

# Enrolled Senate Bill 32

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor John A. Kitzhaber, M.D., for Oregon Military Department)

CHAPTER .....

AN ACT

Relating to military regulations for governance of the militia; creating new provisions; amending ORS 107.169, 109.056, 396.125, 396.128, 398.002, 398.004, 398.006, 398.010, 398.012, 398.014, 398.058, 398.118, 398.120, 398.216, 398.224, 398.234, 398.252, 398.408, 398.414, 398.416, 398.420, 399.075, 399.515, 401.656, 646.605 and 659A.086; repealing ORS 398.008, 398.052, 398.054, 398.056, 398.062, 398.065, 398.066, 398.068, 398.083, 398.102, 398.104, 398.106, 398.108, 398.110, 398.112, 398.114, 398.116, 398.126, 398.128, 398.130, 398.132, 398.135, 398.136, 398.138, 398.140, 398.162, 398.164, 398.166, 398.168, 398.170, 398.172, 398.202, 398.204, 398.206, 398.209, 398.210, 398.212, 398.214, 398.218, 398.220, 398.222, 398.228, 398.230, 398.232, 398.236, 398.238, 398.254, 398.256, 398.258, 398.272, 398.274, 398.276, 398.278, 398.280, 398.282, 398.284, 398.286, 398.288, 398.290, 398.292, 398.294, 398.296, 398.302, 398.304, 398.306, 398.308, 398.310, 398.312, 398.314, 398.316, 398.318, 398.320, 398.322, 398.324, 398.326, 398.328, 398.330, 398.332, 398.334, 398.336, 398.338, 398.340, 398.342, 398.344, 398.346, 398.348, 398.350, 398.352, 398.354, 398.356, 398.358, 398.360, 398.362, 398.366, 398.368, 398.370, 398.372, 398.374, 398.375, 398.378, 398.380, 398.384, 398.386, 398.388, 398.391, 398.393, 398.394, 398.395, 398.397, 398.399, 398.400, 398.402, 398.404 and 398.410; and declaring an emergency.

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

## OREGON CODE OF MILITARY JUSTICE

**SECTION 1.** ORS 396.125 is amended to read:

396.125. (1) The Governor of *[the]* **this** state, by virtue of office, is the Commander in Chief of the militia of *[the]* **this** state, and may issue military regulations for the governance of the militia. Military regulations issued by the Governor shall have the *[same force and effect as the provisions of this chapter and ORS chapters 398 and 399]* **full force and effect of law. To the extent a regulation issued under this section conflicts with any other law of this state, the regulation shall supersede the conflicting law.**

(2) In issuing *[such]* regulations **under this section**, the Governor may give consideration to the laws and regulations of the United States relating to the organization, discipline and training of the militia, to the provisions of this chapter and ORS chapters 398 and 399 and to the laws and regulations governing the United States Army and United States Air Force. *[The military regulations in force on July 15, 2005, shall remain in force until new regulations are approved and promulgated.]*

[(2)] (3) The Governor may delegate to the Adjutant General authority to issue the regulations described in [subsection (1) of] this section for the governance of the militia.

**SECTION 2.** ORS 396.128 is amended to read:

396.128. (1) If the Adjutant General [adopts] **issues** regulations for the [organization, discipline and] governance of the organized militia **as provided under ORS 396.125**, the Adjutant General shall specify in the regulations a date on which the regulations become operative for the purposes of all conduct **subject to the regulations** occurring on or after the specified date. [The provisions of ORS chapters 396, 398 and 399 do not apply to any conduct occurring on or after the specified date.] **To the extent a regulation issued under this section conflicts with a provision of this chapter, ORS chapter 398 or 399 or any other law of this state, the regulation shall supersede the conflicting provision or law.**

(2) **Regulations issued by the Adjutant General under this section and ORS 396.125 that have become operative shall be known and cited as “the Oregon Code of Military Justice.”**

**SECTION 3.** ORS 398.002 is amended to read:

398.002. As used in this chapter and ORS 396.120, 396.145, 399.205 and 399.515, unless the context requires otherwise, **the following terms have the meanings given those terms in the Oregon 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, or any other person who has an interest other than an official interest in the prosecution of the accused.]

[(2)] “Active state duty” means full-time duty in the active military service of the state under an order of the Governor issued under authority vested in the Governor by law, and includes travel to and from such duty. The term “active state duty” also includes all Oregon National Guard personnel serving on active duty under Title 32 U.S.C. 502(f).]

[(3)] (1) “Commanding officer.” [includes only commissioned officers in positions of command.]

[(4)] (2) “Commissioned officer.” [includes a commissioned warrant officer.]

[(5)] “Component” includes the Army National Guard, the Air National Guard and the Oregon State Defense Force.]

[(6)] (3) “Confining authority.” [means the Governor, a military court or a convening authority or commanding officer designated by the Adjutant General.]

[(7)] (4) “Convening authority.” [means a person authorized under this chapter to convene a court-martial.]

[(8)] “Duty status other than active state duty” means any drill periods and such other training or service, other than active state duty, as may be required under state or federal laws, regulations or orders, and travel to and from such duty.]

[(9)] (5) “Enlisted member.” [means a person in an enlisted grade.]

[(10)] “Grade” means a step or degree, in a graduated scale of office or military rank, that is established and designated as a grade by law or regulation.]

[(11)] (6) “Judge advocate.” [means the State Judge Advocate or an Assistant State Judge Advocate.]

[(12)] “Military” refers to any or all of the armed forces.]

[(13)] (7) “Military court.” [means a court-martial, a court of inquiry or a provost court.]

[(14)] (8) “Military judge.” [means an official of a general or special court-martial detailed in accordance with ORS 398.135.]

[(15)] (9) “Officer.” [means commissioned or warrant officer.]

[(16)] “Organized militia” means the organized militia described in ORS 396.105.]

[(17)] “Rank” means the order of precedence among members of the armed forces.]

[(18)] (10) “Record.” [,” when used in connection with the proceedings of a court-martial, means:]

[(a) An official written transcript, written summary or other writing relating to the proceedings; or]

[(b) An official audiotape, videotape or similar material from which sound or sound and visual images depicting the proceedings may be reproduced.]

[(19)] (11) “State Judge Advocate.” [means the commissioned officer responsible for supervising the administration of military justice and general military legal matters in the organized militia.]

[(20)] (12) “Superior commissioned officer.” [means a commissioned officer superior in rank or command.]

[(21)] “Uniform Code of Military Justice” means chapter 47 (commencing with section 801) of Title 10 of the United States Code and regulations adopted thereunder, together with the Manual for Courts-Martial, United States, 1984 (Executive Order 12473 of July 13, 1984, as amended).]

**SECTION 4.** ORS 398.004 is amended to read:

398.004. (1) The following persons who are not in federal service are subject to [this chapter] **the Oregon Code of Military Justice as described in ORS 396.128:**

[(1)] (a) Members of the organized militia.

[(2)] (b) All other persons lawfully ordered to duty in or with the organized militia, from the dates they are required by the terms of the order or other directive to obey the same.

(2) **A person may not be tried or punished for any offense provided in the Oregon Code of Military Justice unless:**

(a) **The offense was committed while the person was in a duty status during a period of time in which the person was under lawful orders to be in a duty status; or**

(b) **The offense charged has a connection with the military status or assignment of the person. For purposes of this paragraph, the required connection with military status or assignment is conclusively established for offenses for which there is no equivalent offense in the general criminal laws of this state and for offenses involving wrongful use, possession, manufacture, distribution or introduction of a controlled substance described in Article 112a of the Oregon Code of Military Justice.**

(3)(a) **Subject matter jurisdiction is established if a nexus exists between an offense, either military or nonmilitary, and the state military force.**

(b) **State military forces have primary jurisdiction of military offenses defined in Article 1(a)(18) of the Oregon Code of Military Justice when persons subject to the code are in a duty status or are properly ordered to be in a duty status.**

(c) **Except as provided in paragraph (f) of this subsection, a civilian court has primary jurisdiction of an offense when:**

(A) **An act or omission violates both the Oregon Code of Military Justice and a state, federal or foreign criminal law; and**

(B) **A person subject to the code was neither in a duty status nor properly ordered to be in a duty status at the time of the act or omission.**

(d) **When a person is charged with an offense described in paragraph (c) of this subsection, a court-martial or nonjudicial punishment may be initiated only after a civilian court has declined to prosecute or has dismissed the charge, provided jeopardy has not attached.**

(e) **Jurisdiction over attempted crimes, conspiracy crimes, solicitation and accessory crimes must be determined by the underlying offense.**

(f) **State military forces have jurisdiction of any offense involving a person subject to the Oregon Code of Military Justice when the person is in a duty status, when the person is properly ordered to be in a duty status or when the sole offense is conduct that is prohibited by Article 112a of the Oregon Code of Military Justice.**

**SECTION 5.** ORS 398.006 is amended to read:

398.006. (1) Each person discharged from the organized militia who is later charged with having fraudulently obtained the discharge of the person is, subject to ORS 398.216, subject to trial by court-martial on that charge and is after apprehension subject to [this chapter] **the Oregon Code of Military Justice** while in the custody of the military for that trial. Upon conviction of that charge, the person is subject to trial by court-martial for all offenses under [this chapter] **the Oregon Code of Military Justice** committed before the fraudulent discharge.

(2) [No] A person who has deserted from the organized militia may **not** be relieved from amenability to the jurisdiction of [this chapter] **the Oregon Code of Military Justice** by virtue of a separation from any later period of service.

**SECTION 6.** ORS 398.010 is amended to read:

398.010. (1) [This chapter] **The Oregon Code of Military Justice** applies throughout [the state. It] **this state and** also applies to all persons otherwise subject to [this chapter] **the code** while they are serving outside the state, and while they are going to and returning from such service outside the state, in the same manner and to the same extent as if they were serving inside the state.

(2) Courts-martial and courts of inquiry may be convened and held in units of the organized militia while those units are serving outside the state with the same jurisdiction and powers as to persons subject to [this chapter] **the Oregon Code of Military Justice** as if the proceedings were held inside the state; and]. Offenses committed outside the state may be tried and punished either inside or outside the state.

**SECTION 7.** 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,

**10 U.S.C. 801 et seq.**

(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. 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,

**10 U.S.C. 801 et seq.**

(3)(a) The Adjutant General may appoint temporary Assistant State Judge Advocates 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, **10 U.S.C. 801 et seq.**

(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 a State Judge Advocate Legal Assistant are limited to those legal services that may be performed by legal assistants consistent with ORS 9.160.

(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.

(6)(a) Convening authorities shall at all times communicate directly with their judge advocate in matters relating to the administration of military justice and general military legal matters.

(b) The judge advocate of any command may communicate directly with the 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)].

(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 judge advocate to any reviewing authority upon the same case.

(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 8.** ORS 398.014 is amended to read:

398.014. (1) A charge against a person subject to [this chapter] **the Oregon Code of Military Justice** for an offense that is classified as a Class A felony under the Oregon Criminal Code shall first be presented by the convening authority to a prosecuting civilian authority with jurisdiction over the offense for possible prosecution.

(2) If the prosecuting civilian authority declines to prosecute or fails to respond within 90 days from presentation of the charge, the charge may then be prosecuted as provided in this chapter **or the Oregon Code of Military Justice.**

**SECTION 9.** ORS 398.058 is amended to read:

398.058. (1)(a) Except as provided in paragraph (b) of this subsection, any person subject to [this chapter] **the Oregon Code of Military Justice** charged with an offense under [this chapter] **the code** may be ordered, as a priority prisoner, into arrest or confinement, as circumstances may require.

(b) A person subject to [this chapter] **the code** charged only with a minor offense normally tried by a summary court-martial or subject to punishment under [ORS 398.083] **Article 15 of the code** may not ordinarily be placed in confinement.

[*(c) The offense described under ORS 398.322 is not a minor offense for the purposes of this subsection.*]

(2) When any person subject to [this chapter] **the Oregon Code of Military Justice** is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform the person of the specific wrong of which the person is accused and to try the person or to dismiss the charges and release the person.

(3) When a person subject to [this chapter] **the Oregon Code of Military Justice** is placed in confinement prior to summary court-martial or disposition under [ORS 398.083] **Article 15 of the code**, the person shall be conditionally released pending disposition of the charges.

(4) A person described in subsection (3) of this section may be reconfined if the person violates the conditional release. The person violates the conditional release if the person fails to attend drill periods, periods of active duty training, annual training, other periods determined by the confining authority or hearings related to the pending charges or other conditions imposed by the confining authority.

(5) As used in this section, “priority prisoner” means a person subject to [this chapter] **the Oregon Code of Military Justice** who:

(a) Has been ordered into confinement by a confining authority;

(b) Is received by a keeper, officer, warden or other person in charge of the county jail, penitentiary, prison or other facility in which the person has been ordered confined; and

(c) May be released only upon order of the confining authority.

**SECTION 10.** ORS 398.118 is amended to read:

398.118. Upon the conditions and with the restrictions and limitations as the Governor thinks proper, the Governor may grant commutations and pardons for all punishments imposed under [this

*chapter*] **the Oregon Code of Military Justice** by a general court-martial or a special court-martial and may remit all forfeitures and fines **that were** imposed under [ORS 398.106 or 398.108] **the code.**

**SECTION 11.** ORS 398.120 is amended to read:

398.120. (1) When a person subject to [*this chapter*] **the Oregon Code of Military Justice** makes an application for commutation or pardon to the Governor, a copy of the application, signed by the applicant and stating fully the grounds of the application, shall be served by the applicant upon:

- (a) The convening authority; and
- (b) If the applicant is in confinement, the person in charge of the place of confinement.

(2) The applicant shall present to the Governor proof by affidavit of the service.

(3) Upon receiving a copy of the application for commutation or pardon, the convening authority shall provide to the Governor, as soon as practicable, the information and records relating to the case as the Governor may request and any other information and records relating to the case that the convening authority considers relevant to the issue of commutation or pardon.

(4) Following receipt by the Governor of an application for commutation or pardon, the Governor may not grant the application for at least 30 days. Upon the expiration of 180 days following receipt of an application, if the Governor has not granted the commutation or pardon applied for, the application shall lapse. Any further proceedings for commutation or pardon in the case shall be pursuant only to further application and service.

**SECTION 12.** ORS 398.216 is amended to read:

398.216. [(1) *A person charged with desertion or absence without leave in time of war, or with aiding the enemy, may be tried and punished at any time without limitation.*]

[(2) *Except as otherwise provided in this section, a person charged with desertion in time of peace or the offense punishable under ORS 398.386 is not liable to be tried by court-martial 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.*]

[(3) *Except as otherwise provided in this section, a person charged with any offense is not liable to be tried by court-martial or punished under ORS 398.083 if the offense was committed more than two 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 ORS 398.083.*]

[(4) *Periods in which the accused was absent from territory in which the state has the authority to apprehend the accused, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this section.*]

**(1) Except as otherwise provided in this section, a person subject to the Oregon Code of Military Justice who is charged with an offense is not liable to be tried by court-martial if the offense was committed more than three years before the receipt of sworn charges and specifications by an officer exercising court-martial jurisdiction over the command.**

**(2) A person charged with an offense is not liable to be punished under Article 15 of the Oregon Code of Military Justice if the offense was committed more than one year before any proceeding relating to the offense has been initiated.**

**(3) Periods of time in which the accused is absent without authority or is fleeing from justice must be excluded in computing the period of limitation prescribed in this section.**

**(4) Periods of time in which the accused is absent from territory in which the state has the authority to apprehend the accused, is in the custody of civil authorities or is in the hands of the enemy must be excluded in computing the period of limitation prescribed in this section.**

**(5) When the United States is at war or the President of the United States has declared a national emergency, the running of any statute of limitation applicable to an offense under the Oregon Code of Military Justice is suspended until two years after the termination of hostilities or national emergency as proclaimed by the President or by a joint resolution of Congress if the offense:**

(a) Involved fraud or attempted fraud against the United States, any state or any state or federal agency, whether by conspiracy or not;

(b) Was committed in connection with the acquisition, care, handling, custody, control or disposition of any real or personal property of the United States or of any state; or

(c) Was committed in connection with the negotiation, procurement, award, performance, payment, interim financing, cancellation or other termination or settlement of any contract, subcontract or purchase order that is connected with or related to the prosecution of war or with any disposition of termination inventory by a war contractor or governmental agency.

(6) If charges or specifications are dismissed as defective or insufficient for any cause and the period prescribed by the applicable statute of limitation has expired or will expire within 180 days after the date of dismissal of the charges and specifications, trial and punishment under new charges and specifications are not barred by the statute of limitation if the new charges and specifications:

(a) Are received by an officer exercising summary court-martial jurisdiction over the command within 180 days after the dismissal of the charges or specifications; and

(b) Allege the same acts or omissions that were alleged in the dismissed charges or specifications, or allege acts or omissions that were included in the dismissed charges or specifications.

**SECTION 13.** ORS 398.224 is amended to read:

398.224. (1) Any person not subject to [*this chapter*] **the Oregon Code of Military Justice** commits a Class B misdemeanor if the person:

(a) Has been duly subpoenaed to appear as a witness before a court-martial, court of inquiry or any other military court or board, or before any military or civil officer designated to take a deposition to be read in evidence before such a court, commission or board;

(b) Has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending the circuit court of the state in ORS 44.415 (2); and

(c) Willfully 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.

(2) The district attorney of the county in which the offense occurred, upon certification of the facts by the military court, court of inquiry or board, shall prosecute any person who commits the offense described in subsection (1) of this section.

**SECTION 14.** ORS 398.234 is amended to read:

398.234. (1) No person may be convicted of an offense, except by the concurrence of two-thirds of the members of a **general or special court-martial** present at the time the vote **on the findings and on the sentence of a court-martial** is taken.

(2) All sentences shall be determined by the concurrence of two-thirds of the members present at the time that the vote is taken.

(3) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote. However, a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing it, may be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence. 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.

**SECTION 15.** ORS 398.252 is amended to read:

398.252. Punishment by flogging, or by branding, marking or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by any court-martial or inflicted upon any person subject to [*this chapter*] **the Oregon Code of Military Justice**. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

**SECTION 16.** ORS 398.408 is amended to read:

398.408. (1) Military courts may issue all process necessary to carry into effect the powers vested in those courts. Such courts may issue subpoenas and subpoenas duces tecum and enforce by attachment attendance of witnesses and production of books and records, when the courts are sitting within the state and the witnesses, books and records sought are also so located.

(2) Such process may be issued by summary courts-martial, provost courts or the president or military judge of other military courts and may be directed to and may be executed by the marshals of the military court or any peace officer and shall be in such form as may be prescribed [by military department regulations issued under this chapter] **in the Oregon Code of Military Justice**.

(3) All officers to whom such process may be so directed shall execute [them] **the documents** and make return of their acts thereunder according to the requirements of those documents. Except as otherwise specifically provided in [this chapter] **the Oregon Code of Military Justice**, no such officer may demand or require payment of any fee or charge for receiving, executing or returning such a process or for any service in connection therewith.

**SECTION 17.** ORS 398.414 is amended to read:

398.414. The jurisdiction of the military courts and boards established by this chapter **and the Oregon Code of Military Justice** shall be presumed and the burden of proof rests on any person seeking to oust those courts or boards of jurisdiction in any action or proceeding.

**SECTION 18.** ORS 398.416 is amended to read:

398.416. The Governor may delegate any authority vested in the Governor under this chapter, and may provide for the subdelegation of any such authority, except with respect to the power given the Governor by [ORS 398.112, 398.118 and 398.126] **ORS 398.118**.

**SECTION 19.** 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 this chapter, **the Oregon Code of Military Justice** 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 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]* **issue** 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, **10 U.S.C. 801 et seq.**

(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.

**(12) As used in this section, "component" includes the Army National Guard, the Air National Guard and the Oregon State Defense Force.**

**SECTION 20. ORS 398.008, 398.052, 398.054, 398.056, 398.062, 398.065, 398.066, 398.068, 398.083, 398.102, 398.104, 398.106, 398.108, 398.110, 398.112, 398.114, 398.116, 398.126, 398.128, 398.130, 398.132, 398.135, 398.136, 398.138, 398.140, 398.162, 398.164, 398.166, 398.168, 398.170, 398.172, 398.202, 398.204, 398.206, 398.209, 398.210, 398.212, 398.214, 398.218, 398.220, 398.222, 398.228, 398.230, 398.232, 398.236, 398.238, 398.254, 398.256, 398.258, 398.272, 398.274, 398.276, 398.278, 398.280, 398.282, 398.284, 398.286, 398.288, 398.290, 398.292, 398.294, 398.296, 398.302, 398.304, 398.306, 398.308, 398.310, 398.312, 398.314, 398.316, 398.318, 398.320, 398.322, 398.324, 398.326, 398.328, 398.330, 398.332, 398.334, 398.336, 398.338, 398.340, 398.342, 398.344, 398.346, 398.348, 398.350, 398.352, 398.354, 398.356, 398.358, 398.360, 398.362, 398.366, 398.368, 398.370, 398.372, 398.374, 398.375, 398.378, 398.380, 398.384, 398.386, 398.388, 398.391, 398.393, 398.394, 398.395, 398.397, 398.399, 398.400, 398.402, 398.404 and 398.410 are repealed.**

#### CONFORMING AMENDMENTS

**SECTION 21.** ORS 107.169 is amended to read:

107.169. (1) As used in this chapter, "joint custody" means an arrangement by which parents share rights and responsibilities for major decisions concerning the child, including, but not limited to, the child's residence, education, health care and religious training. An order providing for joint custody may specify one home as the primary residence of the child and designate one parent to have sole power to make decisions about specific matters while both parents retain equal rights and responsibilities for other decisions.

(2) The existence of an order of joint custody shall not, by itself, determine the responsibility of each parent to provide for the support of the child.

(3) The court shall not order joint custody, unless both parents agree to the terms and conditions of the order.

(4) When parents have agreed to joint custody in an order or a judgment, the court may not overrule that agreement by ordering sole custody to one parent.

(5) Modification of a joint custody order shall require showing of changed circumstances and a showing that the modification is in the best interests of the child such as would support modification of a sole custody order. Inability or unwillingness to continue to cooperate shall constitute a change of circumstances sufficient to modify a joint custody order.

(6)(a) The inability of a parent to comply with the terms and conditions of a joint custody order due to the parent's temporary absence does not constitute a change of circumstances if the parent's temporary absence is caused by the parent being:

(A) Called into *[active state duty]* **state active duty** as defined in *[ORS 398.002]* **the Oregon Code of Military Justice**; or

(B) Called into active federal service under Title 10 of the United States Code as a member of the Oregon National Guard.

(b) As used in this subsection, “temporary absence” means a period not exceeding 30 consecutive months.

**SECTION 22.** ORS 109.056, as amended by section 2, chapter 106, Oregon Laws 2012, is amended to read:

109.056. (1) Except as provided in subsection (2) or (3) of this section, a parent or guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding six months, any of the powers of the parent or guardian regarding care, custody or property of the minor child or ward, except the power to consent to marriage or adoption of a minor ward.

(2) A parent or guardian of a minor child may delegate the powers designated in subsection (1) of this section to a school administrator for a period not exceeding 12 months.

(3)(a) As used in this subsection, “servicemember-parent” means a parent or guardian:

(A) Who is:

(i) A member of the organized militia of this state;

(ii) A member of the Reserves of the Army, Navy, Air Force, Marine Corps or Coast Guard of the United States;

(iii) A member of the commissioned corps of the National Oceanic and Atmospheric Administration; or

(iv) A member of the Public Health Service of the United States Department of Health and Human Services detailed by proper authority for duty with the Army or Navy of the United States; and

(B) Who is required to enter and serve in the active military service of the United States under a call or order by the President of the United States or to serve on [*active state duty*] **state active duty** as defined in [*ORS 398.002*] **the Oregon Code of Military Justice**.

(b) A servicemember-parent of a minor child may delegate the powers designated in subsection (1) of this section for a period not exceeding the term of active duty service plus 30 days.

(c) Except as provided in paragraph (d) of this subsection, if the minor child is living with the child’s other parent, a delegation under paragraph (b) of this subsection must be to the parent with whom the minor child is living unless a court finds that the delegation would not be in the best interests of the minor child.

(d) When the servicemember-parent has joint custody of the minor child with the child’s other parent or another individual, and the servicemember-parent is married to an individual other than the child’s other parent, the servicemember-parent may delegate the powers designated in subsection (1) of this section to the spouse of the servicemember-parent for a period not exceeding the term of active duty service plus 30 days, unless a court finds that the delegation would not be in the best interests of the minor child.

**SECTION 23.** ORS 646.605 is amended to read:

646.605. As used in ORS 646.605 to 646.652:

(1) “Appropriate court” means the circuit court of a county:

(a) Where one or more of the defendants reside;

(b) Where one or more of the defendants maintain a principal place of business;

(c) Where one or more of the defendants are alleged to have committed an act prohibited by ORS 646.605 to 646.652; or

(d) With the defendant’s consent, where the prosecuting attorney maintains an office.

(2) “Documentary material” means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate.

(3) “Examination” of documentary material shall include inspection, study or copying of any such material, and taking testimony under oath or acknowledgment in respect of any such documentary material or copy thereof.

(4) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations and any other legal entity except bodies or officers acting under statutory authority of this state or the United States.

(5) "Prosecuting attorney" means the Attorney General or the district attorney of any county in which a violation of ORS 646.605 to 646.652 is alleged to have occurred.

(6)(a) "Real estate, goods or services" means those that are or may be obtained primarily for personal, family or household purposes, or that are or may be obtained for any purposes as a result of a telephone solicitation, and includes loans and extensions of credit, and franchises, distributorships and other similar business opportunities, but does not include insurance.

(b) Notwithstanding paragraph (a) of this subsection:

(A) "Real estate" does not cover conduct covered by ORS chapter 90 except as provided in section 2, chapter 658, Oregon Laws 2003.

(B) "Loans and extensions of credit" does not include transactions involving a pawnbroker, as defined in ORS 726.010, that is required to be licensed under ORS chapter 726.

(7) "Telephone solicitation" means a solicitation where a person, in the course of the person's business, vocation or occupation, uses a telephone or an automatic dialing-announcing device to initiate telephonic contact with a potential customer and the person is not one of the following:

(a) A person who is a broker-dealer or salesperson licensed under ORS 59.175, or a mortgage banker or mortgage broker licensed under ORS 86A.106 when the solicitation is for a security qualified for sale pursuant to ORS 59.055.

(b) A real estate licensee or a person who is otherwise authorized to engage in professional real estate activity pursuant to ORS chapter 696, when the solicitation involves professional real estate activity.

(c) A person licensed or exempt from licensure as a builder pursuant to ORS chapter 701, when the solicitation involves the construction, alteration, repair, improvement or demolition of a structure.

(d) A person licensed or otherwise authorized to sell insurance as an insurance producer pursuant to ORS chapter 744, when the solicitation involves insurance.

(e) A person soliciting the sale of a newspaper of general circulation, a magazine or membership in a book or record club who complies with ORS 646.611, when the solicitation involves newspapers, magazines or membership in a book or record club.

(f) A person soliciting without the intent to complete and who does not complete the sales presentation during the telephone solicitation and who only completes the sales presentation at a later face-to-face meeting between the solicitor and the prospective purchaser.

(g) A supervised financial institution or parent, subsidiary or affiliate thereof. As used in this paragraph, "supervised financial institution" means any financial institution or trust company, as those terms are defined in ORS 706.008, or any personal property broker, consumer finance lender, commercial finance lender or insurer that is subject to regulation by an official or agency of this state or of the United States.

(h) A person who is authorized to conduct prearrangement or preconstruction funeral or cemetery sales, pursuant to ORS chapter 692, when the solicitation involves prearrangement or preconstruction funeral or cemetery plans.

(i) A person who solicits the services provided by a cable television system licensed or franchised pursuant to state, local or federal law, when the solicitation involves cable television services.

(j) A person or affiliate of a person whose business is regulated by the Public Utility Commission of Oregon.

(k) A person who sells farm products as defined by ORS 576.006 if the solicitation neither intends to nor actually results in a sale that costs the purchaser in excess of \$100.

(L) An issuer or subsidiary of an issuer that has a class of securities that is subject to section 12 of the Securities Exchange Act of 1934 and that is either registered or exempt from registration under paragraph (A), (B), (C), (E), (F), (G) or (H) or subsection (g) of that section.

(m) A person soliciting exclusively the sale of telephone answering services to be provided by that person or that person's employer when the solicitation involves answering services.

(n) A telecommunications utility with access lines of 15,000 or less or a cooperative telephone association when the solicitation involves regulated goods or services.

(8) "Trade" and "commerce" mean advertising, offering or distributing, whether by sale, rental or otherwise, any real estate, goods or services, and include any trade or commerce directly or indirectly affecting the people of this state.

(9) "Unconscionable tactics" include, but are not limited to, actions by which a person:

(a) Knowingly takes advantage of a customer's physical infirmity, ignorance, illiteracy or inability to understand the language of the agreement;

(b) Knowingly permits a customer to enter into a transaction from which the customer will derive no material benefit;

(c) Permits a customer to enter into a transaction with knowledge that there is no reasonable probability of payment of the attendant financial obligation in full by the customer when due; or

(d) Knowingly takes advantage of a customer who is a disabled veteran, a disabled servicemember or a servicemember in active service, or the spouse of a disabled veteran, disabled servicemember or servicemember in active service. For purposes of this paragraph:

(A) "Disabled veteran" has the meaning given that term in ORS 408.225.

(B) "Disabled servicemember" means a servicemember, as defined in 50 U.S.C. App. 511 as in effect on January 1, 2010, who may be entitled to disability compensation under laws administered by the United States Department of Veterans Affairs.

(C) "Servicemember in active service" means:

(i) A servicemember called into active service under Title 10 or Title 32 of the United States Code as in effect on January 1, 2010; or

(ii) A servicemember on [*active state duty*] **state active duty**, as defined in [*ORS 398.002*] **the Oregon Code of Military Justice**.

(10) A willful violation occurs when the person committing the violation knew or should have known that the conduct of the person was a violation.

(11) A loan is made "in close connection with the sale of a manufactured dwelling" if:

(a) The lender directly or indirectly controls, is controlled by or is under common control with the seller, unless the relationship is remote and is not a factor in the transaction;

(b) The lender gives a commission, rebate or credit in any form to a seller who refers the borrower to the lender, other than payment of the proceeds of the loan jointly to the seller and the borrower;

(c) The lender is related to the seller by blood or marriage;

(d) The seller directly and materially assists the borrower in obtaining the loan;

(e) The seller prepares documents that are given to the lender and used in connection with the loan; or

(f) The lender supplies documents to the seller used by the borrower in obtaining the loan.

**SECTION 24.** ORS 646.605, as amended by section 12, chapter 658, Oregon Laws 2003, section 199, chapter 71, Oregon Laws 2007, section 32, chapter 319, Oregon Laws 2007, section 2, chapter 215, Oregon Laws 2009, and section 2, chapter 94, Oregon Laws 2010, is amended to read:

646.605. As used in ORS 646.605 to 646.652:

(1) "Appropriate court" means the circuit court of a county:

(a) Where one or more of the defendants reside;

(b) Where one or more of the defendants maintain a principal place of business;

(c) Where one or more of the defendants are alleged to have committed an act prohibited by ORS 646.605 to 646.652; or

(d) With the defendant's consent, where the prosecuting attorney maintains an office.

(2) "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate.

(3) "Examination" of documentary material shall include inspection, study or copying of any such material, and taking testimony under oath or acknowledgment in respect of any such documentary material or copy thereof.

(4) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations and any other legal entity except bodies or officers acting under statutory authority of this state or the United States.

(5) "Prosecuting attorney" means the Attorney General or the district attorney of any county in which a violation of ORS 646.605 to 646.652 is alleged to have occurred.

(6)(a) "Real estate, goods or services" means those that are or may be obtained primarily for personal, family or household purposes, or that are or may be obtained for any purposes as a result of a telephone solicitation, and includes loans and extensions of credit, and franchises, distributorships and other similar business opportunities, but does not include insurance.

(b) Notwithstanding paragraph (a) of this subsection:

(A) "Real estate" does not cover conduct covered by ORS chapter 90.

(B) "Loans and extensions of credit" does not include transactions involving a pawnbroker, as defined in ORS 726.010, that is required to be licensed under ORS chapter 726.

(7) "Telephone solicitation" means a solicitation where a person, in the course of the person's business, vocation or occupation, uses a telephone or an automatic dialing-announcing device to initiate telephonic contact with a potential customer and the person is not one of the following:

(a) A person who is a broker-dealer or salesperson licensed under ORS 59.175, or a mortgage banker or mortgage broker licensed under ORS 86A.106 when the solicitation is for a security qualified for sale pursuant to ORS 59.055.

(b) A real estate licensee or a person who is otherwise authorized to engage in professional real estate activity pursuant to ORS chapter 696, when the solicitation involves professional real estate activity.

(c) A person licensed or exempt from licensure as a builder pursuant to ORS chapter 701, when the solicitation involves the construction, alteration, repair, improvement or demolition of a structure.

(d) A person licensed or otherwise authorized to sell insurance as an insurance producer pursuant to ORS chapter 744, when the solicitation involves insurance.

(e) A person soliciting the sale of a newspaper of general circulation, a magazine or membership in a book or record club who complies with ORS 646.611, when the solicitation involves newspapers, magazines or membership in a book or record club.

(f) A person soliciting without the intent to complete and who does not complete the sales presentation during the telephone solicitation and who only completes the sales presentation at a later face-to-face meeting between the solicitor and the prospective purchaser.

(g) A supervised financial institution or parent, subsidiary or affiliate thereof. As used in this paragraph, "supervised financial institution" means any financial institution or trust company, as those terms are defined in ORS 706.008, or any personal property broker, consumer finance lender, commercial finance lender or insurer that is subject to regulation by an official or agency of this state or of the United States.

(h) A person who is authorized to conduct prearrangement or preconstruction funeral or cemetery sales, pursuant to ORS chapter 692, when the solicitation involves prearrangement or preconstruction funeral or cemetery plans.

(i) A person who solicits the services provided by a cable television system licensed or franchised pursuant to state, local or federal law, when the solicitation involves cable television services.

(j) A person or affiliate of a person whose business is regulated by the Public Utility Commission of Oregon.

(k) A person who sells farm products as defined by ORS 576.006 if the solicitation neither intends to nor actually results in a sale that costs the purchaser in excess of \$100.

(L) An issuer or subsidiary of an issuer that has a class of securities that is subject to section 12 of the Securities Exchange Act of 1934 and that is either registered or exempt from registration under paragraph (A), (B), (C), (E), (F), (G) or (H) or subsection (g) of that section.

(m) A person soliciting exclusively the sale of telephone answering services to be provided by that person or that person's employer when the solicitation involves answering services.

(n) A telecommunications utility with access lines of 15,000 or less or a cooperative telephone association when the solicitation involves regulated goods or services.

(8) "Trade" and "commerce" mean advertising, offering or distributing, whether by sale, rental or otherwise, any real estate, goods or services, and include any trade or commerce directly or indirectly affecting the people of this state.

(9) "Unconscionable tactics" include, but are not limited to, actions by which a person:

(a) Knowingly takes advantage of a customer's physical infirmity, ignorance, illiteracy or inability to understand the language of the agreement;

(b) Knowingly permits a customer to enter into a transaction from which the customer will derive no material benefit;

(c) Permits a customer to enter into a transaction with knowledge that there is no reasonable probability of payment of the attendant financial obligation in full by the customer when due; or

(d) Knowingly takes advantage of a customer who is a disabled veteran, a disabled servicemember or a servicemember in active service, or the spouse of a disabled veteran, disabled servicemember or servicemember in active service. For purposes of this paragraph:

(A) "Disabled veteran" has the meaning given that term in ORS 408.225.

(B) "Disabled servicemember" means a servicemember, as defined in 50 U.S.C. App. 511 as in effect on January 1, 2010, who may be entitled to disability compensation under laws administered by the United States Department of Veterans Affairs.

(C) "Servicemember in active service" means:

(i) A servicemember called into active service under Title 10 or Title 32 of the United States Code as in effect on January 1, 2010; or

(ii) A servicemember on [*active state duty*] **state active duty**, as defined in [*ORS 398.002*] **the Oregon Code of Military Justice**.

(10) A willful violation occurs when the person committing the violation knew or should have known that the conduct of the person was a violation.

(11) A loan is made "in close connection with the sale of a manufactured dwelling" if:

(a) The lender directly or indirectly controls, is controlled by or is under common control with the seller, unless the relationship is remote and is not a factor in the transaction;

(b) The lender gives a commission, rebate or credit in any form to a seller who refers the borrower to the lender, other than payment of the proceeds of the loan jointly to the seller and the borrower;

(c) The lender is related to the seller by blood or marriage;

(d) The seller directly and materially assists the borrower in obtaining the loan;

(e) The seller prepares documents that are given to the lender and used in connection with the loan; or

(f) The lender supplies documents to the seller used by the borrower in obtaining the loan.

**SECTION 25.** ORS 399.515 is amended to read:

399.515. (1) This section, [*and*] ORS 398.006, [*398.008, 398.052, 398.083, 398.132, 398.136, 398.204,*] 398.252[, 398.302 to 398.400, 398.404] and 399.205 **and the Oregon Code of Military Justice as described in ORS 396.128** shall be carefully explained to:

(a) Every enlisted member at the time of enlistment or transfer or induction into, or at the time of an order to duty in or with any of the forces of the organized militia or within 30 days thereafter[. *They shall also be explained annually to*]; **and**

(b) Each unit of the organized militia **on an annual basis**.

(2) A complete text of ORS chapter 398 and **the Oregon Code of Military Justice**, of ORS 399.205[, *of the military department regulations prescribed by the Governor thereunder*] and of the

regulations issued by the Adjutant General under ORS 396.160 and 398.420[,] shall be made available to any member of the organized militia, upon request, for personal examination.

**SECTION 26.** ORS 399.075 is amended to read:

399.075. (1) The Adjutant General, with the approval of the Governor, may order members of the organized militia to [*active state duty*] **state active duty as defined in the Oregon Code of Military Justice**. Members, while on [*active state duty*] **state active duty**, shall receive not less than the pay and allowances of their corresponding grades in the Armed Forces of the United States in accordance with a schedule approved by the Adjutant General for the period of time in [*active state duty*] **state active duty**. [*Active state duty*] **State active duty** under this subsection includes, but is not limited to, support of federal, state and local drug eradication, interdiction and other counterdrug operations under a counterdrug support plan approved by the Governor, and reasons related to homeland security. When participating in such support operations, and to the extent authorized by 32 U.S.C. 112, applicable regulations of the National Guard Bureau and the Oregon Counterdrug Support Plan, the Oregon Military Department is designated as a law enforcement agency for the purpose of carrying out federal asset forfeiture laws only.

(2) Members of the organized militia serving on courts-martial, courts of inquiry, efficiency boards, medical boards or other special duty requiring absence from their stations or business under competent orders may be reimbursed for necessary expenses incurred at the rate established for state employees under appropriate travel regulations issued by the Oregon Department of Administrative Services.

(3) In lieu of other provisions of this chapter, a medical examiner may be paid for services and necessary disbursements and a properly appointed judge advocate may be paid for legal services and necessary disbursements in any suit, action or proceeding, such amounts as shall be approved by the Governor.

(4) Members of the organized militia shall not receive from the state the pay or the pay and allowances provided for by this section when eligible for such pay and allowances from federal funds.

(5) Notwithstanding any of the provisions of this chapter, members of the organized militia may with their consent perform without pay or without pay and allowances any of the types of military duty prescribed in this chapter and ORS chapters 396 and 398 pursuant to orders issued by competent military authority; provided however, that necessary traveling expenses, subsistence and per diem allowances may be furnished such members within the discretion of the Adjutant General and within the amount appropriated therefor.

(6) All pay and allowances provided for by this chapter, except per diem, mileage and expenses while traveling under orders shall be subject to be applied to the payment of penalties and fines imposed by military courts, and to the payment of any shortage of or injury to state or United States property or funds for which a member of the organized militia is responsible or accountable where such responsibility has been fixed by competent authority.

(7)(a) Except as provided in paragraph (b) of this subsection, members of the organized militia who are ordered to [*active state duty*] **state active duty** shall be considered temporary employees of the military department.

(b) Members of the organized militia who are ordered to [*active state duty*] **state active duty** are not subject to ORS chapter 240 and ORS 243.650 to 243.782.

(8) The limitations on employment imposed by ORS 238.082 (2) and (3) do not apply to a retired member of the Public Employees Retirement System who has attained normal retirement age and is on [*active state duty*] **state active duty**. Hours served by a person under this subsection shall not be counted for the purpose of the limitations on employment imposed by ORS 238.082 (2) and (3).

**SECTION 27.** ORS 401.656 is amended to read:

401.656. When the Governor declares a state of emergency under ORS 401.165 or a public health emergency under ORS 433.441, the Governor, as part of the declaration of emergency, may authorize members of the Oregon National Guard on [*active state duty*] **state active duty** or Title 32 orders to provide health care services in Oregon without being subject to the Oregon licensing require-

ments for health care providers, provided that each member is qualified by virtue of the member's military duty position, training and qualifications to perform the same or similar functions as an Oregon licensed health care provider for the Armed Forces of the United States under either state or federal status.

**SECTION 28.** ORS 659A.086 is amended to read:

659A.086. (1) An employee shall be granted a leave of absence by the employer of the employee to perform active state service if:

(a) The employee is a member of the organized militia of this state and is called into active service of the state under ORS 399.065 (1) or [*active state duty*] **state active duty** under ORS 399.075.

(b) The employee is a member of the organized militia of another state and is called into active state service by the Governor of the respective state.

(2) The employer shall grant the employee a leave of absence until release from active state service permits the employee to resume the duties of employment. The regular employment position of an employee on a leave of absence for active state service under this section is considered vacant only for the period of the leave of absence. The employee is not subject to removal or discharge from the position as a consequence of the leave of absence.

(3) Upon the termination of the leave of absence for active state service, an employee shall:

(a) Resume the duties of employment within seven calendar days; and

(b) Be restored to the employee's position or an equivalent position by the employer without loss of seniority, vacation credits, sick leave credits, service credits under a pension plan or any other employee benefit or right that had been earned at the time of the leave of absence.

(4) An employer is not required to pay wages or other monetary compensation to an employee during a leave of absence required under subsection (1) of this section.

(5) Notwithstanding subsection (4) of this section:

(a) The State of Oregon shall continue coverage under an employer-sponsored health plan to an employee of the State of Oregon and any other individual provided coverage under the employee's plan on the day before the date the employee goes on leave for a period not exceeding a total of 12 months during a leave of absence required under subsection (1) of this section.

(b) An employer other than the State of Oregon may continue coverage under an employer-sponsored health plan to an employee and any other individual provided coverage under the employee's plan on the day before the date the employee goes on leave during a leave of absence required under subsection (1) of this section.

(6)(a) Notwithstanding subsection (4) of this section, the State of Oregon, a county, a municipality or other political subdivision of this state may establish and administer a donated leave program that:

(A) Allows an employee who is on a leave of absence required under subsection (1) of this section to receive donated leave; and

(B) Allows an employee to voluntarily donate vacation time to an eligible employee on a leave of absence required under subsection (1) of this section.

(b) An employee who is on a leave of absence required under subsection (1) of this section and who receives donated leave under paragraph (a) of this subsection may receive an amount of donated leave that supplements any pay received as a member of the organized militia, but may not receive more than the amount the employee was earning in total compensation on the date the employee began the leave of absence.

(7) For the purpose of calculating total compensation under subsection (6) of this section, the State of Oregon, a county, a municipality or other political subdivision of this state shall:

(a) Include any amounts attributable to hours of overtime that equal the average number of hours of overtime for the same employee class;

(b) Determine the average number of hours of overtime for an employee class based on a reasonable expectation of the average number of hours of overtime employees in that class would perform over the course of a calendar year; and



(c) Maintain records of the average number of hours of overtime for each employee class for each calendar year.

(8) As used in this section:

(a) "Employee" means any individual, other than a copartner of the employer or an independent contractor, who renders personal services in this state to an employer who pays or agrees to pay wages or other compensation to the individual for those services.

(b) "Employee class" means a group of similarly situated employees whose positions have been designated by their employer in a policy or a collective bargaining agreement as having common characteristics.

(c) "Employer" means any person who employs one or more employees in this state. The term includes the State of Oregon or any county, city, district, authority, public corporation or entity and any of their instrumentalities organized and existing under law or charter, but does not include the federal government.

(d) "Total compensation" means the total of an employee's base salary, differentials and over-time.

**CAPTIONS**

**SECTION 29. The unit captions used in this 2013 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2013 Act.**

**EMERGENCY CLAUSE**

**SECTION 30. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.**

**Passed by Senate March 13, 2013**

.....  
Robert Taylor, Secretary of Senate

.....  
Peter Courtney, President of Senate

**Passed by House May 2, 2013**

.....  
Tina Kotek, Speaker of House

**Received by Governor:**

.....M.,....., 2013

**Approved:**

.....M.,....., 2013

.....  
John Kitzhaber, Governor

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

.....M.,....., 2013

.....  
Kate Brown, Secretary of State