

**Enrolled**  
**House Bill 2163**

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Oregon Military Department)

CHAPTER .....

AN ACT

Relating to military justice; creating new provisions; and amending ORS 398.012, 398.420 and 399.238.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** ORS 398.012 is amended to read:

398.012. (1) The Governor, on the recommendation of the Adjutant General, shall appoint an officer of the organized militia as State Judge Advocate. To be eligible for appointment as **State Judge Advocate**, an officer must:

- (a) Be a member in good standing of the Oregon State Bar;
- (b) Have been a member of the Oregon State Bar for at least five years; and
- (c) Meet the qualifications for a judge advocate under the Uniform Code of Military Justice.

(2) **The Adjutant General may appoint an officer of the organized militia as an Assistant State Judge Advocate.** The Adjutant General may appoint as many Assistant State Judge Advocates as the Adjutant General deems necessary. [*The Assistant State Judge Advocates shall be officers of the organized militia and members of the Oregon State Bar.*] **To be eligible for appointment as an Assistant State Judge Advocate, an officer must:**

- (a) **Be a member in good standing of the Oregon State Bar; and**
- (b) **Meet the qualifications for a judge advocate under the Uniform Code of Military Justice.**

(3)(a) [*However,*] The Adjutant General may appoint temporary Assistant State Judge Advocates [*for a period not to exceed 12 months*] **who are officers of the organized militia.** An individual appointed as a temporary Assistant State Judge Advocate **has 12 months from the date of appointment to become a member in good standing of the Oregon State Bar and meet the qualifications for a judge advocate under the Uniform Code of Military Justice.**

(b) **The legal services performed by a temporary Assistant State Judge Advocate are limited to those legal services that may be performed by legal assistants consistent with ORS 9.160.**

(c) **A temporary Assistant State Judge Advocate who has met the requirements under this subsection is eligible for appointment as an Assistant State Judge Advocate.**

(d) **The Adjutant General may extend, for an additional 12 months, the time during which a temporary Assistant State Judge Advocate must meet the qualifications described in paragraph (a) of this subsection.**

(4) **The Adjutant General may appoint State Judge Advocate Legal Assistants for a period not to exceed 12 months. An individual appointed as a State Judge Advocate Legal Assistant**

shall be an officer of the Oregon State Defense Force and shall be legally trained but is not required to be admitted to the practice of law by the Supreme Court of this state. The legal services performed by *[temporary Assistant State Judge Advocates shall be]* **a State Judge Advocate Legal Assistant** are limited to those legal services that may be performed by legal assistants consistent with ORS 9.160.

*[(3)]* **(5)** The State Judge Advocate, **the Senior Force Judge Advocate, as defined in the Oregon Code of Military Justice (2008)**, or **their** assistants shall make frequent inspections in the field for supervision of the administration of military justice and general military legal matters.

*[(4)]* **(6)(a)** Convening authorities shall at all times communicate directly with their *[staff judge advocate or legal officers]* **judge advocate** in matters relating to the administration of military justice and general military legal matters; *and*.

**(b)** The *[staff judge advocate or legal officer]* **judge advocate** of any command *[is entitled to]* **may** communicate directly with the *[staff judge advocate or legal officer]* **judge advocate** of a superior or subordinate command, or with the State Judge Advocate **or the Senior Force Judge Advocate, as defined in the Oregon Code of Military Justice (2008)**.

*[(5)]* **(7)** A person who has acted as member, military judge, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel or investigating officer, or who has been a witness for either the prosecution or defense in any case, may not later act as *[staff judge advocate or legal officer]* **judge advocate** to any reviewing authority upon the same case.

*[(6)]* **(8)** A judicial officer, as defined by ORS 1.210, is not prohibited, by reason of holding that office, from:

**(a)** Performing all acts necessary or incumbent to the authorized exercise of duties as a judge advocate or as a member of the Military Council.

**(b) Being assigned as a judge advocate by the Adjutant General as appointed by the Governor as Commander in Chief under the Oregon Constitution.**

**SECTION 2.** ORS 398.420 is amended to read:

398.420. (1) There is established within the Oregon Military Department the Armed Forces Court of Appeals for Oregon.

(2) The court shall have **exclusive** jurisdiction over appeals properly brought *[under regulations adopted by the Adjutant General]* **under this chapter and ORS chapters 396 and 399.**

(3) The Adjutant General shall appoint three persons who shall serve as judges on the court. The persons appointed shall serve without compensation.

(4) One person shall be Chief Judge and two persons shall be Associate Judges. The Chief Judge shall be selected by the three judges. The selection shall be subject to the approval of the Adjutant General.

(5)(a) Appointments shall be for a term of six years, except that the initial appointments of the judges shall be for the following terms:

(A) One judge shall serve a two-year term.

(B) One judge shall serve a four-year term.

(C) One judge shall serve a six-year term.

(b) The term of office of any successor judges shall be six years, but any judge appointed to fill a vacancy occurring prior to the expiration of the term for which the judge's predecessor was appointed shall be appointed only for the unexpired term of the predecessor.

(c) Any person appointed to a full or partial term on the court, unless otherwise disqualified, shall be eligible for reappointment.

(6) A person is eligible for appointment to the court if the person:

(a) Is a member of the Oregon State Bar and admitted to practice before the highest court of this state;

(b) Is a former commissioned officer of the Armed Forces of the United States *[(regular, reserve or National Guard)]* **or the reserve components**, or is a former or current member of the Oregon State Defense Force; and

(c) Has at least:

(A) Five years' experience as an officer in the Judge Advocate General's Corps; or  
(B) Fifteen years' experience in the Judge Advocate Branch of the Oregon State Defense Force.  
(7) Judges of the court may be removed by the Adjutant General, upon notice and hearing, for neglect of duty or malfeasance in office or for mental or physical disability, but for no other cause.

(8) If a judge of the court is temporarily unable to perform the judge's duties due to mental or physical disability, the Adjutant General may designate another person eligible for appointment to the court to fill the office for the period of disability.

(9) The Oregon Military Department shall be responsible for reimbursement and funding of all usual travel and per diem expenses of the judges.

(10) The Adjutant General shall adopt regulations to govern appellate procedure before the court. The regulations shall be substantially similar to the provisions for post-trial procedure and review of courts-martial under the Uniform Code of Military Justice.

**(11) A party aggrieved by a decision of the Armed Forces Court of Appeals for Oregon may petition the Supreme Court of this state for review within 35 days after the date of the decision, in the manner provided by rules of the Supreme Court.**

**SECTION 3.** ORS 399.238 is amended to read:

399.238. (1) As used in this section, "service member" means:

(a) A member of the organized militia who is called into active service [*of the state by the Governor*] under ORS [399.065 (1)] **chapter 399.**

(b) A member of the Oregon National Guard who is called into active service outside this state under Title 10 or Title 32 of the United States Code.

*[(c) A member of the Oregon National Guard who is called into active state duty under ORS 399.075.]*

(2) A service member may, while in active service [*or active state duty*] or within [*six months*] **one year** after that service [*or duty*] ends, apply to a court or an administrative body:

(a) For relief with respect to any obligation or liability incurred by the member before the period of active service [*or active state duty*] began. The court or administrative body, after appropriate notice and hearing, may grant relief unless the court or administrative body determines that the ability of the member to comply with the terms of the obligation or liability has not been materially affected by active service [*or active state duty*].

(b) For a stay of a civil or administrative proceeding in which the service member is a party. The court or administrative body, after appropriate notice, shall grant the stay unless the court or administrative body determines that the ability of the service member to appear is not materially affected by active service [*or active state duty*].

(3) The court or administrative body may not charge or collect any fee from a service member who applies to the court or administrative body for relief under this section.

(4) An application filed under this section may not be deemed as consent to jurisdiction in any action or proceeding.

**(5) The period of a service member's active service may not be included in computing any period limited by law, rule or order for bringing any action or proceeding before a court or administrative body for or against the service member or the service member's heirs, executors, administrators or assigns.**

**SECTION 4.** The amendments to ORS 399.238 by section 3 of this 2009 Act apply to applications to a court or an administrative body brought on or after the effective date of this 2009 Act.

**Passed by House March 24, 2009**

**Repassed by House May 22, 2009**

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Chief Clerk of House

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Speaker of House

**Passed by Senate May 20, 2009**

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President of Senate

**Received by Governor:**

.....M,....., 2009

**Approved:**

.....M,....., 2009

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Governor

**Filed in Office of Secretary of State:**

.....M,....., 2009

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Secretary of State