Sixtieth Legislative Assembly of North Dakota

## 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.

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

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

## 37-01-40. Veteran and wartime veteran defined - Uniform service dates for wartime veterans.

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

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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:

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

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

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

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

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

- 1. Veterans are entitled to preference, over all other applicants, in appointment or employment by governmental agencies, provided that such veteran is a United States citizen at the time of application for employment. Veterans qualified for preference may not be disqualified from holding any position with an agency because of physical or mental disability, unless the disability renders them unable to properly perform the duties of the position applied for.
- 2. When a veteran applies for appointment or employment under subsection 1, the officer, board, or person whose duty it is to appoint or employ a person to fill the available position shall, except where the veteran has been qualified for the position applied for under a personnel system, investigate the qualifications of the veteran. If the veteran is found to possess the qualifications required for the position applied for, whether educational or by way of prior experience, and is physically and mentally able to perform the duties of the position applied for, the officer, board, or person shall appoint or employ the veteran.
- A disabled veteran is entitled to a preference superior to that given other veterans under this section, which preference must be accorded in the manner provided in this section.
- 4. Notwithstanding the preference provisions in subsections 1, 2, and 3, public employment preference for veterans by agencies or governmental agencies, as defined herein, which now have, or which may hereafter have, an established to have a valid personnel system are governed by the following an agency with a personnel system:
  - a. No May not make any distinction or discrimination may be made in the 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 Upon request for the prescribed number of eligible persons from the eligibility e. 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 so 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 so 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

with the highest examination grade is first entitled to the position and, in

- the absence of justifiable cause, documented in writing, must be so appointed or employed.
  - (3) When such If the certified list of eligible persons includes nonveterans and veterans, but not disabled veterans, then the one with the highest examination grade, whether a nonveteran or a veteran, is first entitled to the position and, in the absence of justifiable cause, must be se appointed or employed; and if the one with the highest examination grade is a veteran and is not appointed or employed, there must be justifiable cause documented in writing for not making such that appointment or employment.
  - 5. The provisions of this section do not apply when the position to be filled is that of a superintendent of schools, teacher, or the chief deputy or private secretary of an elected or appointed official, the chancellor and vice chancellors of the board of higher education, presidents or executive deans, vice presidents, assistant to the president, provosts, and instructors of board institutions. Temporary committees and individual or group appointments made by the governor or legislative assembly are also excepted from the provisions of this section.

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

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