

# MILITARY

## CHAPTER 378

HOUSE BILL NO. 1088  
(Committee on Human Services and Veterans Affairs)  
(At the request of the National Guard)

### VETERANS' CEMETERY

AN ACT to amend and reenact section 37-03-14 of the North Dakota Century Code, relating to the North Dakota veterans' cemetery.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

\* SECTION 1. AMENDMENT. Section 37-03-14 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

37-03-14. North Dakota veterans' cemetery - Administration. The adjutant general shall establish and operate the North Dakota veterans' cemetery, which the adjutant general shall locate within or adjacent to Fort Abraham Lincoln state park. The adjutant general may accept and utilize private and federal funds to establish and operate the veterans' cemetery. All moneys received from private or federal sources must be paid into a veterans' cemetery maintenance fund. The adjutant general, with the approval of the governor, may enter into an agreement with the director of the state parks and recreation department for the maintenance of the cemetery. The adjutant general shall provide lots in the state veterans' cemetery for the interment of deceased members of the national guard, other reserve components, and veterans, and their spouses, minor children, and unmarried adult children who were physically or mentally disabled and incapable of self-support. The adjutant general may adopt, amend, or rescind any rules under chapter 28-32 as deemed necessary to implement and administer this section.

Approved March 8, 1991  
Filed March 8, 1991

\* NOTE: Section 37-03-14 was also amended by section 6 of Senate Bill No. 2054, chapter 640.

## CHAPTER 379

HOUSE BILL NO. 1181  
(Committee on State and Federal Government)  
(At the request of the National Guard)

### NATIONAL GUARD LAND SALES

AN ACT to amend and reenact section 37-10-03.2 of the North Dakota Century Code, relating to the sale of military lands by the adjutant general; and to repeal section 37-10-03.1 of the North Dakota Century Code, relating to the sale of military lands by the adjutant general.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-10-03.2 of the North Dakota Century Code is amended and reenacted as follows:

37-10-03.2. Exchange, sale, and lease of military lands. The adjutant general may exchange or sell lands owned by the state of North Dakota and used for military purposes with other agencies of the state, counties, municipalities or other political subdivisions, corporations or individuals, and may purchase, within funds available, parcels of land necessary for the construction of armories or the expansion of present military installations in the state of North Dakota. Sales must be made under the provisions of sections 54-01-05.1 and 54-01-05.2 and all net proceeds of sales must be placed in the national guard training area and facility development trust fund. The adjutant general may lease parts of military installations to the department of defense or other agencies of the federal government.

SECTION 2. REPEAL. Section 37-10-03.1 of the North Dakota Century Code is repealed.

Approved March 13, 1991  
Filed March 13, 1991

## CHAPTER 380

SENATE BILL NO. 2192  
(Committee on Appropriations)  
(At the request of the Division of Emergency Management)

### DISASTER RECOVERY FUNDING

AN ACT to create and enact a new section to chapter 37-17 of the North Dakota Century Code, relating to the establishment of a method to fund the state match required to assist state and local governments to recover from a major disaster or emergency, expanded duties and responsibilities of the division of emergency management and the emergency commission, and a loan from the Bank of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 37-17 of the North Dakota Century Code is created and enacted as follows:

Disaster or emergency recovery funding - Loan authorization. When approved by the emergency commission, the division of emergency management is authorized to borrow from the Bank of North Dakota, to match federal funds under the Robert T. Stafford Disaster Emergency Assistance Act [Public Law 93-288, as amended]. In addition to the principal repayment, the Bank of North Dakota shall receive interest on the loan at a rate equal to other state agency borrowings. On behalf of the state, the division of emergency management shall administer the disaster or emergency recovery program according to state procedures based on federal laws or regulations. After a county or group of counties have been declared a major disaster or emergency area by the president, the division shall submit a request to the emergency commission for:

1. Approval to make an application for a loan from the Bank of North Dakota;
2. Approval for additional personnel required to perform the anticipated recovery activities; and
3. Authority to spend additional state and federal funds for the recovery program.

If the request is acceptable, the emergency commission shall approve the request and issue a notice of their action to the division, Bank of North Dakota, and the office of management and budget. The division shall keep the emergency commission apprised of the progress of the recovery operation and submit a final report upon completion of the project. The emergency commission is responsible to repay any loan, including accrued interest, from the Bank of North Dakota which is provided under this section. The emergency commission is authorized to repay the loan utilizing federal recovery administrative reimbursements to the state under Public Law 93-288, as amended, and any other moneys remaining in the contingency fund. If at the

end of the biennium a balance exists on the loan, the emergency commission shall request the legislative assembly for a deficiency appropriation to repay the loan.

Approved March 14, 1991

Filed March 15, 1991

## CHAPTER 381

SENATE BILL NO. 2152  
(Committee on State and Federal Government)  
(At the request of the Division of Emergency Management)

### MUTUAL AID AGREEMENTS

AN ACT to create and enact four new sections to chapter 37-17.1 of the North Dakota Century Code, relating to mutual aid agreements between political subdivisions and between North Dakota and other states or provinces in times of an actual or potential disaster or emergency situation or incident.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 37-17.1 of the North Dakota Century Code is created and enacted as follows:

#### Mutual aid - Cooperation.

1. The division of emergency management shall encourage and assist political subdivisions to enter mutual aid agreements with other public and private agencies within the state for reciprocal aid and assistance in responding to and recovering from actual and potential disasters or emergencies.
2. In reviewing emergency operations plans and programs of political subdivisions, the division of emergency management shall consider whether they contain adequate provisions for mutual aid.
3. Local emergency management organizations may assist in negotiation of mutual aid agreements between the governor and an adjoining state or province or a political subdivision of an adjoining state or province and shall carry out arrangements of any such agreements relating to the local political subdivision.

SECTION 2. A new section to chapter 37-17.1 of the North Dakota Century Code is created and enacted as follows:

#### Interstate mutual aid agreements.

1. This state may enter into an interstate mutual aid agreement or compact with any state that has enacted or shall enact the compact substantially in the form contained in section 4 of this Act.
2. The governor may enter into an interstate agreement with any state if the governor finds that joint action with that state is desirable in meeting common intergovernmental problems of emergency or disaster preparedness, mitigation, response, and recovery.

3. The governor may deny the request of a requesting state as the governor determines necessary.
4. All interstate mutual aid compacts and other interstate agreements to which this state is a party dealing with disaster or emergency preparedness, response, recovery, or mitigation must be reviewed and made current every four years.
5. If a person holds a license, certificate, or other permit issued by any state or political subdivision evidencing the meeting of qualifications for professional, mechanical, or other skills, the person may render aid involving that skill in this state to meet an emergency or disaster, and this state shall give due recognition to the license, certificate, or other permit.
6. When considered of mutual benefit, the governor may, subject to the limitations of law, enter into intergovernmental arrangements with neighboring provinces of Canada for the purpose of exchanging disaster or emergency resources.

SECTION 3. A new section to chapter 37-17.1 of the North Dakota Century Code is created and enacted as follows:

Authority to join interstate mutual aid agreements - Interstate compacts.

1. The governor, in the name of the state, may join with other states in the interstate mutual aid agreement or compact.
2. The governor may negotiate and execute such supplemental agreements as may be necessary and proper to fully carry out the terms and provisions of the interstate mutual aid agreement or compact as set forth in section 4 of this Act.

SECTION 4. A new section to chapter 37-17.1 of the North Dakota Century Code is created and enacted as follows:

Text of the mutual aid agreement or compact. The interstate mutual aid agreement or compact referred to in sections 2 and 3 of this Act reads as follows:

#### INTERSTATE MUTUAL AID AGREEMENT OR COMPACT

##### Article I

The purpose of this agreement or compact is to provide voluntary assistance among participating states in responding to any disaster or imminent disaster or emergency that overextends the ability of local and state governments to reduce, counteract, or remove the threat to lives, property, or the environment. Assistance may include rescue, fire, law enforcement, health and medical, communications, and transportation resources to cope with problems that require use of special equipment, trained personnel, or personnel in large numbers not locally available.

##### Article II

Article I, section 10, of the Constitution of the United States permits a state to enter into an agreement or compact with other states, subject to the consent of Congress. Congress, through enactment of 50 U.S.C. 2281(g) and 2283 and the executive branch, by issuance of Executive Order No. 10186

of December 1, 1950, encourage states to enter into emergency, disaster, and civil defense mutual aid agreements or pacts.

#### Article III

It is agreed by participating states that the following conditions will guide implementation of the mutual aid agreement or compact:

1. Participating states through their designated officials are authorized to request and receive assistance from a participating state. Requests will be granted only if the requesting state is committed to the mitigation of the disaster or emergency and other resources are not immediately available and the governor of the aiding state agrees to the request.
2. Requests for assistance may be verbal or in writing. If the request is made by other than written communication, it must be confirmed in writing as soon as practical after the request. A written request must provide an itemization of equipment and operators, types of expertise, and personnel or other resources needed. Each request must be signed by an authorized official.
3. Personnel and equipment of the aiding state made available to the requesting state must, whenever possible, remain under the control and direction of the aiding state. The activities of personnel and equipment of the aiding state must be coordinated by the requesting state.
4. An aiding state has the right to withdraw some or all of its personnel and equipment whenever the personnel and equipment are needed by that state. Notice of intention to withdraw should be communicated to the requesting state as soon as possible.

#### Article IV

1. The requesting state shall reimburse the aiding state as soon as possible after the receipt by the requesting state of an itemized voucher requesting reimbursement of costs.
2. Any state rendering aid pursuant to the mutual aid agreement must be reimbursed by the state receiving such aid for any damage to, loss of, or expense incurred in the operation of any equipment used in responding to a request for aid, and for the cost incurred in connection with such request.
3. Any state rendering aid pursuant to this agreement or compact must be reimbursed by the state receiving such aid for the cost of compensation and death benefits to injured officers, agents, or employees and their dependents or representatives if such officers, agents, or employees sustain injuries or are killed while rendering aid pursuant to this arrangement and such payments must be made in the same manner and on the same terms as if the injury or death was sustained within the aiding state.

#### Article V

1. All privileges and immunities from liability, exemptions from law, ordinance, and rules and all pension, disability relief, workers' compensation, and other benefits that apply to the activity of officers, agents, or employees when performing their respective

functions within territorial limits of their respective political subdivisions apply to them to the same extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of this agreement.

2. All privileges and immunities from liability, exemptions from law, ordinances, and rules and workers' compensation and other benefits that apply to duly enrolled or registered volunteers when performing their respective functions at the request of their state and within its territorial limits apply to the same extent while performing their functions extraterritorially under the provisions of this agreement or compact. "Volunteers", as used in this subsection, includes physicians, surgeons, nurses, dentists, structural engineers, and trained search and rescue or hazardous materials teams, volunteers, or personnel.
3. The signatory states, their political subdivisions, municipal corporations, and other public agencies shall hold harmless the corresponding entities and personnel thereof from the other state with respect to the acts and omissions of its own agents and employees that occur while providing assistance pursuant to the common plan.
4. Nothing in this agreement may be construed as repealing or impairing any existing interstate mutual aid agreements.
5. Upon enactment of this agreement by two or more states, and annually by each January thereafter, the participating states will exchange with each other the names of officials designated to request and provide service under this arrangement. In accordance with the cooperative nature of this agreement, it is permissible and desirable for states to exchange operational procedures to be followed in requesting assistance and reimbursing expenses.
6. This agreement becomes effective and is binding upon the states so acting when it has been enacted into law by any two states. Therefore, this agreement becomes effective and binding on any other state upon similar action by such state.
7. This agreement remains binding upon a party state until it enacts a law repealing the agreement and providing for the sending of formal written notice of withdrawal from the agreement to the appropriate officials of all other party states. An actual withdrawal may not take effect until the thirtieth consecutive day after the notice has been sent. Such withdrawal does not relieve the withdrawing state from its obligations assumed under this agreement prior to the effective date of the withdrawal.

Approved March 18, 1991  
Filed March 19, 1991



## CHAPTER 382

SENATE BILL NO. 2188  
(Committee on Natural Resources)  
(At the request of the Division of Emergency Management)

### HAZARDOUS CHEMICALS PREPAREDNESS

AN ACT to provide for the establishment of a program to carry out the provisions of the Emergency Planning and Community Right-to-Know Act of 1986, expanded duties of the division of emergency management, a facility fee system, a state and local hazardous chemicals fund or account, and the expenditure of special funds; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

#### SECTION 1. Hazardous chemicals preparedness and response program.

##### 1. Program components.

- a. State emergency response commission. The governor shall appoint members of the state emergency response commission to carry out the commission's responsibilities as outlined in Public Law 99-499, 42 U.S.C. 11001, et seq., also referred to as SARA title III, and the responsibilities of the commission members as outlined in the North Dakota emergency operations plan.
- b. In conjunction with the state emergency response commission, the local emergency planning committees, and the local emergency management organizations, the division of emergency management shall coordinate the development and maintenance of a state hazardous chemicals preparedness and response program.
- c. The director of the division of emergency management shall serve as the chairperson of the state emergency response commission. In the absence of the chairperson, the designated vice chairperson shall serve as chairperson. The chairperson shall recognize the assignment of representatives to the commission who are designated through a delegation of authority by a member. The chairperson shall designate a commission secretary, solely for the purpose of documenting and distributing clerical proceedings, from the staff of the division of emergency management.
- d. Facility reporting. For the purpose of complying with the reporting requirements set forth in sections 302, 304, 311, 312, and 313 of Public Law 99-499, 42 U.S.C. 11001, et seq., also referred to as SARA title III, the owner and operator of any facility, as defined in SARA title III, shall submit those reports to the North Dakota division of emergency management as

required by SARA title III, which shall establish and maintain the state repository for these reports.

2. Establishment of funds.

- a. State hazardous chemicals preparedness and response fund. There is hereby created in the state treasury a nonlapsing restricted account to be known as a state hazardous chemicals preparedness and response fund. The fund consists of revenue collected from the state hazardous chemical fee system and funds appropriated by the general assembly. Moneys in the fund shall be appropriated biennially to the division of emergency management for carrying out the purposes, goals, and objectives of SARA title III, and the state hazardous chemicals preparedness and response program.
- b. County hazardous chemicals preparedness and response account. The county treasurer of each county shall establish a nonlapsing restricted account, to be known as the county hazardous chemicals preparedness and response account. The county hazardous chemicals preparedness and response account consists of revenue from the state hazardous chemicals fee system, county, federal or state funds, grants, and any private donations provided to finance the county hazardous chemicals preparedness and response program.
- c. Facility fee system. Each owner and operator of a facility, as defined in SARA title III, shall pay an annual hazardous chemicals fee to the division of emergency management by March first of each year. The fee is twenty-five dollars for each chemical within the meaning of 40 CFR 355.20 or its successor which is required under section 312 of SARA, title III, to be listed on the hazardous chemical inventory form (tier II) which the owner or operator must submit to the division. The federal requirements must be used for completing the tier II form, including the threshold amounts, as outlined in 40 CFR Section 370.20. The maximum fee for a facility under this section is one hundred fifty dollars. The division of emergency management shall transfer to the county hazardous chemicals preparedness and response account one-half of the funds collected from the state's hazardous chemicals fee system.
- d. Exemptions. The owners or operators of family farm enterprises that are not engaged in the retail or wholesale of hazardous chemicals and facilities owned by the state or local governments are exempt from the fee under subdivision c. For purposes of this section, the terms "family farm" and "farmer" have the same meaning as set forth in section 6-09.11-01.
- e. Accept funding. The state and county governments are authorized to accept and may deposit grants, gifts, and federal funds into the hazardous chemicals preparedness and response fund and accounts for the purpose of carrying out the hazardous chemicals preparedness and response program.
- f. Definition. "Hazardous chemical" means as defined in 40 CFR 355.20 and 29 CFR 1910.1200.

- g. Termination of fee system. The fee system in this section terminates ten years after the effective date of this Act unless reestablished by the legislative assembly by statute.
  - h. City fee system. The state hazardous chemicals fee system does not supersede a city fee system for hazardous chemicals.
- 3. Recovery of response costs.
  - a. General rule. A person who causes a release, as defined in 40 CFR 355.20, of a hazardous chemical in excess of the reportable quantity of that chemical, as defined in 40 CFR 355.20, is liable for the response costs incurred by state or local hazardous chemical response personnel. The state agency, local agency, volunteer organization, or hazardous chemical response personnel, as identified in the state or local emergency operations plan, which undertakes a response action may recover those response costs in an action brought before a court of competent jurisdiction. If more than one jurisdiction, organization, or agency incurs response costs for the same hazardous chemical release or incident, those hazardous chemical response jurisdictions, agencies, organizations, or personnel may file a joint action and may designate one entity to represent the others in the action.
  - b. Amount. In the action to recover reasonable and necessary response costs, state agencies, local agencies, or volunteer organizations may include operational, administrative, personnel, and legal costs incurred from its initial response action up to the time that it recovers its cost. Reasonable and necessary costs are those additional costs incurred that are a result of the responsible party's failure or inability to implement or initiate the necessary actions to protect life, property, and the environment.
- 4. Penalties and fines.
  - a. Civil fines. A person who violates any of the reporting, planning, or notification requirements outlined in the provisions of the Emergency Planning and Community Right-To-Know Act of 1986 [title III of Public Law 99-499, 42 U.S.C. 11001 et seq.], or fails to pay a state hazardous chemicals fee is subject to a civil fine of not more than fifteen thousand dollars for each separate offense. For purposes of this subdivision, each day of continued violation constitutes a separate offense. All civil fines collected under this subdivision must be deposited in the state general fund. The state and its political subdivisions and employees of the state or a political subdivision acting within the scope of their employment are not subject to the civil fines established in this subdivision.
  - b. Criminal penalty. Any person who knowingly falsifies information or who intentionally obstructs or impairs, by force, violence, physical interference, or obstacle, a representative of state or local government or state or local hazardous chemicals response personnel attempting to perform

duties and functions in state or local emergency operations plans or complying with Public Law 99-499, SARA title III, is guilty of a class B misdemeanor. The state and its political subdivisions and employees of the state or a political subdivision acting within the scope of their employment are not subject to the penalty established in this subdivision.

5. Enforcement.

- a. If the director of the division of emergency management determines that a violation of this chapter has occurred, the director shall make all evidence available to the attorney general for use in any remedial action the attorney general's office determines appropriate, including injunctive relief.
- b. Nothing in this section may be construed to deny use of the remedies authorized under chapter 32-40.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 383

HOUSE BILL NO. 1106  
(Committee on Human Services and Veterans Affairs)  
(At the request of the Department of Veterans' Affairs)

### VETERANS ASSISTANCE FUND ACCEPTANCE

AN ACT to amend and reenact section 37-18-04 of the North Dakota Century Code, relating to the duties of the commissioner of veterans' affairs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-18-04 of the North Dakota Century Code is amended and reenacted as follows:

37-18-04. Duties of commissioner. It is the duty of the commissioner to coordinate agencies or instrumentalities of the state set up to render service and benefits to returning veterans; to have charge of and implement programs and benefits authorized by statute; to assist or represent veterans or their widows, administrators, executors, guardians, or heirs, in processing claims; to advise and assist veterans in taking advantage of the provisions of the Servicemen's Readjustment Act of 1944 [Pub. L. 78-346; 58 Stat. 291], or any similar or related measures afforded by the federal government; to assist, supervise, advise, and direct the work of county service officers; to assist county service officers in the formation of county service to veterans' committees and to outline, assist, and direct the activities of such committees; to disseminate information and to do any and all things necessary and proper for the purpose of carrying out the intent and purposes of this chapter.

The department of veterans' affairs may accept and expend funds from any source, including federal or private sources and interest earnings from the veterans' postwar trust fund, to be used to assist veterans or qualified veterans' spouses in obtaining assistance and to pay other expenses authorized by law, incurred pursuant to hearings covered in section 37-19.1-04 or incurred in carrying out programs of benefit and service for resident North Dakota veterans as authorized by the administrative committee on veterans' affairs or the emergency commission.

The department of veterans' affairs may receive from the United States government such records of veterans as the United States government may wish to turn over to the department of veterans' affairs and same shall keep and maintain such records as hereafter provided by this chapter.

Approved March 18, 1991  
Filed March 19, 1991

## CHAPTER 384

HOUSE BILL NO. 1142  
(Committee on Human Services and Veterans Affairs)  
(At the request of the Department of Veterans' Affairs)

**VETERAN'S PREFERENCE HEARING PROCEDURES**

AN ACT to amend and reenact section 37-19.1-04 of the North Dakota Century Code, relating to hearing procedures for veteran's preference grievance hearings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 sections 37-19.1-02 or 37-19.1-03, ~~he may~~, the applicant within fifteen days after ~~he~~ notification by certified mail that employment has been refused ~~employment, demand,~~ may request a hearing before a ~~board composed hearing officer~~ as provided in subsection 3. The ~~demand~~ request must be in writing and must be delivered to the ~~employing agency commissioner of veterans' affairs~~ by certified mail with return receipt requested. ~~If the board finds in favor of the veteran or spouse, they are~~ The applicant is entitled to immediate employment in the position for which ~~he had application was~~ originally made ~~application~~, or an equivalent position, ~~if the hearing officer finds in favor of the applicant.~~
2. Any ~~veteran person~~ who has exercised ~~his~~ the right to an employment preference under this chapter, and who, within one year after exercise of that right:
  - a. Is discharged;
  - b. Has had ~~his~~ compensation reduced; or
  - c. Is otherwise subject to action by the employing agency designed to cause the veteran or qualified veteran's spouse to resign or quit ~~his~~ employment,

is entitled to a hearing if ~~he~~ the person believes that the employing agency took any of the above-described action due to the ~~veteran's~~ exercise of ~~his~~ employment preference, ~~the~~. The hearing must be held before a ~~board composed the hearing officer~~ as provided in subsection 3. If the ~~board hearing officer~~ finds that the employing agency took any of the actions described in

subdivisions a, b, or c due to the veteran's person's exercise of his the right to an employment preference, the board hearing officer shall order the employing agency to cease and desist from such action or to reinstate the veteran or qualified veteran's spouse. The demand request for a hearing under this subsection must be in writing addressed to the employing agency commissioner of veterans' affairs. The demand request must be made by certified mail with return receipt requested within fifteen days after discharge or any other action described in subdivisions a, b, or c is taken by the employing agency about which the veteran may be aggrieved.

3. The hearing board for At the request of the commissioner of veterans' affairs, the attorney general shall appoint a hearing officer knowledgeable in personnel administration to hear grievances arising under subsection 1 or 2 shall consist of one person chosen by the veteran; one person chosen by the employing agency; and one person chosen by the foregoing two persons. In the event that the two persons appointed by the parties do not appoint a third person within five days after the appointment of the two, a district judge for that judicial district shall make the appointment after receiving a written request to do so from one or both of the other appointees; or from the veteran. In the event that the employing agency does not appoint a person to the board within five days after the appointment by the veteran, a district judge for that judicial district shall make the appointment after receiving written request to do so from the veteran. The hearing officer is entitled to be reimbursed by the employing agency for expenses incurred in performing these duties. The board hearing officer shall meet and hold the hearing within ten fifteen days after the selection of the final member hearing is requested by the commissioner of veterans' affairs. At the hearing, both parties may be represented by counsel; and. If the hearing is requested pursuant to subsection 1, the employing agency has the burden of proving that the veteran or the qualified veteran's spouse did not possess the qualifications required for the position. If the hearing is requested pursuant to subsection 2, the employing agency has the burden of proving that any action which it is shown by the veteran to have was taken was not taken because of the veteran's exercise of his the right to an employment preference. Hearing board members may not be compensated; nor may their expenses be paid; from public funds. The hearing officer shall issue findings and an order within fifteen days after the hearing is concluded. The order is binding on both parties, subject to appeal.
4. Any party aggrieved by the finding and order of the board hearing officer may appeal to the district court in the manner provided for in section 28-32-15 chapter 28-32, provided that notice of appeal need only be served on the other party, and the appellant need not execute an undertaking. ~~The~~ Any party aggrieved by the decision of the district court on appeal is final may appeal that decision to the supreme court as provided in chapter 28-32. Appeals to the district court under this subsection must be heard without a jury.

## CHAPTER 385

SENATE BILL NO. 2596  
(Senators Heigaard, Nelson)  
(Representatives Kloubec, Schneider)  
(Approved by the Committee on Delayed Bills)

### VETERANS COMPENSATION

AN ACT to provide for adjusted compensation for eligible veterans of Operation Desert Shield and Operation Desert Storm and for the method of filing and payment of claims, duties of the adjutant general, and exemption from taxation and execution for such payments; to provide a penalty; to provide an appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Statement of public purpose. In order to ease the financial hardships and personal and family sacrifices sustained by those North Dakota members of the national guard and reserve component personnel who were activated for Operation Desert Shield and Operation Desert Storm in the Persian Gulf, it is the intent of the legislative assembly that additional compensation be provided to those resident veterans of North Dakota who were activated under 10 U.S.C. 673 or 10 U.S.C. 673(b), and payment of that compensation is declared to be a public purpose. It is the further intent of the legislative assembly to encourage those North Dakota resident veterans of Operation Desert Shield and Operation Desert Storm to continue their voluntary membership in the national guard and other reserve components.

SECTION 2. Definitions. As used in this Act:

1. "Adjutant general" means the adjutant general of North Dakota.
2. "Beneficiary" in relation to a deceased veteran, means, in the order named:
  - a. The surviving unremarried husband or wife as of the date of signing the application;
  - b. The surviving child or children and the lawful issue of a deceased child or children by right of representation;
  - c. The surviving person standing in loco parentis; or
  - d. The surviving parent or parents.
3. "Domestic service" means service by a veteran during the period of service which is not foreign service.
4. "Foreign service" means service by a veteran during the period of service anywhere in the Persian Gulf theatre.



5. "Honorable and faithful" means service evidenced by:
  - a. An honorable discharge, or its equivalent;
  - b. In the case of an officer, a certificate of service; and
  - c. In the case of a veteran who has not been discharged, a certificate from appropriate service authority that the veteran's service was honorable and faithful.
6. "Period of service" means the period of time beginning August 2, 1990, and ending on a date prescribed by the president or the Congress for the cessation of hostilities in the Persian Gulf.
7. "Resident" means a person who:
  - a. Was born in and lived in the state of North Dakota until entrance into the armed forces of the United States;
  - b. Was born in, but was temporarily living outside the state of North Dakota, not having abandoned North Dakota residence at the time of entrance into the armed forces of the United States; or
  - c. Was born elsewhere but had resided within the state of North Dakota for the last six months before entrance into military service and had prior to or during that six-month period:
    - (1) Voted in the state of North Dakota;
    - (2) Was an emancipated minor during such period of residence or had lived with a parent or person standing in loco parentis who was a resident; or
    - (3) Was not registered for voting in another state after being a resident.
  - d. "Resident" also means a veteran who was a bona fide resident of the state of North Dakota at the time of entering the armed forces, as determined under the rules of the adjutant general and the laws of this state. A person is not a resident of North Dakota for the purpose of receiving any benefits under this Act if the person was on continuous active duty in the armed forces, immediately prior to August 2, 1990, and has not established actual abode in North Dakota prior to the effective date of this Act.
8. "Veteran" means a member of the national guard or reserve component who was activated under 10 U.S.C. 673 or 10 U.S.C. 673(b) and who completed honorable and faithful service of more than thirty days on active duty in the armed forces of the United States at any time during the period of service, who was a resident of the state of North Dakota, and who has not received bonus or adjusted compensation from another state for the period of service.

**SECTION 3.** Payment of adjusted compensation for domestic and foreign service. Each veteran is entitled to fifty dollars for each month or major

fraction thereof for domestic service and one hundred dollars for each month or major fraction thereof for foreign service. If the veteran received a Purple Heart for foreign service, the veteran is entitled to a payment of two thousand five hundred dollars in lieu of monthly payments for adjusted compensation. If the veteran is deceased, the veteran's beneficiary is entitled to any payments under this Act to which the veteran would have been entitled. Applications for adjusted compensation may be filed with the adjutant general after April 1, 1991, but not later than six months after the end of the period of service.

**SECTION 4. Payment to beneficiary of veteran who died in active service.** In the case of a veteran who died as a result of active service during the period of service, the beneficiary of such veteran is entitled to a payment of two thousand five hundred dollars in lieu of any other compensation under this Act.

**SECTION 5. Application.** Each veteran or veteran's beneficiary entitled to payment under this Act shall make application to the adjutant general of the state of North Dakota upon a form prescribed by the adjutant general. If the veteran is incompetent or the veteran's beneficiary is incompetent or a minor, application may be made by the guardian of the veteran or beneficiary, and if there is no guardian the person determined by the adjutant general to have assumed the major responsibility for the care of the veteran or beneficiary and to be a proper person to receive payment for the veteran or beneficiary may make the application. If a veteran is hospitalized in a state, county, or federal institution and no application has otherwise been approved by the adjutant general the person in charge of such institution may make the application with the approval of the adjutant general. For the purpose of this section, the word "minor" does not include the unremarried spouse of a veteran. Each application must be accompanied by a certified copy of honorable discharge or other evidence of honorable and faithful service. Each application must be subscribed and sworn to by the applicant in such manner as may be prescribed by the adjutant general. The adjutant general shall provide by rule for an endorsement of the evidence of honorable and faithful service if application for payment has been made.

**SECTION 6. Method of payment - Deduction of sums due veterans aid fund.** Upon submission of satisfactory proof that the applicant is entitled to payment under this Act, the adjutant general shall compute the amount of payment due the applicant, make a record thereof, and forward a voucher for the payment to the office of management and budget, which shall cause the warrant-check to be issued for the amount of the claim. Payment must be made from funds appropriated by the legislative assembly. If the veteran or the applicant for payment under this Act is indebted to the veterans' aid fund of the state of North Dakota, the adjutant general shall determine the amount of such indebtedness and certify such determination to the office of management and budget together with the record of payment due. Within the limits of the payment due, the amount of such indebtedness must be paid to the veterans' aid fund and the applicant must be paid any remainder to which the veteran is entitled.

**SECTION 7. Payments exempt from taxation and from execution - Assignments void - Debts to state and political subdivisions not deducted.** Payments under this Act are exempt from all state and local taxes and from levy, garnishment, attachment, and sale on execution. Any pledge, mortgage, sale, assignment, or transfer of any right, claim, or interest in any claim or payment under this Act is void and payment to the veteran may not be

denied because of any sums owed to the state or any political subdivisions except as provided in section 6 of this Act.

SECTION 8. Duty of adjutant general - Finality of decisions - Questions of residence subject to court review. The adjutant general shall administer this Act. The adjutant general shall prepare and distribute application blanks and investigate all claims and applications filed. If the adjutant general is satisfied of the proof of a claim and application, the adjutant general shall approve and direct payment of the claim. The adjutant general may adopt any rules necessary to the efficient administration of this Act. The necessary books, papers, records, cases, and equipment used in the administration of this Act shall become a part of the permanent records of the office of the adjutant general. The adjutant general may determine any claim in any case if doubt arises as to the eligibility of an applicant to receive payment and the decision of the adjutant general in such case is final, except on questions or residence which are subject to review by a court of competent jurisdiction. The adjutant general shall authorize payment for prisoners of war upon their release and return.

SECTION 9. Penalty for false statement. Any person who willfully makes a false statement in the application for benefits under this Act is guilty of a class A misdemeanor.

SECTION 10. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$600,000, or so much thereof as may be necessary, to make payment of adjusted compensation to veterans in accordance with the provisions of this Act, for the period from the effective date of this Act through June 30, 1993.

SECTION 11. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 16, 1991  
Filed April 18, 1991