

Sixty-second
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2279

Introduced by

Senators G. Lee, Lyson, Sitte

Representatives Boehning, Nathe, Wrangham

1 A BILL for an Act to amend and reenact sections 37-19.1-01, 37-19.1-02, 37-19.1-03, and
2 37-19.1-04 of the North Dakota Century Code, relating to veterans' preference; and to provide
3 for a legislative management study.

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

5 **SECTION 1. AMENDMENT.** Section 37-19.1-01 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **37-19.1-01. Definitions.**

8 As used in this chapter:

- 9 1. "Agency" or "governmental agency" means all political subdivisions and the state,
10 including any state agency, board, bureau, commission, department, officer, and any
11 state institution or enterprise authorized to employ individuals either temporarily or
12 permanently.
- 13 2. "Chief deputy" means the individual who is appointed by an elected or appointed
14 official under express statutory authority to hire a chief deputy and who is authorized
15 to act on behalf of that official. The term does not include an individual appointed to a
16 position that must be filled under a competitive personnel system.
- 17 3. "Competitive personnel system" means a system that rates applicants for a position
18 using an objective set of skills, knowledge, abilities, behaviors, or other characteristics
19 required for the position.
- 20 4. "Disabled veteran" means a veteran who is found to be entitled to a service-connected
21 disability rating as determined by the United States veterans' administration.
- 22 4.5. "Justifiable cause" means grounds for action that are in accord with sufficient reason
23 that can be justified or defended as correct. Justifiable cause not to hire a veteran

1 must be something specific to that individual which renders the individual unsuitable
2 for the position.

3 5. ~~"Personnel system" means a system that rates applicants for a position using an~~
4 ~~objective set of skills, knowledge, abilities, behaviors, or other characteristics required~~
5 ~~for the position.~~

6 6. "Political subdivision" means counties, cities, townships, and any other governmental
7 entity created by state law which employs individuals either temporarily or
8 permanently.

9 7. "Private secretary" means the individual who is appointed by an elected or appointed
10 official under express legal authority to hire a private secretary or administrative
11 assistant and who is authorized to handle correspondence, keep files, schedule
12 appointments, and do other clerical work of a more personal and confidential nature
13 for that official, but does not include an individual appointed to a position that must be
14 filled under a competitive personnel system.

15 8. "Veteran" means a North Dakota resident who is a wartime veteran as defined in
16 subsection 21 of section 37-01-40.

17 **SECTION 2. AMENDMENT.** Section 37-19.1-02 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **37-19.1-02. Public employment preference to veterans - Residency requirements.**

20 1. Veterans are entitled to preference, over all other applicants, in ~~appointment or~~
21 ~~employment~~recruitment and selection processes by governmental agencies, provided
22 that such veteran is a United States citizen at the time of application for employment.

23 Veterans qualified for preference may not be disqualified from holding any position
24 with an agency because of physical or mental disability, unless the disability renders
25 them unable to properly perform the duties of the position applied for. To receive

26 veterans' preference, an applicant must submit the following documentation:

27 a. An applicant claiming veterans' preference shall provide a copy of report of
28 separation DD-214.

29 b. An applicant claiming disabled veterans' preference shall provide a copy of report
30 of separation DD-214 and a letter less than one year old from the veterans'
31 administration indicating the veteran's disability status.

1 c. An applicant claiming veterans' preference as an eligible spouse of a deceased
2 veteran shall provide a copy of the marriage certificate, the veteran's report of
3 separation DD-214, and the veteran's death certificate.

4 d. An applicant claiming disabled veterans' preference as an eligible spouse of a
5 disabled veteran shall provide a copy of the marriage certificate, the veteran's
6 report of separation DD-214, and a letter less than one year old from the
7 veterans' administration indicating the veteran's disability status.

8 2. ~~When a veteran applies for appointment or employment under subsection 1 to a~~
9 ~~position that is not being filled through a competitive personnel system,~~ the officer,
10 board, or person whose duty it is to ~~appoint or employ~~ an individual to fill the available
11 position shall, ~~except where the veteran has been qualified for the position applied for~~
12 ~~under a personnel system,~~ investigate the qualifications of the veteran. If the veteran
13 is found to possess the qualifications required for the position applied for, whether
14 educational or by way of prior experience, and is physically and mentally able to
15 perform the duties of the position applied for, the officer, board, or person shall ~~appoint~~
16 ~~or employ~~ the veteran. A disabled veteran is entitled to a preference superior to that
17 given other veterans under this section, which preference must be accorded in the
18 manner provided in this section. If the group of eligible individuals includes either
19 veterans or disabled veterans, the employing authority of that particular agency or
20 governmental agency shall make a selection for the available position as follows:

21 a. A disabled veteran is first entitled to the position and, in the absence of justifiable
22 cause, documented in writing, for not making that selection, must be so
23 employed. If the list includes two or more disabled veterans, then the employing
24 authority shall fill the position from the group of eligible individuals to be
25 considered. The employing authority may further inquire into the qualifications of
26 each eligible individual from within that group through means including
27 interviews, background checks, and skills testing. A disabled veteran from the
28 group of eligible individuals is first entitled to the position and, in the absence of
29 justifiable cause, documented in writing, for not making that selection, must be so
30 employed.

b. If the group of eligible individuals does not include one or more disabled veterans and consists only of veterans, then the employing authority shall fill the position from the group of eligible individuals to be considered. The employing authority may further inquire into the qualifications of each eligible individual from within that group through means including interviews, background checks, and skills testing. A veteran from the group of eligible individuals is first entitled to the position and, in the absence of justifiable cause, documented in writing, for not making that selection, must be so employed.

c. If the group of eligible individuals includes nonveterans and veterans, but not disabled veterans, then the employing authority shall fill the position from the group of eligible individuals to be considered. The employing authority may further inquire into the qualifications of each eligible individual from within that group through means including interviews, background checks, and skills testing. A veteran from the group of eligible individuals is first entitled to the position and must be employed unless there is justifiable cause that is documented in writing for not employing that 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 filling positions through a personnel system are governed by the following:~~When a veteran applies for employment to a position that is being filled through a competitive personnel system, the officer, board, or person whose duty it is to employ an individual to fill the available position shall 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 employ the following:

a. No distinction or discrimination may be made in the administration of the competitive personnel system examination because the applicant may be a veteran.

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

(3) ~~If the certified list of eligible individuals 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 so 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 that appointment or employment.~~

d. The employing authority shall fill the position from the group of eligible individuals to be considered. The employing authority may further inquire into the qualifications of each eligible individual from within that group through means including interviews, background checks, and skills testing.

5.4. This section does not apply when the position to be filled is that of a superintendent of schools, teacher, administrative head of a department required by law, 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. If an exempt position is advertised, the advertisement must state that veterans' preference does not apply to the position being advertised.

5. An employee of a state agency is not eligible for preference when applying for a different job within the same state agency or other state agencies. An employee of a political subdivision is not eligible for preference when applying for a different job within the same political subdivision.

SECTION 3. AMENDMENT. Section 37-19.1-03 of the North Dakota Century Code is amended and reenacted as follows:

37-19.1-03. Preferences to be granted veterans' spouses.

1. The unremarried spouse of a veteran who died while in service, or later died from a service-connected cause or causes, is entitled, if the person is otherwise qualified, to

the appointment or employment preference given to a veteran under section 37-19.1-02 in the manner provided therein.

2. The spouse of a disabled veteran, who ~~is disabled due to a service-connected cause or causes~~ has a one hundred percent service-connected disability as determined by the department of veterans' affairs, or who has an extra-schedular rating to include individual unemployability that brings the veteran's total disability rating to one hundred percent as determined by the department of veterans' affairs, is, if the disabled veteran is unable to exercise the veteran's right to a veteran's employment preference due to the veteran's disability, entitled, if the person is otherwise qualified, to the appointment or employment preference given to a veteran under section 37-19.1-02 in the manner provided therein.

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

37-19.1-04. Refusal to give preference - Retaliatory action or removal - Remedies - Procedures.

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 calendar days after notification by certified mail that employment has been refused, may request a hearing as provided in subsection 3. The notification from the employer must include the reasons for nonselection, inform the applicant of the right to an appeal hearing, inform the applicant of the requirement that the request for a hearing must be filed by certified mail within fifteen calendar days after the notification, inform the applicant that a request for an appeal hearing must be made to the commissioner of veterans' affairs at the included commissioner's mailing address, and inform the applicant that if the applicant requests an appeal, the applicant must mail a copy of the request for an appeal hearing to the employer or employing agency. The applicant's request for a hearing must be in writing, must include a copy of the employer's notification that employment has been refused, and must be ~~delivered~~mailed to the commissioner of veterans' affairs by certified mail. A copy of the written request must be mailed to the employer or employing agency by certified mail. The applicant is entitled to immediate employment in the position for which application

1 was originally made, or an equivalent position, together with backpay and benefits
2 from the date the appointment should have been made less amounts otherwise
3 earnable through due diligence, if the hearing officer finds in favor of the applicant.

- 4 2. Any person who has exercised the right to an employment preference under this
5 chapter, and who, within one year after exercise of that right:
- 6 a. Is discharged;
 - 7 b. Has had compensation reduced; or
 - 8 c. Is otherwise subject to action by the employing agency designed to cause the
9 veteran or qualified veteran's spouse to resign or quit employment, is entitled to a
10 hearing if the person believes that the employing agency took any of the
11 above-described action due to the exercise of employment preference. The
12 hearing must be held before a hearing officer as provided in subsection 3. If the
13 hearing officer finds that the employing agency took any of the actions described
14 in subdivision a, b, or c due to the person's exercise of the right to an
15 employment preference, the hearing officer shall order the employing agency to
16 cease and desist from such action or to reinstate the veteran or qualified
17 veteran's spouse. The request for a hearing under this subsection must be in
18 writing addressed to the commissioner of veterans' affairs. The request for a
19 hearing must identify the employer or employing agency that took any action
20 described in subdivision a, b, or c and describe the action taken. A copy of the
21 written request must be mailed to the employer or employing agency. The
22 request, addressed to the commissioner of veterans' affairs and the copy to the
23 employer or employing agency, must be made by certified mail within fifteen
24 calendar days after any action described in subdivision a, b, or c is taken by the
25 employing agency.

- 26 3. Within fifteen calendar days after receiving a request from an applicant or person
27 under subsection 1 or 2, the commissioner of veterans' affairs may request the
28 director of the office of administrative hearings to designate a hearing officer to hear
29 the grievance arising under subsection 1 or 2. The commissioner shall notify the
30 employer or employing agency that a request for a hearing has been made. The office
31 of administrative hearings is entitled to be reimbursed by the employer or employing

1 agency for all hearing officer services rendered and expenses incurred in performing
2 these duties. The hearing officer shall hold the hearing within thirty calendar days after
3 the hearing officer request is received by the director of the office of administrative
4 hearings. Notwithstanding the time limitation, the hearing officer may postpone or
5 continue the hearing for good cause, at the request of a party. At the hearing, both
6 parties may be represented by counsel. If the hearing is requested pursuant to
7 subsection 1, the employing agency has the burden of proving that the veteran or the
8 qualified veteran's spouse did not possess the qualifications required for the position.
9 If the hearing is requested pursuant to subsection 2, the employing agency has the
10 burden of proving that any action which was taken was not taken because of exercise
11 of the right to an employment preference. The hearing officer shall issue findings of
12 fact, conclusions of law, and an order within fifteen calendar days after the hearing is
13 concluded, briefs filed, and arguments closed. The order is binding on both parties,
14 subject to appeal.

- 15 4. Any party aggrieved by the findings of fact, conclusions of law, and order of the
16 hearing officer may appeal in the manner provided for in chapter 28-32, except that
17 the appellant need not execute an undertaking.

18 **SECTION 5. LEGISLATIVE MANAGEMENT VETERANS' PREFERENCE LAWS STUDY.**

19 During the 2011-12 interim, the legislative management shall consider studying the North
20 Dakota veterans' preference laws. The legislative management shall report its findings and
21 recommendations, together with any legislation required to implement the recommendations, to
22 the sixty-third legislative assembly.