

CHAPTER 98-33

Senate Bill No. 142

An act relating to veterans' preference in employment; transferring and renumbering s. 295.15, F.S., relating to legislative intent; amending s. 295.07, F.S.; clarifying provisions; providing for rules; amending s. 295.08, F.S.; revising provisions with respect to positions for which a numerically based selection process is used; removing a monetary limitation with respect to certain classes of positions; amending s. 295.085, F.S.; revising provisions with respect to positions for which a numerically based selection process is not used; providing for preference for certain veterans with service-connected disabilities; deleting provisions for rules; amending s. 295.101, F.S.; revising provisions with respect to the expiration of employment preference; amending s. 295.11, F.S.; revising provisions with respect to investigative findings; providing for the dismissal of a complaint; deleting reference to the Department of Management Services and providing reference to the Department of Veterans Affairs; amending s. 295.14, F.S.; revising provisions with respect to penalties; repealing s. 295.151, F.S., relating to the application of ch. 78-372, Laws of Florida, with respect to point preference to certain persons in applying for employment; creating s. 295.155, F.S.; providing that military retirement on the basis of longevity does not disqualify a person from veterans' employment preference; providing an effective date.

WHEREAS, it is the policy of the State of Florida that in appreciation for their service to this state and the country, and in recognition of the time and advantage lost toward the pursuit of a civilian career, veterans as defined in section 295.07, Florida Statutes, shall be granted preference in employment with the state and political subdivisions of or in the state, and

WHEREAS, except for a veteran who has an absolute preference for employment by virtue of a 30 percent or more service-connected disability, a veteran applying for a position using veterans' preference must be equally or better qualified for the position than the nonveteran applicant, and

WHEREAS, veterans' preference alone does not assure the employment of a veteran who is not fully qualified by experience or training to fulfill the requirements of the position, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 295.15, Florida Statutes, is transferred and renumbered as section 295.065, Florida Statutes.

Section 2. Section 295.07, Florida Statutes, is amended to read:

295.07 Preference in appointment and retention.—

(1) The state and its political subdivisions in the state shall give preference in appointment and retention in positions of employment to:

(a) Those disabled veterans:

1. Who have served on active duty in any branch of the Armed Forces of the United States, have been separated therefrom under honorable conditions, and have established the present existence of a service-connected disability which is compensable under public laws administered by the U.S. Department of Veterans' Affairs, or

2. Who are receiving compensation, disability retirement benefits, or pension by reason of public laws administered by the U.S. Department of Veterans' Affairs and the Department of Defense.

(b) The spouse of any person who has a total disability, permanent in nature, resulting from a service-connected disability and who, because of this disability, cannot qualify for employment, and the spouse of any person missing in action, captured in line of duty by a hostile force, or forcibly detained or interned in line of duty by a foreign government or power.

(c) A veteran of any war as defined in s. 1.01(14).

(d) The unremarried widow or widower of a veteran who died of a service-connected disability.

(2) The Department of Veterans' Affairs shall adopt rules to ensure that veterans are given special consideration in the employing agency's selection and retention processes. The rules must include the award of point values as articulated in s. 295.08, if applicable, or, where point values are not relevant, must include procedures to ensure that veterans are given special consideration at each step of the employment selection process, unless the sponsoring governmental entity is a party to a collective bargaining agreement, in which case the collective bargaining agreement must comply within 90 days following ratification of a successor collective bargaining agreement or extension of any existing collective bargaining agreement.

(3) Preference in employment and retention may be given only to eligible persons who are described in subsection (1) and who are residents of this state.

~~(4)(2)~~ The following positions are ~~shall be~~ exempt from the provisions of this section:

(a) Those positions that are exempt from the state Career Service System under s. 110.205(2); however, all positions under the University Support Personnel System of the State University System as well as all Career Service System positions under the State Community College System and the School for the Deaf and the Blind are ~~shall be~~ included.

(b) ~~Those~~ Positions in political subdivisions of the state which ~~that~~ 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 without benefits, city managers and county managers, heads of departments, management positions, policymaking positions, positions that which require licensure as a physician, licensure as an osteopathic physician, licensure as a chiropractic physician, and positions that which require that the employee be a member of The Florida Bar.

Section 3. Section 295.08, Florida Statutes, is amended to read:

295.08 Positions for which a numerically based selection process is used ~~Competitive examination systems preference points; professional and scientific services.~~—For those positions for which an examination is used to determine the qualifications for entrance into employment with the state or its political subdivisions in the state, 10 points shall be added to the earned ratings of any person included under s. 295.07(1)(a) or (b), and 5 points shall be added to the earned rating of any person included under s. 295.07(1)(c) and (d), if the provided that such person has obtained a qualifying score on the examination for the position. The names of persons eligible for preference shall be entered on an appropriate register or list in accordance with their respective augmented ratings. However, except for classes of positions with Federal Government designations of professional or technician for which the lowest range of the salary is over \$9,000 per annum, the names of all persons qualified to receive a 10-point preference whose service-connected disabilities have been rated by the United States Department of Veterans Affairs or its predecessor or the Department of Defense to be 30 percent or more shall be placed at the top of the appropriate register or employment list, in accordance with their respective augmented ratings. The respective augmented rating is the examination score or evaluated score in addition to the applicable veteran's preference points.

Section 4. Section 295.085, Florida Statutes, is amended to read:

295.085 Positions for which a numerically based selection process where an examination is not used utilized; preferences.—

(1) In all positions in which the appointment or employment of persons is not subject to a written examination, with the exception of ~~those positions that which~~ are exempt under pursuant to s. 295.07(2), first preference in appointment, and employment, and retention shall be given by the state and its political subdivisions in the state first to those persons included under s. 295.07(1)(a) and (b), and second preference shall be given to those persons included under s. 295.07(1)(c) and (d) who, provided such persons possess the minimum qualifications necessary to the discharge of the duties of the position involved.

(2) ~~The Department of Veterans' Affairs shall be responsible for promulgating such rules or procedures as to ensure that those persons defined in s. 295.07 are given special consideration in the employing agency's selection and retention processes. These procedures shall include the award of point values as articulated in s. 295.08 if applicable, or where such point values are not relevant, shall include procedures to ensure those persons defined in s. 295.07 are given special consideration at each step of the employment~~

~~selection process and are given special consideration in the retention of employees where layoffs are necessitated.~~

Section 5. Section 295.101, Florida Statutes, is amended to read:

295.101 Employment preference; expiration.—A veteran's employment preference ~~shall expire~~ ~~be deemed to have expired~~ after a person eligible pursuant to s. 295.07 has applied and been employed by the any state or any agency of a political subdivision in ~~of~~ the state.

Section 6. Section 295.11, Florida Statutes, is amended to read:

295.11 Investigation; administrative hearing for not employing preferred applicant.—

(1) The Department of Veterans' Affairs or its designee shall, upon the written request of any person specified in s. 295.07, investigate any complaint filed with the department by such person when the person has ~~applied to made application with~~ any state agency or any agency of a political subdivision in ~~of~~ the state for a position of employment which was awarded to a nonveteran and the person feels aggrieved under this chapter. The Department of Veterans' Affairs shall review each case and may issue an opinion to the Public Employees Relations Commission as to the merit or lack of merit in each case. The ~~Such~~ investigation ~~must~~ ~~shall~~ be accomplished within existing amounts appropriated to the department.

(3) When a satisfactory resolution to the complaint is not forthcoming, ~~any the department of the state or political subdivision in the state may its designee shall, upon written request of the complainant and with advisory assistance from the Department of Management Services, testify telephonically or in person at the discretion of the Public Employees Employee Relations Commission hearing as to the investigative findings.~~ The complainant, however, may be represented at the hearing by counsel of his or her choice at his or her expense.

(4) Jurisdiction to effectuate the purposes of ss. 295.07-295.09 shall vest with the Public Employees Relations Commission for appropriate administrative determination. If, upon preliminary review of the Public Employees Relations Commission, the commission agrees with the department's determination that a case lacks merit and finds, in its discretion, that there was a complete absence of justiciable issues of either law or fact raised by the veterans'-preference complaint, the Public Employees Relations Commission shall dismiss the complaint without the necessity of holding a hearing.

Section 7. Subsection (1) of section 295.14, Florida Statutes, is amended to read:

295.14 Penalties.—

(1) When the Public Employees Relations Commission, after a hearing on notice conducted according to rules ~~adopted promulgated~~ by the commission, determines that a violation of s. 295.07, s. 295.08, s. 295.085(1), or s. 295.09(1)(a) or (b) has occurred and sustains the veteran seeking redress,

the commission shall order the offending agency, employee, or officer of the state to comply with the provisions of s. 295.07, s. 295.08, s. 295.085(1), or s. 295.09(1)(a) or (b); and, in the event of a violation of s. 295.07, s. 295.08, s. 295.085(1) or s. 295.09(1)(a) or (b), the commission may issue an order to compensate ~~the such~~ veteran for the loss of any wages and reasonable attorney's fees for actual hours worked, and costs of all work, including litigation, incurred as a result of such violation, which order shall be conclusive on the agency, employee, or officer concerned. The attorney's fees and costs may not exceed \$10,000. The action of the commission shall be in writing and shall be served on the parties concerned by certified mail with return receipt requested.

Section 8. Section 295.151, Florida Statutes, is repealed.

Section 9. Section 295.155, Florida Statutes, is created to read:

295.155 Military retirement based on longevity.—Military retirement on the basis of longevity does not disqualify a person eligible under s. 295.07 from veterans' employment preference.

Section 10. This act shall take effect upon becoming a law.

Approved by the Governor April 29, 1998.

Filed in Office Secretary of State April 29, 1998.