

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 HOUSE BILL 2382

By: Kannady

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5
6 AS INTRODUCED

7 An Act relating to militia; amending 44 O.S. 2021,
8 Sections 21, 23, 24, 25, 26, 45, 48, 49, 235, 241,
and 243, which relate to the Oklahoma Military Code;
9 clarifying personnel to staff joint forces
headquarters; providing for Adjutant General to
10 assign necessary persons to headquarters; clarifying
personnel in state military forces; providing gender-
neutral language; establishing term limit for
11 Adjutant General upon certain date; authorizing
removal for cause; modifying eligibility criteria for
12 Adjutant General; authorizing Governor to waive
certain eligibility requirements; directing certain
13 comparable rate of compensation for Adjutant General;
authorizing Adjutant General to establish rules
14 allowing the Military Department of the State of
Oklahoma to accept donations to create a certain
15 scholarship program; permitting delegation of
oversight to a nonprofit public charity; providing
16 gender-neutral language; modifying oath of office for
National Guard officers; updating gender-neutral
17 language; clarifying personnel discharge procedures
by the Governor as Commander in Chief; authorizing
18 certain personnel matters to be decided according to
customs and state and federal regulations; removing
19 reference to certain regulations prescribed by the
Secretary of Defense; striking requirement that
20 personnel procedures be in conformity with certain
laws, rules, and regulations; amending 44 O.S. 2021,
21 Sections 821, 875, and 905, which relate to the
Oklahoma Uniform Code of Military Justice;
22 prohibiting federal officials from convening certain
court-martial proceedings without prior consent of
23 the Governor; requiring consent to be in writing and
published by Governor; authorizing Governor to
24 reappoint certain dismissed officers; providing for

1 reappointment procedures; directing Governor or
2 Adjutant General to prescribe certain regulations;
3 prohibiting act of forgery; prescribing punishment
4 for forgery; and providing an effective date.

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

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

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

1 and ~~as may be authorized by law and Army National Guard regulations~~
2 ~~and Air National Guard regulations~~ the Adjutant General.

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

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

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

3 Section 24. A. The Adjutant General shall be appointed by the
4 Governor, by and with the advice and consent of the Senate, ~~and~~
5 ~~shall serve at the pleasure of the Governor.~~ Beginning January 1,
6 2027, the appointment of the Adjutant General shall be for a term of
7 five (5) years, requiring a new reappointment process for any
8 additional term. The Adjutant General may be removed for cause by
9 the Governor during the appointed term.

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

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

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

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

21 C. If the Oklahoma National Guard is in active federal service
22 and no persons having the qualifications required in subsection B of
23 this section are available within the state, then the Governor may
24 appoint, subject to the advice and consent of the Senate, any

1 suitably qualified person who at any time in the preceding ten (10)
2 years would have been qualified, ~~as above, and who has served at~~
3 ~~least two (2) years in active federal service in the grade of~~
4 ~~Colonel or higher~~ pursuant to the requirements of subsection B of
5 this section.

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

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

16 B. The Governor may appoint Assistant Adjutants General for
17 Army and Assistant Adjutants General for Air to assist the Adjutant
18 General in the discharge and performance of his or her duties. When
19 appointing Assistant Adjutants General, the Governor shall take into
20 consideration the number of such positions contemplated or
21 recommended by the National Guard Bureau for manning the joint
22 forces headquarters of a state. Such Assistant Adjutants General
23 shall have the qualifications prescribed by law for the Adjutant
24 General and shall have the rank of Brigadier General. The Assistant

1 Adjutants General appointed by the Governor shall be considered
2 staff officers and not commanders except that, in the discretion of
3 the Adjutant General, specific command or supervisory authority may
4 be delegated by the Adjutant General to an Assistant Adjutant
5 General but such delegation shall be accomplished in writing and
6 shall be considered a military publication, as defined in Section
7 801 of this title (Article 1).

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

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

21 SECTION 5. AMENDATORY 44 O.S. 2021, Section 26, is
22 amended to read as follows:

23 Section 26. A. The Adjutant General shall be in control of the
24 Military Department of the State of Oklahoma, subordinate only to

1 the Governor. Within the limitations and under the provisions of
2 law, he or she shall supervise and direct the Oklahoma National
3 Guard within the service of the state and when under state control
4 in all of its organization, training and other activities; shall
5 receive and give effect to the orders of the Governor; and shall
6 perform such other military and defense duties, not otherwise
7 assigned by law, as the Governor may prescribe.

8 B. The Adjutant General, when absent from the state, may
9 temporarily delegate any authority vested under this title and any
10 such duties as an agency appointing authority to an Assistant
11 Adjutant General, other state officer or employee within the
12 Military Department of the State of Oklahoma. Such temporary
13 delegations of authority pursuant to this subsection shall be
14 accomplished in writing. The Adjutant General may also promulgate
15 regulations providing for the delegation of any such authority.

16 C. The Adjutant General shall develop, publish and maintain an
17 organizational chart depicting the chain of command between the
18 Adjutant General and the major commands of the Oklahoma National
19 Guard. Besides the major commands defined in Section 801 of this
20 title (Article 1), the Adjutant General, in his or her discretion,
21 may designate other military units within the Oklahoma National
22 Guard as major commands.

23 D. The organizational chart required in subsection C of this
24 section shall be updated no less than annually and shall include all

1 enlisted and officer billets assigned to joint forces headquarters
2 and shall depict all existing command relationships established by
3 the Adjutant General within joint forces headquarters. The
4 organizational chart required herein shall not be considered a
5 military publication within the meaning of Section 801 of this title
6 (Article 1).

7 E. In accordance with all relevant requirements of the United
8 States Army, the United States Air Force or the National Guard
9 Bureau, the Adjutant General shall develop, publish and maintain an
10 enlisted and officer rating scheme for all enlisted and officer
11 billets assigned to joint forces headquarters. The rating scheme
12 required herein shall not be considered a military publication
13 within the meaning of Section 801 of this title (Article 1).

14 F. Pursuant to the rules established by the Adjutant General,
15 the Military Department of the State of Oklahoma is authorized to
16 expend appropriated and nonappropriated funds to enhance recruiting
17 and retention efforts for the Oklahoma National Guard.

18 G. The Adjutant General may establish rules allowing the
19 Military Department of the State of Oklahoma to accept donations and
20 bequests to create a scholarship program for the benefit of members
21 of the Oklahoma National Guard. The Adjutant General may delegate
22 oversight of scholarship program funds to a nonprofit public charity
23 for the purpose of creating and administering an endowment fund for
24 the scholarship program.

1 SECTION 6. AMENDATORY 44 O.S. 2021, Section 45, is
2 amended to read as follows:

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

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

17 SECTION 7. AMENDATORY 44 O.S. 2021, Section 48, is
18 amended to read as follows:

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

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

12 SECTION 8. AMENDATORY 44 O.S. 2021, Section 49, is
13 amended to read as follows:

14 Section 49. All matters relating to organization, commissioning
15 and discharging of officers, enlisting and discharge of enlisted ~~men~~
16 personnel, discipline, and government of the National Guard, not
17 otherwise provided in this code, ~~shall~~ may be decided ~~by~~ according
18 to the customs, regulations, and usage of the United States Army or
19 the United States Air Force or National Guard regulations.

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
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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, 2023.

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