

1 AMENDMENT TO HOUSE BILL 4457

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 4457, AS AMENDED,  
3 by replacing everything after the enacting clause with the  
4 following:

5 "Section 5. The Military Code of Illinois is amended by  
6 adding Article V-A and changing the heading of Article VII as  
7 follows:

8 (20 ILCS 1805/Art. V-A heading new)

9 ARTICLE V-A. NATIONAL GUARD EMPLOYMENT RIGHTS

10 (20 ILCS 1805/30.1 new)

11 Sec. 30.1. Article short title. This Article may be  
12 cited as the Illinois National Guard Employment Rights Law.

13 (20 ILCS 1805/30.5 new)

14 Sec. 30.5. Public policy. As a guide to the  
15 interpretation and application of this Article, the public  
16 policy of the State is declared as follows:

17 The United States has provided for the reemployment  
18 rights of members of the Reserve Components of the armed  
19 forces, and of the National Guard of the states, while  
20 servng in duty or training statuses pursuant to Title 10 or

1 32 of the United States Code, by enacting the Uniformed  
2 Services Employment and Reemployment Rights Act, codified at  
3 Title 38, United States Code, Chapter 43. The Uniformed  
4 Services Employment and Reemployment Rights Act, however,  
5 does not provide any such protection to members of the  
6 National Guard serving the states, including the State of  
7 Illinois, in a State Active Duty status pursuant to orders of  
8 the Governor.

9 The United States has also provided relief from certain  
10 civil obligations for personnel of the United States armed  
11 forces serving on federal active duty under Title 10 of the  
12 United States Code, by enacting the Soldiers' and Sailors'  
13 Civil Relief Act of 1940, codified at Title 50 Appendix,  
14 United States Code, Sections 501-591. Members of the National  
15 Guard serving other than in such a federal active duty status  
16 under Title 10 of the United States Code, however, are not  
17 subject to, nor do they receive the protections of, the  
18 Soldiers' and Sailors' Civil Relief Act of 1940.

19 As a constituent commonwealth of the United States, and  
20 in accordance with the constitutions of the United States and  
21 of the State of Illinois, the State of Illinois must provide  
22 for the defense of its citizens and territory against  
23 domestic and foreign threats, and the Illinois National Guard  
24 is an essential part of the State's ability to meet such  
25 threats. It is therefore declared to be the policy of the  
26 State of Illinois (i) to ensure the readiness of members of  
27 the National Guard to execute missions assigned by  
28 appropriate federal or State authorities by guaranteeing  
29 adequate protections of their right to return to civilian  
30 employment upon completion of State Active Duty and (ii) to  
31 grant members of the National Guard relief from certain civil  
32 obligations while performing periods of training or duty  
33 under Title 32 of the United States Code and State Active  
34 Duty.

1 (20 ILCS 1805/30.10 new)

2 Sec. 30.10. Definitions. In this Article:

3 "National Guard" has the definition provided by federal  
4 law at 10 U.S.C. 101(c).

5 "Illinois National Guard" has the definition provided in  
6 Sections 5 and 7 of this Code.

7 "Federal active duty under Title 10 of the United States  
8 Code" means active federal service of members of the National  
9 Guard pursuant to any provision of Chapter 1209 of Title 10  
10 of the United States Code.

11 "Training or duty under Title 32 of the United States  
12 Code" means active or inactive National Guard training or  
13 duty performed pursuant to Chapter 5 of Title 32 of the  
14 United States Code and pursuant to the orders of the  
15 Governor.

16 "State Active Duty" means National Guard duty performed  
17 in the active service of any state or United States territory  
18 or commonwealth in accordance with that jurisdiction's laws  
19 and pursuant to the orders of the Governor concerned. It does  
20 not refer to active duty performed pursuant to Chapter 5 of  
21 Title 32 of the United States Code and pursuant to the orders  
22 of the Governor.

23 "Political subdivision" means any unit of local  
24 government or school district.

25 (20 ILCS 1805/30.15 new)

26 Sec. 30.15. National Guard; State Active Duty;  
27 reemployment rights.

28 (a) Any member of the National Guard ("a member")  
29 employed by a private employer in the State of Illinois or by  
30 the State of Illinois or any political subdivision of the  
31 State whose absence from a position of employment is  
32 necessitated by reason of being called to State Active Duty,  
33 whether or not voluntary, shall be entitled to reemployment

1 rights and benefits and other employment benefits under this  
2 Article if:

3 (1) the member (or an appropriate officer of the  
4 National Guard in which the service is performed) has  
5 given advance written or oral notice of the service, if  
6 reasonably possible;

7 (2) the member reports to, or submits an  
8 application for reemployment to, the employer in  
9 accordance with the provisions of subsection (e); and

10 (3) the character of the member's service on State  
11 Active Duty was honorable, under honorable conditions, or  
12 otherwise characterized as satisfactory.

13 (b) No notice is required under subsection (a) if  
14 precluded by military necessity, or if the giving of the  
15 notice is not reasonably possible, under all relevant  
16 circumstances. A written determination of military necessity  
17 for the purposes of this subsection shall be made by the  
18 Adjutant General of Illinois and shall not be subject to  
19 judicial review.

20 (c) An employer is not required to reemploy a member  
21 under this Section if:

22 (1) the employer's circumstances have so changed as  
23 to make such reemployment impossible or unreasonable, or  
24 if reemployment would impose an undue hardship on the  
25 employer; or

26 (2) the employment from which the member leaves to  
27 serve in the National Guard on State Active Duty is for a  
28 brief, nonrecurrent period and there is no reasonable  
29 expectation that the employment will continue  
30 indefinitely or for a significant period.

31 (d) In any proceeding involving an issue of whether (i)  
32 any reemployment referred to in subsection (c) is impossible  
33 or unreasonable because of a change in an employer's  
34 circumstances; (ii) any accommodation, training, or effort

1 referred to in subdivision (c)(1) would impose an undue  
2 hardship on the employer; or (iii) the employment referred to  
3 in subdivision (c)(2) is for a brief, nonrecurrent period and  
4 there is no reasonable expectation that the employment will  
5 continue indefinitely or for a significant period, the  
6 employer has the burden of proving the impossibility or  
7 unreasonableness, the undue hardship, or the brief or  
8 nonrecurrent nature of the employment without a reasonable  
9 expectation of continuing indefinitely or for a significant  
10 period.

11 (e) Subject to subsection (f), a member referred to in  
12 subsection (a) shall, upon completion of a period of State  
13 Active Duty, notify the employer referred to in subsection  
14 (a) of the member's intent to return to a position of  
15 employment with the employer as follows:

16 (1) In the case of a member whose period of State  
17 Active Duty was less than 31 days, by reporting to the  
18 employer:

19 (A) not later than the beginning of the first  
20 full regularly scheduled work period on the first  
21 full calendar day following completion of the period  
22 of State Active Duty and the expiration of 8 hours  
23 after a period allowing for safe transportation of  
24 the member from the place of that duty to the  
25 member's residence; or

26 (B) as soon as possible after the expiration  
27 of the 8-hour period referred to in paragraph (A),  
28 if reporting within that period is impossible or  
29 unreasonable through no fault of the member.

30 (2) In the case of a member whose period of State  
31 Active Duty was more than 30 days but less than 180 days,  
32 by submitting an application for reemployment with the  
33 employer not less than 14 days after completion of the  
34 period of State Active Duty, or if submitting the

1 application within that period is impossible or  
2 unreasonable through no fault of the member, the next  
3 full calendar day when submission of the application  
4 becomes possible.

5 (3) In the case of a member whose period of State  
6 Active Duty was 180 days or more, by submitting an  
7 application for reemployment with the employer not later  
8 than 90 days after completion of the period of service.

9 (f) A member who is hospitalized for, or convalescing  
10 from, an illness or injury incurred in, or aggravated during,  
11 the performance of a period of State Active Duty shall, at  
12 the end of the period that is necessary for the member to  
13 recover from the illness or injury, report to the member's  
14 employer or submit an application for reemployment with the  
15 employer. The period of recovery shall not exceed 2 years,  
16 except that the 2-year period shall be extended by the  
17 minimum time required to accommodate the circumstances beyond  
18 the member's control which make reporting within the 2-year  
19 period impossible or unreasonable.

20 (g) A member who fails to report or apply for employment  
21 or reemployment within the appropriate period specified in  
22 this Section shall not automatically forfeit his or her  
23 rights and benefits under subsection (a), but shall be  
24 subject to the conduct rules, established policy, and general  
25 practices of the employer pertaining to explanations and  
26 discipline with respect to absence from scheduled work.

27 (h) A member who submits an application for reemployment  
28 in accordance with this Article shall, upon the request of  
29 the employer, provide to the employer documentation to  
30 establish that:

- 31 (1) the member's application is timely; and
- 32 (2) the character of the member's service was  
33 honorable, under honorable conditions, or otherwise  
34 satisfactory.

1       The failure of a member to provide documentation as  
2 prescribed in this subsection may not be the basis for  
3 denying reemployment if the failure occurs because the  
4 documentation does not exist or is not readily available at  
5 the time of the employer's request. If, after reemployment,  
6 documentation becomes available that establishes that the  
7 member does not meet one or more of the requirements in  
8 paragraph (1) or (2), the employer may terminate the member's  
9 employment in accordance with the conduct rules, established  
10 policy, and general practices of the employer pertaining to  
11 explanation and discipline with respect to absence from  
12 scheduled work. An employer may not delay or attempt to  
13 defeat a reemployment obligation by demanding documentation  
14 that does not exist or is not then readily available.

15       (i) Except as otherwise provided by this subsection, a  
16 member entitled to reemployment under this Article, upon  
17 completion of a period of State Active Duty, shall be  
18 promptly reemployed in the position of employment which he or  
19 she left with the same increases in status, seniority, and  
20 wages that were earned during his or her period of State  
21 Active Duty by employees in like positions who were on the  
22 job at the time the returning member entered State Active  
23 Duty, or to a position of like seniority, status, and pay,  
24 unless the employer's circumstances have so changed as to  
25 make it impossible or unreasonable to do so.

26       If at the time of requesting reemployment, the member is  
27 no longer physically, mentally, or otherwise qualified or  
28 able to perform the duties of the position of employment  
29 which he or she left due to disability acquired incident to  
30 his or her service in State Active Duty, but is qualified and  
31 able to perform the duties of any other position in the  
32 employ of the employer, then the member shall be restored to  
33 that other position, the duties of which he or she is  
34 qualified and able to perform and that will provide him or

1 her with like seniority, status, and pay, or the nearest  
2 approximation thereof consistent with the circumstances of  
3 the case.

4 If a member enters State Active Duty and the position of  
5 employment which he or she left is filled by one or more  
6 employees who are also members of the National Guard and who  
7 later enter State Active Duty, the members shall, upon  
8 release from State Active Duty, be given preference in the  
9 matter of reemployment in the order in which they entered  
10 State Active Duty, and the employer shall not be required to  
11 retain more than one of them in his or her employ.

12 (j) Except as otherwise provided in this Section, each  
13 member in the employ of a private employer or of the State of  
14 Illinois or a political subdivision of the State who, for the  
15 purpose of entering State Active Duty, has left or leaves  
16 that employment but who has been rejected for State Active  
17 Duty for lack of proper qualifications, shall be restored by  
18 the employer (i) to the position of employment which the  
19 member left with the same seniority, status, and wage  
20 increases that an employee who was employed in that position  
21 at the time the member left to enter State Active Duty earned  
22 during the time the member was absent from employment because  
23 of his or her attempt to enter State Active Duty or (ii) to a  
24 position of like seniority, status, and pay, provided that at  
25 the time of the rejection for State Active Duty the member is  
26 qualified to perform the duties of the position of employment  
27 which he or she left and has made application for  
28 reemployment within the time period specified in subsection  
29 (e) after receiving official notice of the rejection for  
30 State Active Duty.

31 (20 ILCS 1805/30.20 new)

32 Sec. 30.20. Reemployment; benefits.

33 (a) Any member of the National Guard who is reemployed



1 or seeks reemployment to a position of employment in  
2 accordance with the provisions of this Article, shall be  
3 considered as having been on furlough or leave of absence  
4 during his or her State Active Duty and shall be so  
5 reemployed without loss of seniority and shall be entitled to  
6 participate in insurance or other benefits offered by the  
7 employer pursuant to established rules and practices relating  
8 to employees on furlough or leave of absence in effect with  
9 the employer at the time the member entered State Active  
10 Duty. The member shall not be discharged from the position  
11 without cause within one year after reemployment.

12 (b) If an employer provides health insurance, an  
13 exclusion or waiting period may not be imposed in connection  
14 with coverage of a health or physical condition of a member  
15 entitled to participate in that insurance under this Section,  
16 or a health or physical condition of any other person who is  
17 covered by the insurance by reason of the coverage of that  
18 member, if: (i) the condition arose before or during that  
19 member's period of State Active Duty; (ii) an exclusion or  
20 waiting period would not have been imposed for the condition  
21 during a period of coverage resulting from participation by  
22 that member in the insurance; and (iii) the condition of that  
23 member has not been determined to be service connected.

24 (20 ILCS 1805/30.25 new)

25 Sec. 30.25. Stay of prosecution. During and for a  
26 period of 14 days after a period of training or duty in  
27 excess of 29 days either under Title 32 of the United States  
28 Code or under State Active Duty, a court having jurisdiction  
29 over the enforcement of any civil obligation or liability,  
30 the prosecution of any civil suit or proceeding, or the entry  
31 or enforcement of any civil order, writ, judgment, or decree  
32 may stay, postpone, or suspend the matter if the court  
33 determines that a person's failure to meet the obligation is

1 the direct result of that period of training or duty. The  
2 stay, postponement, or suspension of proceedings does not in  
3 any way modify any condition, obligation, term, or liability  
4 agreed upon or incurred by a person in military service  
5 including but not limited to accrued interest, late fees, or  
6 penalties. No stay, postponement, or suspension shall be  
7 provided regarding any written agreement entered into, or  
8 debt that is incurred, by the person during or after his or  
9 her period of training or duty either under Title 32 of the  
10 United States Code or under State Active Duty.

11 (20 ILCS 1805/30.30 new)

12 Sec. 30.30. School attendance and tuition. Any person  
13 in federal active duty under Title 10 of the United States  
14 Code, or in training or duty under Title 32 of the United  
15 States Code, or in State Active Duty, pursuant to the orders  
16 of the Governor has the right to receive a full monetary  
17 credit or refund for funds paid to any Illinois public  
18 university, college, or community college if the person is  
19 placed into a period of military service with the State of  
20 Illinois pursuant to the orders of the Governor and is unable  
21 to attend the university or college for a period of 7 or more  
22 days. Withdrawal from the course shall not impact upon the  
23 final grade point average of the person. If any person who  
24 has been enrolled in any Illinois public university, college,  
25 or community college is unable to process his or her  
26 enrollment for the upcoming term, he or she shall have any  
27 and all late penalties and or charges set aside, including  
28 any and all late processing fees for books, lab fees, and all  
29 items that were not in place because the person was engaged  
30 in military service and was unable to enroll in the courses  
31 at the appropriate time. The rights set forth in this  
32 Section are in addition to any rights afforded to persons in  
33 military service with the State of Illinois pursuant to the

1 orders of the Governor under the policies of an Illinois  
2 public university, college, or community college.

3 (20 ILCS 1805/Art. VII heading)

4 ARTICLE VII. SEPARATION ~~THE-RETIRED-LIST~~

5 (20 ILCS 1805/33 rep.)

6 Section 10. The Military Code of Illinois is amended by  
7 repealing Section 33.

8 Section 99. Effective date. This Act takes effect upon  
9 becoming law."