WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3451

By Delegates Hillenbrand, Ridenour, Sheedy, Street, and Cooper

[Introduced February 14, 2023; Referred to the Committee on Government Organization]

A BILL to amend and reenact §6-13-1 of the Code of West Virginia, 1931, as amended, relating to updating the veteran preference ratings in state code for state employment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13. PREFERENCE RATING OF VETERANS ON WRITTEN EXAMINATION ON NONPARTISAN MERIT BASIS.

§6-13-1. Preference rating of veterans on written examinations for positions in state departments filled under nonpartisan merit system.

(a) For positions in any agency as defined in ~~section four, article one, chapter five-f of this code~~ §5F-1-4 of this code or any other political subdivision of this state in which positions are filled under civil service or any job classification system, ~~a preference of five points in addition to the regular numerical score received on examination shall be awarded to all veterans having qualified for appointment by making a minimum passing grade; and to all veterans awarded the purple heart, or having a compensable service-connected disability, as established by any proper veterans’ bureau or department of the federal government, an additional five points shall be allowed~~ a 1-Point Preference Sole Survivorship Preference (SSP) shall be utilized. This relatively new Federal category was established for veterans released or discharged from a period of active duty from the armed forces, after August 29, 2008, by reason of a "sole survivorship discharge." Under the sole survivorship preference, the individual:

(1) Does not receive veterans’ preference points as other preference eligibles do when the "rule of 3" is applied;

(2) Is entitled to be listed ahead of nonpreference eligibles with the same score on an examination, or listed ahead of nonpreference eligibles in the same quality category when agencies are using category rating;

(3) Is entitled to receive the same pass over rights as other preference eligibles; and

(4) Is entitled to credit experience in the armed forces to meet the qualification requirements for West Virginia jobs.

(b)A 1-point Preference shall be added to the passing score or rating of a veteran who is the only surviving child in a family Sole Survivorship Preference (SSP) in which the father or mother or one or more siblings:

(1) Served in the armed forces, and

(2) Was killed, died as a result of wounds, accident, or disease, is in a captured or missing in action status, or is permanently 100 percent disabled or hospitalized on a continuing basis (and is not employed gainfully because of the disability or hospitalization), where

(3) The death, status, or disability did not result from the intentional misconduct or willful neglect of the parent or sibling and was not incurred during a period of unauthorized absence.

(c) A 5-Point Preference shall be added to the passing examination score or rating of a veteran who served:

(1) During a war; or

(2) For more than 180 consecutive days, other than for training, any part of which occurred after January 31, 1955, and before August 1, 1990; or

(3) During the Gulf War from August 2, 1990, through January 2, 1992; or

(4) For more than 180 consecutive days, other than for training, any part of which occurred during the period beginning September 11, 2001, and ending on August 31, 2021, the last day of Operation Iraqi Freedom, Sentinel; or

(5) In a campaign or expedition for which a campaign medal has been authorized. Any Armed Forces Expeditionary medal for approved operations listed in Department of Defense 1348.33 Vol 2, or campaign badge. A veteran’s DD Form 214 showing the award of any Armed Forces Expeditionary Medal is acceptable proof. The DD form 214 does not have to show the name of the theater or country of service for which that medal was awarded.

(d) A campaign medal holder or Gulf War veteran who originally enlisted after September 7, 1980, (or began active duty on or after October 14, 1982, and has not previously completed 24 months of continuous active duty) must have served continuously for 24 months or the full period called or ordered to active duty. The 24-month service requirement does not apply to 10-point preference eligibles separated for disability incurred or aggravated in the line of duty, or to veterans separated for hardship or other reasons under 10 U.S.C. §§1171 or 1173.

(e) A 10-Point Compensable Disability Preference shall be added to the passing examination score or rating of a veteran who served is 10 point preference eligible if they served at any time and they have a service connected disability, or received a Purple Heart.

(f) For the purpose of this article, a person is defined as a "veteran" if he or she fulfills the requirements of one of the following subsections:

~~(a)~~ ~~Served on active duty anytime between December 7, 1941, and July 1, 1955. However, any person who was a reservist called to active duty between February 1, 1955, and October 14, 1976, must meet condition (b) stated below;~~

~~(b) Served on active duty anytime between July 2, 1955, and October 14, 1976, or a reservist called to active duty between February 1, 1955, and October 14, 1976, and who served for more than one hundred eighty days;~~

~~(c) Entered on active duty between October 15, 1976, and September 7, 1980, or a reservist who entered on active duty between October 15, 1976, and October 13, 1982, and received a campaign badge or expeditionary medal or is a disabled veteran; or~~

~~(d) Enlisted in the Armed Forces after September 7, 1980, or entered active duty other than by enlistment on or after October 14, 1982;~~

(1) A veteran must have been discharged or released from active duty in the Armed Forces under honorable conditions (i.e., with an honorable or general discharge). As defined in 5 U.S.C. 2101(2), "Armed Forces" means the Army, Navy, Air Force, Marine Corps , Coast Guard and Space Force. The veteran must also be eligible under one of the preference categories below. For nondisabled users, active duty for training by National Guard or Reserve soldiers does not qualify as "active duty" for preference, but National Guard or Reserve soldiers placed on Title 10 for active duty service shall qualify as "active duty" for preference.

(2) For disabled veterans, active duty includes training service in the Reserves or National Guard, per the Merit Systems Protection Board decision in Hesse v. Department of the Army, 104 M.S.P.R.647(2007); and

~~(1)~~ (3) Completed 24 months of continuous active duty or the full period called or ordered to active duty, or was discharged under 10 U.S.C. 1171, or for hardship under 10 U.S.C. 1173, and received or was entitled to receive a campaign badge or expeditionary medal; or

~~(2)~~ (4) Is a disabled veteran.

(g) For purposes of this chapter, "war" means only those armed conflicts declared by Congress as war and includes World War II, which covers the period from December 7, 1941, to April 28, 1952.

(h) To receive veteran preference, separation from active duty must have been under honorable conditions. This includes honorable and general discharges. A clemency discharge does not meet the requirements of the Veteran Preference Act. ~~Active duty for training in the military reserve and National Guard programs is not considered active duty for purposes of veteran preference.~~

(i) These awards shall be made for the benefit and preference in appointment of all veterans who have heretofore or who shall hereafter take examinations, but shall not operate to the detriment of any person heretofore appointed to a position in a department or agency.

NOTE: The purpose of this bill is to update the veteran preference ratings in state code for state employment.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.