

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)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows Adjutant General to appoint temporary Assistant State Judge Advocates who must meet certain qualifications within 12 months of appointment.

Creates position of State Judge Advocate Legal Assistant.

Gives Supreme Court of this state exclusive jurisdiction over appeals from Armed Forces Court of Appeals for Oregon.

Provides for tolling of statute of limitations during service member's active service. Decreases time that service member may apply to court or administrative body for relief.

A BILL FOR AN ACT

1
2 Relating to military justice; creating new provisions; and amending ORS 398.012, 398.420 and
3 399.238.

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

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

6 398.012. (1) The Governor, on the recommendation of the Adjutant General, shall appoint an of-
7 ficer of the organized militia as State Judge Advocate. To be eligible for appointment **as State**
8 **Judge Advocate**, an officer must:

9 (a) Be a member in good standing of the Oregon State Bar;

10 (b) Have been a member of the Oregon State Bar for at least five years; and

11 (c) Meet the qualifications for a judge advocate under the Uniform Code of Military Justice.

12 (2) **The Adjutant General may appoint an officer of the organized militia as an Assistant**
13 **State Judge Advocate.** The Adjutant General may appoint as many Assistant State Judge Advoc-
14 ates as the Adjutant General deems necessary. [*The Assistant State Judge Advocates shall be offi-*
15 *cers of the organized militia and members of the Oregon State Bar.*] **To be eligible for appointment**
16 **as an Assistant State Judge Advocate, an officer must:**

17 (a) **Be a member in good standing of the Oregon State Bar; and**

18 (b) **Meet the qualifications for a judge advocate under the Uniform Code of Military Jus-**
19 **tice.**

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

25 (b) **The legal services performed by a temporary Assistant State Judge Advocate are**
26 **limited to those legal services that may be performed by legal assistants consistent with ORS**
27 **9.160.**

28 (c) **A temporary Assistant State Judge Advocate who has met the requirements under**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 **this subsection is eligible for appointment as an Assistant State Judge Advocate.**

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

5 **(4) The Adjutant General may appoint State Judge Advocate Legal Assistants for a period**
 6 **not to exceed 12 months. An individual appointed as a State Judge Advocate Legal Assistant**
 7 **shall be an officer of the Oregon State Defense Force and shall be legally trained but is not required**
 8 **to be admitted to the practice of law by the Supreme Court of this state. The legal services per-**
 9 **formed by [temporary Assistant State Judge Advocates shall be] a State Judge Advocate Legal**
 10 **Assistant are limited to those legal services that may be performed by legal assistants consistent**
 11 **with ORS 9.160.**

12 **[(3)] (5) The State Judge Advocate, the Senior Force Judge Advocate, as defined in the**
 13 **Oregon Code of Military Justice (2008), or their assistants shall make frequent inspections in the**
 14 **field for supervision of the administration of military justice and general military legal matters.**

15 **[(4)] (6)(a) Convening authorities shall at all times communicate directly with their [staff judge**
 16 **advocate or legal officers] judge advocate in matters relating to the administration of military jus-**
 17 **tice and general military legal matters[; and].**

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

22 **[(5)] (7) A person who has acted as member, military judge, trial counsel, assistant trial counsel,**
 23 **defense counsel, assistant defense counsel or investigating officer, or who has been a witness for**
 24 **either the prosecution or defense in any case, may not later act as [staff judge advocate or legal of-**
 25 **ficer] judge advocate to any reviewing authority upon the same case.**

26 **[(6)] (8) A judicial officer, as defined by ORS 1.210, is not prohibited, by reason of holding that**
 27 **office, from:**

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

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

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

33 398.420. (1) There is established within the Oregon Military Department the Armed Forces Court
 34 of Appeals for Oregon.

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

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

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

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

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

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

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

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

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

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

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

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

13 (c) Has at least:

14 (A) Five years' experience as an officer in the Judge Advocate General's Corps; or

15 (B) Fifteen years' experience in the Judge Advocate Branch of the Oregon State Defense Force.

16 (7) Judges of the court may be removed by the Adjutant General, upon notice and hearing, for
17 neglect of duty or malfeasance in office or for mental or physical disability, but for no other cause.

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

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

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

26 **(11) The Supreme Court of this state has exclusive jurisdiction over all appeals from the**
27 **Armed Forces Court of Appeals for Oregon.**

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

29 399.238. (1) As used in this section, "service member" means:

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

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

34 [*c) A member of the Oregon National Guard who is called into active state duty under ORS*
35 *399.075.*]

36 (2) A service member may, while in active service [*or active state duty*] or within [*six months*]
37 **90 days** after that service [*or duty*] ends, apply to a court or an administrative body:

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

43 (b) For a stay of a civil or administrative proceeding in which the service member is a party.
44 The court or administrative body, after appropriate notice, shall grant the stay unless the court or
45 administrative body determines that the ability of the service member to appear is not materially

1 affected by active service [*or active state duty*].

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

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

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

10 **SECTION 4. The amendments to ORS 399.238 by section 3 of this 2009 Act apply to ap-**
11 **plications to a court or an administrative body brought on or after the effective date of this**
12 **2009 Act.**

13 _____