

197.46 VETERANS PREFERENCE ACT; REMOVAL FORBIDDEN; RIGHT OF MANDAMUS.

(a) Any person whose rights may be in any way prejudiced contrary to any of the provisions of this section, shall be entitled to a writ of mandamus to remedy the wrong. No person holding a position by appointment or employment in the several counties, cities, towns, school districts and all other political subdivisions in the state, who is a veteran separated from the military service under honorable conditions, shall be removed from such position or employment except for incompetency or misconduct shown after a hearing, upon due notice, upon stated charges, in writing.

(b) Any veteran who has been notified of the intent to discharge the veteran from an appointed position or employment pursuant to this section shall be notified in writing of such intent to discharge and of the veteran's right to request a hearing within 60 days of receipt of the notice of intent to discharge. The failure of a veteran to request a hearing within the provided 60-day period shall constitute a waiver of the right to a hearing. Such failure shall also waive all other available legal remedies for reinstatement.

Request for a hearing concerning such a discharge shall be made in writing and submitted by mail or personal service to the employment office of the concerned employer or other appropriate office or person. If the veteran requests a hearing under this section, such written request must also contain the veteran's election to be heard by a civil service board or commission, a merit authority, or a three-person panel as defined in paragraph (c). If the veteran fails to identify the veteran's election, the governmental subdivision may select the hearing body.

(c) In all governmental subdivisions having an established civil service board or commission, or merit system authority, such hearing for removal or discharge shall be held before such civil service board or commission or merit system authority. Where no such civil service board or commission or merit system authority exists, such hearing shall be held by a board of three persons appointed as follows: one by the governmental subdivision, one by the veteran, and the third by the two so selected. In the event that the hearing is authorized to be held before a three-person board, the governmental subdivision's notice of intent to discharge shall state that the veteran must respond within 60 days of receipt of the notice of intent to discharge, and provide in writing to the governmental subdivision the name, United States mailing address, and telephone number of the veteran's selected representative for the three-person board. The failure of a veteran to submit the name, address, and telephone number of the veteran's selected representative to the governmental subdivision by mail or by personal service within the provided notice's 60-day period, shall constitute a waiver of the veteran's right to the hearing and all other legal remedies available for reinstatement of the veteran's employment position. In the event the two persons selected by the veteran and governmental subdivision do not appoint the third person within ten days after the appointment of the last of the two, then the judge of the district court of the county wherein the proceeding is pending, or if there be more than one judge in said county then any judge in chambers, shall have jurisdiction to appoint, and upon application of either or both of the two so selected shall appoint, the third person to the board and the person so appointed by the judge with the two first selected shall constitute the board.

(d) Either the veteran or the governmental subdivision may appeal from the decision of the board upon the charges to the district court by causing written notice of appeal, stating the grounds thereof, to be served upon the other party within 15 days after notice of the decision and by filing the original notice of appeal with proof of service thereof in the office of the court administrator of the district court within ten days after service thereof. Nothing in section 197.455 or this section shall be construed to apply to the position of private secretary, superintendent of schools, or one chief deputy of any elected official or head of a department, or to any person holding a strictly confidential relation to the appointing officer. Nothing in this

section shall be construed to apply to the position of teacher. The burden of establishing such relationship shall be upon the appointing officer in all proceedings and actions relating thereto.

(e) For disputes heard by a civil service board, the political subdivisions shall bear all costs associated with the hearing but not including attorney fees for attorneys representing the veteran. For disputes heard by a three-person panel, all parties shall bear equally all costs associated with the hearing, but not including attorney fees for attorneys representing the veteran. If the veteran prevails in a dispute heard by a civil service board or a three-person panel and the hearing reverses all aspects of discharge, the governmental subdivision shall pay the veteran's reasonable attorney fees.

(f) All officers, boards, commissions, and employees shall conform to, comply with, and aid in all proper ways in carrying into effect the provisions of section 197.455 and this section notwithstanding any laws, charter provisions, ordinances or rules to the contrary. Any willful violation of such sections by officers, officials, or employees is a misdemeanor.

History: (4369) 1907 c 263 s 2; 1917 c 499 s 1; 1919 c 14 s 1; 1919 c 192 s 2; 1937 c 121; Ex1937 c 6 s 2; 1943 c 230 s 2; 1945 c 502 s 2; 1961 c 566 s 1; 1974 c 549 s 1; 1975 c 45 s 5; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 2009 c 94 art 3 s 15; 2010 c 333 art 2 s 10; 2012 c 230 s 1; 2015 c 77 art 3 s 6