

SENATE BILL NO. 2353

Introduced by

Senators Dever, Lyson, Tollefson

Representatives Carlisle, Karls, L. Meier

1 A BILL for an Act to amend and reenact sections 37-01-40, 37-19.1-01, and 37-19.1-02 and
2 subsection 1 of section 37-19.1-04 of the North Dakota Century Code, relating to veterans and
3 veterans' preferences.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 37-01-40 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **37-01-40. Veteran and wartime veteran defined - Uniform service dates for**
8 **wartime veterans.**

- 9 1. A "veteran" is a person who has served on continuous federalized active military
10 duty for ~~twenty-four months~~ or the full period for which the person was called or
11 ordered to active military duty, ~~whichever is shorter,~~ for reasons other than training
12 and who was discharged or released therefrom under other than dishonorable
13 conditions. A discharge reflecting "expiration of term of service" or "completion of
14 required service" or words to that effect qualifies the shorter term of service as
15 making the person a veteran.
- 16 2. A "wartime veteran" is a person who served in the active military forces, during a
17 period of ~~war or who received the armed forces expeditionary or other campaign~~
18 ~~service medal during an emergency condition and who was discharged or released~~
19 ~~therefrom under other than dishonorable conditions~~ service. "Wartime veteran"
20 also includes a person who died in the line of duty in the active military forces, as
21 determined by the armed forces.
- 22 3. Period of service dates for a wartime veteran begins with the date of any
23 declaration of war by the Congress of the United States, the date of any
24 presidential action or proclamation beginning an armed conflict, or the beginning of

1 an emergency condition recognized by the issuance of a presidential proclamation
2 or a presidential executive order and in which the armed forces expeditionary
3 medal or other campaign service medals are awarded according to presidential
4 executive order and ending on a date prescribed by presidential proclamation or
5 concurrent resolution of the Congress of the United States and dates determined
6 by the United States department of defense.

7 **SECTION 2. AMENDMENT.** Section 37-19.1-01 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **37-19.1-01. Definitions.** As used in this chapter:

- 10 1. "Agency" or "governmental agency" means all political subdivisions and any state
11 agency, board, bureau, commission, department, officer, and any state institution
12 or enterprise authorized to employ persons either temporarily or permanently.
- 13 2. "Chief deputy" means the person who is appointed by an elected or appointed
14 official under express statutory authority to hire a chief deputy and who is
15 authorized to act on behalf of that official. The term does not include a person
16 appointed to a position that must be filled under ~~an established~~ a personnel
17 system.
- 18 3. "Disabled veteran" means a veteran who is found to be entitled to a
19 service-connected disability rating as determined by the United States veterans'
20 administration.
- 21 4. "Personnel system" means a ~~personnel~~ system of hiring employees based on an
22 established merit principles system that rates applicants for a position using an
23 objective and measurable set of skills, knowledge, abilities, behaviors, or other
24 characteristics required for the position.
- 25 5. "Political subdivision" means counties, cities, townships, and any other
26 governmental entity created by state law which employs persons either temporarily
27 or permanently.
- 28 6. "Private secretary" means the person who is appointed by an elected or appointed
29 official under express legal authority to hire a private secretary or administrative
30 assistant and who is authorized to handle correspondence, keep files, schedule
31 appointments, and do other clerical work of a more personal and confidential

1 nature for that official, but does not include a person appointed to a position that
2 must be filled under ~~an established~~ a personnel system.

3 7. "Veteran" means a North Dakota resident who is a wartime veteran as defined in
4 subsection 2 of section 37-01-40.

5 **SECTION 3. AMENDMENT.** Section 37-19.1-02 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **37-19.1-02. Public employment preference to veterans - Residency requirements.**

- 8 1. Veterans are entitled to preference, over all other applicants, in appointment or
9 employment by governmental agencies, provided that such veteran is a United
10 States citizen at the time of application for employment. Veterans qualified for
11 preference may not be disqualified from holding any position with an agency
12 because of physical or mental disability, unless the disability renders them unable
13 to properly perform the duties of the position applied for.
- 14 2. When a veteran applies for appointment or employment under subsection 1, the
15 officer, board, or person whose duty it is to appoint or employ a person to fill the
16 available position shall, except where the veteran has been qualified for the
17 position applied for under a personnel system, investigate the qualifications of the
18 veteran. If the veteran is found to possess the qualifications required for the
19 position applied for, whether educational or by way of prior experience, and is
20 physically and mentally able to perform the duties of the position applied for, the
21 officer, board, or person shall appoint or employ the veteran.
- 22 3. A disabled veteran is entitled to a preference superior to that given other veterans
23 under this section, which preference must be accorded in the manner provided in
24 this section.
- 25 4. Notwithstanding the preference provisions in subsections 1, 2, and 3, ~~public~~
26 ~~employment preference for veterans by agencies or governmental agencies, as~~
27 ~~defined herein, which now have, or which may hereafter have, an established to~~
28 have a valid personnel system ~~are governed by the following~~ an agency with a
29 personnel system:
- 30 a. ~~No~~ May not make any distinction or discrimination ~~may be made~~
31 administration of the examination because ~~the~~ an applicant may be a veteran.

- 1 b. Upon completion of the examination with a passing grade, shall inform the
2 applicant ~~must be informed~~ of a veteran's rights to employment preference as
3 ~~hereinafter~~ provided in this section.
- 4 c. ~~The~~ Shall require the applicant ~~must be required~~ to furnish proof of the
5 applicant's status as a veteran and, if disabled, proof of the applicant's
6 disability, ~~as defined herein~~.
- 7 d. Upon receipt of proof required in subdivision c, ~~the examiner~~ shall add five
8 points for a nondisabled veteran and ten points for a disabled veteran to the
9 examination grade of the applicant, and the total is the veteran's examination
10 grade.
- 11 e. Upon request for the prescribed number of eligible persons from the eligibility
12 registry, ~~such~~ shall certify the number of eligible persons ~~must be certified~~
13 from the top number of eligible persons and with ~~such~~ the certified list of
14 eligible persons ~~there must also be submitted~~ shall submit a statement as to
15 which of those so certified are veterans, disabled veterans, or nonveterans.
- 16 f. In the event the certified list of eligible persons includes either veterans or
17 disabled veterans, the appointing or employing authority of ~~that particular~~
18 ~~agency or governmental~~ an agency shall make a selection for the available
19 position as follows:
- 20 (1) A disabled veteran, without regard to the disabled veteran's
21 examination grade, is first entitled to the position and, in the absence of
22 justifiable cause, documented in writing, for not making ~~such that~~
23 selection, must be ~~se~~ appointed or employed. If ~~such~~ the list includes
24 two or more disabled veterans, then the one with the highest
25 examination grade is first entitled to the position and, in the absence of
26 justifiable cause, documented in writing, for not making ~~such that~~
27 selection, must be ~~se~~ appointed or employed.
- 28 (2) ~~When such~~ If the certified list of eligible persons does not include one
29 or more disabled veterans and consists only of veterans, then the one
30 with the highest examination grade is first entitled to the position and, in

1 the absence of justifiable cause, documented in writing, must be ~~se~~
2 appointed or employed.

3 (3) ~~When such~~ If the certified list of eligible persons includes nonveterans
4 and veterans, but not disabled veterans, then the one with the highest
5 examination grade, whether a nonveteran or a veteran, is first entitled
6 to the position and, in the absence of justifiable cause, must be ~~se~~
7 appointed or employed; and if the one with the highest examination
8 grade is a veteran and is not appointed or employed, there must be
9 justifiable cause documented in writing for not making ~~such~~ that
10 appointment or employment.

11 5. The provisions of this section do not apply when the position to be filled is that of a
12 superintendent of schools, teacher, or the chief deputy or private secretary of an
13 elected or appointed official, the chancellor and vice chancellors of the board of
14 higher education, presidents or executive deans, vice presidents, assistant to the
15 president, provosts, and instructors of board institutions. Temporary committees
16 and individual or group appointments made by the governor or legislative assembly
17 are also excepted from the provisions of this section.

18 **SECTION 4. AMENDMENT.** Subsection 1 of section 37-19.1-04 of the North Dakota
19 Century Code is amended and reenacted as follows:

20 1. If a veteran, or a qualified veteran's spouse, hereafter known as the applicant, is
21 not given the preference provided in section 37-19.1-02 or 37-19.1-03, the
22 applicant, within fifteen days after notification by certified mail that employment has
23 been refused, may request a hearing before a hearing officer as provided in
24 subsection 3. The applicant's request must be in writing, must include the
25 employer's notification that employment has been refused, and must be delivered
26 to the commissioner of veterans' affairs by certified mail. A copy of the written
27 request must be mailed to the employer or employing agency. The applicant is
28 entitled to immediate employment in the position for which application was
29 originally made, or an equivalent position, together with backpay and benefits from
30 the date the appointment should have been made, if the hearing officer finds in
31 favor of the applicant.