

## CHAPTER 99

Substitute for HOUSE BILL No. 2562

AN ACT relating to veterans; concerning veterans preference and powers of attorney; amending K.S.A. 73-201 and K.S.A. 2007 Supp. 73-1210a and repealing the existing sections.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 73-201 is hereby amended to read as follows: 73-201. (a) *As used in this act: (1) "Veteran" means:*

(A) *Any person who entered the armed forces before October 15, 1976, and separated from the armed forces under honorable conditions, if such person served: (i) On active duty during any war (the official dates for war service are April 6, 1917 through July 2, 1921, and December 7, 1941 through April 28, 1952); (ii) during the period April 28, 1952 through July 1, 1955; (iii) in any campaign or expedition for which a campaign badge or service medal has been authorized; or (iv) for more than 180 consecutive days since January 31, 1955, but before October 15, 1976, excluding an initial period of active duty for training under the "six-month" reserve or national guard program;*

(B) *any person who entered the armed forces on or after October 15, 1976, and separated from the armed forces under honorable conditions, if such person was awarded a service medal or campaign badge;*

(C) *any person who separated from the armed forces under honorable conditions and has a disability certified by the United States department of veterans affairs as being service connected, has been issued the purple heart by the United States government or has been released from active service with a service-connected disability;*

(D) *the spouse of a veteran who has a 100% service connected disability as determined by the United States department of veteran affairs;*

(E) *the unremarried spouse of a veteran who died while, and as a result of, serving in armed forces; and*

(F) *the spouse of a prisoner of war, as defined by K.S.A. 75-4364, and amendments thereto.*

*Notwithstanding the foregoing, the term "veteran" shall not apply to any person who retired from the active military with the pay grade of 04 or above unless the person retired due to wounds received in combat or is a disabled veteran.*

(2) *"Competent" means a good faith determination that the person is likely to successfully meet the performance standards of the position based on what a reasonable person knowledgeable in the operation of the position would conclude from all information available at the time the decision is made. The basis for such determination shall include experience, training, education, licensure, certification and/or other factors determined by the decision making authority as appropriate to determine the applicant's overall qualification and ability to successfully meet the performance standards of the position. The decision making authority shall document such factors prior to the initiation of the selection process.*

(3) *"Disabled veteran" means a person who has served on active duty in the armed forces, has been separated therefrom under honorable conditions, and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a public statute administered by the department of veterans affairs or a military department.*

(b) *In grateful recognition of the services, sacrifices and sufferings of persons veterans who served in the army, navy, air force, coast guard or marine corps of the United States in world war I and world war II, and of persons who have served with the armed forces of the United States during the military, naval and air operations in Korea, Viet Nam, Iraq, Afghanistan or other places under the flags of the United States and the United Nations or under the flag of the United States alone, and have been honorably discharged therefrom, ~~they~~ the provisions of this section are enacted.*

(c) *Veterans shall be preferred for appointments and employed to fill positions initial employment and first promotion in every public department and upon all public works of the state government of Kansas, and of in the counties and cities of this state, if competent to perform such services; ~~and the person.~~ Any veteran thus preferred shall not be disqualified from holding any position in ~~said~~ such service on account of his*

~~the veteran's age or by reason of any physical or mental disability, provided as long as such age or disability does not render him the veteran incompetent to perform the duties of the position applied for, and. When any such ex-soldier, sailor, airman or marine veteran shall apply for appointment to any such position, place, or employment, the officer, board or person whose duty it is or may be to appoint a person to fill such place shall, if the applicant be a man or woman veteran of good reputation, and can competently perform the duties of the position applied for by him or her the veteran, appoint said ex-soldier, sailor, airman or marine consider the veteran for appointment to such position, place, or employment. Provided, That. Within 30 days of filling a position, eligible veterans who have applied and are not hired shall be notified by certified mail or personal service that they are not being hired. Such notice also shall advise the veteran of any administrative appeal available.~~

(d) The provisions of this act shall not be applicable to any persons classed as conscientious objectors. The provisions of this act shall not be controlling over the provisions of any statute, county resolution or city ordinance relating to retirement, or termination on the basis of age, of employees of the state or any county or city. Whenever under any statute, county resolution or city ordinance retirement, or termination on the basis of age, of any employee is required at a certain age, or is optional with the employer at a certain age, such provisions of such statute, resolution or ordinance shall be controlling and shall not be limited by this section.

(e) All notices of job openings, if any, and all applications for employment, if any, by the state and any city or county in this state shall state that the job is subject to a veteran's preference, how the preference works and how veterans may take advantage of the preference and post a written statement of: (1) The qualifications for such position; (2) any preferred qualifications of such position; (3) performance standards for the position; and (4) the process that will be used for selection. A veteran, or a spouse who qualifies for the veteran's preference, desiring to use a veteran's preference shall provide the hiring authority with a copy of the veteran's DD214 form or the DD214 form of the veteran under which the spouse qualifies for the preference.

(f) Every employment center of the state and any city or county human resources department, if any, shall openly display documents that indicate that veterans are eligible for a preference in their initial employment and any first promotion within the employment of the governmental entity.

(g) Any veteran who alleges that a state agency, city or county has not provided the veterans preference as required by this act, after exhausting any available administrative remedy, may bring an action in the district court.

New Sec. 2. (a) The provisions of section 1, and amendments thereto, shall not apply to the following:

- (1) An office filled by election;
- (2) positions which are filled by officers elected by popular vote or persons appointed to fill vacancies in such offices and the personal secretary of each such officer, members of boards and commissions, persons employed on a temporary basis, heads of departments, positions that require licensure as a physician, licensure as an osteopathic physician, licensure as a chiropractic physician and positions that require that the employee be admitted to practice law in Kansas;
- (3) a key employee as defined in subsection (b);
- (4) a job held by a patient, inmate or student in or enrolled at a state institution; and
- (5) temporary or casual employment positions.

(b) As used in this section, "key employee" means an individual specifically hired for a city or county at will position or for a non-classified position or a department or agency head, or an individual serving as the immediate subordinate, secretary or administrative assistant of a person holding such position, such as a position as a private secretary or deputy of an official, department or agency who holds a confidential relationship to the appointing or employing officer, and positions in the unclassified service of the state of Kansas as enumerated in K.S.A. 75-2935, and amendments thereto or other Kansas statutes.

New Sec. 3. To the extent that this act conflicts with federal law or a limitation provided by a federal grant to a public entity, this act shall be construed to operate in harmony with the federal law or limitation of

the federal grant.

New Sec. 4. Prior to the beginning of the 2011 regular legislative session, the division of post audit shall conduct an audit of the Kansas veterans preference laws. The audit shall be in accordance with article 11 of chapter 46 of the Kansas Statutes Annotated, and amendments thereto. The audit report shall be submitted to the legislature at the commencement of the regular session of the legislature in 2011.

Sec. 5. K.S.A. 2007 Supp. 73-1210a is hereby amended to read as follows: 73-1210a. (a) Except as otherwise provided by law, and subject to the Kansas civil service act, the executive director of the Kansas commission on veterans affairs shall appoint such subordinate officers and employees, subject to the approval of the commission, as are necessary to enable the commission to exercise or perform its functions, powers and duties pursuant to the provisions of article 12 of chapter 73 of Kansas Statutes Annotated, and amendments thereto.

(b) Upon the commencement of the interview process, every candidate for a position in a Kansas commission on veterans affairs office that interviews claimants and provides information advice and counseling to veterans, surviving spouses, their dependents concerning compensation, pension, education, vocational rehabilitation, insurance, hospitalization, outpatient care, home loans, housing, tax exemptions, burial benefits and other benefits to which they may be entitled, or any other sensitive position, as determined by the executive director shall be given a written notice that a criminal history records check is required. The Kansas commission on veterans affairs shall require such candidates to be fingerprinted and submit to a state and national criminal history record check. The fingerprints shall be used to identify the candidate and to determine whether the candidate has a record of criminal history in this state or another jurisdiction. The Kansas commission on veterans affairs shall submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. Local and state law enforcement officers and agencies shall assist the Kansas commission on veterans affairs in taking and processing of fingerprints of candidates. If the criminal history record information reveals any conviction of crimes of dishonesty, or violence such conviction may be used to disqualify a candidate for any position within the Kansas commission on veterans affairs. If the criminal history record information is used to disqualify a candidate, the candidate shall be informed in writing of that decision.

(c) Persons employed by the Kansas soldiers home and Kansas veterans home shall be excluded from the provisions of subsection (b). No person who has been employed by the Kansas commission on veterans affairs for five consecutive years immediately prior to the effective date of this act shall be subject to the provisions of subsection (b) while employed by the Kansas commission on veterans affairs.

(d) All such subordinate officers and employees shall be within the classified service under the Kansas civil service act, shall perform such duties and exercise such powers as the Kansas commission on veterans affairs and the executive director of the commission may prescribe and such duties and powers as are designated by law, and shall act for and exercise the powers of the commission and the executive director to the extent authority to do so is delegated by such commission or director.

(e) Except as otherwise provided by law, and subject to the Kansas civil service act, the executive director of the Kansas commission on veterans affairs shall appoint such subordinate officers and employees, subject to the approval of the Kansas commission on veterans affairs, as shall be necessary to enable the commission to exercise or perform its functions, powers and duties pursuant to the provisions of article 19 of chapter 76 of Kansas Statutes Annotated, and amendments thereto. All such subordinate officers and employees shall be within the classified service under the Kansas civil service act, shall perform such duties and exercise such powers as the commission, the executive director of the commission, the superintendent of the Kansas soldiers' home and the superintendent of the Kansas veterans' home may prescribe and such duties and powers as are designated by law, and shall act for and exercise the powers of the commission, the executive director of the commission, the superintendent of the Kansas soldiers' home and the superintendent of the Kansas veterans' home to the extent authority to do so is delegated by such commission, executive director or superintendent.

(f) Any veterans service representative appointed by the executive director of the Kansas commission on veterans affairs shall be an honorably discharged veteran or retired from the United States armed forces. *No veterans service representative of the Kansas commission on veterans affairs shall take a power of attorney in the name of the Kansas commission on veterans affairs. Nothing in this act shall be construed to prohibit any such veterans service representative from assisting any veteran with any claim in which a power of attorney is not required.*

Nothing in this subsection shall be construed to affect the status, rights or benefits of any officer or employee of the Kansas commission on veterans affairs employed by such commission on the effective date of this act.

For the purpose of this subsection, “veterans service representative” means any officer or employee appointed pursuant to this section whose primary duties include:

- (1) ~~Assisting and representing~~ veterans and their dependents in securing benefits from the federal government and the state of Kansas.
- (2) Providing information and assistance to veterans and dependents in obtaining special services and benefits based on knowledge of federal and state laws, policies and regulations pertaining to veterans benefits and services.
- (3) *Providing assistance to veterans service organizations participating in the veterans claims assistance program.*

(g) Nothing in this act shall be construed to affect the status, rights or benefits of any officer or employee of the Kansas veterans’ commission employed by such commission on the effective date of this act.

Sec. 6. K.S.A. 73-201 and K.S.A. 2007 Supp. 73-1210a are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 21, 2008.

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