

1 ENGROSSED HOUSE  
2 BILL NO. 3902

By: Kannady of the House

3 and

4 Simpson of the Senate

5  
6  
7 An Act relating to militia; amending 44 O.S. 2021,  
8 Sections 21, 23, 24, 25, 45, 48, 49, 235, 241, and  
9 243, which relate to the Oklahoma Military Code;  
10 clarifying personnel to staff joint forces  
11 headquarters; providing for Adjutant General to  
12 assign necessary persons to headquarters; clarifying  
13 personnel in state military forces; providing gender-  
14 neutral language; modifying eligibility criteria for  
15 Adjutant General; authorizing Governor to waive  
16 certain eligibility requirements; directing certain  
17 comparable rate of compensation for Adjutant General;  
18 providing gender-neutral language; modifying oath of  
19 office for National Guard officers; updating gender-  
20 neutral language; clarifying personnel discharge  
21 procedures by the Governor as Commander in Chief;  
22 authorizing certain personnel matters to be decided  
23 according to customs and state and federal  
24 regulations; granting supervision and control of the  
Oklahoma National Guard Museum to the Oklahoma  
National Guard Museum Board of Governors;  
establishing membership of Board of Governors;  
providing for membership terms; prohibiting certain  
persons from appointment; providing for appointment  
of vacancies; prohibiting members from certain  
employment; directing promulgation of rules; listing  
specified powers and duties of Board of Governors;  
prescribing publication of rules and regulations for  
operation and maintenance of Oklahoma National Guard  
Museum; providing for legal counsel by the State  
Judge Advocate or designee; removing reference to  
certain regulations prescribed by the Secretary of  
Defense; striking requirement that personnel  
procedures be in conformity with certain laws, rules,  
and regulations; amending 44 O.S. 2021, Sections 821,  
875, and 905, which relate to the Oklahoma Uniform

1 Code of Military Justice; prohibiting federal  
2 officials from convening certain court-martial  
3 proceedings without prior consent of the Governor;  
4 requiring consent to be in writing and published by  
5 Governor; authorizing Governor to reappoint certain  
6 dismissed officers; providing for reappointment  
7 procedures; directing Governor or Adjutant General to  
8 prescribe certain regulations; prohibiting act of  
9 forgery; prescribing punishment for forgery; and  
10 providing an effective date.

11 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

12 SECTION 1. AMENDATORY 44 O.S. 2021, Section 21, is  
13 amended to read as follows:

14 Section 21. The Military Department of the State of Oklahoma is  
15 hereby established and shall be under the command and control of the  
16 Governor as Commander in Chief, with the Adjutant General as the  
17 executive and administrative head thereof. The Military Department  
18 shall be constituted of the state military forces, as defined by  
19 Section 801 of this title, and is hereby organized into a joint  
20 headquarters which shall be identified as the joint forces  
21 headquarters. The joint forces headquarters shall be jointly  
22 staffed by ~~Army National Guard and Air National Guard~~ personnel of  
23 the state military forces who, under the authority and direction of  
24 the Adjutant General, shall support and assist the Adjutant General  
in the exercise of command and control over state military forces  
when not activated for federal duty under Title 10 of the United  
States Code. There shall be assigned to the joint force

1 headquarters, officers, enlisted personnel, and civilian employees  
2 as may be considered necessary by the Governor as Commander in Chief  
3 and ~~as may be authorized by law and Army National Guard regulations~~  
4 ~~and Air National Guard regulations~~ the Adjutant General.

5 SECTION 2. AMENDATORY 44 O.S. 2021, Section 23, is  
6 amended to read as follows:

7 Section 23. The Governor of the state shall be the Commander in  
8 Chief of the Militia, and as such shall have supreme command of the  
9 military forces of the state while in the service of the state or  
10 until they are ordered ~~and accepted~~ into the actual service of the  
11 United States within the meaning of Clauses 15 and 16 of Section 8  
12 of Article I of the United States Constitution and Section 2 of  
13 Article II of the United States Constitution. While in the service  
14 of the ~~state~~ State of Oklahoma, ~~he~~ the Governor shall have power to  
15 muster out any organization of the state military forces, discharge  
16 enlisted ~~men~~ personnel, as provided herein, and perform such other  
17 acts in keeping with the laws of the Commander in Chief, ~~subject to~~  
18 ~~the laws of the United States and regulations prescribed by the~~  
19 ~~President of the United States.~~ No armed military force from  
20 another state or territory shall be permitted to enter the state  
21 without ~~his~~ permission of the Governor, unless such military force  
22 be a part of the United States, or is acting under the authority of  
23 the United States. No independent military organization, except as  
24 a corps of cadets at the educational institutions, shall be

1 permitted to bear arms without first securing permission of the  
2 Commander in Chief.

3 SECTION 3. AMENDATORY 44 O.S. 2021, Section 24, is  
4 amended to read as follows:

5 Section 24. A. The Adjutant General shall be appointed by the  
6 Governor, by and with the advice and consent of the Senate, and  
7 shall serve at the pleasure of the Governor.

8 B. To be eligible to hold the office of Adjutant General of  
9 this state, at the time of appointment the appointee:

10 1. Shall be a federally recognized and currently serving  
11 officer of the Oklahoma National Guard ~~and of the National Guard of~~  
12 ~~the United States for~~ who is not presently retired nor has ever  
13 previously retired from the National Guard and with no less than  
14 three (3) years of service in the Oklahoma National Guard;

15 2. Shall possess at least the rank of Colonel; and

16 3. If not already a general officer, shall be eligible for a  
17 Certificate of Eligibility pursuant to federal law and applicable  
18 regulations issued by the Chief of the National Guard Bureau.

19 C. If the Oklahoma National Guard is in active federal service  
20 and no persons having the qualifications required in subsection B of  
21 this section are available within the state, then the Governor may  
22 appoint, subject to the advice and consent of the Senate, any  
23 suitably qualified person who at any time in the preceding ten (10)  
24 years would have been qualified, ~~as above, and who has served at~~

1 ~~least two (2) years in active federal service in the grade of~~  
2 ~~Colonel or higher~~ pursuant to the requirements of subsection B of  
3 this section.

4 SECTION 4. AMENDATORY 44 O.S. 2021, Section 25, is  
5 amended to read as follows:

6 Section 25. A. The Adjutant General shall have the rank of  
7 Major General and devote full time to the duties of the office.  
8 Regardless of whether or not the Adjutant General has been  
9 recognized federally at the rank of Major General at the time of  
10 appointment by the Governor, the Adjutant General shall be  
11 compensated at the same rate of pay and allowances afforded to a  
12 Major General serving on federal Title 10 active duty with the same  
13 time in grade.

14 B. The Governor may appoint Assistant Adjutants General for  
15 Army and Assistant Adjutants General for Air to assist the Adjutant  
16 General in the discharge and performance of his or her duties. When  
17 appointing Assistant Adjutants General, the Governor shall take into  
18 consideration the number of such positions contemplated or  
19 recommended by the National Guard Bureau for manning the joint  
20 forces headquarters of a state. Such Assistant Adjutants General  
21 shall have the qualifications prescribed by law for the Adjutant  
22 General and shall have the rank of Brigadier General. The Assistant  
23 Adjutants General appointed by the Governor shall be considered  
24 staff officers and not commanders except that, in the discretion of

1 the Adjutant General, specific command or supervisory authority may  
2 be delegated by the Adjutant General to an Assistant Adjutant  
3 General but such delegation shall be accomplished in writing and  
4 shall be considered a military publication, as defined in Section  
5 801 of this title (Article 1).

6 C. Other general officers assigned to billets within the state  
7 military forces, including certain billets within the joint forces  
8 headquarters, shall be considered staff officers and not commanders  
9 except that, in the discretion of the Adjutant General, specific  
10 command or supervisory authority may be delegated by the Adjutant  
11 General to such general officers but such delegation shall be  
12 accomplished in writing and shall be considered a military  
13 publication, as defined in Section 801 of this title (Article 1).

14 D. The Adjutant General may employ a state employee in the  
15 position of Executive Assistant and Programs Manager for the  
16 Military Department of the state. Said position shall be  
17 unclassified and exempt from the Oklahoma Personnel Act and the  
18 Merit Rules for Employment, except leave regulations.

19 SECTION 5. AMENDATORY 44 O.S. 2021, Section 45, is  
20 amended to read as follows:

21 Section 45. Oath for National Guard Officers. Each  
22 commissioned officer, before entering upon the duties of his or her  
23 office, shall take and subscribe to the following oath, ~~or such~~  
24 ~~other oath as may be required by National Guard Regulations:~~

1 "I ....., do solemnly swear that I will support and defend  
2 the Constitution of the United States and the Constitution of the  
3 State of Oklahoma against all enemies, foreign and domestic; that I  
4 will bear true faith and allegiance to the same; that I will obey  
5 the lawful orders of the President of the United States and the  
6 Governor of the State of Oklahoma; that I make this obligation  
7 freely, without any mental reservation or purpose of evasion, and  
8 that I will well and faithfully discharge the duties of the office  
9 of ....., in the National Guard of the United States and the State  
10 of Oklahoma upon which I am about to enter, so help me God."

11 SECTION 6. AMENDATORY 44 O.S. 2021, Section 48, is  
12 amended to read as follows:

13 Section 48. Enlisted ~~men~~ personnel discharged from service in  
14 the Oklahoma National Guard ~~of this state~~ shall receive a discharge  
15 in writing in such form and with such classification as is or shall  
16 be prescribed by National Guard regulations, and in time of peace  
17 discharges may be given prior to the expiration of terms of  
18 enlistment in the following cases:

19 By sentence of a general court-martial; by direction of the  
20 Governor on account of disability; on account of sentence of  
21 imprisonment by a civil court whether suspended or not; on account  
22 of a bona fide permanent change of residence to another state; and  
23 for the purpose of enlisting in regular Army, Air Force, Navy, or  
24 Marine Corps, and for such other causes as may be prescribed by

1 ~~National Guard regulations or~~ the Governor as Commander in Chief;  
2 provided, that an enlisted ~~man~~ person who has not returned or  
3 accounted for all of the public property for which he or she is  
4 responsible, shall under no circumstances receive an honorable  
5 discharge.

6 SECTION 7. AMENDATORY 44 O.S. 2021, Section 49, is  
7 amended to read as follows:

8 Section 49. All matters relating to organization, commissioning  
9 and discharging of officers, enlisting and discharge of enlisted ~~men~~  
10 personnel, discipline, and government of the National Guard, not  
11 otherwise provided in this code, ~~shall~~ may be decided ~~by~~ according  
12 to the customs, regulations, and usage of the United States Army or  
13 the United States Air Force or National Guard regulations.

14 SECTION 8. AMENDATORY 44 O.S. 2021, Section 235, is  
15 amended to read as follows:

16 Section 235. A. There is hereby created the Oklahoma National  
17 Guard Museum, to be under the supervision and control of the  
18 Oklahoma National Guard Museum Board of Governors. The Oklahoma  
19 National Guard Museum Board of Governors shall consist of at least  
20 five, but no more than eleven, members all of whom shall be  
21 appointed by the Adjutant General and shall serve at the pleasure of  
22 the Adjutant General. The Adjutant General may Each member shall be  
23 appointed for a term of three (3) years, and the Board of Governors  
24 shall be divided into three classes which shall be staggered in



1 their terms. No person shall be appointed to the Board of Governors  
2 who is related by affinity or consanguinity within the third degree  
3 to any person employed by the Oklahoma National Guard Museum.

4 Members of the Board of Governors shall continue in office until the  
5 expiration of their terms and until their successors are appointed  
6 and enter upon the duties of their offices. Any vacancy on the  
7 Board of Governors resulting from any cause shall be filled by  
8 appointment by the Adjutant General for the remainder of the term  
9 established pursuant to this subsection.

10 B. No member of the Board of Governors shall be employed by the  
11 Oklahoma National Guard Museum during the time of his or her service  
12 on the Board of Governors nor shall any person who served as a  
13 member of the Board of Governors be employed by the Oklahoma  
14 National Guard Museum subsequent to his or her service on the Board  
15 of Governors for a period of two (2) years. Members of the Board of  
16 Governors may also serve simultaneously on the Board of the Oklahoma  
17 National Guard Museum Foundation.

18 C. The Board of Governors shall promulgate rules and  
19 regulations as necessary for the operation and maintenance of the  
20 Oklahoma National Guard Museum. In addition to its other powers and  
21 duties as herein provided, the Board of Governors shall have the  
22 following specific powers and duties which shall, however, not be  
23 deemed to be exclusive:

1       1. To organize itself by the election of a chair, vice-chair,  
2 and secretary, who shall perform the duties required of them by the  
3 rules and regulations, but shall not receive compensation, and to  
4 provide for the time and place of meetings of the Board of Governors  
5 at least four times annually;

6       2. To appoint an Executive Director to oversee of the Oklahoma  
7 National Guard Museum and provide for the employment of personnel as  
8 may be necessary to carry out the daily operations and maintenance  
9 of the museum and perform other duties as requested by the Adjutant  
10 General Oklahoma National Guard Museum. Appropriate state agencies  
11 are directed to make available, for display of items of historical  
12 significance and necessary space for administration, the buildings  
13 presently occupied by the Oklahoma Military Department, located in  
14 the vicinity of 36th Street and North Eastern in Oklahoma City,  
15 Oklahoma. The building herein referred to shall be made available  
16 by the Adjutant General as soon as same is no longer needed by and  
17 is vacated by the Oklahoma Military Department. The salary and  
18 tenure of the Executive Director shall be established by the Board  
19 of Governors. The salaries and tenure of all other personnel may be  
20 established by the Board of Governors or delegated to the Executive  
21 Director for his or her determination;

22       3. To establish a budget annually, or more often if needed, for  
23 the Oklahoma National Guard Museum; and  
24

1       4. To approve all claims and expenditures arising from the  
2 operations and maintenance of the Oklahoma National Guard Museum,  
3 prior to the payment thereof, from appropriations made directly to  
4 the Oklahoma National Guard Museum or from funds provided by the  
5 Oklahoma Military Department or from funds provided by the Oklahoma  
6 National Guard Museum Foundation.

7       D. The Executive Director, subject to the approval of the  
8 ~~Adjutant General~~ Board of Governors, may lease to the 45th Infantry  
9 Division Association, for periods not exceeding one (1) year and  
10 with provisions for renewal from year to year, an area to be used as  
11 a gift shop, if the lease does not interfere with its use by the  
12 Oklahoma National Guard Museum. The proceeds of the sales from the  
13 gift shop shall remain with the 45th Infantry Division Association  
14 for operating purposes.

15       E. The Adjutant General shall cause the rules and regulations  
16 promulgated pursuant to subsection C of this section to be published  
17 as military publications as defined in Section 801 of this title.  
18 The State Judge Advocate or his or her designee shall provide legal  
19 counsel and support to the Board of Governors.

20       SECTION 9.       AMENDATORY       44 O.S. 2021, Section 241, is  
21 amended to read as follows:

22       Section 241. The Governor, pursuant to the authority granted  
23 the states by Section 109 of Title 32 of the United States Code or a  
24 successor provision, ~~and under such regulations as the Secretary of~~

1 ~~Defense may prescribe for discipline in training,~~ is hereby  
2 authorized to enlist, organize, maintain, equip and discipline such  
3 military forces other than the National Guard as he or she may deem  
4 necessary to defend the state. Such forces shall be uniformed and  
5 subject to Sections 1 through 117, Sections 208 through 237, and  
6 Sections 800 through 946 of this title, insofar as such sections do  
7 not conflict with Sections 241 through 250 of this title.

8 SECTION 10. AMENDATORY 44 O.S. 2021, Section 243, is  
9 amended to read as follows:

10 Section 243. A. The Governor is hereby authorized to prescribe  
11 rules and regulations governing the enlistment, organization,  
12 administration, equipment, discipline and discharge of the personnel  
13 of such military forces; to requisition from the Secretary of  
14 Defense such arms and equipment as may be in the possession of and  
15 can be spared by the Department of Defense and to extend thereto the  
16 facilities of state armories, Armed Forces Reserve Centers,  
17 readiness centers, logistics, aviation, and training facilities,  
18 warehouses and their equipment and such other state premises and  
19 property as may be available for the purpose of drill and  
20 instruction. ~~Insofar as applicable the procedure for the~~  
21 ~~enlistment, organization, pay, maintenance, equipment and~~  
22 ~~disciplining of such forces shall be in conformity with the law and~~  
23 ~~the rules and regulations governing and pertaining to the National~~  
24 ~~Guard; provided, that the officers~~ Officers and enlisted personnel

1 in the Oklahoma State Guard shall not receive any compensation or  
2 monetary allowances from the state except when activated for state  
3 active duty, as defined in Section 801 of this title, by order of  
4 the Governor.

5 B. Members of the Oklahoma State Guard shall be considered part  
6 of state military forces as defined in Section 801 of this title and  
7 shall be subject to the Oklahoma Uniform Code of Military Justice.

8 C. When prescribing the rules and regulations governing  
9 enlistment, organization, administration, equipment, discipline and  
10 discharge of the personnel of the Oklahoma State Guard, the Governor  
11 shall issue such rules and regulations in the form of an executive  
12 order or in a series of such orders. An executive order or a series  
13 of such orders prescribing the rules and regulations governing  
14 enlistment, organization, administration, equipment, discipline and  
15 discharge of the personnel of the Oklahoma State Guard shall also be  
16 published by the Adjutant General as a military publication.

17 SECTION 11. AMENDATORY 44 O.S. 2021, Section 821, is  
18 amended to read as follows:

19 Section 821. ~~RESERVED.~~ ARTICLE 21. Convening of court-martial  
20 by federal officials.

21 In no case shall the President of the United States, the  
22 Secretary of Defense, the Secretary of a military department, a  
23 military officer serving on active duty within the meaning of Title  
24 10 of the United States Code, or any other federal official convene

1 a court-martial proceeding pursuant to the Oklahoma Military Code  
2 unless prior consent has been granted by the Governor. Such  
3 consent, if granted by the Governor, shall be accomplished in  
4 writing and shall be published by the Governor.

5 SECTION 12. AMENDATORY 44 O.S. 2021, Section 875, is  
6 amended to read as follows:

7 Section 875. ARTICLE 75. Restoration.

8 A. Under such regulations as the Adjutant General may  
9 promulgate, all rights, privileges, and property affected by an  
10 executed part of a court-martial sentence which has been set aside  
11 or disapproved, except an executed dismissal or discharge, shall be  
12 restored unless a new trial or rehearing is ordered and such  
13 executed part is included in a sentence imposed upon the new trial  
14 or rehearing.

15 B. If a previously executed sentence of dishonorable or bad-  
16 conduct discharge is not imposed on a new trial, the Adjutant  
17 General shall substitute therefor a form of discharge authorized for  
18 administrative issuance unless the accused is to serve out the  
19 remainder of his or her enlistment.

20 C. If a previously executed sentence of dismissal is not  
21 imposed on a new trial, the Adjutant General shall substitute  
22 therefor a form of discharge authorized for administrative issue,  
23 and the commissioned officer dismissed by that sentence may be  
24 ~~reappointed pursuant to Sections 875 and 12203 of Title 10 of the~~

1 ~~United States Code and any applicable regulations prescribed~~  
2 ~~thereunder by the President of the United States or the Secretary~~  
3 ~~concerned~~ solely by the Governor to such commissioned grade and with  
4 such rank as in the opinion of the Governor that former officer  
5 would have attained had he or she not been dismissed. The  
6 reappointment of such a former officer shall be without regard to  
7 the existence of a vacancy and shall affect the promotion status of  
8 other officers only insofar as the Governor may direct. All time  
9 between the dismissal and the reappointment shall be considered as  
10 actual service for all purposes, including the right to pay and  
11 allowances.

12 D. The Governor or Adjutant General shall prescribe  
13 regulations, with such limitations as the Governor or Adjutant  
14 General considers appropriate, governing eligibility for pay and  
15 allowances for the period after the date on which an executed part  
16 of a court-martial sentence is set aside.

17 SECTION 13. AMENDATORY 44 O.S. 2021, Section 905, is  
18 amended to read as follows:

19 Section 905. ~~RESERVED.~~ ARTICLE 105. Forgery.

20 Any person subject to the Oklahoma Uniform Code of Military  
21 Justice who, with intent to defraud:

22 1. Falsely makes or alters any signature to, or any part of,  
23 any writing which would, if genuine, apparently impose a legal  
24

1 liability on another or change his or her legal right or liability  
2 to his or her prejudice; or

3 2. Utters, offers, issues, or transfers such a writing, known  
4 by him or her to be so made or altered,  
5 is guilty of forgery and shall be punished as a court-martial may  
6 direct.

7 SECTION 14. This act shall become effective November 1, 2022.

8 Passed the House of Representatives the 15th day of March, 2022.

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10  
11 Presiding Officer of the House  
12 of Representatives

13 Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2022.

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15 Presiding Officer of the Senate  
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