CHAPTER 37-19.1
VETERANS' PREFERENCES

37-19.1-01. Definitions.

As used in this chapter:

1. "Agency" or "governmental agency" means all political subdivisions and the state, including any state agency, board, bureau, commission, department, officer, and any state institution or enterprise authorized to employ individuals either temporarily or permanently.
2. "Chief deputy" means the 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 an individual appointed to a position that must be filled under a competitive personnel system.
3. "Competitive personnel system" means a system that rates applicants for a position using an objective set of skills, knowledge, abilities, behaviors, or other characteristics required for the position.
4. "Designated electronic communication" means an agreed electronic system of communication used by a governmental agency and applicant as the designated official means of communicating nonselection. The designated electronic communication must include the applicant's electronic mail address. The term includes an electronic system for the transmittal and receipt of appeals to the department of veterans' affairs or a governmental agency and is limited to an electronic communication that provides notice to a sender that the communication has been delivered.
5. "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.
6. "Justifiable cause" means grounds for action that are in accord with sufficient reason that can be justified or defended as correct. Justifiable cause not to hire a veteran must be something specific to that individual which renders the individual unsuitable for the position.
7. "Political subdivision" means counties, cities, townships, and any other governmental entity created by state law which employs individuals either temporarily or permanently.
8. "Private secretary" means the individual 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 an individual appointed to a position that must be filled under a competitive personnel system.
9. "Veteran" means an individual who:
   a. Is a veteran as defined in subsection 1 of section 37-01-40; or
   b. Is serving in or has been honorably discharged from the national guard or a reserve unit.

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

1. Veterans are entitled to preference, over all other applicants, in recruitment and selection processes 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. To receive veterans' preference, an applicant must submit the following documentation:
   a. An applicant claiming veterans' preference shall provide a copy of report of separation DD-214 or certification from the applicant's unit command that the individual is expected to be discharged or released from active duty in the

uniformed services under other than dishonorable conditions not later than one hundred twenty days after the date of the submission of the certification.

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

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

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

2. When a veteran applies for employment to a position that is not 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 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. If the group of eligible individuals includes either veterans or disabled veterans, the employing authority of that particular agency or governmental agency shall make a selection for the available position as follows:

   a. A disabled veteran 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. If the list includes two or more 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 disabled 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.

   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. 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.
b. Upon receipt of proof required in subsection 1, on a one hundred point scale, the examiner shall add five points for a veteran and ten points for a disabled veteran to the examination grade of the applicant. The total is the veteran's examination score. If a scale other than a one hundred point scale is used, the examiner shall add five percent of the scale used for a veteran and ten percent of the scale used for a disabled veteran to the examination grade of the applicant. The total is the veteran's examination score.
c. The employing authority shall designate a prescribed number of eligible individuals to be considered from the top number of the group of eligible candidates in rank order, from highest to lowest, based on the applicant's final score.
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.

4. This section does not apply when the position to be filled is that of an administrative head of a department required by law or the chief deputy or private secretary of an elected or appointed official. 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.

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 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 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 which results in the veteran being paid at the one hundred percent rate 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 employment preference given to a veteran under section 37-19.1-02 in the manner provided therein.

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 receipt of notification by certified mail or through a designated electronic communication 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 or designated electronic communication 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 or electronic mail address, and inform the applicant that if the applicant

requests an appeal, the applicant must provide by mail or designated electronic communication 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 submitted to the commissioner of veterans' affairs by certified mail or electronic means designated by the commissioner. A copy of the written request must be provided to the employer or employing agency by certified mail or electronic means designated by 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 less amounts otherwise earnable through due diligence, if the hearing officer finds in favor of the applicant.

2. Any person who has exercised 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 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 employment, is entitled to a hearing if the person believes that the employing agency took any of the above-described action due to the exercise of employment preference. The hearing must be held before a hearing officer as provided in subsection 3. If the hearing officer finds that the employing agency took any of the actions described in subdivision a, b, or c due to the person's exercise of the right to an employment preference, the 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 request for a hearing under this subsection must be in writing addressed to the commissioner of veterans' affairs. The request for a hearing must identify the employer or employing agency that took any action described in subdivision a, b, or c and describe the action taken. A copy of the written request must be mailed to the employer or employing agency. The request, addressed to the commissioner of veterans' affairs and the copy to the employer or employing agency, must be made by certified mail within fifteen calendar days after any action described in subdivision a, b, or c is taken by the employing agency.
3. Within fifteen calendar days after receiving a request from an applicant or person under subsection 1 or 2, the commissioner of veterans' affairs may request the director of the office of administrative hearings to designate a hearing officer to hear the grievance arising under subsection 1 or 2. The commissioner shall notify the employer or employing agency that a request for a hearing has been made. The office of administrative hearings is entitled to be reimbursed by the employer or employing agency for all hearing officer services rendered and expenses incurred in performing these duties. The hearing officer shall hold the hearing within thirty calendar days after the hearing officer request is received by the director of the office of administrative hearings. Notwithstanding the time limitation, the hearing officer may postpone or continue the hearing for good cause, at the request of a party. At the hearing, both parties may be represented by counsel. 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 was taken was not taken because of exercise of the right to an employment preference. The hearing officer shall issue findings of fact, conclusions of law, and an order within fifteen calendar days after the hearing is concluded, briefs filed, and arguments closed. The order is binding on both parties, subject to appeal.

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

37-19.1-05. Private employment veterans' preference.

A private, nonpublic employer in this state may provide a preference to a veteran for employment. Spouses of honorably discharged veterans who have a service-connected permanent and total disability also may be preferred for employment. This preference is not considered a violation of any state or local equal employment opportunity law.