

HOUSE BILL NO. 1250

Introduced by

Representatives Stemen, Boschee, Dockter, Hagert, Heinert, Roers Jones, M. Ruby,
Swiontek

Senators Meyer, Patten, K. Roers, Vedaa

1 A BILL for an Act to amend and reenact sections 37-19.1-01 and 37-19.1-04 of the North
2 Dakota Century Code, relating to the definition of designated electronic communication and the
3 procedural requirements for refusing veterans preference.

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 5. "Designated electronic communication" means an agreed electronic system of
23 communication used by a governmental agency and applicant as the designated

1 official means of communicating nonselection. The designated electronic
2 communication must include the applicant's electronic mail address. The term includes
3 an electronic system for the transmittal and receipt of appeals to the department of
4 veterans' affairs or a governmental agency and is limited to an electronic
5 communication that provides notice to a sender that the communication has been
6 delivered.

7 6. "Justifiable cause" means grounds for action that are in accord with sufficient reason
8 that can be justified or defended as correct. Justifiable cause not to hire a veteran
9 must be something specific to that individual which renders the individual unsuitable
10 for the position.

11 6-7. "Political subdivision" means counties, cities, townships, and any other governmental
12 entity created by state law which employs individuals either temporarily or
13 permanently.

14 7-8. "Private secretary" means the individual who is appointed by an elected or appointed
15 official under express legal authority to hire a private secretary or administrative
16 assistant and who is authorized to handle correspondence, keep files, schedule
17 appointments, and do other clerical work of a more personal and confidential nature
18 for that official, but does not include an individual appointed to a position that must be
19 filled under a competitive personnel system.

20 8-9. "Veteran" means an individual who:
21 a. Is a veteran as defined in subsection 1 of section 37-01-40; or
22 b. Has been honorably discharged from the national guard or a reserve unit located
23 within North Dakota and:
24 (1) Has completed a minimum of twenty years of service; or
25 (2) Served in a combat zone.

26 **SECTION 2. AMENDMENT.** Section 37-19.1-04 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **37-19.1-04. Refusal to give preference - Retaliatory action or removal - Remedies -**
29 **Procedures.**

30 1. If a veteran, or a qualified veteran's spouse, hereafter known as the applicant, is not
31 given the preference provided in section 37-19.1-02 or 37-19.1-03, the applicant,

1 within fifteen calendar days after receipt of notification by certified mail or through the-
2 ~~online recruiting solution system~~ designated electronic communication that
3 employment has been refused, may request a hearing as provided in subsection 3.

4 The notification from the employer must include the reasons for nonselection, inform
5 the applicant of the right to an appeal hearing, inform the applicant of the requirement
6 that the request for a hearing must be filed by certified mail or designated electronic
7 communication within fifteen calendar days after the notification, inform the applicant
8 that a request for an appeal hearing must be made to the commissioner of veterans'
9 affairs at the included commissioner's mailing address or electronic mail address, and
10 inform the applicant that if the applicant requests an appeal, the applicant must
11 provide by mail or designated electronic communication a copy of the request for an
12 appeal hearing to the employer or employing agency. The applicant's request for a
13 hearing must be in writing, must include a copy of the employer's notification that
14 employment has been refused, and must be ~~mailed~~ submitted to the commissioner of
15 veterans' affairs by certified mail or electronic means designated by the commissioner.
16 A copy of the written request must be ~~mailed~~ provided to the employer or employing
17 agency by certified mail or electronic means designated by the employer or employing
18 agency. The applicant is entitled to immediate employment in the position for which
19 application was originally made, or an equivalent position, together with backpay and
20 benefits from the date the appointment should have been made less amounts
21 otherwise earnable through due diligence, if the hearing officer finds in favor of the
22 applicant.

- 23 2. Any person who has exercised the right to an employment preference under this
24 chapter, and who, within one year after exercise of that right:
- 25 a. Is discharged;
 - 26 b. Has had compensation reduced; or
 - 27 c. Is otherwise subject to action by the employing agency designed to cause the
28 veteran or qualified veteran's spouse to resign or quit employment, is entitled to a
29 hearing if the person believes that the employing agency took any of the
30 above-described action due to the exercise of employment preference. The
31 hearing must be held before a hearing officer as provided in subsection 3. If the

1 hearing officer finds that the employing agency took any of the actions described
2 in subdivision a, b, or c due to the person's exercise of the right to an
3 employment preference, the hearing officer shall order the employing agency to
4 cease and desist from such action or to reinstate the veteran or qualified
5 veteran's spouse. The request for a hearing under this subsection must be in
6 writing addressed to the commissioner of veterans' affairs. The request for a
7 hearing must identify the employer or employing agency that took any action
8 described in subdivision a, b, or c and describe the action taken. A copy of the
9 written request must be mailed to the employer or employing agency. The
10 request, addressed to the commissioner of veterans' affairs and the copy to the
11 employer or employing agency, must be made by certified mail within fifteen
12 calendar days after any action described in subdivision a, b, or c is taken by the
13 employing agency.

- 14 3. Within fifteen calendar days after receiving a request from an applicant or person
15 under subsection 1 or 2, the commissioner of veterans' affairs may request the
16 director of the office of administrative hearings to designate a hearing officer to hear
17 the grievance arising under subsection 1 or 2. The commissioner shall notify the
18 employer or employing agency that a request for a hearing has been made. The office
19 of administrative hearings is entitled to be reimbursed by the employer or employing
20 agency for all hearing officer services rendered and expenses incurred in performing
21 these duties. The hearing officer shall hold the hearing within thirty calendar days after
22 the hearing officer request is received by the director of the office of administrative
23 hearings. Notwithstanding the time limitation, the hearing officer may postpone or
24 continue the hearing for good cause, at the request of a party. At the hearing, both
25 parties may be represented by counsel. If the hearing is requested pursuant to
26 subsection 1, the employing agency has the burden of proving that the veteran or the
27 qualified veteran's spouse did not possess the qualifications required for the position.
28 If the hearing is requested pursuant to subsection 2, the employing agency has the
29 burden of proving that any action which was taken was not taken because of exercise
30 of the right to an employment preference. The hearing officer shall issue findings of
31 fact, conclusions of law, and an order within fifteen calendar days after the hearing is

- 1 concluded, briefs filed, and arguments closed. The order is binding on both parties,
2 subject to appeal.
- 3 4. Any party aggrieved by the findings of fact, conclusions of law, and order of the
4 hearing officer may appeal in the manner provided for in chapter 28-32, except that
5 the appellant need not execute an undertaking.