

SESSION OF 2015

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2154**

As Agreed to May 11, 2015

Brief*

HB 2154 would establish a permissive veterans' preference in private employment; establish employment reinstatement protections for certain service members; provide in-state tuition to certain military personnel and their family members; modify the statute relating to professional credentialing for military service-members and military spouses; and amend statutes related to diversions, court-ordered treatment, and sentencing with regard to military service members.

Permissive Veterans' Preference in Private Employment

The bill would authorize a private employer to adopt a policy to give a hiring preference to a veteran who meets the requirements of the job. The bill would require such a policy to be in writing and to be applied consistently to all decisions regarding initial employment. Veterans would be required to provide the employer with proof of military service and proof of honorable discharge or general discharge under honorable conditions from military service.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

Employment Reinstatement

The bill also would provide employment reinstatement protections to any person employed in Kansas who is called or ordered to state active duty by Kansas or any other state, whether the person is a member of the Kansas Army National Guard, the Kansas Air National Guard, or other military force of Kansas or any other state. To receive these employment protections, a person eligible under the bill would have to comply with other requirements in existing law, including provision of adequate notice to the employer and release from state active duty under honorable conditions. Current law provides employment protections only to persons called or ordered to duty by the State of Kansas who are members of a Kansas military force.

In-State Tuition for Certain Military Personnel, Veterans, and Military Family Members

The bill would grant in-state tuition and fees to current military personnel, National Guard personnel, veterans, military spouses, and dependents who are attending post-secondary education institutions and are eligible to receive educational assistance under federal law granting such assistance to veterans, regardless of their length of residency in Kansas. In order to receive in-state tuition and fees, the person must be continuously enrolled and file a letter of intent to establish residency in Kansas.

Professional Credentialing for Military Service Members and Military Spouses

The bill would modify statutory provisions related to professional credentialing for military service members and military spouses. The bill would insert a time frame in continuing law that requires any professional licensing body, with the exception of those regulating the legal profession, to issue a license, registration, or certification by endorsement,

reinstatement, or reciprocity to a military service member or nonresident military spouse. Under the bill, the licensing body would be required to issue the license within 60 days after a complete application is submitted; current law does not specify a time frame. The bill also would extend from three months to six months the amount of time a service member or military spouse may have a license on a probationary basis when the licensing body does not have licensure, registration, or certification by endorsement, reinstatement, or reciprocity and the service member or military spouse meets certain criteria. The bill also would permit a licensing body to grant licensure to any person who meets the requirements under this section but was separated from the military under less than honorable conditions.

Municipal and District Court Diversion

The bill would expand the list of factors that must be considered by prosecuting attorneys when determining whether to enter into a diversion agreement with a defendant, by including the following factors:

- Whether there is a probability the defendant committed the crime as a result of an injury, including major depressive disorder, polytrauma, post-traumatic stress disorder, or traumatic brain injury (all terms defined below) connected to service in a combat zone while in the U.S. Armed Forces; and
- If so, whether there is a probability the defendant will cooperate with and benefit from inpatient or outpatient treatment in a facility operated by the U.S. Department of Defense, the U.S. Department of Veterans Affairs, or the Kansas National Guard, with the defendant's consent, as a condition of diversion.

Court-Ordered Treatment

Current law allows a defendant, at the time of conviction or prior to sentencing, to assert the offense was committed as a result of mental illness stemming from service in a combat zone while in the U.S. Armed Forces. If the court determines the defendant meets certain criteria, and would fall within a presumptive non-prison category under sentencing guidelines, the court may order the defendant to undergo inpatient or outpatient treatment in facilities or programs operated by the U.S. Department of Defense, the U.S. Department of Veterans Affairs, or the Kansas National Guard.

The bill would make the following changes:

- Replace the term “mental illness” with the phrase “injury, including major depressive disorder, polytrauma, post-traumatic stress disorder, or traumatic brain injury” and provide the following definitions:
 - “Major depressive disorder” and “post-traumatic stress disorder” mean the same as the terms are defined in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5, 2013);
 - “Polytrauma” means injury to multiple body parts and organ systems that occurred as a result of events during the defendant’s service in one or more combat zones; and
 - “Traumatic brain injury” means injury to the brain caused by physical trauma that occurred as a result of events during the defendant’s service in one or more combat zones;
- Eliminate from the qualifying criteria the requirement that the defendant separated from the

armed forces with an honorable discharge or general discharge under honorable conditions; and

- Provide an alternative for a defendant who meets the qualifying criteria but is ineligible for treatment in facilities or programs operated by the U.S. Department of Defense, the U.S. Department of Veterans Affairs, or the Kansas National Guard. If a court determines such defendant meets the requirements for treatment under the alternative sentencing provisions of 2003 SB 123 (applicable to certain nonviolent offenders convicted of drug possession), the statutes pertaining to SB 123 must apply.

Sentencing

The bill would expand the nonexclusive list of mitigating factors a sentencing judge may consider in determining whether to depart from the presumptive sentence provided by sentencing guidelines. In addition to the mitigating factors in continuing law, the judge could consider whether the offender committed the crime as a result of an injury, including major depressive disorder, polytrauma, post-traumatic stress disorder, or traumatic brain injury connected to service in a combat zone while in the U.S. Armed Forces.

Conference Committee Action

The Conference Committee agreed to add the contents of House Sub. for SB 12 (creating additional diversion and sentencing options for veterans) and House Sub. for SB 112 (expanding and expediting the professional credentialing process for most veterans and military spouses), both as passed by the House.

Background

HB 2154 – Permissive Veterans’ Preference in Private Employment

HB 2154 was introduced by the House Committee on Veterans, Military and Homeland Security, at the request of Representative Phillips. Proponent testimony was provided in the House Committee by Representative Phillips and representatives of the Kansas Commission on Veterans’ Affairs Office, the U.S. Department of Defense, and the Governor’s Military Council. No neutral or opponent testimony was provided.

The House Committee of the Whole amended the bill by replacing language requiring veterans to provide DD214 forms with language requiring veterans to provide proof of military service and proof the discharge was honorable or general under honorable conditions. This amendment was technical in nature and was made because not every veteran discharged from military service will receive a DD214 form, as required by the bill as introduced.

At the hearing before the Senate Federal and State Affairs Committee, Representative Phillips and representatives from the U.S. Department of Defense and the American Legion appeared in support of the bill. Written testimony in support of the bill was submitted by a representative of the Governor’s Military Council.

The Senate Committee on Federal and State Affairs amended HB 2154 by adding the provisions of HB 2155, as amended by the House Committee on Veterans, Military and Homeland Security, and HB 2228, as amended by the House Committee of the Whole and as amended by the Senate Committee, to the provisions of HB 2154, as amended by the House Committee of the Whole.

The Senate Committee of the Whole amended the bill by striking language that applied only to veterans attending post-secondary institutions during academic year 2006-2007, and also adopted a technical amendment.

According to the fiscal note prepared by the Division of the Budget, the original bill would have no fiscal effect on the Kansas Department of Labor's budget. The Attorney General indicates the only potential cost would come from a legal challenge to the law and, if such a challenge were to be made, the agency would defend the action using existing resources. Any fiscal effect associated with HB 2154 is not reflected in *The FY 2016 Governor's Budget Report*.

HB 2155 – Expansion of Employment Reinstatement

HB 2155 was introduced by the House Committee on Veterans, Military and Homeland Security at the request of Representative Phillips. He testified the bill would provide employment protections for members of the National Guard who are employed outside their affiliated state at the time of state-sponsored activations. Additional testimony in support of the bill was provided by representatives of the Adjutant General's Department, the Kansas Commission on Veterans' Affairs Office, the Governor's Military Council, and the U.S. Department of Defense. A conferee noted there are 232 persons who work in Kansas assigned to the National Guard in one of the four states that border Kansas. Under current law, those individuals do not have reemployment rights when they complete state active duty.

The House Committee amended the bill to correct references to state active duty, further specify the type of documentation received upon release from state active duty, and clarify the circumstances and manner in which the Adjutant General's Department provides technical assistance to a person denied benefits under the law.

At the hearing before the Senate Federal and State Affairs Committee, Representative Phillips and representatives from the U.S. Department of Defense and the Kansas Adjutant General's Office appeared in support of the bill. Written testimony in support of the bill was submitted by a representative of the Governor's Military Council.

The fiscal note prepared by the Division of the Budget on HB 2155, as introduced, indicates passage of the bill could increase the number of claims investigations the Adjutant General's Department would have to conduct. However, there is no way to estimate how many cases, the length of time to investigate each case, or how much it would cost to hire an investigative officer. Any fiscal effect associated with HB 2155 is not reflected in *The FY 2016 Governor's Budget Report*.

HB 2228 – In-State Tuition

The House Committee on Veterans, Military and Homeland Security introduced the bill. Proponent testimony was offered by Representative Hutchins and representatives of the National Guard Association of Kansas, Military Officers Association of America, Kansas Commission on Veterans' Affairs Office, American Legion Department of Kansas, and Kansas Department of Veterans of Foreign Wars. Written proponent testimony was provided by the Kansas Board of Regents and Kansas Adjutant General's Department. Proponents of the bill explained this change in law is necessary to make Kansas statutes compliant with requirements established in the Veterans Access Choice and Accountability Act of 2014, for state universities to provide in-state tuition and fees to certain veterans, spouses, and dependents. Under the Choice Act, states that do not comply with the in-state tuition and fee requirements will lose federal GI Bill funding approval. There was no neutral or opponent testimony provided.

The bill, as introduced, did not provide in-state tuition and fees to members of the National Guard. The House

Committee amended the bill to provide National Guard service members in-state tuition and fees.

The House Committee of the Whole made a technical amendment to the bill to make its new provisions part of the Militia, Defense and Public Safety chapter of the Kansas Statutes Annotated.

At the hearing before the Senate Committee, Representative Hutchins and representatives from the Kaw Valley Chapter of the Military Officers Association of America, the National Guard Association of Kansas, the Kansas Commission on Veterans' Affairs Office, the American Legion, and the Disabled American Veterans appeared in support of the bill. Written testimony in support of the bill was submitted by the Kansas Veterans of Foreign Wars, the Kansas Board of Regents, and the Kansas Adjutant General's Office. There was no neutral or opponent testimony on the bill.

The Senate Committee amended the bill by clarifying that current members, not just active duty members, of the armed forces qualified for in-state tuition, and to clarify that such member must live in the state where attending a post-secondary educational institution. Previously the bill had required members to "reside" in the state where "enrolled in" a post-secondary educational institution.

The fiscal note prepared by the Division of the Budget on the HB 2228, as introduced, states the bill could reduce tuition revenue at state universities. Under current law, the state universities waived out-of-state tuition of \$5,390,592 for qualifying military persons and their families in 2014. The proposed law would cause the out-of-state tuition waiver to increase. Any fiscal effect associated with the bill is not reflected in *The FY 2016 Governor's Budget Report*.

House Sub. for SB 12 – Additional Diversion and Sentencing Options for Veterans

SB 12, as introduced, would have expanded the crimes of battery and aggravated battery against law enforcement officers to include judges, attorneys, and court services offices while performing their duties. The bill was amended in the Senate Committee on Corrections and Juvenile Justice, and passed the Senate. It was assigned to the House Committee on Corrections and Juvenile Justice, but did not pass out of that Committee and, subsequently, was referred to the House Committee on Veterans, Military and Homeland Security.

The House Committee on Veterans, Military and Homeland Security removed the contents of SB 12, inserted provisions related to veterans, and passed House Sub. for SB 12.

The Committee previously held an informational hearing on veterans treatment courts. Kansas' first veterans court is anticipated to begin operation in Johnson County in fall 2015. Members noted the substitute bill creates a tool that could be used in veterans treatment courts.

There is no fiscal note for the substitute bill.

House Sub. for SB 112 – Expedited Professional Credentialing

SB 112, as introduced, pertained to officer discretion in issuing citations for misdemeanor violations of the Kansas Department of Wildlife, Parks and Tourism laws. These provisions were amended into SB 113 by the House Committee on Judiciary.

The House Committee on Veterans, Military and Homeland Security held an informational hearing on professional licensure by reciprocity for military families in

Kansas. A representative of the Department of Defense Midwest Regional Office provided informational testimony about this issue.

Following discussion regarding the difficulties for military spouses to receive the credentialing to continue their professions after a permanent change of duty station assigning the service member to Kansas or the difficulties for service members to receive the credentialing to continue their professions after being discharged from the armed forces, the House Committee on Veterans, Military and Homeland Security removed the contents of SB 112 and inserted the provisions of a Revisor's draft into a substitute bill.

There is no fiscal note for the substitute bill.

veterans; employment reinstatement; private veterans preference; in-state tuition; military spouse licensure; veterans diversion; military families

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