

SENATE BILL No. 308

By Committee on Ways and Means

3-9

1 AN ACT concerning public employees; relating to hiring and promotion
2 preferences for state employment; providing for a preference for
3 persons with a disability; expanding the veterans preference to include
4 remarried spouses of a deceased veteran who died while, and as a result
5 of, serving in the armed forces and to include surviving spouses,
6 whether remarried or not remarried of a prisoner of war; amending
7 K.S.A. 73-201 and repealing the existing section.
8

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

10 New Section 1. Sections 1 through 3, and amendments thereto, shall
11 be known and may be cited as Kathy's bill.

12 New Sec. 2. For purposes of sections 1 through 3, and amendments
13 thereto:

14 (a) "Disability" means a physical or mental impairment that
15 substantially limits one or more major life activities of an individual.

16 (b) "Major life activities" includes, but is not limited to, the activities
17 of caring for oneself, performing manual tasks, seeing, hearing, eating,
18 sleeping, walking, standing, lifting, bending, speaking, breathing, learning,
19 reading, concentrating, thinking, communicating and working. "Major life
20 activities" also includes the operation of major bodily functions, including,
21 but not limited to, the immune system, normal cell growth, digestive
22 system, bowel, bladder, neurological system, brain, respiratory system,
23 circulatory system, endocrine system and reproductive system.

24 (c) "Reasonable accommodation" means:

25 (1) Making existing facilities used by employees readily accessible
26 and usable by individuals with disabilities; and

27 (2) job restructuring, part-time or modified work schedules,
28 reassignment to a vacant position, acquisition or modification of
29 equipment or devices, appropriate adjustment or modifications of
30 examinations, training materials or policies, the provision of qualified
31 readers or interpreters or other similar accommodations for individuals
32 with disabilities.

33 (d) "State government" means any department, bureau, division,
34 board, authority, agency, commission or institution of this state, except the
35 judicial and legislative branches of state government and political
36 subdivisions of the state.

1 New Sec. 3. (a) Persons with disabilities shall be preferred for
2 employment and promotion in the state government of Kansas if qualified,
3 with or without a reasonable accommodation, to meet the performance
4 standards of the position. In the event that a person with a disability
5 meeting the requirements of this act and a veteran, surviving spouse of a
6 deceased disabled veteran or spouse or surviving spouse of a prisoner of
7 war meeting the requirements of the veteran's preference established by
8 K.S.A. 73-201, and amendments thereto, apply for the same position, the
9 person having the highest qualifications meeting the performance
10 standards of the position shall receive the primary preference.

11 (b) State government job opening notices and application forms shall
12 state that the position is subject to the disability preference and explain
13 how applicants with disabilities may take advantage of the preference,
14 including information regarding the documentation of a disability that
15 shall be provided pursuant to subsection (c) and the process that will be
16 used for selection.

17 (c) An applicant who is a person with a disability shall provide
18 documentation of the person's disability to the state government hiring
19 authority when applying for the disability preference by providing a copy
20 of one of the following documents:

21 (1) Supplemental security income or social security disability
22 insurance determination letter;

23 (2) letter from a managed care organization or a qualified medical
24 professional attesting to the disability;

25 (3) home and community-based services waiver approval letter;

26 (4) vocational rehabilitation letter from a vocational rehabilitation
27 counselor;

28 (5) United States department of veterans affairs benefits summary
29 letter or form 2055 statement from the benefit payment record, indicating a
30 service-connected disability; or

31 (6) military service physical evaluation board decision document, as
32 provided by 10 U.S.C. § 1222(a), with a finding of unfit for duty.

33 (d) The state government hiring authority shall offer an interview to a
34 person who has applied for an open position who is qualified, with or
35 without reasonable accommodation, to meet the performance standards of
36 the position and who has presented proof of disability as provided in
37 subsection (c).

38 (e) In any reduction in personnel by the state government employer,
39 employees who are persons with disabilities shall be retained in preference
40 to all other employees in the same job classification or job title with equal
41 qualifications, seniority, status and performance reviews.

42 (f) A person with a disability has the right to not disclose that person's
43 disability at the time of hire but may not assert a right to a retention

1 preference pursuant to subsection (e) at a later date unless the disability is
2 disclosed prior to the announcement of a layoff by submission of
3 documentation as provided in subsection (c). Disclosure may be made to
4 the state government human resources office where the employee is
5 employed and shall remain confidential unless disclosure is required for
6 the provision of a reasonable accommodation for the person with a
7 disability or for emergency preparedness planning.

8 (g) The provisions of sections 1 through 3, and amendments thereto,
9 shall not apply to positions that are filled by elected officers or vacancies
10 in such elected offices, personal secretaries of such officers, members of
11 boards and commissions, persons employed on a temporary basis,
12 positions held by patients in state institutions, inmates in the custody of the
13 secretary of corrections, students enrolled at a state educational institution,
14 heads of departments, positions that require licensure as a physician and
15 positions that require that the employee be admitted to practice law in
16 Kansas.

17 Sec. 4. K.S.A. 73-201 is hereby amended to read as follows: 73-201.
18 (a) As used in this act:

19 (1) "Veteran" means:

20 (A) Any person who entered the armed forces before October 15,
21 1976, and separated from the armed forces under honorable conditions, if
22 such person served: (i) On active duty during any war (the official dates
23 for war service are April 6, 1917 through July 2, 1921, and December 7,
24 1941 through April 28, 1952); (ii) during the period April 28, 1952 through
25 July 1, 1955; (iii) in any campaign or expedition for which a campaign
26 badge or service medal has been authorized; or (iv) for more than 180
27 consecutive days since January 31, 1955, but before October 15, 1976,
28 excluding an initial period of active duty for training under the "six-
29 month" reserve or national guard program;

30 (B) any person who entered the armed forces on or after October 15,
31 1976, and separated from the armed forces under honorable conditions, if
32 such person was awarded a service medal or campaign badge;

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

38 (D) the spouse of a veteran who has a ~~100%~~ service connected
39 disability of *30% or greater* as determined by the United States department
40 of veteran affairs;

41 (E) the ~~unremarried~~ surviving spouse, *whether remarried or not*
42 *remarried*, of a veteran who died while, and as a result of, serving in
43 armed forces; and

1 (F) the spouse *or, whether remarried or not remarried, the surviving*
2 *spouse* of a prisoner of war, as defined by K.S.A. 75-4364, and
3 amendments thereto.

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

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

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

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

32 (c) Veterans shall be preferred for initial employment and first
33 promotion in the state government of Kansas, and in the counties and cities
34 of this state, if competent to perform such services. Any veteran thus
35 preferred shall not be disqualified from holding any position in such
36 service on account of the veteran's age or by reason of any physical or
37 mental disability as long as such age or disability does not render the
38 veteran incompetent to perform the duties of the position applied for.
39 When any veteran shall apply for appointment to any such position, place,
40 or employment, the officer, board or person whose duty it is or may be to
41 appoint a person to fill such place shall, if the applicant be a veteran of
42 good reputation, and can competently perform the duties of the position
43 applied for by the veteran, consider the veteran for appointment to such

1 position, place, or employment. Within 30 days of filling a position,
2 eligible veterans who have applied and are not hired shall be notified by
3 certified mail or personal service that they are not being hired. Such notice
4 also shall advise the veteran of any administrative appeal available.

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

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

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

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

34 Sec. 5. K.S.A. 73-201 is hereby repealed.

35 Sec. 6. This act shall take effect and be in force from and after its
36 publication in the statute book.