

# SENATE BILL NO. 162

February 28, 2019, Introduced by Senators VICTORY, BUMSTEAD, OUTMAN, HOLLIER, HERTEL, DALEY, BARRETT and VANDERWALL and referred to the Committee on Economic and Small Business Development.

A bill to prohibit an employer from discriminating against, disciplining, or discharging an employee who is absent from work to respond to an emergency as an emergency responder; and to provide remedies for a violation of this act.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1           Sec. 1. This act shall be known and may be cited as the "emergency  
2 responder employment protection act".

3           Sec. 2. As used in this act:

4           (a) "Emergency responder" means an individual who is required to  
5 possess a license, certificate, permit, or other official recognition  
6 for his or her expertise in a particular field or area of knowledge,  
7 whose assistance in that field or area is utilized or is desirable  
8 during an emergency, and who provides such assistance during  
9 emergencies on a volunteer or paid on-call basis. Emergency responder  
10 includes, but is not limited to, emergency medical services personnel;  
11 physicians; nurses; mental health, veterinary, or other public health  
12 practitioners; emergency management personnel; public works personnel;  
13 and firefighters, including, but not limited to, firefighters trained  
14 in the areas of hazardous materials, specialized rescue, extrication,  
15 water rescue, or other specialized area. Emergency responder does not  
16 include law enforcement officers or other law enforcement personnel.

17           (b) "Employee" means an individual who receives wages or  
18 remuneration for providing services to an employer.

19           (c) "Employer" means a person that provides wages or remuneration  
20 to 1 or more individuals who perform services for the employer under an  
21 express or implied contract of hire.

1           Sec. 3. (1) Subject to subsections (2) and (3), an employer shall  
2 not discriminate against, discipline, or discharge an employee for any  
3 of the following reasons:

4           (a) The employee is an emergency responder.

5           (b) The employee is absent from work, if both of the following  
6 conditions are met:

7           (i) The employee is absent for the purpose of responding as an  
8 emergency responder to an emergency that began before the start of the  
9 shift for which the employee is absent.

10          (ii) The employee provides the employer with verification of the  
11 emergency need for the employee's service.

12          (2) Subsection (1)(b) does not apply to an employee who leaves  
13 work during the employee's shift for the purpose of responding as an  
14 emergency responder to an emergency.

15          (3) This act does not do any of the following:

16          (a) Prohibit an employer from treating the time the employee is  
17 absent under subsection (1)(b) as unpaid time off.

18          (b) Prohibit an employer from complying with a collective  
19 bargaining agreement or employee benefit plan entered into before the  
20 effective date of this act.

21          (4) Within 30 days after the effective date of this act, the date  
22 of employment, or the date of a change in an employee's status as an  
23 emergency responder, whichever is latest, the employee shall notify his  
24 or her employer of the employee's status as an emergency responder.

25          (5) An employee or former employee may bring a civil action for  
26 damages or equitable relief to enforce this act.

## EMERGENCY RESPONDER EMPLOYMENT PROTECTION ACT

Senate Bill No. 162 as introduced

Sponsor: Senator Roger Victory

Committee: Economic and Small Business Development

### SUMMARY:

**Senate Bill 162** would create a new act prohibiting employers from discriminating against, disciplining, or discharging their employees in response to their being absent because they are actively working as an emergency first responder.

The act defines an *emergency responder* as an individual who is required to possess a license, certificate, permit, or other official recognition for his or her expertise in a particular field or area of knowledge whose assistance in the field or area is utilized or is desirable during an emergency, and who provides such assistance during emergencies on a volunteer or paid on call basis. Emergency first responders include but is not limited to emergency medical service personnel, physicians, nurses, and firefighters. Emergency responders do not include law enforcement officers or other law enforcement personnel.

An *employee* would mean an individual who receives wages or remuneration for providing services to an employer.

An *employer* would mean a person that provides wages or remuneration to one or more individuals who perform services for the employer under an express or implied contract for hire.

Under this act, an employer could not discriminate against, discipline, or discharge an employee if the employee is absent at the start of the shift due to an emergency and can provide verification of the need to said employer.

This act would not apply if an emergency responder left during a shift, nor does it prevent the employer from withholding compensation for the time the employee was absent or prevent an employer from engaging in collective bargaining agreements.

Employees must notify employers within 30 days of the passage of this act, their change in employment, or change in status as an emergency responder.

### APPARENT PROBLEM

The bill sponsors hold that the recruitment and retention of emergency first responders is far lower than what is desired and necessary for Michigan. Active first responders are being overutilized while being at risk of losing their regular employment. This bill seeks to alleviate some of the burden on first responders but removing the fear of employer disciplinary action in response to their first responder obligations.

## **SUPPORTING ARGUMENTS**

The greatest benefit of this bill would be lightening the load on emergency first responders and giving them a greater capacity to do their jobs well without fear of retribution. Additionally, this could have the added benefit of improving retention and recruitment numbers for emergency responders with added knowledge of their job security.

This act also includes protections for employers through a variety of means:

1. It does not require employers to forego pre-existing contracts with unions
2. It does not require employers to pay employees for the missed time at work
3. The policy only extends to emergencies starting before a work shift and would not encourage employees to leave during a shift
4. It requires employees to give notice of their rights and service responsibilities

## **OPPOSING ARGUMENTS**

The greatest negative impact of this bill would be on business owners. While some protections are given to employers, notice of the reason for absence is given retroactively. A first responder may not be present at the start of their shift with no notice to the employer or coworkers. This could lead to a business opening later than advertised, coworkers being unable to leave at agreed upon times, or the closing of operations while the emergency first responder is absent. Especially for small businesses with limited staff, this could have a detrimental impact.

While the act provides protections for employers, it leaves ambiguity as to how far the policy extends. Employers often will take other responsibilities into account when hiring an individual. Under this policy, it becomes highly ambiguous as to whether choosing not to hire a person based on emergency responder responsibilities is discriminatory or out of consideration for an undo burden.

## **FISCAL IMPACT:**

Senate Bill 162 would have an intermittent impact on the civil court systems depending upon the number of discrimination cases presented considering this case. Area businesses will also be fiscally impacted in an intermittent amount depending on factors such as:

- 1) The number of total employees available to the business,
- 2) the number of employees actively serving as emergency responders, and
- 3) the number of emergency situations in their area requiring volunteer service.

The Michigan Department of Homeland Security (DHS) may show a positive fiscal impact as this act would remove barriers to individuals' willingness to volunteer as first responders knowing that they will not be adversely impacted for serving in this capacity.