

Sixtieth
Legislative Assembly
of North Dakota

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

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

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

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

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

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

24 **37-19.1-01. Definitions.** As used in this chapter:

- 25 1. "Agency" or "governmental agency" means all political subdivisions and any state
26 agency, board, bureau, commission, department, officer, and any state institution
27 or enterprise authorized to employ ~~persons~~ individuals either temporarily or
28 permanently.
29 2. "Chief deputy" means the ~~person~~ individual who is appointed by an elected or
30 appointed official under express statutory authority to hire a chief deputy and who
31 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 a~~
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 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 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 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

- 1 because of physical or mental disability, unless the disability renders them unable
2 to properly perform the duties of the position applied for.
- 3 2. When a veteran applies for appointment or employment under subsection 1, the
4 officer, board, or person whose duty it is to appoint or employ ~~a person~~ an
5 individual to fill the available position shall, except where the veteran has been
6 qualified for the position applied for under a personnel system, investigate the
7 qualifications of the veteran. If the veteran is found to possess the qualifications
8 required for the position applied for, whether educational or by way of prior
9 experience, and is physically and mentally able to perform the duties of the
10 position applied for, the officer, board, or person shall appoint or employ the
11 veteran.
- 12 3. A disabled veteran is entitled to a preference superior to that given other veterans
13 under this section, which preference must be accorded in the manner provided in
14 this section.
- 15 4. Notwithstanding the preference provisions in subsections 1, 2, and 3, public
16 employment preference for veterans by agencies ~~or governmental agencies, as~~
17 ~~defined herein, which now have, or which may hereafter have, an established~~
18 filling positions through a personnel system are governed by the following:
- 19 a. No distinction or discrimination may be made in the administration of the
20 examination because the applicant may be a veteran.
- 21 b. Upon completion of the examination with a passing grade, the applicant must
22 be informed of a veteran's rights to employment preference as hereinafter
23 provided.
- 24 c. The applicant must be required to furnish proof of the applicant's status as a
25 veteran and, if disabled, proof of the applicant's disability, as defined herein.
- 26 d. Upon receipt of proof required in subdivision c, on a one hundred point scale,
27 the examiner shall add five points for a nondisabled veteran and ten points for
28 a disabled veteran to the examination grade of the applicant, ~~and the .~~ The
29 total is the veteran's examination grade score.
- 30 e. Upon request for the prescribed number of eligible ~~persons~~ individuals from
31 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~~ 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 less amounts otherwise
20 earnable through due diligence, if the hearing officer finds in favor of the applicant.