

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

HOUSE BILL 3902

By: Kannady

AS INTRODUCED

An Act relating to militia; amending 44 O.S. 2021, Sections 21, 23, 24, 25, 45, 48, 49, 241, 243, 821, and 875, which relate to the Oklahoma Military Code; clarifying personnel to staff joint forces headquarters; providing for Adjutant General to assign necessary persons to headquarters; clarifying personnel in state military forces; providing gender-neutral language; modifying eligibility criteria for Adjutant General; directing certain comparable rate of compensation for Adjutant General; providing gender-neutral language; modifying oath of office for National Guard officers; updating gender-neutral language; clarifying personnel discharge procedures by the Governor as Commander in Chief; authorizing certain personnel matters to be decided according to customs and state and federal regulations; 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; prohibiting federal officials from convening certain court-martial proceedings without prior consent of the Governor; requiring consent to be in writing and published by Governor; authorizing Governor to reappoint certain dismissed officers; providing for reappointment procedures; directing Governor or Adjutant General to prescribe certain regulations; and providing an effective date.

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

SECTION 1. AMENDATORY 44 O.S. 2021, Section 21, is

amended to read as follows:

Section 21. The Military Department of the State of Oklahoma is hereby established and shall be under the command and control of the Governor as Commander in Chief, with the Adjutant General as the executive and administrative head thereof. The Military Department shall be constituted of the state military forces, as defined by Section 801 of this title, and is hereby organized into a joint headquarters which shall be identified as the joint forces headquarters. The joint forces headquarters shall be jointly staffed by ~~Army National Guard and Air National Guard~~ personnel of the state military forces who, under the authority and direction of 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 headquarters, officers, enlisted personnel and civilian employees as may be considered necessary by the Governor as Commander in Chief and ~~as may be authorized by law and Army National Guard regulations and Air National Guard regulations~~ the Adjutant General.

SECTION 2. AMENDATORY 44 O.S. 2021, Section 23, is

amended to read as follows:

Section 23. The Governor of the state shall be the Commander in Chief of the Militia, and as such shall have supreme command of the

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

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

21 Section 24. A. The Adjutant General shall be appointed by the
22 Governor, by and with the advice and consent of the Senate, and
23 shall serve at the pleasure of the Governor.

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

3 1. Shall be a ~~federally recognized~~ currently serving officer of
4 the Oklahoma National Guard ~~and of the National Guard of the United~~
5 ~~States for~~ with no less than three (3) years of service in the
6 Oklahoma National Guard; and

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

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

11 C. If the Oklahoma National Guard is in active federal service
12 and no persons having the qualifications required in subsection B of
13 this section are available within the state, then the Governor may
14 appoint, subject to the advice and consent of the Senate, any
15 suitably qualified person who at any time in the preceding ten (10)
16 years would have been qualified, ~~as above, and who has served at~~
17 ~~least two (2) years in active federal service in the grade of~~
18 ~~Colonel or higher~~ pursuant to the requirements of subsection B of
19 this section.

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

22 Section 25. A. The Adjutant General shall have the rank of
23 Major General and devote full time to the duties of the office.
24 Regardless of whether or not the Adjutant General has been

1 recognized federally at the rank of Major General at the time of
2 appointment by the Governor, the Adjutant General shall be
3 compensated at the same rate of pay and allowances afforded to a
4 Major General serving on federal, Title 10 active duty with the same
5 time in grade.

6 B. The Governor may appoint Assistant Adjutants General for
7 Army and Assistant Adjutants General for Air to assist the Adjutant
8 General in the discharge and performance of his or her duties. When
9 appointing Assistant Adjutants General, the Governor shall take into
10 consideration the number of such positions contemplated or
11 recommended by the National Guard Bureau for manning the joint
12 forces headquarters of a state. Such Assistant Adjutants General
13 shall have the qualifications prescribed by law for the Adjutant
14 General and shall have the rank of Brigadier General. The Assistant
15 Adjutants General appointed by the Governor shall be considered
16 staff officers and not commanders except that, in the discretion of
17 the Adjutant General, specific command or supervisory authority may
18 be delegated by the Adjutant General to an Assistant Adjutant
19 General but such delegation shall be accomplished in writing and
20 shall be considered a military publication, as defined in Section
21 801 of this title (Article 1).

22 C. Other general officers assigned to billets within the state
23 military forces, including certain billets within the joint forces
24 headquarters, shall be considered staff officers and not commanders

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

6 D. The Adjutant General may employ a state employee in the
7 position of Executive Assistant and Programs Manager for the
8 Military Department of the state. Said position shall be
9 unclassified and exempt from the Oklahoma Personnel Act and the
10 Merit Rules for Employment, except leave regulations.

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

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

17 "I, do solemnly swear that I will support and defend
18 the Constitution of the United States and the Constitution of the
19 State of Oklahoma against all enemies, foreign and domestic; that I
20 will bear true faith and allegiance to the same; that I will obey
21 the lawful orders of the President of the United States and the
22 Governor of the State of Oklahoma; that I make this obligation
23 freely, without any mental reservation or purpose of evasion, and
24 that I will well and faithfully discharge the duties of the office

1 of, in the National Guard of the United States and the State
2 of Oklahoma upon which I am about to enter, so help me God."

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

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

11 By sentence of a general court-martial; by direction of the
12 Governor on account of disability; on account of sentence of
13 imprisonment by a civil court whether suspended or not; on account
14 of a bona fide permanent change of residence to another state; and
15 for the purpose of enlisting in regular Army, Air Force, Navy, or
16 Marine Corps, and for such other causes as may be prescribed by
17 ~~National Guard regulations or~~ the Governor as Commander in Chief;
18 provided, that an enlisted ~~man~~ person who has not returned or
19 accounted for all of the public property for which he or she is
20 responsible, shall under no circumstances receive an honorable
21 discharge.

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

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1 Section 49. All matters relating to organization, commissioning
2 and discharging of officers, enlisting and discharge of enlisted ~~men~~
3 personnel, discipline, and government of the National Guard, not
4 otherwise provided in this code, ~~shall~~ may be decided ~~by~~ according
5 to the customs, regulations, and usage of the United States Army or
6 the United States Air Force or National Guard regulations.

7 SECTION 8. AMENDATORY 44 O.S. 2021, Section 241, is
8 amended to read as follows:

9 Section 241. The Governor, pursuant to the authority granted
10 the states by Section 109 of Title 32 of the United States Code or a
11 successor provision, ~~and under such regulations as the Secretary of~~
12 ~~Defense may prescribe for discipline in training,~~ is hereby
13 authorized to enlist, organize, maintain, equip and discipline such
14 military forces other than the National Guard as he or she may deem
15 necessary to defend the state. Such forces shall be uniformed and
16 subject to Sections 1 through 117, Sections 208 through 237, and
17 Sections 800 through 946 of this title, insofar as such sections do
18 not conflict with Sections 241 through 250 of this title.

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

21 Section 243. A. The Governor is hereby authorized to prescribe
22 rules and regulations governing the enlistment, organization,
23 administration, equipment, discipline and discharge of the personnel
24 of such military forces; to requisition from the Secretary of

1 Defense such arms and equipment as may be in the possession of and
2 can be spared by the Department of Defense and to extend thereto the
3 facilities of state armories, Armed Forces Reserve Centers,
4 readiness centers, logistics, aviation, and training facilities,
5 warehouses and their equipment and such other state premises and
6 property as may be available for the purpose of drill and
7 instruction. ~~Insofar as applicable the procedure for the~~
8 ~~enlistment, organization, pay, maintenance, equipment and~~
9 ~~disciplining of such forces shall be in conformity with the law and~~
10 ~~the rules and regulations governing and pertaining to the National~~
11 ~~Guard; provided, that the officers~~ Officers and enlisted personnel
12 in the Oklahoma State Guard shall not receive any compensation or
13 monetary allowances from the state except when activated for state
14 active duty, as defined in Section 801 of this title, by order of
15 the Governor.

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

19 C. When prescribing the rules and regulations governing
20 enlistment, organization, administration, equipment, discipline and
21 discharge of the personnel of the Oklahoma State Guard, the Governor
22 shall issue such rules and regulations in the form of an executive
23 order or in a series of such orders. An executive order or a series
24 of such orders prescribing the rules and regulations governing

1 enlistment, organization, administration, equipment, discipline and
2 discharge of the personnel of the Oklahoma State Guard shall also be
3 published by the Adjutant General as a military publication.

4 SECTION 10. AMENDATORY 44 O.S. 2021, Section 821, is
5 amended to read as follows:

6 Section 821. ~~RESERVED.~~ ARTICLE 21. Convening of court-martial
7 by federal officials.

8 In no case shall the President of the United States, the
9 Secretary of Defense, the Secretary of a military department, a
10 military officer serving on active duty within the meaning of Title
11 10 of the United States Code or any other federal official convene a
12 court-martial proceeding pursuant to the Oklahoma Military Code
13 unless prior consent has been granted by the Governor. Such
14 consent, if granted by the Governor, shall be accomplished in
15 writing and shall be published by the Governor.

16 SECTION 11. AMENDATORY 44 O.S. 2021, Section 875, is
17 amended to read as follows:

18 Section 875. ARTICLE 75. Restoration.

19 A. Under such regulations as the Adjutant General may
20 promulgate, all rights, privileges, and property affected by an
21 executed part of a court-martial sentence which has been set aside
22 or disapproved, except an executed dismissal or discharge, shall be
23 restored unless a new trial or rehearing is ordered and such
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1 executed part is included in a sentence imposed upon the new trial
2 or rehearing.

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

8 C. If a previously executed sentence of dismissal is not
9 imposed on a new trial, the Adjutant General shall substitute
10 therefor a form of discharge authorized for administrative issue,
11 and the commissioned officer dismissed by that sentence may be
12 reappointed ~~pursuant to Sections 875 and 12203 of Title 10 of the~~
13 ~~United States Code and any applicable regulations prescribed~~
14 ~~thereunder by the President of the United States or the Secretary~~
15 ~~concerned~~ solely by the Governor to such commissioned grade and
16 with such rank as in the opinion of the Governor that former officer
17 would have attained had he or she not been dismissed. The
18 reappointment of such a former officer shall be without regard to
19 the existence of a vacancy and shall affect the promotion status of
20 other officers only insofar as the Governor may direct. All time
21 between the dismissal and the reappointment shall be considered as
22 actual service for all purposes, including the right to pay and
23 allowances.
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1 D. The Governor or Adjutant General shall prescribe
2 regulations, with such limitations as the Governor or Adjutant
3 General considers appropriate, governing eligibility for pay and
4 allowances for the period after the date on which an executed part
5 of a court-martial sentence is set aside.

6 SECTION 12. This act shall become effective November 1, 2022.

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8 58-2-8949 EK 01/17/22