

SESSION OF 2008

**CONFERENCE COMMITTEE REPORT BRIEF
SUBSTITUTE FOR HOUSE BILL NO. 2562**

As Agreed to April 1, 2008

Brief*

Sub. for HB 2562 would amend the statute on veterans preference, and it would prohibit a veterans service representative of the Kansas Commission on Veterans Affairs (KCVA) from taking power of attorney in the name of the KCVA when assisting a veteran with a claim.

Veterans Preference. The bill would give preference to veterans for initial employment and first promotion with state government and with counties and cities, if the applicant is competent and subject to additional limitations. The bill would include the following provisions:

- Define “veteran,” to clarify who would qualify to assert the veterans preference, to include:
 - A veteran who served in the armed forces (Army, Navy, Air Force, Coast Guard and Marine Corps) during the time periods specified in the bill and has been honorably discharged;
 - A veteran who is honorably discharged and has a service-connected disability, has been issued the Purple Heart, or has been released from active service with a service-connected disability;
 - The spouse of a veteran who has a 100 percent service-connected disability;
 - The unremarried spouse of a veteran who died while, and as a result of, serving in the armed forces; and

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- The spouse of a prisoner of war.
- Clarify that, for the purposes of this Act, “veteran” does not include any person who retired from the active military with a pay grade of 04 or above, unless the person retired due to wounds received in combat or is a disabled veteran;
- Define a “disabled veteran” as a person who was honorably discharged after active duty and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension from the U.S. Department of Veterans Affairs or a military department.
- Clarify that the veterans preference would not apply to:
 - An office filled by election;
 - Persons appointed to fill vacancies in offices filled by election;
 - The personal secretary of an elected officer or officer appointed to fill the vacancy of an elected officer;
 - Temporary employees;
 - Department heads;
 - Positions that require licensure as a physician, an osteopathic physician, and a chiropractic physician;
 - Positions that require the employee to be admitted to practice law in Kansas;
 - Key employees specifically hired for an at-will 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, a state non-classified position, and positions in the unclassified service of the State, such as a position as a private secretary or deputy of an official department or agency who has a confidential relationship to the appointing or employing officer;
 - Jobs held by a patient, inmate or student enrolled at a state institution; and
 - Temporary or casual employment positions.

- Define “competent” to mean a good faith determination that the person is likely to successfully meet the performance standards of the position based on a reasonable person standard;
- Require the veteran choosing to use veterans preference to provide the hiring authority a copy of the veteran’s DD-214 form (The Defense Department issues to each veteran a DD-214, identifying the veteran's condition of discharge such as honorable, general, other than honorable, dishonorable or bad conduct);
- Require certain actions from the hiring authority:
 - To consider experience, training, education, licensure, certification and other factors in determining the applicant’s overall qualification and ability to successfully meet the performance standards of the position;
 - To document such factors prior to the initiation of the selection process;
 - To include in notices of job openings, if any, that the hiring authority is subject to a veterans preference, how the veterans preference works, and how veterans may take advantage of the preference;
 - At least 30 days prior to announcing the intent to fill a position, to post a written statement of the qualifications for the position, any preferred qualifications for the position, performance standards for the position, and the process that will be used for selection.
- Require the state, county, and city employment center or human resources department, if any, to openly display documents that indicate that veterans are eligible for a preference in their initial employment and first promotion;
- Require written notice served by certified mail or personal service, within 30 days of filling a position, to an eligible veteran who has applied for employment but was not hired; the notice must advise the veteran that the veteran

has not been chosen for employment and that an administrative appeal, if any, is available;

- Authorize an eligible veteran who alleges the state, county or city has not provided the veterans preference as required by this Act, after exhausting any available administrative remedy, to bring an action in district court;
- Authorize reasonable attorney fees if a court or a jury finds the state, county or city has failed to provide the veterans preference to an eligible veteran;
- Clarify this Act is to be construed to operate in harmony with federal law or a limitation provided by a federal grant if there is a conflict;
- Require the Division of Legislative Post Audit conduct an audit of the Kansas veterans preference law and submit an audit report at the start of the 2011 Legislative Session.

KCVA and Power of Attorney. These provisions would prohibit a veterans service representative of the KCVA from taking power of attorney in the name of the KCVA when assisting a veteran with a claim. The KCVA would not be prohibited from assisting any veteran with any claim in which a power of attorney is not required.

Conference Committee Report

The Conference Committee agreed to add the contents of HB 2663, on the KCVA and power of attorney, to the bill.

Background

Veterans Preference. The proponents of HB 2562 included Representative L. Candy Ruff; Ed Klumpp, Kansas Association of Chiefs of Police; Ken Stodgell, Veterans of

Foreign Wars; Jane Carter and Chad Lopez, Kansas Organization of State Employees; and Charles Yunker, the American Legion. Mark Tomb, League of Kansas Municipalities, spoke in opposition to the bill. Police Chief Patrick Kitchens, City of Leavenworth, spoke as a neutral person on the bill.

The House Committee of the Whole amended the bill in the following ways:

- Clarify “veteran” does not apply to any person who retired from the active military;
- Clarify the veterans preference applies to initial employment and first promotion in county or city employment;
- Clarify the veterans preference applies to initial employment and any promotion in state employment;
- Clarify the veterans preference does not apply to temporary employees without benefits;
- Clarify the veterans preference does not apply to “key employees” that are:
 - An at will position in city or county employment;
 - A department of agency head, or an individual serving as the immediate subordinate secretary or administrative assistant of a person holding such position; and
 - A non-classified state position.

The Senate Committee amended HB 2562 to exclude in the definition of “veteran” a person who retired from the active military with a pay grade of 04 or above and to include disabled veterans. Also, the Committee amended the bill by requiring the Post Audit report to be submitted to the 2011 Legislature.

KCVA and Power of Attorney. In 2006, the Legislature enacted House Sub. for SB 396, which directed the Kansas Commission on Veterans’ Affairs to establish and administer a program to help veterans with claims for assistance through annual grant agreements with veterans service organizations. Attorney General Opinion No. 2007-20 said current law allows

representatives of both the veterans service organizations and the KCVA to take power of attorney when representing veterans in claims.

Representative Ruff, who requested and testified as a proponent of the bill, said HB 2663 was intended to clarify legislative intent of the 2006 bill. Representatives of the Veterans of Foreign Wars and The American Legion, the veterans service organizations that currently receive grants from the KCVA, also testified in favor of the bill. The Executive Director of the KCVA testified in opposition to the bill. The House Veterans, Military, and Homeland Security Committee amended HB 2663 to simplify the bill's language.

Fiscal Effect. The fiscal notes from the Division of Budget state that passage of HB 2562, as introduced, and HB 2663, as introduced, would have no fiscal effect on the state budget.