

Sixtieth  
Legislative Assembly  
of North Dakota

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

executive order and in which the armed forces expeditionary medal or other campaign service medals are awarded according to presidential executive order and ending on a date prescribed by presidential proclamation or concurrent resolution of the Congress of the United States and dates determined by the United States department of defense.

4. Current uniform period of service dates for periods of armed conflict include:

- a. The period beginning December 7, 1941, through December 31, 1946, known as world war II;
- b. The period beginning June 27, 1950, through January 31, 1955, known as the Korean war;
- c. The period beginning August 5, 1964, through May 7, 1975, known as the Vietnam war;
- d. The period beginning August 2, 1990, through January 2, 1992, known as the gulf war; and
- e. The period beginning September 11, 2001, and ending on a date prescribed by presidential proclamation or by Congress as the last day of operation Iraqi freedom or operation enduring freedom, whichever occurs later.

5. The department of veterans affairs shall maintain a list of all period of service dates for emergency conditions in which the armed forces expeditionary medal has been awarded.

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

**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~~ individuals either temporarily or permanently.
- 2. "Chief deputy" means the ~~person~~ individual 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~~

- 1            an individual appointed to a position that must be filled under an established  
2            personnel system.
- 3            3. "Disabled veteran" means a veteran who is found to be entitled to a  
4            service-connected disability rating as determined by the United States veterans'  
5            administration.
- 6            4. "Justifiable cause" means grounds for action that are in accord with sufficient  
7            reason that can be justified or defended as correct. Justifiable cause not to hire a  
8            veteran must be something specific to that individual which renders the individual  
9            unsuitable for the position.
- 10          5. "Personnel system" means a ~~personnel system based on merit principles~~ system  
11          that rates applicants for a position using an objective set of skills, knowledge,  
12          abilities, behaviors, or other characteristics required for the position.
- 13          5- 6. "Political subdivision" means counties, cities, townships, and any other  
14          governmental entity created by state law which employs ~~persons~~ individuals either  
15          temporarily or permanently.
- 16          6- 7. "Private secretary" means the ~~person~~ individual who is appointed by an elected or  
17          appointed official under express legal authority to hire a private secretary or  
18          administrative assistant and who is authorized to handle correspondence, keep  
19          files, schedule appointments, and do other clerical work of a more personal and  
20          confidential nature for that official, but does not include ~~a person~~ an individual  
21          appointed to a position that must be filled under ~~an established~~ a personnel  
22          system.
- 23          7- 8. "Veteran" means a North Dakota resident who is a wartime veteran as defined in  
24          subsection 2 of section 37-01-40.

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

27            **37-19.1-02. Public employment preference to veterans - Residency requirements.**

- 28            1. Veterans are entitled to preference, over all other applicants, in appointment or  
29            employment by governmental agencies, provided that such veteran is a United  
30            States citizen at the time of application for employment. Veterans qualified for  
31            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~~ an individual 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.
3. 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~~ filling positions through a personnel system are governed by the following:
  - a. No distinction or discrimination may be made in the administration of the examination because the applicant may be a veteran.
  - b. Upon completion of the examination with a passing grade, the applicant must be informed of a veteran's rights to employment preference as hereinafter provided.
  - c. The applicant must be required to furnish proof of the applicant's status as a veteran and, if disabled, proof of the applicant's disability, as defined herein.
  - d. Upon receipt of proof required in subdivision c, on a one hundred point scale, the examiner shall add five points for a nondisabled veteran and ten points for a disabled veteran to the examination grade of the applicant, ~~and the~~ . The total is the veteran's examination ~~grade~~ score.
  - e. Upon request for the prescribed number of eligible ~~persons~~ individuals from the eligibility registry, ~~such~~ the number of eligible ~~persons~~ individuals must be

1 certified from the top number of eligible ~~persons~~ individuals and with ~~such the~~  
2 certified list of eligible ~~persons~~ individuals there must also be submitted a  
3 statement as to which of those so certified are veterans, disabled veterans, or  
4 nonveterans.

5 f. ~~In the event~~ If the certified list of eligible ~~persons~~ individuals includes either  
6 veterans or disabled veterans, the appointing or employing authority of that  
7 particular agency or governmental agency shall make a selection for the  
8 available position as follows:

9 (1) A disabled veteran, without regard to the disabled veteran's  
10 examination grade, is first entitled to the position and, in the absence of  
11 justifiable cause, documented in writing, for not making ~~such that~~  
12 selection, must be so appointed or employed. ~~If such the~~ If the list includes  
13 two or more disabled veterans, then the one with the highest  
14 examination grade is first entitled to the position and, in the absence of  
15 justifiable cause, documented in writing, for not making ~~such that~~  
16 selection, must be so appointed or employed.

17 (2) ~~When such~~ If the certified list of eligible ~~persons~~ individuals does not  
18 include one or more disabled veterans and consists only of veterans,  
19 then the one with the highest examination grade is first entitled to the  
20 position and, in the absence of justifiable cause, documented in writing,  
21 must be ~~so~~ appointed or employed.

22 (3) ~~When such~~ If the certified list of eligible ~~persons~~ individuals includes  
23 nonveterans and veterans, but not disabled veterans, then the one with  
24 the highest examination grade, whether a nonveteran or a veteran, is  
25 first entitled to the position and, in the absence of justifiable cause,  
26 must be so appointed or employed; and if the one with the highest  
27 examination grade is a veteran and is not appointed or employed, there  
28 must be justifiable cause documented in writing for not making ~~such~~  
29 that appointment or employment.

30 5. ~~The provisions of this~~ This section ~~do~~ does not apply when the position to be filled  
31 is that of a superintendent of schools, teacher, or the chief deputy or private

1 secretary of an elected or appointed official, the chancellor and vice chancellors of  
2 the board of higher education, presidents or executive deans, vice presidents,  
3 assistant to the president, provosts, and instructors of board institutions.

4 Temporary committees and individual or group appointments made by the  
5 governor or legislative assembly are also excepted from the provisions of this  
6 section.

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

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