

South Carolina Legislature

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South Carolina Code of Laws Unannotated

Title 25 - Military, Civil Defense and Veterans Affairs

CHAPTER 1

Military Code

ARTICLE 1

General Provisions

SECTION 25-1-10. Definitions.

Wherever used in this chapter, the word(s)

- (1) "Officer"-Shall be understood to include commissioned officers and warrant officers, unless otherwise specified.
- (2) "Enlisted men"-Shall be understood to designate members of the National Guard of this State other than officers and warrant officers.
- (3) "Adjutant General"-Shall be understood to be the Adjutant and Inspector General.
- (4) "The Assistant Adjutant General"-Shall be understood to be the Assistant Adjutant and Inspector General.
- (5) "Military department"-Shall be understood as any office or activity of the State that controls or coordinates the activities of the militia, or any part of the militia.
- (6) "National Guard"-Shall be understood to include the organized militia, both Army and Air.
- (7) "Air National Guard"-Shall be understood to include those units of the organized militia that are Air Force type units and that are organized and trained as a Reserve of the United States Air Force.
- (8) "Army National Guard"-Shall be understood to include those of the organized militia that are Army type units and that are organized and trained as a Reserve of the United States Army.
- (9) "Military fund"-Any and all moneys appropriated by the General Assembly for the support of the militia and such other revenues as may be collected by the military department for military purposes.
- (10) "State duty"-Duty performed by the militia, or any part of the militia, when such duty is ordered by proper State authority, in the event of war, insurrection, invasion, or imminent danger thereof, breach of the peace, tumult, riot, public disaster, or resistance to process.
- (11) "State status"-Shall be understood to mean the military status of a member of the National Guard when not in the active military service of the United States.
- (12) "Unit"-In the Army National Guard, shall be understood to be a company, battery, troop, detachment, or similar size Federally recognized entity, except that a headquarters is not to be construed as a unit.

In the Air National Guard, it shall be understood to be a single military organization having a mission, function, and a structure prescribed by competent authority.
- (13) "Organization"-Any military element of the South Carolina Army National Guard composed of a headquarters with its assigned or attached subordinate commands. (Example-battalions, groups, brigades and higher commands.)
- (14) "USPFO"-Shall mean United States property and fiscal officer.
- (15) "Federal recognition or federally recognized"-Shall mean acknowledgment by the Secretary of the Air Force or the Secretary of the Army that an individual has been appointed to an authorized grade and position vacancy appropriate to his qualifications in the Air National Guard or the Army National Guard, and that he meets the prescribed Federal requirements for such grade and position.
- (16) "Fully qualified"-Shall mean that an individual meets all physical, moral and professional requirements as may be prescribed by the United States Code, the National Guard Bureau and such other requirements that are or may be made a part of the military code of South Carolina and in addition that he has demonstrated qualities of leadership, ability and potential for appointment or promotion to the next higher grade.
- (17) "Commissioned staff"-Officers assigned to a headquarters by TO/E to assist a commander in his exercise of command. The commander is not to be included in a "commissioned staff."
- (18) "Unit maintenance fund" means funds collected by armory rentals, donations, military fines, and other minor sources of revenue with or without specific appropriation, and used for minor maintenance at facilities and controlled at the unit level.
- (19) "Organized militia" refers to both the National Guard and the organized militia not in National Guard service. Individuals who are federally recognized by the National Guard Bureau are members of the National Guard. Individuals holding rank or privilege within the Military Department, but not federally recognized in that rank for service in the National Guard, are the organized militia not in National Guard service, and these individuals also may be referred to as "State Defense Forces", the "State Guard", or by other terms designated by the Adjutant General.

HISTORY: 1962 Code Section 44-1; 1952 Code Section 44-1; 1950 (46) 1881; 1964 (53) 2241; 2001 Act No. 85, Section 4; 2011 Act No. 46, Section 2, eff June 7, 2011.

Effect of Amendment

The 2011 amendment added subsection (19) defining organized militia.

SECTION 25-1-20. Acceptance of Act of Congress.

The act of Congress approved June 3, 1916, entitled "An Act Making Further and More Effectual Provisions for the National Defense and for Other Purposes" and all acts

presently amendatory thereto, the future amendatory acts thereof being subject to the approval of the State legislature, is hereby accepted by this State and the provisions of said act and amendments thereto are made a part of the military code. (Ref: Titles 32 & 10, United States Code).

HISTORY: 1962 Code Section 44-2; 1952 Code Section 44-2; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-30. National Guard shall conform to Federal laws.

The Governor shall cause the National Guard of South Carolina always to conform to all such Federal laws and regulations as may from time to time be operative and applicable except where in conflict with the laws of this State.

HISTORY: 1962 Code Section 44-3; 1952 Code Section 44-3; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-40. Applicability of Uniform Code of Military Justice.

Whenever a portion of the militia of the State is on duty under or pursuant to orders of the Governor or whenever a part of the militia is ordered to assemble for state duty, the systems, precedents, and procedures established in the Uniform Code of Military Justice for the governing of armed forces of the United States, so far as applicable and not in conflict with a rule or regulation of this code, is considered in full force and regarded as a part of this chapter until these forces are duly relieved from this duty. Nothing in this section is construed as relinquishing the state's authority and jurisdiction in these matters. The Governor shall review the findings of all general courts-martial convened during situations arising pursuant to this section.

HISTORY: 1962 Code Section 44-4; 1952 Code Section 44-4; 1950 (46) 1881; 1964 (53) 2241; 2001 Act No. 85, Section 5; 2011 Act No. 46, Section 3, eff June 7, 2011.

Effect of Amendment

The 2011 amendment, in the first sentence, substituted "of this code" for "herein prescribed", "these forces" for "such forces", and "this duty" for "such duty"; in the second sentence, substituted "these matters" for "such matters"; deleted the third sentence, which had read, "No punishment under this section extending to the taking of life shall in any case be inflicted except in time of actual war, invasion, or insurrection declared to exist by proclamation of the President of the United States or the Governor of this State, and then only after the approval of such sentence by the Governor."; and in the last sentence, substituted "arising pursuant to this section" for "hereinabove recited"; and made other nonsubstantive changes.

SECTION 25-1-50. Rules and regulations.

The Governor or the adjutant general shall promulgate regulations not inconsistent with law as he may consider necessary to carry out the provisions of this chapter.

HISTORY: 1962 Code Section 44-5; 1952 Code Section 44-5; 1950 (46) 1881; 1964 (53) 2241; 1984 Act No. 378, Section 1.

SECTION 25-1-60. Composition and classes of militia.

(A) The militia of this State consists of all able-bodied persons over seventeen years of age who are:

- (1) citizens of the United States residing within this State;
- (2) citizens of the United States bound by law, lawful order, or contract to serve in the militia or military forces of this State; or
- (3) persons who have declared their intention to become citizens of the United States and are bound by law, lawful order, or contract to serve in the militia or military forces of this State.

(B) The militia is divided into three classes:

- (1) the National Guard;
- (2) the organized militia not in National Guard service; and
- (3) the unorganized militia.

HISTORY: 1962 Code Section 44-6; 1952 Code Section 44-6; 1950 (46) 1881; 1964 (53) 2241; 1984 Act No. 378, Section 2; 2001 Act No. 85, Section 6; 2011 Act No. 46, Section 4, eff June 7, 2011.

Effect of Amendment

The 2011 amendment inserted the subsection and paragraph identifiers in the text; and in subsection (B)(2), inserted "not in National Guard service".

SECTION 25-1-70. Organization of the National Guard.

(A) The National Guard of South Carolina shall consist of the commissioned officers, warrant officers, enlisted men, organizations, staffs, units, and departments of the regularly commissioned, warranted, and enlisted militia of the State, organized and maintained pursuant to law.

(B) The Adjutant General may organize units or individuals for state recognized and organized positions. This authority extends to individuals who lack federal service or federal recognition, to the State Guard, and detachments under the authority of the Adjutant General.

HISTORY: 1962 Code Section 44-7; 1952 Code Section 44-7; 1950 (46) 1881; 1964 (53) 2241; 2011 Act No. 46, Section 5, eff June 7, 2011.

Effect of Amendment

The 2011 amendment designated the existing text as subsection (A); and added subsection (B).

SECTION 25-1-90. Service within State of military forces from another State.

No armed military force from another state, territory or district shall be permitted to enter the State for the purpose of doing military duty therein without the permission of the Governor, unless such force is part of the United States Army or is acting under the authority of the United States Government.

HISTORY: 1962 Code Section 44-8; 1952 Code Section 44-8; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-100. Pension of members of National Guard wounded or disabled while in service of State.

Every member of the National Guard of South Carolina who shall be wounded or disabled while on duty in the service of the State or while reasonably proceeding to or returning from such duty shall be taken care of and provided for at the expense of the State, and, if permanently disabled, shall receive the like pensions or rewards that persons under similar circumstances in the military service of the United States receive from the United States. But no pension shall be granted by the State for any disability received while in the service of the United States or while proceeding to or returning from such service. Before the name of any person is placed on the pension roll under this section proof shall be made, under such regulations as the Governor may from time to time prescribe, that the applicant is entitled to such pension.

HISTORY: 1962 Code Section 44-10; 1952 Code Section 44-10; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-110. Burial flags; application forms; eligibility.

(1) The State Adjutant General's office shall present to the family of each deceased member of the South Carolina National Guard a flag of the State of South Carolina, appropriate for use as a burial flag, upon application of a member of the family of the deceased guardsman.

The Adjutant General shall prepare and furnish necessary application forms to the senior full-time employee in each armory of the State. Such application forms shall require such information as the Adjutant General deems necessary to determine the eligibility of the deceased for the flag provided for in this section.

(2) The provisions of this section shall apply to any individual who has served at least one year in the South Carolina National Guard, and who at the time of death was either an active, honorably discharged or retired member thereof.

(3) The Adjutant General shall promulgate necessary rules and regulations to implement the provisions of this section. Flags must be obtained from the United States when available, but if not so granted they must be purchased by the office of the Adjutant General from funds appropriated to that office.

HISTORY: 1962 Code Section 44-10.1; 1973 (58) 647; 1974 (58) 2066; 2001 Act No. 85, Section 7.

SECTION 25-1-120. Military corporations; membership; purposes; powers; tax exemption; use of armories; sales of alcoholic beverages; application process.

(A) The officers, the enlisted personnel, or the officers and enlisted personnel or support groups of an organization or unit of the National Guard of South Carolina may organize themselves into a corporation for social purposes and for the purpose of holding, acquiring, and disposing of that property, real and personal, which the military organizations may possess or acquire. The corporation may not engage in business and may not be required to pay a filing or license fee to the State.

(B) These organizations may include:

(1) enlisted, officer, or all-ranks clubs;

(2) family support groups;

(3) auxiliary organizations;

(4) service branch organizations;

(5) battalion, brigade, or unit fund organizations; or

(6) other such organizations that provide support to personnel and their families.

(C) Organizations incorporated pursuant to this section are exempt from filing returns with the South Carolina Department of Revenue to the same extent they are exempt from filing returns with the Internal Revenue Service.

(D) The corporations may raise funds and provide services, if retained funds are used for unit support, eleemosynary causes, or charitable purposes within their charter. The organizations may use armory or National Guard facilities, if there is no expense to the government. When any area of National Guard facilities is used, the National Guard and State shall have access to that area as needed or practical, and the use of that area by the corporation is not exclusive. Any sale of alcoholic beverages must conform to the limitations of sales under other provisions of law, except that sales within the unit, and not for profit, do not require licensing by the State.

(E) The Adjutant General and the Secretary of State shall coordinate and make provisions to standardize applications for incorporation. Incorporation may not be made under this article without the approval of the Adjutant General and the State Judge Advocate. All accounts and documents of the corporation organized under this article must be available for inspection and review by the Adjutant General.

HISTORY: 1962 Code Section 44-11; 1952 Code Section 44-11; 1950 (46) 1881; 1964 (53) 2241; 2005 Act No. 37, Section 1; 2011 Act No. 46, Section 6, eff June 7, 2011.

Effect of Amendment

The 2011 amendment inserted the subsection identifiers; inserted subsection (C); in subsection (E), in the second sentence, substituted "Incorporation may not" for "No incorporation may"; and made other nonsubstantive changes.

SECTION 25-1-130. Effect of disbandment of military organization.

The dissolution or disbandment of any such unit as a military organization shall not operate to terminate the existence of any such corporation but its existence shall continue for the period limited in its articles of incorporation for the benefit of such corporation. Upon the dissolution or disbandment of any such unit which shall not have incorporated and which shall at the time of such dissolution or disbandment possess any funds or property, the title to such funds or property shall immediately vest in the State and the Adjutant General shall take possession thereof and dispose of the same to the best interest of the National Guard of South Carolina.

HISTORY: 1962 Code Section 44-12; 1952 Code Section 44-12; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-150. Unauthorized wearing of military insignia.

It is unlawful for a person to wilfully wear the badge, button, insignia, or rosette of any military order or use any badge, button, insignia, or rosette to obtain aid, assistance, or other benefit or advantage, unless he is entitled to wear or use the military badge, button, insignia, or rosette.

A person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than two years, or both.

HISTORY: 1962 Code Section 44-9; 1952 Code Section 44-9; 1950 (46) 1881; 1964 (53) 2241; 1993 Act No. 184, Section 201.

SECTION 25-1-160. Landowners encouraged to make land and water areas available for military purposes; limited liability of owners.

(A) The purpose of this section is to encourage owners of land to make land and water areas available to the military department for training and operational purposes by limiting the owners liability toward military persons entering their land and water areas for training and operational purposes.

(B) For purposes of this section:

(1) "Land" means land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty.

(2) "Owner" means the possessor of a fee interest, a tenant, lessee, occupant, or person in control of the premises.

(3) "Military purpose" includes, but is not limited to, any of the following, or any combination thereof: training, missions, operations, or support of training, missions, or operations.

(4) "Charge" means the admission price or fee asked in return for invitation or permission to enter or go upon the land.

(5) "Persons" means individuals regardless of age.

(C) Except as specifically provided in this section, an owner of land owes no duty of care to keep the premises safe for entry or use by persons who have sought and obtained his permission to use it for military purposes or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for military purposes.

(D) Except as specifically provided in this section, an owner of land who permits without charge any person having sought permission to use his property for military purposes does not thereby:

(1) extend any assurance that the premises are safe for any purpose;

(2) confer upon the person the legal status of an invitee or licensee to whom a duty of care is owed;

(3) assume responsibility for or incur liability for any injury to person or property caused by an act of omission of any person using the property.

(E) Nothing in this section limits in any way any liability which otherwise exists:

(1) for grossly negligent, wilful, or malicious failure to guard or warn against a dangerous condition, use, structure, or activity;

(2) for injury suffered in any case where the owner of land charges persons who enter or go on the land for the recreational use thereof, except that in the case of land leases to the State or a subdivision thereof, any consideration received by the owner for such lease shall not be deemed a charge within the meaning of this section.

(F) Nothing in this chapter shall be construed to:

(1) create a duty of care or ground of liability for injury to persons or property; or

(2) relieve any person using the land of another for military purposes from any obligation which he may have in the absence of this chapter to exercise care in his use of such land and in his activities thereon, or from the legal consequences of failure to employ such care.

HISTORY: 2001 Act No. 85, Section 1.

ARTICLE 3

Military Department

SECTION 25-1-310. Administration of State militia.

The militia of the State not in the service of the United States shall be governed and its affairs administered pursuant to law by the Governor, as commander-in-chief, through the military department, which shall consist of the Adjutant General as its executive head, Assistant Adjutants General, and such other officers and such enlisted men and civilian employees as the Adjutant General shall from time to time prescribe.

HISTORY: 1962 Code Section 44-21; 1952 Code Section 44-21; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-320. Adjutant General; appointment and term; salary; minimum qualifications; chief of staff.

(A) There must be an Adjutant General appointed by the Governor upon the advice and consent of the Senate. The initial term of the first appointed Adjutant General must be for two years so as to allow subsequent terms to be staggered with that of the Governor's term. After the initial appointment, the Adjutant General must be appointed for a four-year term commencing on the first Wednesday following the second Tuesday in January that follows the general election that marks the Governor's midterm. The position of Adjutant General is recognized as holding the rank of Major General. He shall hold office until his successor is appointed and confirmed. The Adjutant General is the commander of all military forces within the South Carolina Military Department, and he is responsible to the Governor in his role as and Commander in Chief for the proper performance of his duties. He shall receive an annual salary as provided by the General Assembly and only may be removed for cause prior to the expiration of his term pursuant to the provisions of Section 1-3-240(C).

(B) The person appointed Adjutant General by the Governor must possess, at a minimum, the following qualifications:

(1) be a qualified elector of this State;

(2) be in an active National Guard status at the time of the appointment, except as provided in subsection (E);

(3) be a graduate of the Army War College, the Air War College, or the military education level equivalent;

(4) have ten or more years of federally recognized commissioned service in the South Carolina National Guard, at least five years of which must have been at the rank of Lieutenant Colonel (O-5) or higher;

(5) have command experience at the battalion or squadron level or higher; and

(6) hold the rank of Colonel (O-6) or higher and possess the necessary qualifications to serve as a federally recognized general officer.

(C) In addition to the minimum qualifications for the Office of Adjutant General specified in subsection (B), the Governor also may consider:

(1) the candidates' military experience, including command experience or military service in an area where hostile-fire pay or imminent-danger pay was authorized pursuant to federal law or regulation; and

(2) the promotion criteria for the rank of major general or higher.

(D) In the event of a vacancy or impending vacancy in the Office of the Adjutant General, the South Carolina Military Department, upon request of the Governor, shall provide a list of candidates who satisfy the qualifications for office specified in subsection (B) and copies of the candidates' military personnel records.

(E) Nothing in this section may be construed to prohibit the Governor's ability to appoint a qualified retired officer who has not exceeded the maximum age to serve as a federally recognized general officer.

HISTORY: 1962 Code Section 44-22; 1952 Code Section 44-22; 1948 (45) 1716; 1950 (46) 1881; 1954 (48) 1566; 1957 (50) 404; 1964 (53) 2241; 1969 (56) 444; 1973 (58) 623; 2014 Act No. 224 (H.3540), Section 2, eff March 5, 2015.

Editor's Note

2014 Act No. 224, Section 4, provides as follows:

"SECTION 4. This act takes effect upon the ratification of amendments to Section 7, Article VI, and Section 4, Article XIII of the Constitution of this State deleting the requirement that the Adjutant General be elected by the qualified electors of this State and providing that he be appointed by the Governor." [Ratified effective March 5, 2015, see 2015 Act No. 1 (S.8)]

Effect of Amendment

2014 Act No. 224, Section 2, rewrote the section.

SECTION 25-1-340. Vacancies in office of Adjutant General.

If the Office of the Adjutant General is vacated because of the death, resignation, removal, or retirement of the Adjutant General prior to the normal expiration of his term of Office, the Governor shall appoint with the advice and consent of the Senate an officer of the active South Carolina National Guard, who meets the eligibility requirements provided in Section 25-1-320 to fill out the unexpired term of the former incumbent. In the event a vacancy should occur in the Office of Adjutant General at a time when the Senate is not in session, the Governor temporarily may fill the vacancy pursuant to Section 1-3-210. The appointee, upon being duly qualified, is subject to all the duties and liabilities incident to the office and receives the compensation provided by law for the Adjutant General during his term of service.

HISTORY: 1962 Code Section 44-24; 1952 Code Section 44-24; 1950 (46) 1881; 1964 (53) 2241; 2001 Act No. 85, Section 8; 2011 Act No. 46, Section 7, eff June 7, 2011; 2014 Act No. 224 (H.3540), Section 3, eff March 5, 2015.

Editor's Note

2014 Act No. 224, Section 4, provides as follows:

"SECTION 4. This act takes effect upon the ratification of amendments to Section 7, Article VI, and Section 4, Article XIII of the Constitution of this State deleting the requirement that the Adjutant General be elected by the qualified electors of this State and providing that he be appointed by the Governor." [Ratified effective March 5, 2015, see 2015 Act No. 1 (S.8)]

Effect of Amendment

The 2011 amendment, in the first sentence, deleted "lieutenant" preceding "colonel", and in the second sentence, substituted "receives" for "receive".

2014 Act No. 224, Section 3, rewrote the section.

SECTION 25-1-350. General powers and duties of Adjutant General.

The Adjutant General shall:

- (1) Appoint the civilian employees of his department and he may remove any of them at his discretion;
- (2) keep rosters of all active, reserve, and retired officers of the militia of the State, keep in his office all records and papers required to be kept and filed in his office and submit to the Governor and General Assembly each year an annual Report of the Adjutant General of the State of South Carolina that includes the operations and conditions of the National Guard of South Carolina;
- (3) on the first day of July of each year, make a statement of the condition of the military fund, showing the amount thereof and setting forth in detail all receipts from whatsoever source and all expenditures of whatsoever nature and the unexpended balance thereof;
- (4) cause the military law, the regulations of the National Guard of South Carolina and such other military publications as may be necessary for the military service to be distributed at the expense of the State to commands so that all personnel of the National Guard of South Carolina will have access to same;
- (5) keep records on and preserve all military property belonging to the State;
- (6) keep just and true accounts of all moneys received and disbursed by him;
- (7) attest all commissions issued to military officers of this State;
- (8) prepare and transmit all militia reports, returns and communications prescribed by acts of Congress or by direction of the Department of Defense;
- (9) have a seal;
- (10) make such regulations pertaining to the preparation of reports and returns and to the care and preservation of property in possession of the State for military purposes, whether belonging to the State or the United States, as in his opinion the conditions demand;
- (11) attend the care, preservation, safekeeping and repairing of the arms, ordnance, accoutrements, equipment and all other military property belonging to the State or issued to the State by the government of the United States for military purposes, and keep accurate accounts thereof;
- (12) issue such military property as the necessity of the services require and make purchase for that purpose. No military property shall be issued or loaned, except upon an emergency, to persons or organizations other than those belonging to the National Guard of South Carolina except to such portions of the unorganized militia as may be called out by the Governor;
- (13) keep the reports and returns of troops and all other writings and documents required to be preserved by the State military headquarters;
- (14) keep necessary records attesting to the service of individuals of South Carolina forces for the Spanish American War and all subsequent wars and insurrections. The Adjutant General is authorized to make a determination as to when old records have only historical value, and, therefore, transfer them to the State Archives Department for reference and preservation;
- (15) those records and relics not required for efficient operation of the military department may be turned over to the Archives Department for preservation;
- (16) with the consent of the Governor, have the discretion to order to active duty for not more than fifteen days a member of the National Guard or State Guard who consents to that order and for whose pay and allowances funds, as provided in Section 25-1-2200, are available to the Adjutant General without additional state appropriations;
- (17) in his discretion, authorize National Guard personnel to support and assist the National Guard Association of South Carolina and the South Carolina National Guard Foundation in their missions to promote the health, safety, education, and welfare of South Carolina National Guard personnel and their families.

HISTORY: 1962 Code Section 44-25; 1952 Code Section 44-25; 1950 (46) 1881; 1964 (53) 2241; 1998 Act No. 275, Section 1; 2014 Act No. 289 (S.825), Pt VI, Section 8, eff June 23, 2014; 2015 Act No. 19 (H.3683), Section 1, eff May 7, 2015.

Effect of Amendment

2014 Act No. 289, Section 8, added paragraph (17), relating to support and assistance to the National Guard Association of South Carolina.

2015 Act No. 19, Section 1, rewrote (2).

SECTION 25-1-360. Rules and regulations.

The Adjutant General, with the approval of the Governor, may make such rules and regulations, not in conflict with the laws of this State, from time to time as he may deem expedient, and when promulgated such rules and regulations shall have full force and effect as the military code of the State. But the rules and regulations in force at the

time of the passage of this Code shall remain in force until new rules and regulations are approved and promulgated.

HISTORY: 1962 Code Section 44-26; 1952 Code Section 44-26; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-370. Seal as authentication.

The seal used in the office of the Adjutant General shall be the seal of his office and shall be delivered by him to his successor. Where deemed appropriate orders issued from his office shall be authenticated with such seal and copies, order, records and papers in his office, duly certified and authenticated under such seal, shall be evidence in all cases in like manner as if the originals were produced.

HISTORY: 1962 Code Section 44-27; 1952 Code Section 44-27; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-380. Assistant Adjutant General for Army; additional Assistant Adjutant General for South Carolina Army National Guard.

There must be two Assistant Adjutant Generals for the Army, with the rank of brigadier general, who must be assistants to the Adjutant General and must be appointed and commissioned by the Governor upon the recommendation of the Adjutant General at a salary provided by the annual appropriations act. When authorized by the National Guard Bureau, there may be an additional Assistant Adjutant General for the South Carolina Army National Guard who may hold the rank of major general. These individuals must be appointed from the active or retired list of the Army National Guard and shall have a minimum of five years' active commissioned service in the South Carolina Army National Guard.

HISTORY: 1962 Code Section 44-28; 1952 Code Section 44-28; 1950 (46) 1881; 1964 (53) 2241; 2008 Act No. 252, Section 1, eff June 4, 2008; 2009 Act No. 61, Section 1, eff June 2, 2009.

Effect of Amendment

The 2008 amendment increased the number of Assistant Adjutant Generals to two.

The 2009 amendment added the second sentence relating to the additional Assistant Adjutant General for the South Carolina Army National Guard.

SECTION 25-1-390. Assistant Adjutant General for Air.

There shall be an Assistant Adjutant General for Air, with the rank of brigadier general, who shall be an assistant to the Adjutant General and who shall be appointed and commissioned by the Governor upon the recommendation of the Adjutant General at such salary as may be provided by the annual appropriations act. Such individual shall be appointed from the active or retired list of the Air National Guard and shall have a minimum of five years' active commissioned service in the South Carolina Air National Guard.

HISTORY: 1962 Code Section 44-29; 1952 Code Section 44-28; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-400. Duties of Assistants during absence of Adjutant General.

In case of absence or inability of the Adjutant General to perform the duties of his office, the Governor shall designate one of the Assistant Adjutants General to serve as the Adjutant General.

HISTORY: 1962 Code Section 44-30; 1952 Code Section 44-28; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-410. Audit and allowance of department expenses.

The expenses of the military department, necessary to the military service, shall be audited, allowed and paid as other military expenditures are audited, allowed and paid.

HISTORY: 1962 Code Section 44-31; 1952 Code Section 44-30; 1950 (46) 1881; 1964 (53) 2241.

ARTICLE 4

South Carolina Emergency Management Division

SECTION 25-1-420. South Carolina Emergency Management Division of Office of Adjutant General; administration; duties.

There is established within the office of the Adjutant General the South Carolina Emergency Management Division.

The division must be administered by a director appointed by the Adjutant General, to serve at his pleasure, and such additional staff as may be employed or appointed by the Adjutant General.

The division is responsible for the implementation of the following:

- (a) coordinating the efforts of all state, county, and municipal agencies and departments in developing a State Emergency Plan;
- (b) conducting a statewide preparedness program to assure the capability of state, county, and municipal governments to execute the State Emergency Plan;
- (c) establishing and maintaining a State Emergency Operations Center and providing support of the state emergency staff and work force;
- (d) establishing an effective system for reporting, analyzing, displaying, and disseminating emergency information; and
- (e) establishing an incident management system incorporating the principles of the National Incident Management System (NIMS) that provides for mitigation, preparedness, response to, and recovery from all man-made and natural hazards.

HISTORY: 1979 Act No. 199, Part II, Section 21; 2002 Act No. 190, Section 1; 2002 Act No. 339, Section 15; 2002 Act No. 348, Section 2; 2008 Act No. 296, Section 2, eff June 11, 2008.

Effect of Amendment

The 2008 amendment added item (e) and made nonsubstantive changes.

SECTION 25-1-430. Definitions.

As used in this article:

- (a) "Emergency preparedness" shall mean the extraordinary actions of government in preparing for and carrying out all functions and operations, other than those for which the military is primarily responsible, when concerted, coordinated action by several agencies or departments of government and private sector organizations are required to prevent, minimize, and repair injury and damage resulting from a disaster of any origin.
- (b) "Emergency" shall mean actual or threatened enemy attack, sabotage, conflagration, flood, storm, epidemic, earthquake, riot, or other public calamity.

(c) "South Carolina Emergency Management (Civil Defense) Organization" shall mean all officers and employees of state government, county government, and municipal government, together with those volunteer forces enrolled to aid them in an emergency and persons who may by agreement or operation of law be charged with duties incident to protection of life and property of this State during emergencies.

HISTORY: 1979 Act No. 199, Part II, Section 21; 2002 Act No. 190, Section 2; 2008 Act No. 296, Section 2, eff June 11, 2008.

Effect of Amendment

The 2008 amendment reenacted the section with no apparent change.

SECTION 25-1-440. Additional powers and duties of Governor during declared emergency.

(a) The Governor, when an emergency has been declared, as the elected Chief Executive of the State, is responsible for the safety, security, and welfare of the State and is empowered with the following additional authority to adequately discharge this responsibility:

- (1) issue emergency proclamations and regulations and amend or rescind them. These proclamations and regulations have the force and effect of law as long as the emergency exists;
 - (2) declare a state of emergency for all or part of the State if he finds a disaster or a public health emergency, as defined in Section 44-4-130, has occurred, or that the threat thereof is imminent and extraordinary measures are considered necessary to cope with the existing or anticipated situation. A declared state of emergency shall not continue for a period of more than fifteen days without the consent of the General Assembly;
 - (3) suspend provisions of existing regulations prescribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency;
 - (4) utilize all available resources of state government as reasonably necessary to cope with the emergency;
 - (5) transfer the direction, personnel, or functions of state departments, agencies, and commissions, or units thereof, for purposes of facilitating or performing emergency services as necessary or desirable;
 - (6) compel performance by elected and appointed state, county, and municipal officials and employees of the emergency duties and functions assigned them in the State Emergency Plan or by Executive Order;
 - (7) direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is considered necessary for the preservation of life or other emergency mitigation, response, or recovery; to prescribe routes, modes of transportation, and destination in connection with evacuation; and to control ingress and egress at an emergency area, the movement of persons within the area, and the occupancy of premises therein;
 - (8) within the limits of any applicable constitutional requirements and when a major disaster or emergency has been declared by the President to exist in this State:
 - (i) request and accept a grant by the federal government to fund financial assistance to individuals and families adversely affected by a major disaster, subject to terms and conditions as may be imposed upon the grant but only upon his determination that the financial assistance is essential to meet disaster-related expenses or serious needs that may not be met otherwise from other means of assistance;
 - (ii) enter into an agreement with the federal government, through an officer or agency thereof, pledging the State to participate in the funding of the financial assistance authorized in subitem (i) of this item, under a ratio not to exceed twenty-five percent of the assistance;
 - (iii) make financial grants to meet disaster-related, necessary expenses or serious needs of individuals or families adversely affected by a major disaster which may not otherwise be adequately met from other means of assistance. No individual or family may receive grants aggregating more than ten thousand dollars with respect to any single major disaster subject to the limitations contained in subitem (ii) of this item. The ten thousand-dollar limit annually must be adjusted to reflect changes in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor; and
 - (iv) promulgate necessary regulations for carrying out the purposes of this item;
 - (9) authorize, by executive order, a party to exceed the terms of a curfew if:
 - (i) the party is a business that sells emergency commodities, an employee of a business that sells emergency commodities, or a local official; and
 - (ii) exceeding the terms of the curfew is necessary to ensure emergency commodities are available to the public. As defined in this section, an emergency commodity means a commodity needed to sustain public health and well-being as determined by a local authority. Nothing in this section may be construed to supersede the authority of the Governor under Section 25-1-440;
 - (10) by executive order, authorize operators of solid waste disposal facilities to extend operating hours to ensure the health, safety, and welfare of the general public.
- (b) The Governor is responsible for the development and coordination of a system of Comprehensive Emergency Management that includes:
- (1) provisions for mitigation, preparedness, response, and recovery in anticipated and actual emergency situations;
 - (2) an incident management system that establishes procedures for response and recovery operations at all levels of government from the municipality, special purpose district, through the county to the State, according to the incident scene location.
- (c)(1) Any person who fraudulently or wilfully makes a misstatement of fact in connection with an application for financial assistance made available pursuant to item (8) of subsection (a) upon conviction of each offense, must be fined not more than five thousand dollars or imprisoned for not more than one year, or both.
- (2) Any person who knowingly violates any regulation promulgated pursuant to item (8) of subsection (a) is subject to a civil penalty of not more than two thousand dollars for each violation.
- (3) A grant recipient who misapplies financial assistance made available by item (8) of subsection (a) is subject to a civil penalty in an amount equal to one hundred fifty percent of the original grant amount.
- (d)(1) The Governor must appoint the Public Health Emergency Plan Committee, consisting of representatives of all state agencies relevant to public health emergency preparedness, and, in addition, a licensed physician from the private sector specializing in infectious diseases, a hospital infection control practitioner, a medical examiner, a coroner from an urban county or the coroner's designee, a member of the judiciary, and other members as may be considered appropriate.
- (2) Prior to the declaration of a public health emergency, the Governor must consult with the Public Health Planning Committee and may consult with any public health agency and other experts as necessary. Nothing herein shall be construed to limit the Governor's authority to act without such consultation when the situation calls for prompt and timely action.
- (e) The state of public health emergency must be declared by an executive order that indicates the nature of the public health emergency, the areas that are or may be threatened, and the conditions that have brought about the public health emergency. In addition to the powers and duties provided in this article and in Article 7, Chapter 3 of Title 1, the declaration of a state of public health emergency authorizes implementation of the provisions of Chapter 4 of Title 44, the Emergency Health Powers Act. The declaration authorizes the deployment and use of any resources and personnel including, but not limited to, local officers and employees qualified as first responders, to which the plans apply and the use or distribution of any supplies, equipment, materials, and facilities assembled, stockpiled, or arranged to be made available pursuant to

this act.

HISTORY: 1979 Act No. 199, Part II, Section 21; 1985 Act No. 110, Sections 2, 3; 1989 Act No. 189, Part II, Section 38A; 2002 Act No. 339, Section 16; 2008 Act No. 296, Section 2, eff June 11, 2008.

Effect of Amendment

The 2008 amendment, in subsection (a), added paragraphs (9) and (10) respecting authorization of parties exceeding the terms of a curfew and the extension of operating hours of waste disposal facilities; and, in subsection (b), added the paragraph designators, substituted "that includes:" for "which must include" in the first sentence, and added paragraph (2) respecting an incident management system.

SECTION 25-1-445. Entry into area under curfew.

(A) The Director of the South Carolina Emergency Management Division shall develop a system by which a person who transports goods or services, or assists in ensuring their availability, and a person who assists in the restoration of utility or other services can be certified as such for the purpose of reentry into an area subject to a state or local curfew. The certification system shall be included in the State Emergency Plan.

(B) Before certification, the employer must be in good standing with the South Carolina Secretary of State as a bona fide company doing business in South Carolina. The employer's status may be verified on the website maintained by the South Carolina Secretary of State. A certification of the employer constitutes a certification of the employer's employees.

(C) Notwithstanding the existence of any curfew, a person who is certified pursuant to this section shall be allowed to reenter or remain in the curfew area for the limited purpose of transporting goods or services or assisting in the restoration of utility or other services. Nothing in this section shall prohibit law enforcement or local officials from denying access to an area in order to preserve, protect, or sustain the life, health, safety, or economic well-being of a person or property or from granting access as otherwise deemed necessary.

(D) Nothing in this section shall limit the Governor's authority, when an emergency has been declared, to set, alter, or exceed the terms of any curfew.

HISTORY: 2016 Act No. 236 (H.5299), Section 1, eff June 3, 2016.

SECTION 25-1-450. Duties of state, county, and municipal governments for mutual assistance in emergencies.

State, county, and municipal governments shall cooperate in developing and maintaining a plan for mutual assistance in emergencies.

(1) State government shall be responsible for:

(a) Establishing policies and developing a plan and procedures to insure maximum utilization of all state resources to minimize loss of life and injury to the populace and destruction or damage to resources and facilities of the State during emergencies resulting from enemy attacks or natural or man-made emergencies.

(b) Providing state forces and resources to support local governmental emergency operations and coordinating support with local governments from other sources, including the federal government and those unaffected counties of the State, and implement mutual assistance agreements with adjoining states.

(c) Assuming direction and control of area or local government emergency operations when requested by the county legislative delegation or their designees or when local government authority has broken down or is nonexistent or when the nature or magnitude of an emergency is such that effective response and recovery action is beyond local government's capability or when, in the event of a war emergency or declared natural or man-made emergency, state direction is required for implementation of a national plan.

(2) County and municipal governments shall be responsible for:

(a) Organizing, planning, and otherwise preparing for prompt, effective employment of available resources of the county or municipality to support emergency operations of the municipalities of the county or to conduct emergency operations in areas where no municipal capability exists.

(b) Coordinating support to municipal emergency operations from other sources including state and federal assistance as well as support made available from other municipalities of the county.

(c) Developing and implementing a shelter/relocation plan to protect the populace from the hazards of a nuclear emergency and to provide for the congregate housing and care of persons displaced or rendered homeless as a result of a natural or man-made emergency.

HISTORY: 1979 Act No. 199, Part II, Section 21; 2008 Act No. 296, Section 2, eff June 11, 2008.

Effect of Amendment

The 2008 amendment reenacted the section with no apparent change.

SECTION 25-1-460. Loans for emergency and recovery operations.

When the General Assembly is not in session and emergency funds are required by counties or municipalities, the State Fiscal Accountability Authority may authorize loans for emergency and recovery operations to counties and municipalities not to exceed one and one-half million dollars to any single county or municipality from the reserve fund of the state treasury paid from that fund from any monies in that fund not appropriated for other purposes. Any monies so used must be drawn from the fund on warrants of the board repayable by the borrowing county or municipality and secured by the full faith and credit of the county or municipality involved. These loans may be made only when damage or destruction results from a disaster declared as a state of emergency by the Governor. The board also may reimburse state agencies for unbudgeted expenditures or expenditures otherwise unreimbursed by the federal government for emergency expenditures resulting from their participation in the disaster based on their assigned responsibilities promulgated in the South Carolina Comprehensive Emergency Preparedness Plan.

HISTORY: 1979 Act No. 199, Part II, Section 21; 1989 Act No. 189, Part II, Section 38B; 2008 Act No. 296, Section 2, eff June 11, 2008.

Code Commissioner's Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

Effect of Amendment

The 2008 amendment reenacted the section with no apparent change.

ARTICLE 5

Commissioned and Warrant Officers Generally

SECTION 25-1-510. Appointment, qualifications, and tenure.

All commissioned and warrant officers of the South Carolina National Guard shall be appointed and commissioned or warranted by the Governor. No person must be appointed and commissioned or warranted unless he is a citizen of the United States and meets federal residency requirements for the appointment. His age shall conform to the age requirements as set forth in the regulations issued by the National Guard Bureau and that are in effect at the time of appointment. Every commissioned or warrant officer must hold office under his commission or warrant until he has been regularly appointed and commissioned or warranted to another grade or office or until he has been regularly retired, discharged, dismissed, or placed in an inactive status.

HISTORY: 1962 Code Section 44-41; 1952 Code Section 44-41; 1950 (46) 1881; 1964 (53) 2241; 2001 Act No. 85, Section 9.

SECTION 25-1-520. Certain personnel of The Citadel commissioned in unorganized militia.

All members of the board of visitors, administrative staff and faculty personnel of The Citadel, the Military College of South Carolina, shall be eligible to be commissioned officers in the unorganized militia of South Carolina and the Governor shall issue commissions to such of them as are designated by the college according to the rank prescribed by that institution. These commissions shall be prepared by the Adjutant General and shall bear the signatures of the Adjutant General and the Governor with the seal of the State and shall not entitle any person holding them to any pay or emolument by reason thereof unless he be assigned to duty with the National Guard of South Carolina by order of the Governor. In the event of such assignment the rank of such officer shall be junior to that of all other officers of the same grade of the National Guard of the State. The same rules and regulations provided for commissioned officers of the National Guard shall be applicable to officers commissioned under this section. Nothing in this chapter shall be in conflict with Section 59-121-50.

HISTORY: 1962 Code Section 44-42; 1952 Code Section 44-42; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-530. Probationary and revocable appointment and promotion of officers.

Every appointment and promotion of any person as a commissioned or warrant officer in the National Guard of South Carolina shall be probationary and revocable by the Governor at will. Except that if the appointee shall have been extended Federal recognition for his grade during such probationary period, his commission or warrant no longer shall be probationary or revocable in that grade.

HISTORY: 1962 Code Section 44-43; 1952 Code Section 44-43; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-540. Text of oath for officers.

The oath of office for commissioned and warrant officers in the National Guard of South Carolina shall be substantially as follows: "I _____ do solemnly swear that I will support and defend the Constitution of the United States and the Constitution of the State of South Carolina against all enemies foreign and domestic; that I will bear true faith and allegiance to the same; that I will obey the orders of the President of the United States and the Governor of South Carolina; that I make this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office of _____ in the National Guard of the United States and of South Carolina upon which I am about to enter, so help me God."

HISTORY: 1962 Code Section 44-44; 1952 Code Section 44-44; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-550. Requirement that officers take oath and give bond.

Every officer duly commissioned or warranted shall within such time as may be provided by law or by regulations take the oath of office prescribed by law and give bond, if required. In case of neglect or refusal to do so, he shall be considered to have resigned such office and a new appointment may be made as provided by law.

HISTORY: 1962 Code Section 44-45; 1952 Code Section 44-45; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-560. Publication of relative rank list of officers.

The Adjutant General shall maintain records reflecting a relative rank list of all active and inactive officers in the National Guard and shall publish those lists from time to time with the units but at least annually. Separate relative rank lists shall be maintained for Army National Guard and Air National Guard officers. When the effective date of federal recognition in any given grade is the same for two or more officers, seniority shall be governed by federal military law. When two or more officers are given an original federal recognition in any grade in the National Guard of South Carolina with the same effective date, the relative rank of such officers shall be determined according to federal military law.

HISTORY: 1962 Code Section 44-47; 1952 Code Section 44-55; 1950 (46) 1881; 1964 (53) 2241; 2001 Act No. 85, Section 10.

SECTION 25-1-580. Officer in command of subordinate or detached unit or different units on duty together.

A commander may appoint an officer to command of a subordinate or detached unit. If none is appointed upon marches, guards or in quarters different organizations of the National Guard of this State join in or do state duty together, the officer highest in rank of the line by commission there on duty or in quarters shall command the whole and give orders for what is needful in the service unless otherwise specially directed by the Governor, according to the nature of the case.

HISTORY: 1962 Code Section 44-48; 1952 Code Section 44-56; 1950 (46) 1881; 1964 (53) 2241; 2001 Act No. 85, Section 11.

SECTION 25-1-590. Retirement of officers and enlisted men.

Officers and enlisted men of the National Guard of South Carolina must be retired by order of the commander-in-chief with a promotion of one grade, effective the date of retirement or medical discharge at the request of an officer or enlisted man upon completion of twenty or more years of honorable service in the National Guard of South Carolina, the Armed Forces of the United States, and reserve components of these branches, except that the last ten years of that service must have been in the South Carolina National Guard, or in the National Guard of the United States, and provided that the individual concerned was a member of the South Carolina National Guard at the time he was ordered to active duty in the National Guard of the United States status. The years of service requirements shall not apply to members of the National Guard of South Carolina who are medically discharged prior to the completion of at least twenty years of qualifying military service, so long as the individual's discharge is characterized as honorable. A commissioned officer holding the grade of major general upon retirement must be retired in that grade; a warrant officer holding the grade of chief warrant officer upon retirement must be retired in that grade; and an enlisted man holding the highest authorized enlisted grade upon retirement must be retired in that grade.

Retired officers and retired enlisted men shall draw no pay or allowances except when placed on duty. They must be subject to temporary detail by the commander-in-chief, and while on this duty, shall receive the same pay and allowances as officers and enlisted men of the same rank on the active list. On all occasions of duty or ceremony, retired officers and enlisted men shall take rank below officers and enlisted men of the same grade on the active list.

HISTORY: 1962 Code Section 44-50; 1952 Code Section 44-59; 1950 (46) 1881; 1964 (53) 2241; 2012 Act No. 154, Section 1, eff May 14, 2012.

Effect of Amendment

The 2012 amendment inserted "or medical discharge" after "effective the date of retirement"; inserted "The years of service requirements shall not apply to members of the National Guard of South Carolina who are medically discharged prior to the completion of at least twenty years of qualifying military service, so long as the individual's discharge is characterized as honorable"; and made other, nonsubstantive, changes.

SECTION 25-1-610. Discharge of officers.

The Governor may discharge any commissioned or warrant officer of the organized militia of South Carolina for any of the following reasons: (1) Upon muster out of the organization to which such officer is assigned; (2) acceptance of resignation of such officer; (3) removal of his actual residence to such distance from the station of his command as to render it impracticable for him to perform the duties of his office; or (4) failure to qualify or to maintain qualification for Federal recognition.

HISTORY: 1962 Code Section 44-52; 1952 Code Section 44-60; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-620. Circumstances prohibiting resignation or discharge.

No officer shall be discharged or his resignation accepted while under arrest or against whom military charges have been preferred or until he shall have turned over to his successor or satisfactorily accounted for all State and Federal moneys and military property for which he shall be accountable or responsible.

HISTORY: 1962 Code Section 44-49; 1952 Code Section 44-61; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-630. Officers authorized to administer oaths and act as notary.

(A) Officers are authorized and empowered to administer oaths and affirmations in all matters pertaining to or concerning the National Guard of South Carolina. Any person who shall falsely swear or affirm to any oath or affirmation before any such officer shall be guilty of perjury and upon trial and conviction thereof shall be sentenced for such offense as now provided by law for the crime of perjury.

(B) The persons named in subparagraph (C) have the general powers of a notary public in accordance with the authority of Title 10, United States Code, Section 1044a, and as provided in this section, in the performance of all notarial acts to be executed by:

- (1) members of any of the armed forces;
- (2) persons eligible for legal assistance under the provisions of 10 United States Code, Section 1044, regulations of the United States Department of Defense, this section, and Section 25-1-635;
- (3) persons serving with, employed by, or accompanying the armed forces and National Guard of South Carolina or of any other state or territory of the United States, outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the Virgin Islands; and
- (4) persons subject to the Uniform Code of Military Justice, Chapter 47, Title 10, United States Code, outside the United States.

(C) Persons with the powers described in subsection (B) are:

- (1) all judge advocates, including armed forces reserve judge advocates and judge advocates of the National Guard of South Carolina or of any other state or territory of the United States when not in a duty status;
- (2) all civilian attorneys serving as legal assistance officers;
- (3) all adjutants, assistant adjutants, and personnel adjutants, including reserve and National Guard members when not in a duty status; and
- (4) all other members of the armed forces, including reserve and National Guard members when not in a duty status, who are designated by regulations of the armed forces or statute to have those powers.

(D) No fee may be paid to or received by any person for the performance of a notarial act authorized in this section.

(E) The signature of any person acting as a notary under the authority of Title 10, United States Code, Section 1044a or of this section, together with the title of that person's offices, is prima facie evidence that the signature is genuine, that the person holds the designated title, and that the person is authorized to perform a notarial act.

HISTORY: 1962 Code Section 44-53; 1952 Code Section 44-57; 1942 Code Section 1431; 1932 Code Section 1431; Cr. C. '22 Section 370; 1918 (30) 874; 1964 (53) 2241; 2000 Act No. 288, Section 1.

SECTION 25-1-635. Legal assistance to guard members and immediate family members; scope, duties, and limitations.

(A) For purposes of enhancing the readiness of National Guard personnel for mobilization or call up for state or federal service, legal assistance attorneys and judge advocates of the South Carolina National Guard who provide premobilization legal assistance and counseling to national guard personnel may also provide legal assistance and counseling to the immediate family members and dependents of members of the South Carolina National Guard when, in the opinion of the legal assistance, attorney or judge advocate, the legal assistant and counseling provided enhances the overall mobilization readiness of a member of the National Guard who has an obligation to provide for his family and dependents in his absence in the event of his mobilization.

(B) Subject to the availability of resources, the scope of the practice of law and the legal assistance attorney's duties and responsibilities authorized by this section are limited to advice and service regarding the following matters:

- (1) Basic wills, trusts, and estate planning. Complex estate planning and drafting are not authorized by this section. Except when a legal assistance client is unable to communicate adequately, a will for one spouse may not be prepared based upon discussions with the other spouse without personal communication sufficient to establish the attorney-client relationship with the spouse for whom the will is prepared.
- (2) Advice concerning the legal and practical implications of divorce, legal separation, annulment, custody, and paternity.
- (3) Advice and document preparation, as appropriate, but not pleadings except as permitted by applicable service regulations.
- (4) Advice and assistance, including communication, correspondence, and negotiations with another party or lawyer, on behalf of the client, may be provided as appropriate.
- (5) Basic advice and assistance on federal, state, and local taxes may be provided as appropriate. Legal assistance attorneys will not prepare or sign returns.
- (6) Advice and assistance relating to landlord and tenant matters, including review of personal leases and communication and correspondence in behalf of the client, may be provided as appropriate.
- (7) Advice and appropriate assistance in connection with civil suits may be given. Procedures and requirements of small claims courts and other courts may be explained and appropriate referrals made. Except as permitted by applicable service regulations, court appearances and representation as attorney of record are not authorized by this section.
- (8) Advice and assistance concerning the Soldiers' and Sailors' Civil Relief Act may be provided as appropriate pertaining to the protections afforded and the effect of the act on the client.
- (9) Limited general advice may be provided regarding minor criminal matters and traffic offenses within the jurisdiction of the civilian courts. Serious criminal matters are not within the scope of legal assistance and will be referred to military defense counsel or private civilian attorneys, as appropriate.
- (10) Advice and assistance may be given on powers of attorney, real estate, bankruptcy, contracts, consumer affairs, insurance, immigration, naturalization, and other areas if not inconsistent with legal assistance regulations. Advice and assistance regarding military matters may be provided subject to the limitations stated in applicable service regulations.

(C) Legal assistance is authorized for personal legal affairs only. Legal advice and assistance will not be provided regarding business ventures or regarding matters that are not of a personal nature.

(D) Legal assistance duties are separate and apart from responsibilities of trial counsel, defense counsel, or others involved in processing courts-martial, nonjudicial punishments, administrative boards or proceedings, and investigations. Unless otherwise directed by the Adjutant General or his designee, legal assistance attorneys may not assume defense counsel functions for their legal assistance clients. Members accused or suspected of offenses or conduct that may result in disciplinary or judicial proceedings under Title 25, the Uniform Code of Military Justice, or administrative discharges, must be referred to a defense counsel.

(E) If two or more eligible persons with conflicting interests seek legal assistance from the same legal assistance officer on the same matter, the party first establishing an attorney-client relationship will be provided representation. Other parties shall be advised that they are also eligible for assistance, but that it must be obtained from another source. Every effort will be made to refer the party with a conflicting interest to another legal assistance attorney or to a private civilian attorney.

(F) Legal assistance attorneys may not advise on, assist in, or become involved with, individual interests opposed to or in conflict with the interests of the State of South Carolina or the United States without the specific approval of the Adjutant General.

(G) Except when the client is unable to communicate adequately, advice or assistance will not be provided through third parties. In the absence of unusual or compelling circumstances, legal advice will not be provided over the telephone. This does not prohibit appropriate follow-up telephone discussions between the legal assistance attorney and the client.

(H) The legal assistance attorney may determine that the best interests of the client will be served by referring the case to a private civilian attorney. Referral may be for a variety of reasons, including expertise of the attorney or regulations that prohibit involvement of the legal assistance attorney. Should referral to a private civilian attorney be necessary, payment of legal fees is the client's responsibility. Except as otherwise provided by law, the State will not reimburse the individual or pay any expenses associated with the referral. Legal assistance attorneys shall not refer legal assistance clients to themselves in their private practice nor to their law firm.

(I) Services provided in the legal assistance program are considered an official function of the National Guard and must be provided at no cost to eligible personnel. Legal assistance attorneys, National Guard personnel, and civilian employees acting within the scope of their official duties, are exempt from personal liability for alleged negligent or wrongful acts, omissions for service, or advice rendered pursuant to the legal assistance program, so long as the attorneys, personnel, or employees neither requested nor received a fee or compensation other than their regular compensation for legal services provided to persons eligible for assistance under this section.

HISTORY: 2000 Act No. 288, Section 2; 2011 Act No. 46, Section 8, eff June 7, 2011.

Effect of Amendment

The 2011 amendment rewrote subsection (I).

SECTION 25-1-640. Date of rank of certain former military officers.

Notwithstanding any other provision of law, former Regular and Reserve officers in any component of the Armed Forces appointed and commissioned in the South Carolina Army National Guard and former Regular and Reserve officers in any component of the Armed Forces appointed and commissioned in the South Carolina Air National Guard in the rank of captain, or first and second lieutenant shall be given a date of rank commensurate with their Regular or Reserve officer date of rank.

HISTORY: 1980 Act No. 322, Section 1.

SECTION 25-1-650. Filling of vacancies in commissioned officer grades.

Whenever a vacancy occurs in commissioned officer grades for which provision is not otherwise made, it must be filled in accordance with regulations of the Military Department of South Carolina consistent with applicable federal law and with applicable regulations of the Department of the Army, Department of the Air Force, and National Guard Bureau.

HISTORY: 1985 Act No. 38, Section 3.

ARTICLE 7

Commissioned and Warranted Officers - Army National Guard

SECTION 25-1-810. Promotions under Federal Personnel Act.

Whenever an officer who has been selected for promotion by a selective board convened under the provisions of Federal Personnel Act (Sections 3362 and 8366, Title 10, U. S. Code and subsequent legislation) is immediately faced with withdrawal of his federal status as a National Guard officer and transfer to the Army Reserve, he may be transferred or assigned to a suitable position vacancy in which he can be promoted, subject to concurrence of commanders concerned and approval of the Adjutant General.

HISTORY: 1962 Code Section 44-62; 1964 (53) 2241; 2001 Act No. 85, Section 12.

SECTION 25-1-830. Officer selection boards.

(A) Brigadier General selection board-As required by Federal Personnel Acts, a board must be established by the Governor for the purpose of selecting qualified officers of the next lower grade to fill brigadier general officer vacancies in the South Carolina Army National Guard. The board shall consist of three general officers; composed of the Adjutant General and the active general officers of the South Carolina Army National Guard and, if necessary, the number of recently retired active general officers of the South Carolina Army National Guard necessary to constitute the board.

(B) Colonels-As required by Federal Personnel Acts, a board must be established by the Adjutant General for the purpose of selecting qualified officers of the next lower grade to fill colonel vacancies in the South Carolina Army National Guard. This board shall consist of the five senior officers of the South Carolina Army National Guard, to include not over one officer from the state headquarters or one professional officer.

HISTORY: 1962 Code Section 44-66; 1964 (53) 2241; 2011 Act No. 46, Section 9, eff June 7, 2011.

Effect of Amendment

The 2011 amendment redesignated subsections (a) and (b) as subsections (A) and (B); in subsections (A) and (B), inserted "As required by Federal Personnel Acts,;" in subsection (B), in the first sentence, substituted "board must" for "board shall", and in the second sentence, substituted "board shall" for "board will"; and made another nonsubstantive change.

SECTION 25-1-840. Examinations required.

All officers and warrant officers, even though meeting the requirements for appointment or promotion, as established by law and regulations are subject to examination as prescribed by the Department of the Army.

HISTORY: 1962 Code Section 44-68; 1964 (53) 2241.

SECTION 25-1-850. Transfer of officers within Army National Guard.

Authority shall be given the Adjutant General to make transfers of officers within the South Carolina Army National Guard. These transfers must be in the best interest of the South Carolina Army National Guard.

HISTORY: 1962 Code Section 44-67; 1964 (53) 2241; 2001 Act No. 85, Section 13.

SECTION 25-1-860. Vacancy in staff of headquarters and headquarters detachment.

Whenever a vacancy shall have occurred in any grade in the staff of headquarters and headquarters detachment of the South Carolina National Guard, it shall be filled by those persons as the Adjutant General shall select.

HISTORY: 1962 Code Section 44-64; 1952 Code Section 44-51; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-870. Vacancy in grade of major general.

Whenever a vacancy occurs in the grade of major general of the South Carolina Army National Guard, it must be filled by the promotion of a fully qualified officer within the South Carolina Army National Guard, subject to examination as prescribed by the Department of the Army. Should a fully qualified officer decline or fail to qualify, the promotion will be tendered to successive qualified officers.

HISTORY: 1962 Code Section 44-60; 1952 Code Section 44-50; 1950 (46) 1881; 1964 (53) 2241; 2001 Act No. 85, Section 14.

SECTION 25-1-880. Vacancy in grade of brigadier general.

Except as hereinbefore provided in Section 25-1-860, whenever a vacancy occurs in the grade of brigadier general in the South Carolina Army National Guard, it must be filled by the promotion of the best qualified officer in the next lower grade within the South Carolina Army National Guard as may be determined by the Adjutant General and subject to examination as prescribed by the Department of the Army.

HISTORY: 1962 Code Section 44-59; 1952 Code Section 44-50; 1950 (46) 1881; 1964 (53) 2241; 2001 Act No. 85, Section 15.

SECTION 25-1-890. Vacancy in grade of colonel.

Except as hereinbefore provided in Section 25-1-860, whenever a vacancy shall have occurred in the grade of colonel in the South Carolina Army National Guard, it shall be filled by such fully qualified and best qualified officer in the next lower grade within the South Carolina Army National Guard as may be selected by the "Colonels Selection Board," subject to examination as prescribed by the Department of the Army.

HISTORY: 1962 Code Section 44-58; 1952 Code Section 44-49; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-930. Vacancy in grade of warrant officer.

Whenever a vacancy shall have occurred in any grade of warrant officer in the Army National Guard of South Carolina it shall be filled by the appointment or promotion of a person recommended by the immediate commander, and approved by each commander in the chain of command and the Adjutant General. The applicant must be qualified in accordance with the requirements of the Department of the Army, the National Guard Bureau and such other requirements as may be imposed by the Adjutant General of South Carolina.

HISTORY: 1962 Code Section 44-54; 1952 Code Section 44-47; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-960. Reorganization authority.

In the event the structure or organization of any National Guard unit or organization is changed or reorganized by the Department of the Army, the Adjutant General shall effect such change or reorganization that is to the best interest of the National Guard. Should such change or organization subsequently make inapplicable any sections of the military code, the Adjutant General shall promulgate such appropriate rules and regulations that shall have full force and effect as the military code of State.

HISTORY: 1962 Code Section 44-70; 1964 (53) 2241.

ARTICLE 9

Commissioned and Warrant Officers - Air National Guard

SECTION 25-1-1110. Promotions under federal law.

Whenever an officer is selected for promotion by a selection board convened under the provisions of federal law, he may be tendered the first available vacancy in the South Carolina Air National Guard for which he is qualified regardless of the seniority of other officers of the same grade. If he is not assigned to a suitable position vacancy in which he can be promoted, he will be discharged and transferred to the Air Force Reserve under appropriate regulations.

HISTORY: 1962 Code Section 44-77; 1964 (53) 2241; 2001 Act No. 85, Section 16.

SECTION 25-1-1120. Vacancies in new units.

Whenever new units shall have been organized in the South Carolina Air National Guard at a location distant from previously organized units, newly created officer vacancies shall be tendered first to officers of the South Carolina Air National Guard residing in close proximity to the new unit commensurate with grade and qualifications and then to other applicants qualified for assignment and Federal recognition in accordance with appropriate regulations. After one year from the date of organization of the new unit, vacancies shall be filled by the selection and promotion procedures outlined elsewhere in this chapter for the Air National Guard.

HISTORY: 1962 Code Section 44-78; 1964 (53) 2241.

SECTION 25-1-1140. Vacancy in headquarters, Air National Guard.

Whenever a vacancy for an officer occurs in headquarters, South Carolina Air National Guard, it must be filled from among the officers of the South Carolina Air National Guard who are considered best qualified to fill the vacancy by the chief of staff, headquarters, South Carolina Air National Guard, and the Adjutant General. Assignment of an officer to headquarters, South Carolina Air National Guard, does not entitle him to promotion without regard to seniority rights specified elsewhere in this chapter. Position vacancies for enlisted personnel in headquarters, South Carolina Air National Guard must be filled as directed by the chief of staff, headquarters, South Carolina Air National Guard, subject to approval of the Adjutant General.

HISTORY: 1962 Code Section 44-75; 1964 (53) 2241; 2001 Act No. 85, Section 17.

SECTION 25-1-1150. Vacancy in position of chief of staff, headquarters, Air National Guard; duties of chief of staff.

Whenever a vacancy occurs in the position of chief of staff, headquarters South Carolina Air National Guard it must be filled by promoting the fully qualified rated officer who has a minimum of five years commissioned service in the South Carolina Air National Guard and who is, in the opinion of the Adjutant General of South Carolina, considered to be the best qualified to fill the vacancy. Officers considered for this assignment must have served in a state status the next two years preceding the date the vacancy occurred. Active duty tours or schools of one year's duration or less shall count toward accrual of the two-year period specified in this section. In the event of federal mobilization of the majority of the South Carolina Air National Guard, the two-year requirement does not apply. The chief of staff shall supervise preparation of plans, policies, and programs for the Air National Guard units assigned to the State and advise and assist the Adjutant General in the execution of such of these plans, policies, and programs as he approves. If he is the senior Air National Guard officer in the State, he may be vested with the authority to command all Air National Guard units assigned to the State.

HISTORY: 1962 Code Section 44-74; 1964 (53) 2241; 1985 Act No. 38, Section 1.

SECTION 25-1-1160. Vacancy in grade of colonel or higher.

Except as otherwise specifically authorized in this section, whenever a vacancy occurs in the grade of colonel or higher in the South Carolina Air National Guard, it must be filled by promoting the officer of the next lower grade in the South Carolina Air National Guard who is fully qualified for promotion and who is, in the opinion of the senior tactical Air National Guard commander, the chief of staff, headquarters, South Carolina Air National Guard, and the Adjutant General of South Carolina, considered to be best qualified to fill the vacancy notwithstanding seniority among those officers qualified to fill the vacancy.

HISTORY: 1962 Code Section 44-73; 1964 (53) 2241; 1985 Act No. 38, Section 2.

SECTION 25-1-1190. Appointment of exceptionally qualified enlisted men.

Whenever exceptionally well qualified enlisted men of the South Carolina Air National Guard are approved for appointment in a commissioned grade by headquarters, United States Air Force, and the National Guard Bureau, they may be appointed to the first available vacancy for which they are qualified in the South Carolina Air National Guard without regard to seniority rights specified elsewhere in this article.

HISTORY: 1962 Code Section 44-79; 1964 (53) 2241.

ARTICLE 11

Property and Finances Generally

SECTION 25-1-1310. Duty of State to maintain and govern National Guard.

The duty of maintaining and governing the National Guard of South Carolina not in the service of the United States, rests upon the State, subject to the constitutional authority of Congress.

HISTORY: 1962 Code Section 44-81; 1952 Code Section 44-71; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-1320. Expenses paid from National Guard appropriations.

All expenditures necessary to carry the provisions of this chapter into effect are hereby authorized to be incurred and paid out of the appropriations for the maintenance of the National Guard of South Carolina.

HISTORY: 1962 Code Section 44-82; 1952 Code Section 44-72; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-1330. Annual settlements for Federal and State property.

(a) Federal property.-The Adjutant General shall coordinate with the USPFO to audit and effect annual settlements with responsible officers having federal property accounts. The USPFO shall cause the responsible party to prepare and submit proper adjustment documents to cover any discrepancies discovered during such audit. When it is determined by duly appointed reviewing authority that losses were incurred due to fault or negligence of the responsible party, he shall be held pecuniarily liable. When the responsible party has been held pecuniarily liable, the Adjutant General or the USPFO shall make demand on the responsible party for payment to the Treasurer of the United States for the specified amount. The Adjutant General shall enter or cause to be entered a suit on the bond of such party upon failure to comply with demand for payment, and may initiate collections actions as he considers appropriate.

(b) State property.-All property of a nonconsumable nature procured by the Adjutant General from state appropriated funds and like property purchased from unit maintenance funds must be accounted for as state property. Property donated from any sources for National Guard use must be considered state owned property. The Adjutant General shall maintain state property lists for all units and activities of the South Carolina National Guard. The Adjutant General shall cause state property accounts to be audited as he considers necessary. If the audit reflects shortages, the Adjutant General may cause an investigation to be made and take appropriate action. If such shortages are found to be due to the fault or negligence of the responsible party, the Adjutant General shall make demand on the responsible party for payment, to the military fund of South Carolina, for the specified amount. The Adjutant General shall enter or cause to be entered a suit on the bond of such party upon failure to comply with demand for payment, and may initiate collection actions for payment.

HISTORY: 1962 Code Section 44-83; 1952 Code Section 44-73; 1950 (46) 1881; 1964 (53) 2241; 2001 Act No. 85, Section 18.

SECTION 25-1-1350. Requirements for sharing in appropriations.

No unit or activity shall participate in the annual allotment of the annual appropriation for the maintenance of the militia unless the proper officers of such organizations shall have rendered the required reports and returns for the preceding year, nor unless such organization participated in the required training or was excused by proper authority.

HISTORY: 1962 Code Section 44-85; 1952 Code Section 44-75; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-1360. Disbursements of military funds.

All bills, claims and demands against the military fund shall be certified or verified in the manner prescribed by regulations promulgated by the Governor and shall be audited by the proper board of military auditors and, if allowed, shall be paid by the State Treasurer upon the warrant of the Adjutant and Inspector General from the military fund. But when the National Guard or any part thereof, or any other law-enforcement agency of the State government, is called into the service of the State in case of war, riot, insurrection, invasion, breach of the peace or in aid of the civil authorities, warrants for allowed pay and expenses for such service shall be drawn upon the general fund of the State Treasury and paid out of any moneys in such fund not otherwise appropriated. All military warrants shall be the obligation of the State and shall bear interest at the legal rate from the date of their presentation for payment.

HISTORY: 1962 Code Section 44-86; 1952 Code Section 44-76; 1950 (46) 1881; 1964 (53) 2241; 1969 (56) 444.

SECTION 25-1-1370. Allowances for maintenance.

(A) Each unit shall be entitled to such maintenance fund allowance as may be provided in the annual appropriations act as apportioned periodically. Unit maintenance funds from sources outside the annual appropriation must be regulated and audited by the Adjutant General.

(B) Facilities owned, leased, or under the control of the military department may be rented periodically. The rental income, military fines, and other revenue sources must be deposited in state accounts for operations and maintenance of the military department. The Adjutant General shall promulgate regulations for a rental program and audit these funds.

HISTORY: 1962 Code Section 44-87; 1952 Code Section 44-77; 1950 (46) 1881; 1964 (53) 2241; 2001 Act No. 85, Section 19; 2011 Act No. 46, Section 10, eff June 7, 2011.

Effect of Amendment

The 2011 amendment, in subsection (B), in the first sentence, substituted "The" for "Such", deleted "minor" preceding "revenue sources", substituted "must be deposited" for "may be deposited", and substituted "state accounts for operations and maintenance of the Military Department" for "unit maintenance funds"; and in subsection (B), the second sentence, substituted "these funds" for "such funds".

SECTION 25-1-1380. Transportation and subsistence of militia on State duty.

There shall be provided by the State transportation for all officers and transportation and subsistence for all enlisted men who shall be lawfully ordered to State duty. Necessary transportation, quartermaster's stores and subsistence for troops when ordered on duty shall be contracted for by the proper officers and paid for as other military bills.

HISTORY: 1962 Code Section 44-88; 1952 Code Section 44-78; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-1420. Unlawful purchase or receipt of military property.

If any person knowingly purchases or receives in pawn or pledge any military property of the State or of the United States he shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to imprisonment for a period not exceeding one year, or fined not exceeding one thousand dollars, or to both such fine and imprisonment.

HISTORY: 1962 Code Section 44-92; 1952 Code Section 44-91; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-1430. Disposition of State military property unfit for use.

All military property of the State which after proper inspection shall be found unsuitable for use of the State shall be disposed of in such a manner as the Adjutant General shall direct and the proceeds thereof paid into the military fund of the State.

HISTORY: 1962 Code Section 44-93; 1952 Code Section 44-92; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-1440. Adjutant General's caisson; maintenance and care.

The Adjutant General's Office shall expend from appropriated money each year any necessary and reasonable expenses associated with the maintenance and care of the Adjutant General's caisson. The Adjutant General may make its caisson available for the funeral of dignitaries and military-oriented activities and events. The Adjutant General may accept donations for the expenses associated with maintenance and care of the caisson. Excess money from donations may be carried forward each fiscal year by the Adjutant General to be used strictly for future costs associated with the maintenance and care of the caisson.

HISTORY: 2002 Act No. 356, Section 1, Pt XII.A.

ARTICLE 13

Training Facilities

SECTION 25-1-1610. Acquisition of real estate for training facilities.

The Adjutant General of this State may receive on behalf of the State conveyances of real property suitable for the erection of any required training facility, provided that in accepting any such conveyance on behalf of the State, the State shall incur no liability for the purchase of such real estate unless it can be absorbed by the current appropriation for the operation of the military department.

HISTORY: 1962 Code Section 44-101; 1952 Code Section 44-101; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-1620. Adjutant General to be manager and custodian of training facilities; rental or sublease of facilities.

The Adjutant General shall be the State custodian and manager of training facilities. No training facility shall be used for any other than a strictly military purpose without the recommendation of the officer in charge thereof and approval of the Adjutant General. Facilities owned by or leased for the military department may be rented or subleased when not in use for training under regulations promulgated by the Adjutant General.

HISTORY: 1962 Code Section 44-102; 1952 Code Sections 44-102, 44-103; 1950 (46) 1881; 1964 (53) 2241; 2001 Act No. 85, Section 20.

SECTION 25-1-1630. Leasing of training facilities not owned by State or United States.

All training facilities and all property, real or personal, used by the National Guard and not owned by the State or the United States shall be leased or rented to this State upon such terms and conditions as shall be approved by the Adjutant General.

HISTORY: 1962 Code Section 44-103; 1952 Code Section 44-104; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-1640. Maintenance of training facilities.

The Adjutant General shall be responsible for the proper maintenance of training facilities and is authorized to expend funds appropriated for this purpose.

HISTORY: 1962 Code Section 44-104; 1964 (53) 2241.

SECTION 25-1-1650. Authority to sell obsolete armories; use of proceeds.

The Adjutant and Inspector General is hereby authorized to sell obsolete armories and retain such funds as realized therefrom in a special account with the State Treasurer. Funds from such special account shall be used for the construction of new armories, such construction to be under the supervision of the Adjutant and Inspector General of the State.

HISTORY: 1962 Code Section 44-105; 1964 (53) 2241.

SECTION 25-1-1660. Transfer of surplus armories to political subdivisions.

The State Fiscal Accountability Authority may transfer to a political subdivision ownership of a national guard armory being replaced and declared surplus if the political subdivision has donated real property for use as a site for a replacement armory.

HISTORY: 1985 Act No. 201, Part II, Section 12.

Code Commissioner's Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer of them to the Department of Administration or other entities, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1), effective July 1, 2015.

ARTICLE 15

When National Guard May Be Called to Service

SECTION 25-1-1810. National Guard subject to call by United States.

The National Guard of South Carolina or any part thereof shall be subject to call for Federal service at such times, in such manner and in such numbers as may from time to time be prescribed by the Congress of the United States.

HISTORY: 1962 Code Section 44-111; 1952 Code Section 44-111; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-1820. Circumstances requiring active duty.

The National Guard shall not be subject to active duty other than training duty, except (a) in case of war, (b) in event or danger of invasion by a foreign nation, (c) there is a rebellion or danger of rebellion against the authority of the government of the United States, (d) the President issues orders to execute the laws of the United States, (e) for preventing, repelling or suppressing invasion, insurrection or riot, (f) for aiding civil officers in the execution of the laws, in which cases the Governor or local commander as provided for in Sections 25-1-1840 to 25-1-1880 shall order out for active service, by draft or otherwise, as many of the National Guard as necessity demands, or (g) during natural disaster or local emergency whenever the lives and property of the State's citizens are threatened.

HISTORY: 1962 Code Section 44-112; 1952 Code Section 44-112; 1950 (46) 1881; 1964 (53) 2241; 2001 Act No. 85, Section 21.

SECTION 25-1-1830. Duty when called to suppress unlawful assembly.

When an armed force is called out for the purpose of suppressing an unlawful or riotous assembly it must obey the orders in relation thereto of the civil officer calling it out and render the aid required. The orders of the civil officer may extend to a direction of the general or specific mission to be accomplished and the duration of service by the National Guard, but the tactical direction of the troops, the kind and extent of force to be used and the particular means to be employed to accomplish the mission specified by the civil officers are left solely to the officers of the National Guard.

HISTORY: 1962 Code Section 44-113; 1952 Code Section 44-113; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-1840. Authority of Governor to order out National Guard.

In the event of (a) war, insurrection, rebellion, invasion, tumult, riot or a mob, (b) a body of men acting together by force with intent to commit a felony, to offer violence to persons or property or by force and violence to break and resist the laws of this State or of the United States, (c) in case of the imminent danger of the occurrence of any of such events or (d) in the event of public disaster the Governor may order the National Guard of South Carolina or any part thereof into the active service of the State and cause them to perform such duty as he shall deem proper. The Governor may also upon the written request of the mayor of a city or the sheriff of a county within which a large public assemblage is to occur order out the National Guard or any part thereof to preserve order and keep people within bounds at such assemblage. In case the Governor shall be absent from the State or unavailable for any reason, the authority herein bestowed shall pass to the Adjutant General of the State.

HISTORY: 1962 Code Section 44-114; 1952 Code Section 44-114; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-1850. Authority of Governor to order out National Guard when laws may not be enforced by judicial proceedings.

Whenever, by reason of unlawful obstructions, combinations or assemblages of persons or rebellion against the authority of the government of this State, it shall become impracticable, in the judgment of the Governor to enforce by the ordinary course of judicial proceedings the laws of the State within any county or counties of the State, the Governor may call forth the National Guard of the State or such parts thereof as he may deem necessary to enforce the faithful execution of the laws or to suppress such rebellion.

HISTORY: 1962 Code Section 44-115; 1952 Code Section 44-115; 1942 Code Section 1390; 1932 Code Section 1390; Cr. C. '22 Section 320; Cr. C. '12 Section 331; Cr. C. '02 Section 244; G. S. 2578; R. S. 209; 1868 (14) 85; 1964 (53) 2241.

SECTION 25-1-1860. Governor's proclamation to disperse.

Whenever in the judgment of the Governor it may be necessary to use the military force under the provisions of Section 25-1-1850 the Governor shall forthwith, by proclamation, command such insurgents to disperse and retire peaceably to their respective abodes within a limited time.

HISTORY: 1962 Code Section 44-116; 1952 Code Section 44-116; 1942 Code Section 1391; 1932 Code Section 1391; Cr. C. '22 Section 321; Cr. C. '12 Section 332; Cr. C. '02 Section 245; G. S. 2579; R. S. 210; 1868 (14) 86; 1964 (53) 2241.

SECTION 25-1-1870. Governor may take possession of utilities.

The Governor of the State when, in his judgment, the public safety may require it, may take possession of any or all utilities in the State, including communications and transportation facilities, their offices and appurtenances, their rolling stock, shops, buildings and all their appendages and appurtenances, may prescribe rules and regulations for the holding, using and maintaining of the aforesaid utilities in the manner most conducive to the interest and safety of the government and may place under military control all the officers, agents and employees of such utility or communication facility so that they shall be considered a part of the military establishment of the State, subject to all the restrictions imposed by the rules and articles of war.

HISTORY: 1962 Code Section 44-117; 1952 Code Section 44-118; 1942 Code Section 1392; 1932 Code Section 1392; Cr. C. '22 Section 322; Cr. C. '12 Section 335; Cr. C. '02 Section 248; G. S. 2582; R. S. 213; 1868 (14) 86; 1964 (53) 2241.

SECTION 25-1-1880. Local commanding officer may order out National Guard.

In the event of insurrection, rebellion, invasion, tumult, riot, resistance to law or process or breach of the peace occurring in the vicinity of the station of any organization of the National Guard of South Carolina, the senior commanding officer of that station, whenever the exigencies of the situation are such as to render it impossible first to communicate with the Governor, or Adjutant General, may, upon request in writing by the sheriff of the county involved or an officer acting in his stead stating the facts and the nature of the service desired, order out the organization at that station or such portion thereof as he shall deem necessary and cause it to perform such duty as the circumstances shall require. In any such case such commanding officer shall immediately report what he has done and all of the circumstances of the case to the Governor and it shall be deemed that the action was taken by order of the Governor.

HISTORY: 1962 Code Section 44-118; 1952 Code Section 44-119; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-1890. Call of unorganized militia to service in addition to National Guard.

In the event of or imminent danger of war, insurrection, rebellion, invasion, tumult, riot, resistance to law or process or breach of the peace, if the Governor shall have ordered into active service all of the available forces of the National Guard of South Carolina and shall consider them insufficient in numbers to properly accomplish the purpose, he may then in addition order out the unorganized militia or such portion thereof as he may deem necessary and cause them to perform such military duty as the circumstances may require.

HISTORY: 1962 Code Section 44-119; 1952 Code Section 44-120; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-1900. Proclamation of state of insurrection.

Whenever any portion of the National Guard or militia is employed in aid of the civil authority, the Governor, if in his judgment the maintenance of law and order will thereby be promoted, may by proclamation declare the county or city in which the troops are serving or any specified portion thereof to be in a state of insurrection, rebellion, tumult, riot, resistance to law or process or breach of the peace.

HISTORY: 1962 Code Section 44-122; 1952 Code Section 44-123; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-1920. Penalty for false certificate by physician.

Whenever any physician shall knowingly make and deliver a false certificate of physical disability concerning any member of the National Guard or militia who shall have been ordered out or summoned for active service, such physician shall thereby forfeit forever his license and right to practice in this State and shall be guilty of perjury.

HISTORY: 1962 Code Section 44-121; 1952 Code Section 44-122; 1950 (46) 1881; 1964 (53) 2241.

ARTICLE 17

Provisions Relating to Service

SECTION 25-1-2110. Term of enlistment.

An original enlistment in the National Guard must be for a period prescribed by applicable law and regulations of the Department of Defense.

HISTORY: 1962 Code Section 44-131; 1952 Code Section 44-131; 1950 (46) 1881; 1964 (53) 2241; 2001 Act No. 85, Section 22.

SECTION 25-1-2120. Transmission of orders for duty.

Orders for duty may be oral or written. Officers and enlisted men may be warned for duty either (a) by stating the substance of the order, (b) by reading the order to the person warned, (c) by delivering a copy of such order to such person, (d) by leaving a copy of such order at his last known place of abode or business with some person of suitable age and discretion or (e) by mail directed to him at his last known place of abode or business. Orders may be transmitted by telegram or telephone. Such warnings may be given by any officer or enlisted man. The officer or enlisted man giving such warning shall, when required, make a return thereof, containing the names of persons warned and the time, place and manner of warning. Such returns shall be verified on oath and shall be prima facie evidence on the trial of any person returned as a delinquent of the facts therein stated.

HISTORY: 1962 Code Section 44-132; 1952 Code Section 44-132; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-2170. Civil action or criminal prosecution against military personnel.

No action or proceeding shall be prosecuted or maintained against a member of a military court or officer or person acting under its authority or reviewing its proceedings on account of the approval of imposition or execution of any sentence, warrant, writ process or mandate of any military court, nor shall any officer or enlisted man be liable to a civil action or criminal prosecution for any act done while in the discharge of his military duty when such act is in the line of duty.

HISTORY: 1962 Code Section 44-137; 1952 Code Section 44-138; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-2180. Assault upon military personnel.

Any person who unlawfully assaults, fires at or throws any missile at, against or upon any member or body of the National Guard or any civil officer or other person lawfully aiding them, while on active duty in the State or aiding in the enforcement of the laws under proper authority, shall be guilty of a misdemeanor and on conviction shall be liable to imprisonment in the State Penitentiary for a period of not more than two years in the discretion of the court.

HISTORY: 1962 Code Section 44-138; 1952 Code Section 44-139; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-2190. Interference with employment of or practice of trade by guard member; penalty.

A person who, either by himself or with another, (a) wilfully deprives a member of the National Guard of South Carolina of his employment, (b) prevents such member from being employed, (c) obstructs or annoys a member or his employer in his trade, business or employment because he is such a member or (d) dissuades or attempts to dissuade any person from enlisting in such National Guard by threat of injury to him in his employment, trade or business shall be guilty of a misdemeanor and, on conviction thereof, shall be fined in a sum not exceeding one hundred dollars or imprisoned in the county jail not more than thirty days.

HISTORY: 1962 Code Section 44-139; 1952 Code Section 44-140; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-2200. Pay of National Guard on active duty.

Whenever the National Guard or any part thereof shall be ordered to active State duty the officers, warrant officers and enlisted men shall, during the period of such active duty, receive the same pay and allowances as provided for the active Armed Forces of the United States.

HISTORY: 1962 Code Section 44-140; 1952 Code Section 44-143; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-2220. Transfer of enlisted men.

An enlisted man may be transferred upon his own request from one unit of the National Guard of South Carolina to another by the Adjutant General.

HISTORY: 1962 Code Section 44-143; 1952 Code Section 44-146; 1950 (46) 1881; 1964 (53) 2241; 2001 Act No. 85, Section 23.

SECTION 25-1-2230. Discharges of enlisted men.

An enlisted person may be discharged from the state military forces according to regulations adopted by the Adjutant General or pursuant to federal law or regulations. On termination of the appointment of an enlisted person in the state military forces, the enlisted person shall be given a certificate of discharge stating the character of the person's service.

HISTORY: 1962 Code Section 44-142; 1952 Code Section 44-145; 1950 (46) 1881; 1964 (53) 2241; 2001 Act No. 85, Section 24.

SECTION 25-1-2240. Proceedings in case of death.

In case of the death of any member of the South Carolina National Guard, his commanding officer shall immediately secure all his effects then in camp or military quarters and shall, in the presence of two other officers, make an inventory thereof which he shall transmit to the office of the Adjutant General.

HISTORY: 1962 Code Section 44-141; 1952 Code Section 44-144; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-2250. Leaves of absence for public officers and employees.

Officers and employees of the State of South Carolina, and departments and subdivisions thereof, shall be entitled to military leave without loss of pay, seniority or efficiency rating, when attending National Guard encampments or schools for training, under proper authority, and on all other occasions when ordered to active duty, in the service of the State of South Carolina.

HISTORY: 1962 Code Section 44-168; 1952 Code Section 44-142; 1950 (46) 1881; 1964 (53) 2241.

SECTION 25-1-2260. Continuance of court case when party or attorney on active duty.

It is the duty of a judge of a court of this State to continue a case in the court on or without motion when a party to it or his leading attorney is absent from court when the case is reached by reason of his attendance on active duty as a member of the National Guard or reserves. The case may proceed if the party, in the absence of his leading attorney, or the leading attorney, in the absence of the party, announces ready for trial on the call of the case. If counsel is absent, it shall be necessary for his client to make oath that he cannot safely go to trial without the absent attorney and, if a party is absent, his counsel shall state in his place that he cannot safely go to trial without his client."

HISTORY: 2001 Act No. 85, Section 2; 2003 Act No. 17, Section 1.

SECTION 25-1-2270. Completion of missed exams and assignments due to military service.

Upon notice from a student required to attend or participate in military service, duty, training, or disaster relief efforts, an institution of higher education which receives state funding, either directly or indirectly, including but not limited to state scholarships or grants, shall excuse the student from attending classes or engaging in other mandatory activities, including tests or examinations, in order for the student to fulfill his military obligations and associated military travel requirements. A student whose absence is excused pursuant to this section may not be penalized for his absence and must be allowed to complete all missed assignments or take missed tests or examinations within a reasonable time of his return from the military service, duty, training, or disaster relief efforts. Each of these institutions of higher education shall determine what constitutes a reasonable time to make up the assignments, tests, or examinations missed by reason of military service on a case by case basis, taking into account the individual student's schedule and academic responsibilities. The provisions of this section must be liberally construed and shall apply in the same manner and without distinction to a student's status as a member of the active component, reserve component, or National Guard.

HISTORY: 2012 Act No. 165, Section 1, eff May 14, 2012.

ARTICLE 18

Reemployment Rights

SECTION 25-1-2310. Entitlement to reemployment.

Any member of the South Carolina National Guard who, at the direction of the Governor, enters state duty is entitled, upon honorable release from such duty, to all the reemployment rights provided for in this article.

HISTORY: 1982 Act No. 322, Section 1.

SECTION 25-1-2320. Application for reemployment; restoration to previous position or appropriate alternative.

Upon release from state duty, the employee shall make written application to his previous employer for reemployment within five days of his release from duty or from hospitalization continuing after release. If the employee is still qualified for his previous employment, he shall be restored to his previous position or to a position of like seniority, status and salary, unless the employer's circumstances now make the restoration unreasonable. If the employee is no longer qualified for his previous employment, he shall be placed in another position, for which he is qualified, and which will give him appropriate seniority, status and salary, unless the employer's circumstances now make the placement unreasonable.

HISTORY: 1982 Act No. 322, Section 1.

SECTION 25-1-2330. Judicial action for enforcement of rights.

Any employee may file a motion, petition, or other appropriate pleading in the circuit court of the county in which the employer's place of business is located requiring the employer to comply with the provisions of this article to compensate such employee for any loss of wages or benefits.

HISTORY: 1982 Act No. 322, Section 1.

SECTION 25-1-2340. Provisions of article applicable to members of South Carolina State Guard.

The provisions of Sections 25-1-2310 through 25-1-2330, providing reemployment rights to members of the South Carolina National Guard shall also apply to members of the South Carolina State Guard who, at the direction of the Governor or by his authority, enter state duty and are honorably released from that duty.

HISTORY: 1982 Act No. 322, Section 2.

SECTION 25-1-2350. South Carolinians serving in another state's national or state guard.

The provisions of this article granting reemployment rights to members of the South Carolina National Guard and to members of the South Carolina State Guard who, at the discretion of the Governor or by his authority, enter state duty and are honorably released from that duty shall apply also to a person who is employed in South Carolina but is a member of another state's national or state guard who, at the discretion of the other state's Governor or by his authority, enters into state duty and is honorably released from that duty.

HISTORY: 2015 Act No. 16 (H.3547), Section 1, eff May 7, 2015.

ARTICLE 19

Code of Military Justice for the National Guard

SECTION 25-1-2410. Citation of Code of Military Justice.

This article may be cited as the "Code of Military Justice".

HISTORY: Former Section 25-1-2410 [1950 (46) 1881; 1952 Code Section 44-151; 1962 Code Section 44-151; 1964 (53) 2241] recodified as Section 25-1-2430 by 1984 Act No. 378; New Section 25-1-2410 En by 1984 Act No. 378, Section 3.

SECTION 25-1-2420. Definitions, generally.

As used in the Code of Military Justice:

1. "Accuser" means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any person who has an interest other than an official interest in the prosecution of the accused;
2. "Adjutant general" means the officer defined in Section 25-1-10;
3. "Commander" includes commissioned officers and warrant officers exercising command authority;
4. "Duty status" means duty in the state military forces under an order issued by authority of law, and includes travel to and from duty;
5. "Enlisted member" means a person in an enlisted grade;
6. "Grade" means a step or degree, in a graduated scale of military rank, that is established and designated as a grade by law or regulation;

7. "Legal officer" and "judge advocate" means any commissioned officer of the state military forces designated to perform legal duties for a command;
8. "Military court" means a court-martial or a court of inquiry;
9. "Military forces" means the national guard of the State, as defined in Section 25-1-10, persons attached or assigned to state units, and any other military force organized under the laws of the State;
10. "Military judge" means an official of a general or special court-martial detailed in accordance with Section 25-1-2620;
11. "Oath" includes affirmation;
12. "Rank" means the order of precedence among members of the military forces;
13. "State judge advocate" means the federally recognized National Guard judge advocate responsible for supervising the administration of military justice in the military forces;
14. "Superior commissioned officer" means a commissioned officer superior in rank or command.
15. "Officer" means commissioned officers and warrant officers unless otherwise specified.

HISTORY: Former Section 25-1-2420 [1950 (46) 1881; 1952 Code Section 44-153; 1962 Code Section 44-152; 1964 (53) 2241] recodified as Section 25-1-3000 by 1984 Act No. 378; New Section 25-1-2420 En by 1984 Act No. 378, Section 4; 1985 Act No. 84, Section 1; 2001 Act No. 85, Sections 25, 26; 2011 Act No. 46, Section 11, eff June 7, 2011.

Effect of Amendment

The 2011 amendment, in the definition of "State judge advocate", substituted "federally recognized National Guard judge advocate" for "commissioned officer".

SECTION 25-1-2430. Person subject to Code of Military Justice.

The Code of Military Justice applies to all members of the military forces whether located within or without the territorial boundaries of the State of South Carolina while in an authorized duty status or during a period of time in which he was under lawful orders to be in a duty status, including such time as he was traveling to and from such duty. All members of the military forces are subject to this code while physically located on state or federal property even though not on authorized duty status.

HISTORY: Former Section 25-1-2430 [1950 (46) 1881; 1952 Code Section 44-154; 1962 Code Section 44-153; 1964 (53) 2241] recodified as Section 25-1-3000 by 1984 Act No. 378; New Section 25-1-2430 [derived from former Section 25-1-2410 (1950 (46) 1881; 1952 Code Section 44-151; 1962 Code Section 44-151; 1964 (53) 2241)] En by 1984 Act No. 378, Section 5.

SECTION 25-1-2440. Discharged person as subject to court-martial.

Subject to Section 25-1-2725, no person charged with having committed, while in a status as a member of the state military forces in which he was subject to this code, an offense in violation of this code may be relieved of amenability to trial by court-martial by reason of discharge or other termination of that status. Each person discharged from the state military forces who is later charged with having fraudulently obtained his discharge is, subject to Section 25-1-2725, subject to trial by court-martial on that charge and is after apprehension subject to the code while in the custody of the military for that trial. Upon conviction of that charge he is subject to trial by court-martial for all offenses under the code committed before the fraudulent discharge.

No person who has deserted from the state military forces may be relieved from amenability to the jurisdiction of this code by virtue of a separation from any later period of service.

HISTORY: Former Section 25-1-2440 [1950 (46) 1881; 1952 Code Section 44-155; 1962 Code Section 44-154; 1964 (53) 2241] recodified as Section 25-1-3000 by 1984 Act No. 378; New Section 25-1-2440 [derived from former Section 25-1-2820 (1950 (46) 1881; 1952 Code Sections 44-182, 44-195; 1962 Code Section 44-182; 1964 (53) 2241)] En by 1984 Act No. 378, Section 6; 1985 Act No. 84, Section 2.

SECTION 25-1-2450. Appointment of state judge advocate.

(A) The Adjutant General shall appoint an officer of the military forces as state judge advocate. To be eligible for appointment, an officer must be a member of the South Carolina Bar and federally recognized as a judge advocate. The state judge advocate shall hold a military grade and rank as designated by the Adjutant General. Absent separate appointment, the senior judge advocate of the National Guard is the state judge advocate.

(B) The Adjutant General shall appoint judge advocates and legal officers who shall serve under the supervision of the state judge advocate.

(C) To be eligible for appointment, judge advocates or legal officers must be members of the South Carolina Bar.

(D) The state judge advocate or his assistants shall make frequent inspections in the field of supervision of the administration of military justice.

(E) Convening authorities at all times shall communicate directly with the state judge advocate or with judge advocates within their command in matters relating to the administration of military justice.

(F) A person who has acted as member, military judge, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer in a case may not act later as staff judge advocate or legal officer to a reviewing authority upon the same case.

HISTORY: Former Section 25-1-2450 [1950 (46) 1881; 1952 Code Section 44-156; 1962 Code Section 44-155; 1964 (53) 2241] recodified as Section 25-1-2935 by 1984 Act No. 378; New Section 25-1-2450 [derived from former Section 25-1-820 (1962 Code Section 44-65; 1964 (53) 2241; Repealed by 1985 Act No. 38, Section 4)] En by 1984 Act No. 378, Section 7; 2001 Act No. 85, Section 27; 2011 Act No. 46, Section 12, eff June 7, 2011.

Effect of Amendment

The 2011 amendment, redesignated subsections 1 to 5 and the last undesignated paragraph as subsections (A) to (F); in subsection (A), in the first sentence, inserted "and federally recognized as a judge advocate"; in subsection (E), substituted "at all times shall" for "shall at all times"; and in subsection (F), substituted "A person" for "No person", "officer in a case may not act later" for "officer in any case may later act", and "a reviewing" for "any reviewing".

SECTION 25-1-2455. Military judges; appointment, qualifications, powers, duties.

(A) A military judge must be appointed by the Adjutant General from among the military forces. To be eligible for appointment as a military judge, the person must be:

- (1) a member in good standing of the South Carolina Bar;
- (2) a judge advocate;
- (3) an active member of the National Guard; and

(4) hold the rank of major or above.

(B) A military judge must not be under the supervision of the state judge advocate or any other judge advocate in the South Carolina National Guard. Nothing in this section changes the authority of the National Guard Bureau or the Judge Advocate Generals of the Army or Air Force over the military judge.

(C) Subject to any limitations imposed by the South Carolina Code of Laws, a military judge presides at all general and special courts-martial and has the same authority as a South Carolina Circuit Judge in General Sessions Court.

(D) A military judge must periodically review the military justice system and advise the Adjutant General on at least an annual basis of the state of military justice in the South Carolina National Guard.

(E) All contact between a military judge and the Adjutant General must comply with American Bar Association's Canons of Judicial Conduct and the applicable ethical standards for judges.

HISTORY: 2001 Act No. 85, Section 49; 2011 Act No. 46, Section 13, eff June 7, 2011.

Effect of Amendment

The 2011 amendment, in subsection (A)(1), substituted "South Carolina Bar" for "Bar in at least one state".

SECTION 25-1-2460. "Apprehension" defined; persons authorized to apprehend offenders.

For purposes of this code, "apprehension" is the taking of a person into custody. Any person authorized by this code to apprehend persons subject to the code, any marshal of a court-martial appointed pursuant to the provisions of the code, and any officer under the laws or regulations of the United States or of South Carolina, may do so upon reasonable belief that an offense has been committed and that the person apprehended committed it. Commissioned officers, warrant officers, and noncommissioned officers may, subject to the laws of South Carolina, quell quarrels, frays, and disorders among persons subject to the code and apprehend persons subject to this code who take part therein.

HISTORY: Former Section 25-1-2460 [1950 (46) 1881; 1952 Code Section 44-157; 1962 Code Section 44-156; 1964 (53) 2241] recodified as Sections 25-1-2940 and 25-1-2945 by 1984 Act No. 378; New Section 25-1-2460 [derived from Section 25-1-2490 (1950 (46) 1881; 1952 Code Section 44-160; 1962 Code Section 44-160; 1964 (53) 2241)] En by 1984 Act No. 378, Section 8; 2001 Act No. 85, Section 28.

SECTION 25-1-2470. Arrest and confinement, defined; use of reasonable force; powers of sheriffs.

For purposes of this code, "arrest" is the restraint of a person by an order, not imposed as a punishment for an offense, directing him to remain within certain specified limits. Confinement is the physical restraint of a person.

An enlisted member may be ordered apprehended or into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to the Code of Military Justice or through any person authorized by this code to apprehend persons. A commander may authorize warrant officers or noncommissioned officers to order enlisted members of his command or subject to his authority into arrest or confinement.

A commissioned officer or a warrant officer may be ordered apprehended or into arrest or confinement only by a commander to whose authority he is subject, by an order, oral or written, delivered in person, or by another commissioned officer. The authority to order such persons apprehended or into arrest or confinement may not be delegated.

No person may be ordered apprehended or into arrest or confinement except for probable cause.

This section does not limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

All reasonable force necessary to accomplish arrest, apprehension, or confinement may be used.

The power to restrain may be exercised prior or subsequent to court-martial or other disciplinary proceedings.

The sheriffs of the various counties of this State shall carry out the orders and directives of all courts-martial, including summary court officers.

HISTORY: Former Section 25-1-2470 [1950 (46) 1881; 1952 Code Section 44-159; 1962 Code Section 44-158; 1964 (53) 2241] recodified as Section 25-1-2960 by 1984 Act No. 378; New Section 25-1-2470 [derived from former Section 25-1-2880 (1950 (46) 1881; 1952 Code Sections 44-191 to 44-193; 1962 Code Section 44-188; 1964 (53) 2241)] En by 1984 Act No. 378, Section 9.

SECTION 25-1-2480. Arrest or confinement; informing person of rights.

Any person subject to this code charged with an offense under this code may be ordered into arrest or, under extraordinary circumstances, into confinement; but when charged only with an offense normally tried by a summary court-martial, the person shall not ordinarily be placed in confinement.

When any person subject to this code is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charges and release him.

HISTORY: Former Section 25-1-2480 [1950 (46) 1881; 1952 Code Section 44-158; 1962 Code Section 44-159; 1964 (53) 2241] recodified as Sections 25-1-2905 and 25-1-2960 by 1984 Act No. 378; New Section 25-1-2480 En 1984 Act No. 378, Section 10.

SECTION 25-1-2490. Place of confinement; expenses; reports.

Persons confined other than in a guardhouse, whether before or during trial by court-martial, must be confined in any place of confinement under the control of any of the federal armed forces, state military forces, or in any penal or correctional institution, detention facility, jail, or stockade under the control of the State or any of its political subdivisions. All expenses of the confinement must be paid as if the prisoner were committed to confinement by civilian state officials. Unless circumstances prohibit, the place of confinement must be in the prisoner's county of residence or the county in which the prisoner's unit is headquartered.

No provost marshal, commander of a guard, master-at-arms, warden, keeper, sheriff, supervisor, or officer of a place of confinement designated in the first paragraph of this section, may refuse to receive or keep any prisoner committed to his charge, when the committing person furnishes a statement, signed by him, of the offense charged against the prisoner.

Every commander of a guard, master-at-arms, warden, keeper, sheriff, supervisor, or officer of a place of confinement designated in the first paragraph of this section, to whose charge a prisoner is committed shall, within twenty-four hours after that commitment or as soon as he is relieved from guard, report to the commander of the prisoner the name of the prisoner, the offense charged against him, and the name of the person who ordered or authorized the commitment.

HISTORY: Former Section 25-1-2490 [1950 (46) 1881; 1952 Code Section 44-160; 1962 Code Section 44-160; 1964 (53) 2241] recodified as Section 25-1-2460 by 1984 Act No. 378; New Section 25-1-2490 [derived from former Section 25-1-3080 (1962 Code Section 44-209; 1964 (53) 2241)] En 1984 Act No. 378, Section 11.

SECTION 25-1-2500. Punishment prohibited before trial.

Subject to Section 25-1-2795, no person, while being held for trial or the result of trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him, nor shall the arrest or confinement imposed upon him be any more rigorous than the circumstances required to ensure his presence, but he

may be subjected to minor punishment during that period for infractions of discipline.

HISTORY: Former Section 25-1-2500 [1950 (46) 1881; 1952 Code Section 44-161; 1962 Code Section 44-161; 1964 (53) 2241] recodified as Section 25-1-3095 by 1984 Act No. 378; New Section 25-1-2500 [derived from former Section 25-1-3030 (1950 (46) 1881; 1952 Code Sections 44-210, 44-212; 1962 Code Section 44-203; 1964 (53) 2241)] En by 1984 Act No. 378, Section 12.

SECTION 25-1-2510. Delivery of accused to civil authority for trial; civil conviction interrupting sentence of court-martial; completion of military sentence.

A person subject to the Code of Military Justice who is accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial if the approval of the person's immediate commanding officer is obtained.

When delivery under this section is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for his offense shall, upon the request of competent military authority, be returned to the place of original custody for completion of his sentence.

HISTORY: Former Section 25-1-2510 [1950 (46) 1881; 1952 Code Section 44-162; 1962 Code Section 44-162; 1964 (53) 2241] recodified as Section 25-1-2925 by 1984 Act No. 378; New Section 25-1-2510 En by 1984 Act No. 378, Section 13.

SECTION 25-1-2520. Nonjudicial disciplinary punishment.

1. Under regulations that the Adjutant General may prescribe, limitations may be placed on the powers granted by this section with respect to the kind and amount of punishment authorized, the categories of general officers or commanders authorized to exercise those powers, the applicability of this section to an accused who demands trial by court-martial, and the kinds of courts-martial to which the case may be referred upon a demand. However, punishment may not be imposed upon a member of the military forces under this section if the member has, before the imposition of punishment, demanded trial by court-martial in lieu of punishment. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized pursuant to this section. A colonel or general officer may delegate his nonjudicial punishment authority to an individual within his authority, who is no more than one grade inferior in rank, so long as the adjudged sentence is not executed until the delegating commander has approved the procedure and sentence.

2. Subject to subsection 1 of this section, any commander may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial:

(A) upon officers of his command:

(1) restriction to certain specified limits, with or without suspension from duty, for not more than fifteen days;

(2) if imposed by the Governor, the Adjutant General, or an officer of a general rank in command:

(a) arrest in quarters for not more than fifteen days;

(b) forfeiture of pay of not more than seven days' pay or a fine of not more than the equivalent of seven days' pay;

(B) upon other military personnel of his command:

(1) forfeiture of pay of not more than two days' pay or a fine of not more than the equivalent of two days' pay;

(2) reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

(3) extra duties, including fatigue or other duties, for not more than fourteen days;

(4) restriction to certain specified limits, with or without suspension from duty, for not more than fourteen days;

(5) if imposed by an officer of the grade of major, or above:

(a) forfeiture of pay of not more than four days' pay or a fine of not more than the equivalent of four days' pay;

(b) reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than two pay grades;

(c) the punishment authorized under subitem (3) of item (B) of subsection 2 of this section;

(d) the punishment authorized under subitem (4) of item (B) of subsection 2 of this section.

No two or more of the punishments of arrest in quarters, extra duties, and restriction may be combined to run consecutively in the maximum amount possible for each. Whenever any of those punishments are combined to run consecutively, there must be an apportionment.

3. An officer in charge may impose upon enlisted members assigned to the unit of which he is in charge such of the punishments authorized under subitems (1) through (3) of item (B) of subsection 2 of this section as the Governor may specifically prescribe by regulation.

4. The officer who imposes the punishment authorized in subsection 2 of this section, or his successors in command, may at any time, suspend probationally a reduction in grade or a forfeiture imposed under subsection 2 of this section, whether or not executed. In addition, he may at any time remit or mitigate any part or amount of the unexecuted punishment and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights, privileges, and property affected. He may also mitigate reduction in grade to forfeiture of pay. When mitigating:

(a) arrest in quarters to restriction;

(b) extra duties to restriction;

the mitigated punishment may not be for a greater period than the punishment mitigated. When mitigating reduction in grade to forfeiture of pay, the amount of the forfeiture may not be greater than the amount that could have been imposed initially under this section by the officer who imposed the punishment mitigated.

5. A person punished under this section who considers his punishment unjust or disproportionate to the offense may, through proper channel, appeal to the next superior authority. The appeal must be promptly forwarded and decided, and in the meantime the punishment adjudged must be suspended. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection 4 of this section by the officer who imposed the punishment. The authority who is to act on the appeal shall refer the case to the state judge advocate or a judge advocate or legal officer within his command for consideration and advice. The decision of the superior authority is final.

6. The imposition and enforcement of disciplinary punishment under this section for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this section; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

7. Whenever a punishment of forfeiture of pay is imposed under this section, the forfeiture may apply to pay accruing on or after the date that punishment is imposed and to

any pay accrued before that date.

8. The adjutant general may, by regulation, prescribe the form of records to be kept of proceedings under this section and may also prescribe that certain categories of those proceedings shall be in writing.

HISTORY: Former Section 25-1-2520 [1950 (46) 1881; 1952 Code Section 44-163; 1962 Code Section 44-163; 1964 (53) 2241] recodified as Sections 25-1-2925 and 25-1-3020 by 1984 Act No. 378; New Section 25-1-2520 [derived from former Section 25-1-2650 (1962 Code Section 44-157; 1964 (53) 2241); Section 25-1-3090 (1962 Code Section 44-210; 1964 (53) 2241)] En by 1984 Act No. 378, Section 14; 1985 Act No. 84, Section 3; 2001 Act No. 85, Section 29; 2011 Act No. 46, Section 14, eff June 7, 2011.

Effect of Amendment

The 2011 amendment, in subsection 1, in the first sentence, substituted "regulations that" for "such regulations as", and inserted "general officer or"; in subsection 1, in the second sentence, substituted "a member" for "any member"; in subsection 1, in the third sentence, substituted "pursuant to this section" for "hereunder"; and in subsection 1, added the fourth sentence.

SECTION 25-1-2530. Types of courts-martial.

There may be three types of courts-martial in the state military forces:

1. general court-martial, consisting of:

(a) a military judge and not less than five members; or

(b) only a military judge if, before the court is assembled, the accused, knowing the identity of the military judge, and after consultation with defense counsel, requests in writing a court composed only of a military judge, and the military judge approves;

2. special court-martial, consisting of:

(a) not less than three members; or

(b) a military judge and not less than three members; or

(c) only a military judge, if one has been detailed to the court, and the accused under the same conditions as prescribed in item (b) of subsection 1 of this section so requests; and

3. summary court-martial, consisting of one officer.

HISTORY: Former Section 25-1-2530 [1950 (46) 1881; 1952 Code Section 44-164; 1962 Code Section 44-164; 1964 (53) 2241] recodified as Sections 25-1-2910, 25-1-2915 and 25-1-3025 by 1984 Act No. 378; New Section 25-1-2530 [derived from former Section 25-1-2830 (1950 (46) 1881; 1952 Code Sections 44-183 to 44-187; 1962 Code Section 44-183; 1964 (53) 2241)] En by 1984 Act No. 378, Section 15; 2001 Act No. 85, Section 30.

SECTION 25-1-2540. Jurisdiction of courts-martial in general.

Each component of the military forces has court-martial jurisdiction over all persons subject to the Code of Military Justice. The exercise of jurisdiction by one component over personnel of another component of the military forces must be in accordance with regulations prescribed by the Governor or the adjutant general.

HISTORY: Former Section 25-1-2540 [1950 (46) 1881; 1952 Code Section 44-165; 1962 Code Section 44-165; 1964 (53) 2241] recodified as Sections 25-1-2910 and 25-1-2915 by 1984 Act No. 378; New Section 25-1-2540 [derived from former Section 25-1-2820 (1950 (46) 1881; 1952 Code Sections 44-182, 44-195; 1962 Code Section 44-182; 1964 (53) 2241)] En by 1984 Act No. 378, Section 16.

SECTION 25-1-2550. Jurisdiction of general courts-martial.

Subject to Section 25-1-2540, general courts-martial have jurisdiction to try persons subject to this code for an offense made punishable by the code. Under limitations the Governor may prescribe, or further limitations the Adjutant General may prescribe, a general court-martial may order any of the following:

(1) dismissal, or dishonorable or bad-conduct discharge;

(2) confinement of not more than twelve months;

(3) a fine of not more than forty days' pay;

(4) reduction of enlisted personnel to the lowest pay grade;

(5) forfeiture of pay and allowances not to exceed forty days' pay;

(6) a reprimand;

(7) any combination of these punishments.

HISTORY: Former Section 25-1-2550 [1950 (46) 1881; 1952 Code Section 44-166; 1962 Code Section 44-166; 1964 (53) 2241] recodified as Section 25-1-3020 by 1984 Act No. 378; New Section 25-1-2550 [derived from former Section 25-1-3040 (1950 (46) 1881; 1952 Code Section 44-214; 1962 Code Section 44-204; 1964 (53) 2241)] En by 1984 Act No. 378, Section 17; 2001 Act No. 85, Section 31; 2011 Act No. 46, Section 15, eff June 7, 2011.

Effect of Amendment

The 2011 amendment rewrote the section.

SECTION 25-1-2560. Jurisdiction of special courts-martial.

1. Subject to Section 25-1-2540, special courts-martial have jurisdiction to try persons subject to this code for an offense made punishable by the code. Under limitations the Governor may prescribe, or further limitations the Adjutant General may prescribe, a special court-martial may order any of the following punishments:

(1) bad-conduct discharge;

(2) confinement of not more than six months;

(3) a fine of not more than twenty days' pay;

(4) reduction of enlisted personnel to the lowest pay grade;

(5) forfeiture of pay and allowances not to exceed twenty days' pay;

(6) a reprimand;

(7) any combination of these punishments.

2. A sentence which imposes a bad-conduct discharge or confinement may not be adjudged unless:

(a) a complete summary of the proceedings and testimony has been made by the military judge or the president of the court;

(b) counsel, having the qualifications prescribed under subsection 2 of Section 25-1-2630 was detailed to represent the accused;

(c) a military judge was detailed to the trial.

HISTORY: Former Section 25-1-2560 [1950 (46) 1881; 1952 Code Section 44-167; 1962 Code Section 44-167; 1964 (53) 2241] recodified as Section 25-1-3020 by 1984 Act No. 378; New Section 25-1-2560 [derived from former Section 25-1-3040 (1950 (46) 1881; 1952 Code Section 44-214; 1962 Code Section 44-204; 1964 (53) 2241)] En by 1984 Act No. 378, Section 18; 2001 Act No. 85, Section 32; 2011 Act No. 46, Section 16, eff June 7, 2011.

Effect of Amendment

The 2011 amendment rewrote subsection 1.

SECTION 25-1-2570. Jurisdiction of summary courts-martial.

Subject to Section 25-1-2540, summary courts-martial have jurisdiction to try persons subject to the code, except officers, for an offense made punishable by the code. Under limitations the Governor or Adjutant General may prescribe, a summary court-martial may order any of the following punishments:

(1) reduction of enlisted personnel by one pay grade, provided the grade of the accused is within the promotion authority of the convening authority;

(2) a fine of not more than ten days' pay;

(3) imprisonment not to exceed thirty days;

(4) forfeiture of pay and allowances not to exceed ten days' pay;

(5) any combination of these punishments.

A person to whom summary courts-martial have jurisdiction may not be brought to trial before a summary court-martial if he objects. If objection to trial by summary court-martial is made by an accused, trial may be ordered by special or general court-martial as appropriate.

HISTORY: Former Section 25-1-2570 [1950 (46) 1881; 1952 Code Section 44-169; 1962 Code Section 44-169; 1964 (53) 2241] repealed by codification of Code of Military Justice, 1984 Act No. 378; New Section 25-1-2570 [derived from former Section 25-1-3040 (1950 (46) 1881; 1952 Code Section 44-214; 1962 Code Section 44-204; 1964 (53) 2241)] En by 1984 Act No. 378, Section 19; 2001 Act No. 85, Section 33; 2011 Act No. 46, Section 17, eff June 7, 2011.

Effect of Amendment

The 2011 amendment rewrote the section.

SECTION 25-1-2580. Appointment of general courts-martial.

General courts-martial may be appointed only by order of the Governor, who may delegate this authority to the Adjutant General. The Adjutant General may not sub-delegate general courts-martial appointment authority.

HISTORY: Former Section 25-1-2580 [1950 (46) 1881; 1952 Code Section 44-170; 1962 Code Section 44-170; 1964 (53) 2241] recodified as Section 25-1-2920 by 1984 Act No. 378; New Section 25-1-2580 [derived from former Section 25-1-2840 (1950 (46) 1881; 1952 Code Section 44-184; 1962 Code Section 44-184; 1964 (53) 2241)] En by 1984 Act No. 378, Section 20; 2011 Act No. 46, Section 18, eff June 7, 2011.

Effect of Amendment

The 2011 amendment, in the first sentence, added ", who may delegate this authority to the Adjutant General"; and added the second sentence.

SECTION 25-1-2590. Appointment of special courts-martial.

Special courts-martial must be appointed by the adjutant general and by such other commanding officers of the National Guard as may be delegated such power of appointment by the adjutant general. The power to appoint special courts-martial, when delegated, may not be redelegated and the adjutant general has the power to revoke delegated authority at any time.

HISTORY: Former Section 25-1-2590 [1950 (46) 1881; 1952 Code Section 44-171; 1962 Code Section 44-171; 1964 (53) 2241] recodified as Section 25-1-2905 by 1984 Act No. 378; New Section 25-1-2590 [derived from former Section 25-1-2850 (1950 (46) 1881; 1952 Code Section 44-185; 1962 Code Section 44-185; 1964 (53) 2241)] En by 1984 Act No. 378, Section 21.

SECTION 25-1-2600. Appointment of summary courts-martial.

Summary courts-martial must be appointed by the Adjutant General and by other commanding officers of the National Guard who may be delegated the power of appointment by the Adjutant General. The power to appoint summary courts-martial, when delegated by the Adjutant General, may be redelegated repeatedly from higher echelon of command to lower echelon of command which is considered best by each successive commander delegated that authority. When units without summary court-martial authority report directly to the Adjutant General, he may delegate his summary court-martial appointment authority to a staff officer who holds the rank of colonel or higher. Summary court officers have power and authority to administer oaths.

HISTORY: Former Section 25-1-2600 [1950 (46) 1881; 1952 Code Section 44-172; 1962 Code Section 44-172; 1964 (53) 2241] recodified as Section 25-1-2920 by 1984 Act No. 378; New Section 25-1-2600 [derived from former Section 25-1-2860 (1950 (46) 1881; 1952 Code Section 44-186; 1962 Code Section 44-186; 1964 (53) 2241)] En by 1984 Act No. 378, Section 22; 2011 Act No. 46, Section 19, eff June 7, 2011.

Effect of Amendment

The 2011 amendment inserted the third sentence and made other nonsubstantive changes.

SECTION 25-1-2610. Who may serve on courts-martial.

(1) Any officer off or on duty with the military forces is eligible to serve as a member on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(2) Any enlisted member of the military forces who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of

any enlisted member of the military forces who may lawfully be brought before such courts for trial, but he may serve as a member of a court only if, before the conclusion of a session called by the military judge prior to trial or, in the absence of such a session, before the court is assembled for the trial of the accused, the accused personally has requested, in writing that enlisted members serve on it. After such a request, the accused may not be tried by a general or special court-martial, the membership of which does not include enlisted members in a number comprising at least one-third of the total membership of the court, unless eligible members cannot be obtained on account of physical conditions or military exigencies. If such members may not be obtained, the court may be assembled and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

In this subsection, the word "unit" means any regularly organized body of the military forces not larger than a company, a squadron, or a body corresponding to one of them.

(3) When it can be avoided, no person subject to the Code of Military Justice may be tried by a court-martial composed of any members who are junior to him in rank or grade.

(4) When convening a court-martial, the convening authority shall detail as members such members of the military force as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of the military forces is eligible to serve as a member of a general or special court-martial when he is the accuser or a witness for the prosecution or has acted as investigation officer or as counsel in the same case.

HISTORY: Former Section 25-1-2610 [1950 (46) 1881; 1952 Code Section 44-173; 1962 Code Section 44-173; 1964 (53) 2241] recodified as Section 25-1-3010 by 1984 Act No. 378; New Section 25-1-2610 En by 1984 Act No. 378, Section 23; 2001 Act No. 85, Section 34, eff August 8, 2001.

SECTION 25-1-2620. Detail and designation of military judge; qualifications.

(1) The authority convening a general court-martial shall, and the authority convening a special court-martial may (subject to the approval of the adjutant general), detail a military judge to the court-martial. A military judge shall preside over each open session of the court-martial to which he has been detailed.

(2) A military judge must be a commissioned officer of the military forces who is a member of the South Carolina bar or a member of the bar of a federal court, and who is certified to be qualified for such duty by a state judge advocate.

(3) The military judge of a general or special court-martial must be designated by the adjutant general or his designee, for detail by the convening authority, and, unless the court-martial was convened by the Governor, neither the convening authority nor any member of his staff may prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to his performance of duty as a military judge.

(4) No person is eligible to act as a military judge in a case, if he is the accuser or a witness for the prosecution or has acted as investigating officer or as a counsel in the same case.

(5) The military judge of a court-martial may not consult with the members of the court about the court-martial except in the presence of the accused, trial counsel, and defense counsel; nor may he vote with members of the court.

HISTORY: Former Section 25-1-2620 [1950 (46) 1881; 1952 Code Section 44-174; 1962 Code Section 44-174; 1964 (53) 2241] recodified as Section 25-1-3065 by 1984 Act No. 378; New Section 25-1-2620 En by 1984 Act No. 378, Section 24.

SECTION 25-1-2630. Detail of trial counsel and defense counsel; qualifications.

(1) For each general and special court-martial, either the authority convening the court or the state judge advocate shall detail trial counsel and defense counsel, and the assistants he considers appropriate. A person who has acted as investigating officer, military judge, or court member in a case may not act later as trial counsel, assistant trial counsel, or unless expressly requested by the accused, as defense counsel or assistant defense counsel in the same case. A person who has acted for the prosecution may not act later in the same case for the defense, and a person who has acted for the defense may not act later in the same case for the prosecution.

(2) Trial counsel or defense counsel detailed for a general court-martial must be:

(a) a person who is a member of the South Carolina Bar or a member of the bar of a federal court;

(b) certified as competent to perform the duties by the state judge advocate.

(3) In the case of a special court-martial:

(a) The accused must be afforded the opportunity to be represented at the trial by counsel who has the qualifications prescribed under subsection (2) of this section unless counsel who has these qualifications may not be obtained on account of physical conditions or military exigencies. If counsel who has these qualifications may not be obtained, the court may be convened and the trial held, but the convening authority shall make a detailed written statement, to be appended to the record stating why counsel with these qualifications was not obtained.

(b) If the trial counsel is qualified to act as counsel before a general court-martial, the defense counsel detailed by the convening authority must be a person similarly qualified.

(c) If the trial counsel is a member of the South Carolina Bar, the defense counsel detailed by the convening authority also must be a member of the South Carolina Bar.

HISTORY: Former Section 25-1-2630 [1950 (46) 1881; 1952 Code Section 44-175; 1962 Code Section 44-175; 1964 (53) 2241] recodified as Sections 25-1-3070 and 25-1-3075 by 1984 Act No. 378; New Section 25-1-2630 [derived from former Section 25-1-2900 (1950 (46) 1881; 1952 Code Section 44-188; 1962 Code Section 44-190; 1964 (53) 2241)] En by 1984 Act No. 378, Section 25; 2011 Act No. 46, Section 20, eff June 7, 2011.

Effect of Amendment

The 2011 amendment rewrote the section.

SECTION 25-1-2640. Recording of proceedings; interpreters.

Under regulations the Adjutant General may prescribe, the convening authority of a general or special court-martial or court of inquiry shall assign or hire qualified individuals, who shall record electronically the proceedings of and testimony taken before that court. Under like regulations the convening authority of a military court may detail or employ interpreters who shall interpret for the court.

HISTORY: Former Section 25-1-2640 [1950 (46) 1881; 1952 Code Section 44-176; 1962 Code Section 44-176; 1964 (53) 2241] repealed by codification of Code of Military Justice by 1984 Act No. 378, Section 26; New Section 25-1-2640 En by 1984 Act No. 378, Section 26; 2011 Act No. 46, Section 21, eff June 7, 2011.

Effect of Amendment

The 2011 amendment, in the first sentence, inserted "or hire", and made other nonsubstantive changes.

SECTION 25-1-2650. Absent and additional members for courts-martial.

(1) No member of a general or special court-martial may be absent or excused after the court has been assembled for the trial of the accused except for physical disability or as the result of a challenge or by order of the convening authority for good cause.

(2) Whenever a general court-martial, other than a general court-martial composed of a military judge only, is reduced below five members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than five members. The trial may proceed with the new members present after the recorded evidence previously introduced before the members of the court has been read to the court in the presence of the military judge, the accused, and counsel for both sides.

(3) Whenever a special court-martial, other than a special court-martial composed of a military judge only, is reduced below three members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than three members. The trial may proceed with the new members present as if no evidence had previously been introduced at the trial, unless a verbatim record of the evidence previously introduced before the members of the court or a stipulation thereof is read to the court in the presence of the military judge, if any, the accused, and counsel for both sides.

(4) If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed, subject to any applicable conditions of item (b) of subsection 1 or item (c) of subsection 2 of Section 25-1-2530 after the detail of a new military judge as if no evidence had previously been introduced unless a verbatim record of the evidence previously introduced or a stipulation of the evidence is read in court in the presence of the new military judge, the accused, and counsel for both sides.

HISTORY: Former Section 25-1-2650 [1962 Code Section 44-157; 1964 (53) 2241] recodified as Section 25-1-2520 by 1984 Act No. 378; New Section 25-1-2650 [derived from former Section 25-1-2830 (1950 (46) 1881; 1952 Code Sections 44-183 to 44-187; 1962 Code Section 44-183; 1964 (53) 2241)] En by 1984 Act No. 378, Section 27.

SECTION 25-1-2660. Signature of accused on charges and specifications; oath; informing accused of charges.

Charges and specifications must be signed by a person subject to the Code of Military Justice under oath before a person authorized by the code to administer oaths and shall state:

(1) that the signer has personal knowledge of, or has investigated, the matters set forth therein;

(2) that they are true in fact to the best of his knowledge and belief.

Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made of the charges in the interest of justice and discipline, and the person accused must be informed of the charges against him as soon as practicable.

HISTORY: [Derived from former Section 25-1-2870 (1950 (46) 1881; 1952 Code Section 44-193; 1962 Code Section 44-187; 1964 (53) 2241)] En by 1984 Act No. 378, Section 28.

SECTION 25-1-2665. Compulsory self-incrimination prohibited; informing accused of rights; evidence; admissibility.

(1) No person subject to the Code of Military Justice may compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

(2) No investigating officer may interrogate, or request any statement from an accused, without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected, and that any statement made by him may be used as evidence against him in a trial by court-martial.

(3) No person subject to the code may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.

(4) No statement obtained from any person in violation of this section, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against him in a trial by court-martial.

HISTORY: [Derived from former Section 25-1-2940 (1950 (46) 1881; 1952 Code Section 44-207; 1962 Code Section 44-194; 1964 (53) 2241)] En by 1984 Act No. 378, Section 28; 1985 Act No. 84, Section 4.

SECTION 25-1-2670. Investigation and inquiry of charges; recommendations; advising accused of rights; right to counsel; cross-examination of witnesses; records.

No charge or specifications may be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth in the charge or specification has been made. The investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

The accused may be advised of the charges against him and of his right to be represented at that investigation by counsel. Upon his own request he may be represented by civilian counsel if provided by him at his own expense, or military detailed by the officer exercising general court-martial jurisdiction over the command. At that investigation, full opportunity must be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after the investigation, they must be accompanied by a statement of the substance of the testimony taken on both sides and a copy must be given to the accused.

If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in the second paragraph of this section, no further investigation of that charge is necessary under this section unless it is demanded by the accused after he is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his own behalf.

The requirements of this section are binding on all persons administering this code but failure to follow them does not divest a military court of jurisdiction.

HISTORY: 1984 Act No. 378, Section 28.

SECTION 25-1-2675. Time requirement for forwarding charges to person exercising general court-martial jurisdiction.

When a person is held for trial by general court-martial the commanding officer shall, within eight days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the person exercising general court-martial jurisdiction. If that is not practicable, he shall report in writing to that person the reasons for delay.

HISTORY: [Derived from former Section 25-1-2870 (1950 (46) 1881; 1952 Code Section 44-193; 1962 Code Section 44-187; 1964 (53) 2241)] En by 1984 Act No. 378, Section 28.

SECTION 25-1-2680. Referral of charge to state judge advocate before trial; error in charges or specifications.

Before directing the trial of any charge by general court-martial, the convening authority shall refer it to the state judge advocate for consideration and advice. The convening authority may not refer a charge to a general court-martial for trial unless he has found that the charge alleges an offense under the Code of Military Justice and is warranted by evidence indicated in the report of the investigation.

If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and such changes in the charges and specifications may be made to make them conform to the evidence.

HISTORY: 1984 Act No. 378, Section 28.

SECTION 25-1-2685. Service of charges on accused; time restrictions as to trial.

The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. No person may, against his objection, be brought to trial or be required to participate by himself or counsel in a session called by the military judge under Section 25-1-2705 in a general court-martial case within a period of five days after the service of charges upon him or in a special court-martial within a period of three days after the service of charges upon him.

HISTORY: [Derived from former Section 25-1-2870 (1950 (46) 1881; 1952 Code Section 44-193; 1962 Code Section 44-187; 1964 (53) 2241)] En by 1984 Act No. 378, Section 28.

SECTION 25-1-2690. Evidentiary rules.

The procedure, including modes of proof, in cases before military courts, shall apply the principles of law and rules of evidence generally recognized in the trial of criminal cases in circuit courts of this State, but which may not be contrary to or inconsistent with this code.

HISTORY: 1984 Act No. 378, Section 28.

SECTION 25-1-2695. Unlawfully influencing action of court.

(1) No authority convening a general, special, or summary court-martial nor any other commander or officer serving on the staff of the court-martial may censure, reprimand, or admonish the court or any member, military judge, or counsel with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding. No person subject to this code may attempt to coerce or, by an unauthorized means, influence the action of the court-martial or any other military tribunal or any member thereof in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts. The foregoing provisions of this subsection do not apply with respect to:

(A) general instructional or informational courses in military justice, if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of courts-martial;

(B) statements and instructions given in open court by the military judge, president of a special court-martial, or counsel.

(2) In the preparation of an effectiveness, fitness, or efficiency report or any other report or document used in whole or in part for the purpose of determining whether a member of the military forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the military forces, or in determining whether a member of the military forces should be retained on active duty, no person subject to the Code of Military Justice may, in preparing any such report:

(A) consider or evaluate the performance or duty of the member as a member of a court-martial;

(B) give a less favorable rating or evaluation of any member of the state military forces because of the zeal with which the member, as counsel, represented any accused before a court-martial.

HISTORY: 1984 Act No. 378, Section 28.

SECTION 25-1-2700. Duties of trial counsel and defense counsel; assistant trial counsel.

The trial counsel of a general or special court-martial shall prosecute in the name of the State of South Carolina, and shall, under the direction of the court, prepare the record of the proceedings.

The accused has the right to be represented in his defense before a general or special court-martial by civilian counsel if provided by him at his own expense, or by military counsel detailed under Section 25-1-2630. Should the accused have counsel of his own selection, the defense counsel, and assistant defense counsel, if any, who were detailed, may be excused by the military judge or by the president of a court-martial without a military judge. An accused has no right to military counsel in a summary court-martial proceeding.

In every court-martial proceeding, the defense counsel may, in the event of conviction, forward for attachment to the record of proceedings a brief of matters he feels should be considered in behalf of the accused on review, including any objection to the contents of the record which he considers appropriate.

An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when he is qualified to be a trial counsel as required by Section 25-1-2630 perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when he is qualified to be the defense counsel, as required by Section 25-1-2630 perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

HISTORY: [Derived from former Section 25-1-2900 (1950 (46) 1881; 1952 Code Section 44-188; 1962 Code Section 44-190; 1964 (53) 2241)] En by 1984 Act No. 378, Section 28.

SECTION 25-1-2705. Sessions.

At any time after the service of charges which have been referred for trial to a court-martial composed of a military judge and members, the military judge may, subject to Section 25-1-2685, call the court into session without the presence of the members for the purpose of:

(1) hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

(2) hearing and ruling upon any matter which may be ruled upon by the military judge under this code, whether or not the matter is appropriate for later consideration or decision by the members of the court;

(3) unless prohibited by regulations of the Governor, holding the arraignment and receiving the pleas of the accused;

(4) performing any other procedural function which may be performed by the military judge under this code under rules prescribed pursuant to Section 25-1-2690 and which does not require the presence of the members of the court. These proceedings must be conducted in the presence of the accused, the defense counsel, and the trial counsel and must be made a part of the record.

When the members of a court-martial deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the members of the court with counsel or the military judge, must be made a part of the record and must be in the presence of the accused, the defense counsel, the trial counsel, and in cases in which a military judge has been detailed to the court, the military judge.

HISTORY: 1984 Act No. 378, Section 28.

SECTION 25-1-2710. Continuances.

The military judge or a court-martial without a military judge may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

HISTORY: 1984 Act No. 378, Section 28.

SECTION 25-1-2715. Challenges.

The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The military judge or, if none, the court, shall determine the relevancy and validity of challenges for cause, and may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

Each accused and the trial counsel are entitled to one peremptory challenge, but the military judge may not be challenged except for cause.

HISTORY: [Derived from former Section 25-1-2950 (1950 (46) 1881; 1952 Code Section 44-194; 1962 Code Section 44-195; 1964 (53) 2241)] En by 1984 Act No. 378, Section 28.

SECTION 25-1-2720. Oaths.

Before performing their respective duties, military judges, members of general and special courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully.

HISTORY: 1984 Act No. 378, Section 28.

SECTION 25-1-2725. Statute of limitations.

A person charged with desertion or absence without leave in time of war or with mutiny may be tried and punished at any time without limitation.

A person charged with any offense is not liable to be tried by court-martial or punished under Section 25-1-2520 if the offense was committed more than three years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command or before the imposition of punishment under Section 25-1-2520.

Periods in which the accused was absent from territory in which the State of South Carolina has the authority to apprehend him, or in the custody of civil authorities, or in the hands of the enemy, must be excluded in computing the period of limitation prescribed in this section.

HISTORY: [Derived from former Section 25-1-3000 (1950 (46) 1881; 1952 Code Section 44-197; 1962 Code Section 44-197; 1964 (53) 2241)] En by 1984 Act No. 378, Section 28; 2001 Act No. 85, Section 35.

SECTION 25-1-2726. Jurisdiction over accused.

Jurisdiction over the accused attaches upon service of charges on the accused. Failure to respond or appear shall not defeat jurisdiction to try and sentence an accused in absentia.

HISTORY: 1985 Act No. 84, Section 42.

SECTION 25-1-2730. Double jeopardy.

No person may, without his consent, be tried a second time for the same offense. No proceeding in which an accused has been found guilty by a court-martial upon any charge or specification is a trial in the sense of this section until the finding of guilty has become final after review of the case has been fully completed.

A proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial in the sense of this section.

HISTORY: 1984 Act No. 378, Section 28.

SECTION 25-1-2735. Pleas of accused.

If an accused makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if he fails or refuses to plead, a plea of not guilty must be entered in the record, and the court shall proceed as though he had pleaded not guilty.

With respect to any charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge, or by a court-martial without a military judge, a finding of guilty of the charge or specification may be entered immediately without vote. This finding shall constitute the finding of the court even though the plea of guilty is withdrawn prior to the announcement of the sentence.

HISTORY: [Derived from former Section 25-1-2960 (1950 (46) 1881; 1952 Code Section 44-199; 1962 Code Section 44-196; 1964 (53) 2241)] En by 1984 Act No. 378, Section 28.

SECTION 25-1-2740. Opportunity to obtain witnesses and other evidence.

The trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with regulations prescribed by the Governor. Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence must be similar to that which courts of the state having jurisdiction may lawfully issue, as prescribed by the laws of this State.

HISTORY: [Derived from former Sections 25-1-2980 (1950 (46) 1881; 1952 Code Section 44-204; 1962 Code Section 44-200; 1964 (53) 2241) and 25-1-2990 (1950 (46) 1881; 1952 Code Section 44-205; 1962 Code Section 44-201; 1964 (53) 2241)] En by 1984 Act No. 378, Section 28.

SECTION 25-1-2745. Refusal to appear or testify.

Any person not subject to the Code of Military Justice is guilty of an offense against the State if:

(1) he has been duly subpoenaed in accordance with the laws of this State to appear as a witness or to produce books and records before a military court or before any military or civil officer designated to take a deposition to be read in evidence before such a court;

(2) wilfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpoenaed to produce.

Any person who commits an offense named in this section must be tried in a circuit court of this State, and jurisdiction is conferred upon that court for that purpose. Upon conviction, such a person must be punished by a fine of not more than five hundred dollars, or imprisonment for not more than six months, or both.

The attorney general or his designated representative shall, upon the certification of the facts to him by the military court, prosecute any person violating this section.

HISTORY: [Derived from former Section 25-1-2990 (1950 (46) 1881; 1952 Code Section 44-205; 1962 Code Section 44-201; 1964 (53) 2241)] En by 1984 Act No. 378, Section 28.

SECTION 25-1-2750. Contempt.

A court-martial may punish for contempt any person who uses menacing words, signs, or gestures in its presence, or who disturbs its proceedings. The punishment may not exceed confinement for twenty-five days or a fine of five hundred dollars.

HISTORY: [Derived from former Section 25-1-2970 (1950 (46) 1881; 1952 Code Section 44-202; 1962 Code Section 44-199; 1964 (53) 2241)] En by 1984 Act No. 378, Section 28; 2001 Act No. 85, Section 36.

SECTION 25-1-2755. Depositions.

At any time after charges have been signed, as provided in Section 25-1-2660, any party may take oral or written depositions unless the military judge or court-martial without a military judge hearing the case, or if the case is not being heard, an authority competent to convene a court-martial for the trial of those charges, forbids it for a good cause. If a deposition is to be taken before charges are referred for trial, an authority may designate commissioned officers to represent the prosecution and the defense and may authorize those officers to take the deposition of any witness.

The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

Depositions may be taken before, and authenticated by, any military or civil officer authorized by the laws of this State or by the laws of the place where the deposition is taken to administer oaths.

A duly authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read in evidence before any court-martial or in any proceeding before a court of inquiry, if it appears that:

- (1) the witness resides or is beyond the State or beyond the distance of one hundred miles from the place of trial or hearing;
- (2) the witness by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, nonamenability to process or other reasonable cause, is unable or refuses to appear to testify in person at the place of trial or hearing;
- (3) the present whereabouts of the witness is unknown.

HISTORY: [Derived from former Section 25-1-2980 (1950 (46) 1881; 1952 Code Section 44-204; 1962 Code Section 44-200; 1964 (53) 2241)] En by 1984 Act No. 378, Section 28.

SECTION 25-1-2760. Admissibility of records of courts of inquiry.

In any case not extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony may not be obtained, may if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial if the accused was a party before the court of inquiry and if the same issue was involved or if he consents to the introduction of the evidence.

The testimony may be read in evidence only by the defense in cases extending to the dismissal of a commissioned officer.

The testimony may also be read in evidence before a court of inquiry or a military board.

HISTORY: 1984 Act No. 378, Section 28.

SECTION 25-1-2765. Voting and rulings.

Voting by members of a general or special court-martial on the findings and on the sentence, and by members of a court-martial without a military judge upon questions of challenge must be by secret written ballot. The junior member of the court shall count the votes. The count must be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

The military judge and, except for questions of challenge, the president of a court-martial without a military judge, shall rule upon all questions of law and all interlocutory questions, arising during the proceedings. Any ruling made by the military judge upon any question of law or any interlocutory question other than the factual issue of mental responsibility of the accused, or by the president of a court-martial without a military judge upon any question of law other than a motion for a finding of not guilty is final and constitutes the ruling of the court. However, the military judge or the president of a court-martial without a military judge may change his ruling at any time during the trial.

Before a vote is taken on the findings, the military judge or the president of a court-martial without a military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them:

- (1) that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;
- (2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;
- (3) that if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt;
- (4) that the burden of proof of establishing the guilt of the accused beyond reasonable doubt is upon the State.

This section does not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings, and, if the accused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial shall make a general finding and shall in addition on request find the facts specially. If an opinion or memorandum of decision is filed, it is sufficient if the findings of fact appear in it.

HISTORY: 1984 Act No. 378, Section 28.

SECTION 25-1-2770. Number of votes required.

No person may be convicted of an offense, except as provided in Section 25-1-2735 or by the concurrence of two-thirds of the members present at the time the vote is taken.

All other questions to be decided by the members of a general or special court-martial must be determined by a majority vote. A tie vote on a challenge disqualifies the member challenged. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused.

HISTORY: 1984 Act No. 378, Section 28.

SECTION 25-1-2775. Announcement of findings and sentence.

A court-martial shall announce its findings and sentence to the parties as soon as determined.

HISTORY: 1984 Act No. 378, Section 28.

SECTION 25-1-2780. Record of trial.

Each general court-martial shall keep a separate record of the proceedings in each case brought before it, and the record must be authenticated by the signature of the military judge. If the record may not be authenticated by the military judge by reason of his death, disability, or absence, it must be authenticated by the signature of the trial counsel or by that of a member if the trial counsel is unable to authenticate it by reason of his death, disability, or absence. In a court-martial consisting of only a military judge the record must be authenticated by the court reporter under the same conditions which would impose such a duty on a member under this paragraph. If the proceedings have resulted in an acquittal of all charges and specifications or, if not affecting a general or flag officer, in a sentence not including discharge or confinement and not in excess of that which may otherwise be adjudged by a special court-martial, the record shall contain such matters as may be prescribed by regulations of the Governor.

A copy of the record of the proceedings of each general and special court-martial must be given to the accused as soon as it is authenticated.

Summary court-martial proceedings must use documents promulgated by regulations of the Adjutant General.

HISTORY: 1984 Act No. 378, Section 28; 2001 Act No. 85, Section 37.

SECTION 25-1-2785. Cruel and unusual punishments prohibited.

Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel and unusual punishment, may not be adjudged by any court-martial and inflicted upon any person subject to this code.

HISTORY: 1984 Act No. 378, Section 28.

SECTION 25-1-2790. Resignation in lieu of court-martial.

With the express consent of the adjutant general, an accused may resign without retirement or other benefits from the military forces in lieu of court-martial.

HISTORY: 1984 Act No. 378, Section 28.

SECTION 25-1-2795. Effective date of sentences; forfeiture of pay; confinement; deferment of sentence.

Whenever a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture of pay or allowances in addition to confinement not suspended or deferred, the forfeiture may apply to pay or allowances becoming due on or after the date the sentence is approved by the convening authority. No forfeiture may extend to any pay or allowances accrued before that date.

Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended must be excluded in computing the service of the term of confinement.

All other sentences of courts-martial are effective on the date ordered executed.

On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under his jurisdiction, the person exercising court-martial jurisdiction, may in his sole discretion defer service of the sentence to confinement. The deferment shall terminate when the sentence is ordered executed. The deferment may be rescinded at any time by the officer who granted it or, if the accused is no longer under his jurisdiction, by the person exercising court-martial jurisdiction.

HISTORY: 1984 Act No. 378, Section 28; 2001 Act No. 85, Section 38.

SECTION 25-1-2800. Execution of sentence of confinement; hard labor.

Under such instructions as the adjutant general may prescribe, a sentence of confinement adjudged by a court-martial, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of the federal armed forces, the state military forces or in any penal or correctional institution, detention facility, jail, or stockade under the control of the State or a political subdivision of it, or which the State or a political subdivision of it may be allowed to use. Persons so confined in a penal or correctional institution not under the control of the military forces are subject to the same discipline and treatment as persons confined or committed by the courts of the State.

The omission of the words "hard labor" from any sentence or punishment of a court-martial adjudging confinement does not deprive the authority executing that sentence or punishment of the power to require hard labor as a part of the punishment.

HISTORY: [Derived from former Section 25-1-3080 (1962 Code Section 44-209; 1964 (53) 2241)] En by 1984 Act No. 378, Section 28.

SECTION 25-1-2805. Reduction in pay grade; restoration of benefits.

Unless otherwise provided in regulations to be prescribed by the Governor, a special or general court-martial sentence of an enlisted member in a pay grade above E-2, as approved by the convening authority, that includes:

- (1) a dishonorable or bad-conduct discharge; or
- (2) confinement; reduces that member to pay grade E-2, effective on the date of that approval.

If the sentence of a member who is reduced in pay grade under this section is disapproved or reversed, the rights and privileges of which he was deprived because of that reduction must be restored to him and he is entitled to the pay and allowances to which he would have been entitled, for the period the reduction was in effect, had he not been so reduced.

HISTORY: 1984 Act No. 378, Section 28.

SECTION 25-1-2810. Error of law; lesser included offense.

A finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm, instead, so much of the finding as includes a lesser included offense.

HISTORY: Former Section 25-1-2810 [1950 (46) 1881; 1952 Code Section 44-181; 1962 Code Section 44-181; 1964 (53) 2241] repealed by codification of Code of Military Justice by 1984 Act No. 378, Section 29; New Section 25-1-2810 En by 1984 Act No. 378, Section 29.

SECTION 25-1-2815. Forwarding record to convening authority.

After a trial by court-martial the record must be forwarded to the convening authority, and action thereon may be taken by the person who convened the court, a commissioned officer commanding for the time being, a successor in command, or the person exercising general court-martial jurisdiction.

HISTORY: [Derived from former Section 25-1-3020 (1950 (46) 1881; 1952 Code Section 44-211; 1962 Code Section 44-202; 1964 (53) 2241)] En by 1984 Act No. 378, Section 30.

SECTION 25-1-2820. Forwarding record to state judge advocate.

The adjutant general shall refer the record of each general court-martial to the state judge advocate, who shall submit his written opinion to the convening authority. If final action of the court has resulted in an acquittal of all charges and specifications, the opinion must be limited to questions of jurisdiction.

HISTORY: Former Section 25-1-2820 [1950 (46) 1881; 1952 Code Sections 44-182, 44-195; 1962 Code Section 44-181; 1964 (53) 2241] recodified as Sections 25-1-2440 and 25-1-2540 by 1984 Act No. 378; New Section 25-1-2820 En by 1984 Act No. 378, Section 31.

SECTION 25-1-2825. Reconsideration of ruling; correction of record.

If a specification before a court-martial has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action.

Where there is an apparent error or omission in the record or where the record shows improper or inconsistent action by a court-martial with respect to a finding or sentence which can be rectified without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action. In no case, however, may the record be returned:

- (1) for reconsideration of a finding of not guilty of any specification, or a ruling which amounts to a finding of not guilty;
- (2) for reconsideration of a finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some section of this code;
- (3) for increasing the severity of the sentence unless the sentence prescribed for the offense is mandatory.

HISTORY: 1984 Act No. 378, Section 32.

SECTION 25-1-2830. Rehearings.

If the convening authority disapproves the findings and sentence of a court-martial, he may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing. In such a case he shall state the reasons for disapproval. If he disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges.

Each rehearing shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be imposed, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory.

HISTORY: Former Section 25-1-2830 [1950 (46) 1881; 1952 Code Sections 44-183 to 44-187; 1962 Code Section 44-183; 1964 (53) 2241] recodified as Sections 25-1-2530 and 25-1-2650 by 1984 Act No. 378; New Section 25-1-2830 En by 1984 Act No. 378, Section 33.

SECTION 25-1-2835. Approval of findings and sentence.

In acting on the findings and sentence of a court-martial, the convening authority may approve only the findings of guilty and the sentence or the part or amount of the sentence, as he finds correct in law and fact and as he in his discretion determines must be approved. Unless he indicates otherwise, approval of the sentence is approval of the findings and sentence.

HISTORY: [Derived from former Section 25-1-3030 (1950 (46) 1881; 1952 Code Sections 44-210, 44-212; 1962 Code Section 44-203; 1964 (53) 2241)] En by 1984 Act No. 378, Section 34.

SECTION 25-1-2840. Disposition of records after review by convening authority.

When the convening authority has taken final action in a general court-martial case, he shall send the entire record, including his action thereon and the opinion of the state judge advocate, to the Attorney General for review.

If the sentence of a special court-martial as approved by the convening authority includes a bad-conduct discharge, whether or not suspended, the record must be sent to the person exercising general court-martial jurisdiction. If the sentence as approved by the person exercising general court-martial jurisdiction includes a bad-conduct discharge, whether or not suspended, the record must be sent to the state judge advocate for review. The opinion of the state judge advocate must be given in writing within thirty days.

All other special and summary court-martial records must be reviewed by the state judge advocate or legal officer of appropriate component of the military forces. The opinion of the state judge advocate or legal officer must be given in writing within thirty days.

HISTORY: Former Section 25-1-2840 [1950 (46) 1881; 1952 Code Section 44-184; 1962 Code Section 44-184; 1964 (53) 2241] recodified as Section 25-1-2580 by 1984 Act No. 378; New Section 25-1-2840 [derived from former Section 25-1-3020 (1950 (46) 1881; 1952 Code Section 44-211; 1962 Code Section 44-202; 1964 (53) 2241); Section 25-1-3030 (1950 (46) 1881; 1952 Code Sections 44-210, 44-212; 1962 Code Section 44-203; 1964 (53) 2241)] En by 1984 Act No. 378, Section 35.

SECTION 25-1-2845. Appeal.

Appeal from a general court-martial or special court-martial must be taken as if the case were tried by a court of General Sessions.

HISTORY: 1984 Act No. 378, Section 36.

SECTION 25-1-2850. Appellate counsel.

The National Guard shall not have the responsibility to provide appellate counsel for a defendant. Appellate counsel for a defendant tried by special or general court-martial must be provided under the same provisions as if the defendant were tried as a civilian in a state court. The Attorney General shall provide appellate counsel for the National Guard.

HISTORY: Former Section 25-1-2850 [1950 (46) 1881; 1952 Code Section 44-185; 1962 Code Section 44-185; 1964 (53) 2241] recodified as Section 25-1-2590 by 1984 Act No. 378; New Section 25-1-2850 En by 1984 Act No. 378, Section 37.

SECTION 25-1-2855. Sentence involving general officer.

No sentence involving a general officer or which includes unsuspended dismissal of a commissioned officer, or a dishonorable discharge, may be executed until affirmed on appeal, provided the defendant elects to appeal.

All other court-martial sentences, unless suspended or deferred, may be ordered executed by the convening authority when approved by him. The convening authority may suspend the execution of any sentence.

HISTORY: 1984 Act No. 378, Section 38.

SECTION 25-1-2860. Vacation of suspension of sentence; hearings.

Before the vacation of the suspension of a special court-martial sentence which, as approved, includes a bad-conduct discharge, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The probationer must be represented at the hearing by counsel if he so desires.

The record of the hearing and the recommendation of the officer having special court-martial jurisdiction must be sent for action to the person exercising general court-martial jurisdiction over the probationer. If he vacates the suspension, any unexecuted part of the sentence must be executed, subject to applicable restrictions in Section 25-1-2855.

The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

HISTORY: Former Section 25-1-2860 [1950 (46) 1881; 1952 Code Section 44-186; 1962 Code Section 44-186; 1964 (53) 2241] recodified as Sections 25-1-2600 and 25-1-3085 by 1984 Act No. 378; New Section 25-1-2860 En by 1984 Act No. 378, Section 39.

SECTION 25-1-2865. Remission or suspension of sentence.

The Governor or a convening authority may remit or suspend any part of amount of the unexecuted part of any sentence, including all uncollected forfeitures.

The adjutant general may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

HISTORY: 1984 Act No. 378, Section 40.

SECTION 25-1-2870. Restoration of rights, privileges, and property.

Under such regulations as the Governor or the adjutant general may prescribe, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, must be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon a new trial or rehearing.

HISTORY: Former Section 25-1-2870 [1950 (46) 1881; 1952 Code Section 44-193; 1962 Code Section 44-187; 1964 (53) 2241] recodified as Sections 25-1-2660, 25-1-2675, and 25-1-2685 by 1984 Act No. 378; New Section 25-1-2870 En by 1984 Act No. 378, Section 41.

SECTION 25-1-2875. Appellate review; finality of proceedings, findings, and sentences.

The appellate review of records of trial provided by this code, the proceedings, findings, and sentences of courts-martial as approved, reviewed, or affirmed as required by the code, and all dismissals and discharges carried into execution under sentences by courts-martial following approval, review, or affirmation as required by the code are final and conclusive. Orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the United States and the several states, subject only to action under Section 25-1-2865.

HISTORY: 1984 Act No. 378, Section 42.

SECTION 25-1-2880. Principals.

Any person is a principal who is subject to the code and who:

1. commits an offense punishable by the code, or aids, abets, counsels, commands, or procures its commission; or
2. causes an act to be done which if directly performed by him would be punishable by the code.

HISTORY: Former Section 25-1-2880 [1950 (46) 1881; 1952 Code Sections 44-191 to 44-193; 1962 Code Section 44-188; 1964 (53) 2241] recodified as Section 25-1-2470 by 1984 Act No. 378; New Section 25-1-2880 En by 1984 Act No. 378, Section 43.

SECTION 25-1-2885. Accessory after the fact.

Any person subject to this code who, knowing that an offense punishable by the code has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment may be punished as a court-martial may direct.

HISTORY: 1984 Act No. 378, Section 44; 1985 Act No. 84, Section 5.

SECTION 25-1-2890. Conviction of lesser included offense.

An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included in the offense.

HISTORY: Former Section 25-1-2890 [1962 Code Section 44-189; 1964 (53) 2241] recodified as Section 25-1-3115 by 1984 Act No. 378; New Section 25-1-2890 En by 1984 Act No. 378, Section 45.

SECTION 25-1-2895. Attempts.

An act, done with specific intent to commit an offense under this code, amounting to more than mere preparation and tending, even though failing to effect its commission, is an attempt to commit that offense.

Any person subject to this code who attempts to commit any offense punishable by the code must be punished as a court-martial may direct, unless otherwise specifically prescribed.

HISTORY: 1984 Act No. 378, Section 46; 1985 Act No. 84, Section 6.

SECTION 25-1-2900. Conspiracy.

Any person subject to this code who conspires with any other person to commit an offense under the code may, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

HISTORY: Former Section 25-1-2900 [1950 (46) 1881; 1952 Code Section 44-188; 1962 Code Section 44-190; 1964 (53) 2241] recodified as Sections 25-1-2630 and 25-1-2700 by 1984 Act No. 378; New Section 25-1-2900 En by 1984 Act No. 378, Section 47; 1985 Act No. 84, Section 7.

SECTION 25-1-2905. Soliciting or advising person to desert or commit act of sedition.

(1) Any person subject to this code who solicits or advises another or others to desert in violation of Section 25-1-2920 or mutiny in violation of Section 25-1-2960 must, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but if the offense solicited or advised is not committed or attempted, he must be punished as a court-martial may direct.

(2) Any person subject to this code who solicits or advises another or others to commit an act of sedition in violation of Section 25-1-2960 of the code must, if the offense

solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed, he may be punished as a court-martial may direct.

HISTORY: [Derived from former Sections 25-1-2480 (1950 (46) 1881; 1952 Code Section 44-158; 1962 Code Section 44-159; 1964 (53) 2241), 25-1-2590 (1950 (46) 1881; 1952 Code Section 44-171; 1962 Code Section 44-171; 1964 (53) 2241)] En by 1984 Act No. 378, Section 48; 1985 Act No. 84, Section 8.

SECTION 25-1-2910. Fraudulent enlistment, appointment, or separation.

A person may be punished as a court-martial may direct who:

(1) procures his own enlistment or appointment in the military forces by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances for the enlistment or appointment; or

(2) procures his own separation from the military forces by knowingly false representation, wilful misconduct, or deliberate concealment as to a fact or status for that separation.

HISTORY: Former Section 25-1-2910 [1950 (46) 1881; 1952 Code Section 44-189; 1962 Code Section 44-191; 1964 (53) 2241] recodified as Section 25-1-3120 by 1984 Act No. 378; New Section 25-1-2910 [derived from former Sections 25-1-2530 (1950 (46) 1881; 1952 Code Section 44-164; 1962 Code Section 44-164; 1964 (53) 2241) 25-1-2540 (1950 (46) 1881; 1952 Code Section 44-165; 1962 Code Section 44-165; 1964 (53) 2241)] En by 1984 Act No. 378, Section 49; 1985 Act No. 84, Section 9; 2011 Act No. 46, Section 22, eff June 7, 2011.

Effect of Amendment

The 2011 amendment, in the introductory paragraph, substituted "A" for "Any"; and in subsection (2), inserted ", wilful misconduct," and substituted "a fact or status" for "his eligibility".

SECTION 25-1-2915. Unlawful enlistment, appointment, or separation.

Any person subject to this code who effects an enlistment or appointment in, or a separation from, the state military forces of any person who is known to him to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order may be punished as a court-martial may direct.

HISTORY: [Derived from former Sections 25-1-2530 (1950 (46) 1881; 1952 Code Section 44-164; 1962 Code Section 44-164; 1964 (53) 2241) 25-1-2540 (1950 (46) 1881; 1952 Code Section 44-165; 1962 Code Section 44-165; 1964 (53) 2241)] En by 1984 Act No. 378, Section 50; 1985 Act No. 84, Section 10.

SECTION 25-1-2920. Desertion.

(1) Any member of the military forces is guilty of desertion who:

(A) without authority, goes or remains absent from his unit, organization, or place of duty with intent to remain away permanently;

(B) quits his unit, organization, or place of duty with intent to avoid hazardous duty or to shirk important service;

(C) without being regularly separated from one of the armed forces of the United States, enlists or accepts an appointment in the military forces, without fully disclosing the fact that he has not been regularly separated.

(2) Any commissioned officer of the military forces who, after tender of his resignation and before notice of its acceptance, quits his post or proper duties without leave and with intent to remain away permanently is guilty of desertion.

(3) Any person found guilty of desertion or attempt to desert may be punished as a court-martial may direct.

HISTORY: Former Section 25-1-2920 [1950 (46) 1881; 1952 Code Section 44-190; 1962 Code Section 44-192; 1964 (53) 2241] recodified as Section 25-1-3125 by 1984 Act No. 378; New Section 25-1-2920 [derived from former Sections 25-1-2580 (1950 (46) 1881; 1952 Code Section 44-170; 1962 Code Section 44-170; 1964 (53) 2241) 25-1-2600 (1950 (46) 1881; 1952 Code Section 44-172; 1962 Code Section 44-172; 1964 (53) 2241)] En by 1984 Act No. 378, Section 51; 1985 Act No. 84, Section 11.

SECTION 25-1-2925. Absence without leave.

Any person, subject to this code, may be punished as a court-martial may direct if he, without authority:

(1) fails to go to his appointed place of duty at the time prescribed;

(2) goes from that place; or

(3) absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed.

HISTORY: [Derived from former Section 25-1-2510 (1950 (46) 1881; 1952 Code Section 44-162; 1962 Code Section 44-162; 1964 (53) 2241); Section 25-1-2520 (1950 (46) 1881; 1952 Code Section 44-163; 1962 Code Section 44-163; 1964 (53) 2241)] En by 1984 Act No. 378, Section 52; 1985 Act No. 84, Section 12.

SECTION 25-1-2930. Person missing movement of unit.

Any person subject to this code who, through neglect or design, misses the movement of a unit with which he is required, in the course of duty, to move may be punished as a court-martial may direct.

HISTORY: Former Section 25-1-2930 [1950 (46) 1881; 1952 Code Section 44-206; 1962 Code Section 44-193; 1964 (53) 2241] recodified as Section 25-1-3130 by 1984 Act No. 378; New Section 25-1-2930 En by 1984 Act No. 378, Section 53; 1985 Act No. 84, Section 13.

SECTION 25-1-2935. Disrespect to superior officer or noncommissioned officer.

Any person subject to this code who behaves with disrespect toward his superior officer or noncommissioned officer may be punished as a court-martial may direct.

HISTORY: [Derived from former Section 25-1-2450 (1950 (46) 1881; 1952 Code Section 44-156; 1962 Code Section 44-155; 1964 (53) 2241) En by 1984 Act No. 378, Section 54, 1985 Act No. 84, Section 14; 2001 Act No. 85, Section 39.

SECTION 25-1-2940. Assaulting or wilfully disobeying superior officer or noncommissioned officer.

Any person subject to this code may be punished as a court-martial may direct, if he:

(1) strikes his superior officer or noncommissioned officer or draws or lifts up any weapon or offers any violence against him while he is in the execution of his office;

(2) wilfully disobeys a lawful command of his superior officer or noncommissioned officer.

HISTORY: Former Section 25-1-2940 [1950 (46) 1881; 1952 Code Section 44-207; 1962 Code Section 44-194; 1964 (53) 2241] recodified as Section 25-1-2665 by 1984 Act No. 378; New Section 25-1-2940 [derived from former Section 25-1-2460 (1950 (46) 1881; 1952 Code Section 44-155; 1962 Code Section 44-154; 1964 (53) 2241)] En

by 1984 Act No. 378, Section 55; 1985 Act No. 84, Section 15; 2001 Act No. 85, Section 40.

SECTION 25-1-2945. Insubordinate conduct toward officer or noncommissioned officer.

Any officer or enlisted member may be punished as a court-martial may direct, if he treats with contempt, or is disrespectful in language or deportment toward, an officer or noncommissioned officer while that officer is in the execution of his office.

HISTORY: [Derived from former Section 25-1-2460 (1950 (46) 1881; 1952 Code Section 44-155; 1962 Code Section 44-154; 1964 (53) 2241)] En by 1984 Act No. 378, Section 56; 1985 Act No. 84, Section 16; 2001 Act No. 85, Section 41.

SECTION 25-1-2950. Failure to obey order, statute, or regulation; derelict in performance of duty.

Any person, subject to the code, may be punished as a court-martial may direct, if he:

- (1) violates or fails to obey any lawful general order, statute, or regulation;
- (2) having knowledge of any other lawful order issued by a member of the military forces which it is his duty to obey, fails to obey the order;
- (3) is derelict in the performance of his duties.

HISTORY: Former Section 25-1-2950 [1950 (46) 1881; 1952 Code Section 44-194; 1962 Code Section 44-195; 1964 (53) 2241] recodified as Section 25-1-2715 by 1984 Act No. 378; New Section 25-1-2950 En by 1984 Act No. 378, Section 57; 1985 Act No. 84, Section 17; 2001 Act No. 85, Section 42.

SECTION 25-1-2955. Cruelty and maltreatment.

Any person subject to this code who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders may be punished as a court-martial may direct.

HISTORY: 1984 Act No. 378, Section 58; 1985 Act No. 84, Section 18.

SECTION 25-1-2957. Reckless endangerment.

A person subject to this code who recklessly and unlawfully engages in conduct that endangers the life or safety of another person, or who unlawfully engages in wilful, wanton, careless, reckless, or grossly negligent conduct that is likely to produce death or grievous bodily harm to another, is guilty of a violation of this section and, upon conviction, may be punished as a court-martial may direct.

HISTORY: 2001 Act No. 85, Section 3.

SECTION 25-1-2960. Mutiny or sedition.

(1) Any person subject to the code who:

(A) with intent to usurp or override lawful military authority refuses, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance, is guilty of mutiny;

(B) with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority, is guilty of sedition; or

(C) fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

(2) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition may be punished as a court-martial may direct.

HISTORY: Former Section 25-1-2960 [1950 (46) 1881; 1952 Code Section 44-199; 1962 Code Section 44-196; 1964 (53) 2241] recodified as Section 25-1-2735 by 1984 Act No. 378; New Section 25-1-2960 [derived from former Section 25-1-2470 (1950 (46) 1881; 1952 Code Section 44-159; 1962 Code Section 44-158; 1964 (53) 2241); Section 25-1-2480 (1950 (46) 1881; 1952 Code Section 44-159; 1962 Code Section 44-158; 1964 (53) 2241)]; En by 1984 Act No. 378, Section 59; 1985 Act No. 84, Section 19.

SECTION 25-1-2965. Resisting arrest, and escape.

Any person subject to this code who resists apprehension or breaks arrest or who escapes from physical restraint lawfully imposed may be punished as a court-martial may direct.

HISTORY: 1984 Act No. 378, Section 60; 1985 Act No. 84, Section 20.

SECTION 25-1-2970. Releasing prisoner without proper authority.

Any person subject to the code who, without proper authority, releases any prisoner committed to his charge, or who through neglect or design suffers any prisoner to escape, may be punished as a court-martial may direct, whether or not the prisoner was committed in strict compliance with law.

HISTORY: Former Section 25-1-2970 [1950 (46) 1881; 1952 Code Section 44-202; 1962 Code Section 44-199; 1964 (53) 2241] recodified as Section 25-1-2750 by 1984 Act No. 378; New Section 25-1-2970 En by 1984 Act No. 378, Section 61; 1985 Act No. 84, Section 21.

SECTION 25-1-2975. Unlawful detention.

Any person subject to this code, who, except as provided by law or regulation, apprehends, arrests, or confines any person may be punished as a court-martial may direct.

HISTORY: 1984 Act No. 378, Section 62; 1985 Act No. 84, Section 22.

SECTION 25-1-2980. Noncompliance with procedural rules.

Any person, subject to this code may be punished as a court-martial may direct, if he:

- (1) is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under the code;
- (2) knowingly and intentionally fails to enforce or comply with any provision of this code regulating the proceedings before, during, or after trial of an accused.

HISTORY: Former Section 25-1-2980 [1950 (46) 1881; 1952 Code Section 44-204; 1962 Code Section 44-200; 1964 (53) 2241] recodified as Sections 25-1-2740 and 25-1-2755 by 1984 Act No. 378; New Section 25-1-2980 En by 1984 Act No. 378, Section 63; 1985 Act No. 84, Section 23.

SECTION 25-1-2985. Improper use or disclosure of parole or countersign.

Any person subject to this code, who in time of war discloses the parole or countersign to any person not entitled to receive it, or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authorized and required to give, may be punished as a court-martial may direct.

HISTORY: 1984 Act No. 378, Section 64; 1985 Act No. 84, Section 24.

SECTION 25-1-2990. Forcing a safeguard.

Any person subject to this code who forces a safeguard may be punished as a court-martial may direct.

HISTORY: Former Section 25-1-2990 [1950 (46) 1881; 1952 Code Section 44-205; 1962 Code Section 44-201; 1964 (53) 2241] recodified as Sections 25-1-2740 and 25-1-2745 by 1984 Act No. 378; New Section 25-1-2990 En by 1984 Act No. 378, Section 65; 1985 Act No. 84, Section 25.

SECTION 25-1-2995. Captured or abandoned property.

(1) All persons subject to this code shall secure all public property taken from the enemy for the service of the State and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(2) Any person, subject to this code may be punished as a court-martial may direct, if he:

(A) fails to carry out the duties prescribed in subsection 1 of this section;

(B) buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he receives or expects any profit, benefit, or advantage to himself or another directly or indirectly connected with himself;

(C) engages in looting or pillaging.

HISTORY: 1984 Act No. 378, Section 66; 1985 Act No. 84, Section 26.

SECTION 25-1-3000. False official statements.

Any person subject to this code who with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, may be punished as a court-martial may direct.

HISTORY: Former Section 25-1-3000 [1950 (46) 1881; 1952 Code Section 44-197; 1962 Code Section 44-197; 1964 (53) 2241] recodified as Section 25-1-2725 by 1984 Act No. 378; New Section 25-1-3000 [derived from former Section 25-1-2420 (1950 (46) 1881; 1952 Code Section 44-153; 1962 Code Section 44-152; 1964 (53) 2241); Section 25-1-2430 (1950 (46) 1881; 1952 Code Section 44-153; 1962 Code Section 44-153; 1964 (53) 2241); Section 25-1-2440 (1950 (46) 1881; 1952 Code Section 44-153; 1962 Code Section 44-152; 1964 (53) 2241)] En by 1984 Act No. 378, Section 67; 1985 Act No. 84, Section 27.

SECTION 25-1-3005. Loss, damage, destruction, or wrongful disposition of military property.

Any person subject to this code who, without proper authority:

(1) sells or otherwise disposes of; or

(2) wilfully or through neglect damages, destroys, or loses; or

(3) wilfully or through neglect suffers to be damaged, destroyed, sold, or wrongfully disposed of; or

(4) fails to account for or return any military property of the United States or of the State may be punished as a court-martial may direct.

HISTORY: [Derived from former Section 25-1-1460 (1950 (46) 1881; 1952 Code Section 44-87; 1962 Code Section 44-96; 1964 (53) 2241; repealed by 1984 Act No. 378, Section 91); Section 25-1-1470 (1950 (46) 1881; 1952 Code Section 44-89; 1962 Code Section 44-97; 1964 (53) 2241; repealed by 1984 Act No. 378, Section 91); Section 25-1-1480 (1950 (46) 1881; 1952 Code Section 44-90; 1962 Code Section 44-98; 1964 (53) 2241; repealed by 1984 Act No. 378, Section 91)] En by 1984 Act No. 378, Section 68; 1985 Act No. 84, Section 28.

SECTION 25-1-3010. Waste, spoilage, or destruction of property other than military property.

Any person subject to this code who wilfully or recklessly wastes, spoils, or otherwise wilfully and wrongfully destroys or damages any property other than military property of the State may be punished as a court-martial may direct.

HISTORY: Former Section 25-1-3010 [1950 (46) 1881; 1952 Code Section 44-196; 1962 Code Section 44-198; 1964 (53) 2241] recodified as Section 25-1-3135 by 1984 Act No. 378; New Section 25-1-3010 En by 1984 Act No. 378, Section 69; 1985 Act No. 84, Section 29.

SECTION 25-1-3015. Operating vehicle under influence of intoxicating liquor or controlled substance; reckless driving.

Any person subject to this code who operates any vehicle while under the influence of intoxicating liquors or any controlled substance, or in a reckless or wanton manner, may be punished as a court-martial may direct.

Any person subject to this code who negligently hazards, or allows to be hazarded, any vehicle of the military forces may be punished as a court-martial may direct.

HISTORY: 1984 Act No. 378, Section 70; 1985 Act No. 84, Section 30.

SECTION 25-1-3020. Sleeping on duty; leaving post; under influence of intoxicating liquor or controlled substance while on duty.

Any person subject to this code who is found under the influence of intoxicating liquors or any controlled substance on duty or sleeping upon his post, or who leaves his post before he is regularly relieved, may be punished as a court-martial may direct.

HISTORY: Former Section 25-1-3020 [1950 (46) 1881; 1952 Code Section 44-211; 1962 Code Section 44-202; 1964 (53) 2241] recodified as Sections 25-1-2815 and 25-1-2840 by 1984 Act No. 378; New Section 25-1-3020 [derived from former Section 25-1-2520 (1950 (46) 1881; 1952 Code Section 44-162; 1962 Code Section 44-162; 1964 (53) 2241); Section 25-1-2550 (1950 (46) 1881; 1952 Code Section 44-166; 1962 Code Section 44-166; 1964 (53) 2241); Section 25-1-2560 (1950 (46) 1881; 1952 Code Section 44-167; 1962 Code Section 44-167; 1964 (53) 2241)] En by 1984 Act No. 378, Section 71; 1985 Act No. 84, Section 31.

SECTION 25-1-3025. Malingering.

A person subject to this code must be punished as a court-martial directs, if he, for the purpose of avoiding work, duty, or service in the military forces:

(1) feigns illness, physical disablement, mental lapse, or derangement;

(2) intentionally inflicts self-injury, or commits, performs, or undertakes a service-disqualifying activity;

(3) hires or attempts to hire another person to do his duty.

HISTORY: [Derived from former Section 25-1-2530 (1950 (46) 1881; 1952 Code Section 44-164; 1962 Code Section 44-164; 1964 (53) 2241)] En by 1984 Act No. 378, Section 72; 2011 Act No. 46, Section 23, eff June 7, 2011.

Effect of Amendment

The 2011 amendment rewrote the section.

SECTION 25-1-3030. Riot or breach of peace.

Any person subject to this code who causes or participates in any riot or breach of the peace may be punished as a court-martial may direct.

HISTORY: Former Section 25-1-3030 [1950 (46) 1881; 1952 Code Sections 44-210, 44-212; 1962 Code Section 44-203; 1964 (53) 2241] recodified as Sections 25-1-2500, 25-1-2835 and 25-1-2840 by 1984 Act No. 378; New Section 25-1-3030 En by 1984 Act No. 378, Section 73; 1985 Act No. 84, Section 32.

SECTION 25-1-3035. Provoking or reproachful words or gestures.

Any person subject to this code who uses provoking or reproachful words or gestures toward any other person subject to the code may be punished as a court-martial may direct.

HISTORY: 1984 Act No. 378, Section 74; 1985 Act No. 84, Section 33.

SECTION 25-1-3040. Larceny; wrongful appropriation.

Any person subject to this code who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person, any money, personal property, or article of value of any kind:

(1) with intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, steals that property and is guilty of larceny;

(2) with intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, is guilty of wrongful appropriation.

Any person found guilty of larceny or wrongful appropriation may be punished as a court-martial may direct.

HISTORY: Former Section 25-1-3040 [1950 (46) 1881; 1952 Code Section 44-214; 1962 Code Section 44-204; 1964 (53) 2241] recodified as Sections 25-1-2550, 25-1-2560 and 25-1-2570 by 1984 Act No. 378; New Section 25-1-3040 [derived from former Section 25-1-1410 (1950 (46) 1881; 1952 Code Section 44-88; 1962 Code Section 44-91; 1964 (53) 2241; repealed by 1984 Act No. 378, Section 91); Section 25-1-1450 (1918 (30) 874; Cr. C. '22 Section 115; 1932 Code Section 1227; 1942 Code Section 1227; 1952 Code Section 44-80; 1962 Code Section 44-95; 1964 (53) 2241; repealed by 1984 Act No. 378, Section 91)] En by 1984 Act No. 378, Section 75; 1985 Act No. 84 Section 34.

SECTION 25-1-3045. Forgery.

Any person subject to this code who, with intent to defraud:

(1) falsely makes or alters any signature to, any part of, any writing which would, if genuine, apparently impose a legal liability on another or change his legal right or liability to his prejudice;

(2) utters, offers, issues, or transfers such a writing, known by him to be made or altered is guilty of forgery and may be punished as a court-martial may direct.

HISTORY: [Derived from former Section 25-1-1440 (1950 (46) 1881; 1952 Code Section 44-79; 1962 Code Section 44-94; 1964 (53) 2241; repealed by 1984 Act No. 378, Section 91)] En by 1984 Act No. 378, Section 76; 1985 Act No. 84, Section 35.

SECTION 25-1-3050. Assault.

Any person subject to this code who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault and may be punished as a court-martial may direct.

HISTORY: Former Section 25-1-3050 [1950 (46) 1881; 1952 Code Section 44-213; 1962 Code Section 44-206; 1964 (53) 2241]; Repealed by codification of Code of Military Justice by 1984 Act No. 378, Section 77; New Section 25-1-3050 En by 1984 Act No. 378, Section 77.

SECTION 25-1-3055. Perjury.

Any person subject to this code who, in a judicial proceeding or in a course of justice, conducted under the code, wilfully and corruptly gives, upon a lawful oath, any false testimony material to the issue or matter of inquiry is guilty of perjury and may be punished as a court-martial may direct.

HISTORY: 1984 Act No. 378, Section 78; 1985 Act No. 84, Section 37.

SECTION 25-1-3060. Frauds against United States or the State or any officer of it.

Any person, subject to this code must, upon conviction of the following, be punished as a court-martial may direct, if he:

(1) knowing it to be false or fraudulent:

(A) makes any claim against the United States, the State, or any officer of them;

(B) presents to any person in the civil or military service thereof, for approval or payment any claim against the State or any officer of it;

(2) for the purpose of obtaining the approval, allowance, or payment of any claim against the State or any officer of it:

(A) makes or uses any writing or other paper knowing it to contain any false or fraudulent statements;

(B) makes any oath to any fact or to any writing or other paper knowing the oath to be false;

(C) forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing it to be forged and counterfeited;

(3) having charge, possession, custody, or control of any money or other property of the State furnished or intended for the military forces, knowingly delivers to any person having authority to receive it, any amount thereof less than that for which he receives a certificate or receipt;

(4) being authorized to make or deliver any paper certifying the receipt of any property of the State furnished or intended for the military forces, makes or delivers to any person the writings without having full knowledge of the truth of the statements contained in it and with intent to defraud the State.

HISTORY: Former Section 25-1-3060 [1950 (46) 1881; 1952 Code Section 44-215; 1962 Code Section 44-207; 1964 (53) 2241] recodified as Section 25-1-3140 by 1984 Act No. 378; New Section 25-1-3060 [derived from former Section 25-1-1440 (1950 (46) 1881; 1952 Code Section 44-79; 1962 Code Section 44-94; 1964 (53) 2241; repealed by 1984 Act No. 378, Section 91)] En by 1984 Act No. 378, Section 79.

SECTION 25-1-3065. Conduct unbecoming a member of the National Guard.

A person subject to the Code of Military Justice, who is convicted of conduct unbecoming a member of the National Guard, may be punished as a court-martial directs.

HISTORY: [Derived from former Section 25-1-2620 (1950 (46) 1881; 1952 Code Section 44-174; 1962 Code Section 44-174; 1964 (53) 2241)] En by 1984 Act No. 378, Section 80; 1985 Act No. 84, Section 38; 2001 Act No. 85, Section 43; 2011 Act No. 46, Section 24, eff June 7, 2011.

Effect of Amendment

The 2011 amendment rewrote the section.

SECTION 25-1-3067. Fraternization.

A person subject to the Code of Military Justice, upon conviction of the following, may be punished as a court-martial directs, if he:

- (1) was in the chain of command of a lower ranking member of the military forces;
- (2) exercised authority or command over that lower ranking member of the military forces;
- (3) fraternized with that lower ranking member of the military forces on terms of military equality; and
- (4) that under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the military forces or was of a nature to bring discredit upon the military forces.

HISTORY: 2011 Act No. 46, Section 1, eff June 7, 2011.

SECTION 25-1-3070. Punishment for disorders and neglects not specifically mentioned in Code of Military Justice.

Though not specifically mentioned in this code all disorders, neglects, and conduct to the prejudice of good order and discipline in the military forces, of which persons subject to the code may be guilty, must be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and may be punished at the discretion of that court.

HISTORY: Former Section 25-1-3070 [1962 Code Section 44-208; 1964 (53) 2241] recodified as Section 25-1-3145 by 1984 Act No. 378; New Section 25-1-3070 [derived from former Section 25-1-2630 (1950 (46) 1881; 1952 Code Section 44-175; 1962 Code Section 44-175; 1964 (53) 2241)] En by 1984 Act No. 378, Section 81; 1985 Act No. 84, Section 39.

SECTION 25-1-3075. Statutory and common law criminal offenses in State incorporated into Code of Military Justice.

All statutory and common law criminal offenses in the State of South Carolina are specifically incorporated in this code by reference and made a part of the code so that the commission of such statutory or common law criminal offense shall subject the violator to court-martial and punishment as the court-martial shall direct.

HISTORY: [Derived from former Section 25-1-2630 (1950 (46) 1881; 1952 Code Section 44-175; 1962 Code Section 44-175; 1964 (53) 2241)] En by 1984 Act No. 378, Section 82.

SECTION 25-1-3080. Courts of inquiry.

Courts of inquiry to investigate any matter of concern to the military forces may be convened by the Governor or Adjutant General for that purpose, whether or not the persons involved have requested such an inquiry.

A court of inquiry consists of three or more commissioned officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

Any person subject to this code whose conduct is subject to inquiry must be designated as a party. Any person subject to this code or employed by or for the military forces, who has a direct interest in the subject of inquiry has the right to be designated as a party upon request to the court. Any person designated as a party must be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

The members, counsel, the reporter, and the interpreters of courts of inquiry shall take an oath to faithfully perform their duties.

Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.

Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.

Each court of inquiry shall keep a record of its proceedings, which must be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record may not be authenticated by the president, it must be signed by a member in lieu of the president. If the record may not be authenticated by the counsel for the court, it must be signed by a member in lieu of the counsel.

HISTORY: Former Section 25-1-3080 [1962 Code Section 44-208; 1964 (53) 2241] recodified as Sections 25-1-2490 and 25-1-2800 by 1984 Act No. 378; New Section 25-1-3080 [derived from former Section 25-1-3100 (1950 (46) 1881; 1952 Code Sections 44-219, 44-221; 1962 Code Section 44-211; 1964 (53) 2241)] En by 1984 Act No. 378, Section 83; 1985 Act No. 84, Section 40.

SECTION 25-1-3085. Authority to administer oaths.

The following members of the military forces may administer oaths for the purpose of military administration, including military justice, and affidavits may be taken for those purposes before persons having the general powers of a notary public:

- (1) the state judge advocate;
- (2) all summary courts-martial;
- (3) all adjutants, assistant adjutants, acting adjutants, and personnel adjutants;
- (4) all judge advocates and legal officers, and acting or assistant judge advocates and legal officers;
- (5) the president, military judge, trial counsel, and assistant trial counsel for all general and special courts-martial;
- (6) the president and the counsel for the court of any court of inquiry;

- (7) all officers designated to take a deposition;
- (8) all persons detailed to conduct an investigation;
- (9) all officers;
- (10) all other persons designated by law or by regulations of the Governor.

The signature without seal of any person, together with the title of his office, is prima facie evidence of his authority.

HISTORY: [Derived from former Section 25-1-2860 (1950 (46) 1881; 1952 Code Section 44-186; 1962 Code Section 44-186; 1964 (53) 2241)] En by 1984 Act No. 378, Section 84; 2001 Act No. 85, Section 44.

SECTION 25-1-3090. Text of Code of Military Justice; availability to member of military forces.

A complete text of the Code of Military Justice and of the regulations prescribed by the code must be made available to any member of the military forces, upon his request, for his personal examination.

HISTORY: Former Section 25-1-3090 [1962 Code Section 44-210; 1964 (53) 2241] recodified as Section 25-1-2520 by 1984 Act No. 378; New Section 25-1-3090; En by 1984 Act No. 378, Section 85.

SECTION 25-1-3095. Complaint against officer.

Any member of the military forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to his next superior commissioned officer, who shall examine the complaint and take proper measures for redressing the wrong within his discretion. The Adjutant General shall have the final right of review and he may take such action as he considers necessary.

HISTORY: [Derived from former Section 25-1-2500 (1950 (46) 1881; 1952 Code Section 44-161; 1962 Code Section 44-161; 1964 (53) 2241)] En by 1984 Act No. 378, Section 86; 2001 Act No. 85, Section 45.

SECTION 25-1-3100. Redress for damages to property.

Whenever complaint is made to any commanding officer that damage or loss of property has occurred, either negligently or intentionally, of the State or of an individual, he may, subject to such regulations as the adjutant general may prescribe, convene a board to investigate the complaint. The board shall consist of from one to three commissioned officers and, for the purpose of that investigation, it has power to summon witnesses and examine them upon oath, to receive depositions or other documentary evidence and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by him must be charged against the pay of the offenders. The order of the commanding officer directing charges authorized by this section is conclusive, except as provided in the third paragraph of this section, on any disbursing officer for the payment by him to the injured parties of the damages so assessed and approved.

If the offenders may not be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be made in such proportion as may be considered just upon the individual members who are shown to have been present at the scene at the time the damages complained of were inflicted, as determined by the approved findings of the board.

Any person subject to this code who is accused of causing wilful damage to property has the right to be represented by counsel, to summon witnesses in his behalf and to cross-examine those appearing against him. Appeal may be taken only to the next higher authority who may approve or disapprove the findings or assess a smaller amount.

HISTORY: Former Section 25-1-3100 [1950 (46) 1881; 1952 Code Sections 44-219, 44-221; 1962 Code Section 44-211; 1964 (53) 2241] recodified as Section 25-1-3080 by 1984 Act No. 378; New Section 25-1-3100; En by 1984 Act No. 378, Section 87.

SECTION 25-1-3105. Members of military forces to serve at pleasure of adjutant general.

Members of the military forces shall serve at the pleasure of the adjutant general who may dismiss any member for good cause.

HISTORY: 1984 Act No. 378, Section 88.

SECTION 25-1-3110. Immunity for action of military courts or boards.

No action or proceeding in any state or federal court may be maintained against any member of the military forces acting under the authority or apparent authority of this code. This section may not be construed to bar any action or proceeding by any person who is not made subject to the Code of Military Justice under the provisions of Section 25-1-2430.

HISTORY: Former Section 25-1-3110 [1962 Code Section 44-212; 1964 (53) 2241] recodified as Section 25-1-3150 by 1984 Act No. 378; New Section 25-1-3110 [derived from former Section 25-1-2610 (1950 (46) 1881; 1952 Code Section 44-173; 1962 Code Section 44-173; 1964 (53) 2241)] En by 1984 Act No. 378, Section 89; 1985 Act No. 84, Section 41.

SECTION 25-1-3115. Request for assistance of solicitor of judicial circuit.

The presidents of courts-martial and summary court officers may request the aid of the solicitor of the judicial circuit in which the court is sitting for assistance in the issuance of any writ, warrant, subpoena, or other process that is necessary. It is the duty of each solicitor, when called upon, to assist in the issuance of process, and the form must be that which is considered by the solicitor to be most appropriate to the situation and in keeping with the form of the process of the courts of general sessions.

HISTORY: [Derived from former Section 25-1-2890 (1962 Code Section 44-189; 1964 (53) 2241)] En by 1984 Act No. 378, Section 90.

SECTION 25-1-3120. Oaths of members of court.

The trial counsel of a general or special court-martial shall administer to the members of the court, before they proceed upon any trial, the following oath or affirmation: "You, A.B., swear (or affirm) that you will well and truly try to determine, according to the evidence, the matter now before you between the State of South Carolina, and the person to be tried and that you will duly administer justice, without partiality, favor, or affection according to the provisions of the rules and articles for the government of the National Guard of South Carolina and if any doubt should arise, not explained by these articles, then according to your conscience, and the best of your understanding, do you further swear (or affirm) that you will not divulge the findings or sentence of the court until they shall be published by the proper authority, except to the trial counsel; neither will you disclose the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof as a witness by a court of justice in due course of law. So help you God."

HISTORY: [Derived from former Section 25-1-2910 (1950 (46) 1881; 1952 Code Section 44-189; 1962 Code Section 44-191; 1964 (53) 2241)] En by 1984 Act No. 378, Section 90.

SECTION 25-1-3125. Oath of trial counsel and reporter.

When the oath or affirmation has been administered to the members of a general or special court-martial the president of the court shall administer to the trial counsel an

oath in the following form: "Do you, A.B., swear (or affirm) that you will not divulge the findings or sentence of the court to any but the proper authority until they shall be duly disclosed by the same. So help you God." Every reporter of the proceedings of a court-martial shall, before entering upon his duties, make oath or affirmation in the following form: "Do you swear (or affirm) that you will faithfully perform the duties of reporter to this court. So help you God."

HISTORY: [Derived from former Section 25-1-2920 (1950 (46) 1881; 1952 Code Section 44-190; 1962 Code Section 44-192; 1964 (53) 2241)] En by 1984 Act No. 378, Section 90.

SECTION 25-1-3130. Oath of Witnesses.

All persons who give evidence before a court-martial must be examined on oath or affirmation administered by the trial counsel in the following form: "Do you swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth. So help you God." In case of affirmation the closing sentence of adjuration may be omitted.

HISTORY: [Derived from former Section 25-1-2930 (1950 (46) 1881; 1952 Code Section 44-206; 1962 Code Section 44-193; 1964 (53) 2241)] En by 1984 Act No. 378, Section 90.

SECTION 25-1-3135. Trial by court-martial does not bar trial in State courts.

Trial by court-martial of an accused does not act as a bar to indictment, trial, and punishment by the courts of general sessions for violation of any of the criminal laws of the State of South Carolina which the accused may have committed.

HISTORY: [Derived from former Section 25-1-3010 (1950 (46) 1881; 1952 Code Section 44-196; 1962 Code Section 44-198; 1964 (53) 2241)] En by 1984 Act No. 378, Section 90.

SECTION 25-1-3140. Writ when fine has not been paid.

When a fine has been assessed by a court-martial against a member of the National Guard of South Carolina and the proceedings of the court have been passed upon by the reviewing authority, and such fine is unpaid, the president, in the case of a general or special court-martial, or the summary court officer, in the case of a summary court-martial, shall issue a writ in substantially the following form.

STATE OF SOUTH CAROLINA

COUNTY OF _____

To any sheriff or constable in the State, Greetings:

Whereas, _____ of _____ in the county of _____, a member of the National Guard of South Carolina, was on the ____ day of _____, A. D., 19____, tried and found guilty of _____ in violation of _____ and was by court-martial sentenced to pay a fine of \$ _____ or serve ____ days in jail.

Whereas, such fine has not been paid.

Now, Therefore, by authority of the State of South Carolina, you are hereby commanded to take the body of the said _____ and commit it to the keeper of the jail in the county of _____ within such jail, who is hereby commanded to receive the body of said _____ and keep him safely until he pays the sum above mentioned, or serves ____ days provided said fine due shall be reduced proportionately with the number of days served.

Fail not but service and return make within thirty days from this date.

Dated at _____ in the county of _____ this ____ day of _____, 19____.

Name _____ Rank _____ Organization _____

President of _____ Court National Guard of South Carolina

HISTORY: [Derived from former Section 25-1-3060 (1950 (46) 1881; 1952 Code Section 44-215; 1962 Code Section 44-207; 1964 (53) 2241)] En by 1984 Act No. 378, Section 90.

Editor's Note

This form is reprinted to correct printing errors in the main volume.

SECTION 25-1-3145. Writ of sentence of confinement.

When a sentence of confinement has been imposed by a court-martial against a member of the National Guard of South Carolina and the sentence of the court has been passed upon by the reviewing authority, the president, in case of a general or special court-martial, or the summary court officer, in the case of a summary court-martial, shall issue a writ in substantially the following form:

STATE OF SOUTH CAROLINA

COUNTY OF _____

To any sheriff in the State, Greetings:

Whereas, _____ of _____ in the county of _____, a member of the National Guard of South Carolina, was on the ____ day of _____, A.D., 19____, tried and found guilty of _____ in violation of _____ and was by court-martial sentenced to _____.

Now, Therefore, by authority of the State of South Carolina, you are hereby commanded to take the body of said _____ and commit it to the keeper of the jail in the county of _____ within such jail, who is hereby commanded to receive the body of said _____, and keep him safely until he serves said sentence.

Fail not but service and return make within thirty days from this date.

Dated at _____ in the county of _____ this ____ day of _____, 19__.

US _____

Name _____ Rank _____ Organization _____

President of _____ Court National Guard of South Carolina

HISTORY: [Derived from former Section 25-1-3070 (1962 Code Section 44-208; 1964 (53) 2241)] En by 1984 Act No. 378, Section 90.

SECTION 25-1-3150. Costs and expenses of courts-martial and courts of inquiry.

All costs and expenses involved in the proceedings of courts-martial and courts of inquiry must be paid by the adjutant general out of the appropriate military funds of this State.

HISTORY: [Derived from former Section 25-1-3110 (1962 Code Section 44-212; 1964 (53) 2241)] En by 1984 Act No. 378, Section 90.

SECTION 25-1-3155. Delegation of authority.

The Governor or adjutant general may delegate any authority vested in him under this code and may provide for the subdelegation of the authority, except the power given the Governor by Section 25-1-2580.

HISTORY: 1984 Act No. 378, Section 90.

SECTION 25-1-3160. Construction of Code of Military Justice.

The Code of Military Justice must be so construed as to effectuate its general purpose to make it uniform so far as practical with the Uniform Code of Military Justice, Chapter 47, Title 10, United States Code, and the Manual for Courts-Martial. Moreover, the Adjutant General may establish procedures to conform state military judicial proceedings with those used in circuit courts of this State. The systems and procedures established in the Uniform Code of Military Justice for the governing of military forces, so far as applicable and not in conflict with a statute or regulation prescribed in this code, is considered in full force and regarded as a part of this chapter.

HISTORY: 1984 Act No. 378, Section 90; 2011 Act No. 46, Section 25, eff June 7, 2011.

Effect of Amendment

The 2011 amendment inserted the second sentence and made other nonsubstantive changes.

ARTICLE 21

South Carolina Servicemembers Civil Relief Act

Editor's Note

2019 Act No. 23, Section 3, provides as follows:

"SECTION 3. This act takes effect upon approval by the Governor and applies to contracts entered into on or after that date."

SECTION 25-1-4010. Short title.

This article may be cited as the "South Carolina Servicemembers Civil Relief Act".

HISTORY: 2019 Act No. 23 (H.3180), Section 1, eff April 26, 2019.

Editor's Note

2019 Act No. 23, Section 3, provides as follows:

"SECTION 3. This act takes effect upon approval by the Governor and applies to contracts entered into on or after that date."

SECTION 25-1-4020. Purpose and application of article.

This article is intended to expand and supplement the rights, benefits, and protections of the federal Servicemembers Civil Relief Act, 50 U.S.C. Section 3901, et seq. Nothing in this article may be construed as a restriction or limitation on the rights, benefits, and protections granted to a servicemember pursuant to federal law. A violation of the federal Servicemembers Civil Relief Act, 50 U.S.C. Section 3901, et seq., constitutes a violation of this article. The provisions of this article related to contractual agreements or obligations shall apply to any applicable contract entered into, extended, or amended on or after July 1, 2019.

HISTORY: 2019 Act No. 23 (H.3180), Section 1, eff April 26, 2019.

Editor's Note

2019 Act No. 23, Section 3, provides as follows:

"SECTION 3. This act takes effect upon approval by the Governor and applies to contracts entered into on or after that date."

SECTION 25-1-4030. Definitions.

For purposes of this article:

- (1) "Dependent", with respect to a servicemember, has the meaning set forth in 50 U.S.C. Section 3911(4).
- (2) "Military service" means any of the following:
 - (a) the meaning set forth in 50 U.S.C. Section 3911(2);
 - (b) in the case of a servicemember who is a member or reserve member of the Army, Navy, Air Force, Marine Corps, or Coast Guard, full-time duty in the active military service of the United States, including:
 - (i) full-time training duty;
 - (ii) annual training duty; and
 - (iii) attendance while at a school designated as a service school by federal law or by the secretary of the military department concerned;
 - (c) in the case of a member of the South Carolina National Guard, service under a call to active:
 - (i) service authorized by the President of the United States or the Secretary of Defense for a period of more than thirty days in response to a national emergency declared by the President of the United States; or
 - (ii) duty authorized pursuant to Article 15 for a period of more than thirty consecutive days;
 - (d) in the case of a member of the National Guard of another state, service under an order of the governor of that state, which is similar to South Carolina state active duty, for a period of more than thirty consecutive days;
 - (e) in the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service; or

(f) any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(3) "Period of military service" means the period beginning on the date on which a servicemember enters military service and ending on the date on which the servicemember is released from military service or dies while in military service.

(4) "Servicemember" means an individual engaged in military service or a member of the uniformed services, as that term is defined in 50 U.S.C. Section 3911(1).

HISTORY: 2019 Act No. 23 (H.3180), Section 1, eff April 26, 2019.

Editor's Note

2019 Act No. 23, Section 3, provides as follows:

"SECTION 3. This act takes effect upon approval by the Governor and applies to contracts entered into on or after that date."

SECTION 25-1-4040. Rights, benefits, and protections apply to servicemembers engaged in military service; exceptions; violations.

The rights, benefits, and protections of the federal Servicemembers Civil Relief Act, 50 U.S.C. Section 3901, et seq., apply to a servicemember engaged in military service. However, in the case of a servicemember engaged in military service pursuant to Section 25-1-4030(2)(c)(ii) or (d), a person is not subject to the remedies or penalties of this article unless the servicemember gives to the person a written or electronic copy of the order to military service. A violation of the federal Servicemembers Civil Relief Act, as expanded by this section, is a violation of this article.

HISTORY: 2019 Act No. 23 (H.3180), Section 1, eff April 26, 2019.

Editor's Note

2019 Act No. 23, Section 3, provides as follows:

"SECTION 3. This act takes effect upon approval by the Governor and applies to contracts entered into on or after that date."

SECTION 25-1-4050. Rights and protections provided to dependents of servicemembers.

A dependent of a servicemember engaged in military service has the same rights and protections provided to a servicemember pursuant to Section 25-1-4060 and Subchapter II, Chapter 50, Title 50 of the U.S.C.

HISTORY: 2019 Act No. 23 (H.3180), Section 1, eff April 26, 2019.

Editor's Note

2019 Act No. 23, Section 3, provides as follows:

"SECTION 3. This act takes effect upon approval by the Governor and applies to contracts entered into on or after that date."

SECTION 25-1-4060. Termination of contracts after receiving military orders; notice of termination; penalties; refunds; taxes.

(A) In addition to the rights and protections regarding consumer transactions, contracts, and service providers provided to a servicemember pursuant to Subchapter III, Chapter 50, Title 50 of the U.S.C., a servicemember may terminate a contract described in subsection (B) of this section at any time after the date the servicemember receives military orders to relocate for a period of service of at least ninety days to a location that does not support the contract.

(B) This section applies to a contract to provide the following:

- (1) telecommunication services;
- (2) Internet services;
- (3) television services including, but not limited to, cable television, direct satellite, and other similarly comparable television services;
- (4) athletic club or gym memberships; or
- (5) satellite radio services.

(C) A servicemember shall give to the service provider written or electronic notice of the termination and a written or electronic copy of the order to relocate, together with the date on which the service is to be terminated. If a servicemember, as defined in Section 25-1-4030(4), terminates a contract pursuant to this section, then the service provider shall inform the servicemember of the servicemember's rights posted on the South Carolina National Guard's Internet website pursuant to Section 25-1-4080.

(D) The service provider may not impose an early termination penalty, charge, or fee for a contract terminated pursuant to this section.

(E) Not later than sixty days after the termination date of the contract, the service provider shall refund to the servicemember any fee paid for a service that extends beyond the termination date of the contract.

(F) The servicemember shall pay the tax or other contractual obligation or liability that is due and unpaid at the time of termination of the contract.

(G) If the servicemember resubscribes to the service provided under the contract within ninety days of returning from military service, the service provider may not impose a charge or fee, other than the usual and customary charges and fees for the installation or acquisition of customer equipment imposed on other subscribers.

HISTORY: 2019 Act No. 23 (H.3180), Section 1, eff April 26, 2019.

Editor's Note

2019 Act No. 23, Section 3, provides as follows:

"SECTION 3. This act takes effect upon approval by the Governor and applies to contracts entered into on or after that date."

SECTION 25-1-4070. Civil actions; remedies; penalties.

(A) A servicemember, the dependent of a servicemember, or the South Carolina Attorney General may bring a civil action against a person who intentionally violates a provision of this article.

(B) The court may order one or more of the following remedies:

- (1) injunction; or

(2) payment of restitution to a servicemember in the amount of money unlawfully received from, or required to be refunded to, the servicemember, unless the servicemember has successfully recovered the amount in a separate action under the federal Servicemembers Civil Relief Act, 50 U.S.C. Section 3901, et seq.

(C) In the event of an intentional violation of this article, the court may assess a civil penalty not to exceed five thousand dollars per violation. Fifty percent of the proceeds of civil penalties imposed pursuant to this section must be remitted to the general fund of the State, and the remaining fifty percent may be retained by the Office of the Attorney General and carried forward to succeeding fiscal years to support enforcement or public education efforts directly related to the purpose of this article.

HISTORY: 2019 Act No. 23 (H.3180), Section 1, eff April 26, 2019.

Editor's Note

2019 Act No. 23, Section 3, provides as follows:

"SECTION 3. This act takes effect upon approval by the Governor and applies to contracts entered into on or after that date."

SECTION 25-1-4080. List of rights of servicemember or servicemember's dependent posted on South Carolina National Guard website.

The Adjutant General shall post on the South Carolina National Guard website a list of the rights a servicemember or a servicemember's dependent has pursuant to both the South Carolina Servicemembers Civil Relief Act and the federal Servicemembers Civil Relief Act, 50 U.S.C. Section 3901, et seq.

HISTORY: 2019 Act No. 23 (H.3180), Section 1, eff April 26, 2019.

Editor's Note

2019 Act No. 23, Section 3, provides as follows:

"SECTION 3. This act takes effect upon approval by the Governor and applies to contracts entered into on or after that date."