

CHAPTER 121
MILITIA; NATIONAL GUARD

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Civil relief for state military forces, see chapter 657D.

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Interstate compact on educational opportunity for military children, see chapter 311D.

Vehicle weight tax exemption for active duty personnel, see §249-6.5.

Uniform military and overseas voters act, see chapter 15D.

" **§121-1 Militia.** The militia of the State shall consist of every resident able-bodied citizen of the United States who is seventeen years old or older and under forty-six years of age and all other able-bodied residents of that age who have declared their intention to become citizens of the United States. The militia shall be composed of four classes:

- (1) The federally organized and recognized national guard,
- (2) The remainder of the organized militia to be known as the Hawaii state defense force,
- (3) The naval militia,
- (4) The unorganized militia.

The unorganized militia shall consist of those members of the militia who are not members of the national guard, the naval militia, or the state defense force. The unorganized militia shall be subject to active military duty only when called or ordered into the service of the State for such period as is required. They may be assigned to existing organizations of the Hawaii national guard, the naval militia, or the state defense force, or otherwise as the exigencies require. [L 1967, c 196, pt of §1; HRS §121-1; am L 1969, c 15, §1(a); am L 1988, c 135, §1]

Cross References

Department of defense, generally, see §26-21.

" **§121-2 Exemptions.** The following are exempt from military duty: all persons exempted from military duty under the laws of the United States, all judges of the several courts, and the members of the legislature. [L 1967, c 196, pt of §1; HRS §121-2]

Revision Note

Reference to "magistrates" following "judges", deleted as unnecessary in view of L 1970, c 188.

" **§121-3 Government employees.** In case of a state of war, insurrection, rebellion, or of resistance to the execution of the laws of the United States, or of the State, proclaimed by the President or by the governor as appropriate, all employees of the State and political subdivisions thereof who are not physically disabled and who are not members of the national guard, naval militia, or state defense force shall, upon the order of the governor, report for duty with organizations designated by the governor. [L 1967, c 196, pt of §1; HRS §121-3; am L 1980, c 6, §1; am L 1988, c 135, §1]

Case Notes

When martial law may be put in force. Early case: 10 H. 29. See also note to Organic Act §7.

" **§121-4 Composition.** The Hawaii national guard shall consist of the army national guard, the air national guard, the inactive national guard, and other organizations and units authorized by the laws of the United States or the regulations issued thereunder for the national guard which are recognized by the federal government, and in which federally recognized officers, warrant officers, and enlisted personnel are appointed or enlisted. [L 1967, c 196, pt of §1; HRS §121-4; am L 1969, c 15, §1(b)]

" **§121-5 Command.** The governor shall be the commander in chief of the forces comprising the militia. The governor is authorized to promulgate such rules, regulations, and forms therefor as are not inconsistent with law, and to carry into full effect the law relative thereto. The provisions of chapter 91 shall not apply. The rules, regulations, and forms shall have the force of law. [L 1967, c 196, pt of §1; HRS §121-5; gen ch 1985]

Cross References

Governor, commander in chief under Hawaii const. art. V, §5.
President, commander in chief when militia called into actual service of United States under U.S. Const. Art. II, §2.

" **§121-6 Organization and reorganization of units.** The governor may organize, alter, divide, annex, consolidate, and reorganize the army and air national guard into divisions, brigades, regimental combat teams, regiments, battle groups, battalions, squadrons, batteries, companies, and similar organizations in accordance with their strength as authorized

from time to time and in conformity with the tables of organization prescribed by the secretaries of the army and of the air force. The governor may change the location of units, and subject to the approval of the appropriate secretary, redesignate units or organizations. [L 1967, c 196, pt of §1; HRS §121-6; gen ch 1985]

" **§121-7 Adjutant general; appointment.** The adjutant general shall be the executive head of the department of defense and commanding general of the militia of the State. The adjutant general shall be appointed and be subject to removal as set forth in section 26-31. The adjutant general shall serve for the term as set forth in section 6, article V, of the Constitution. No person shall be eligible for appointment as adjutant general unless the person holds or has held a commission of at least a field grade officer, federally recognized as such, or its equivalent in the national guard, state defense force, or other branch of the armed forces of this or any other state or territory of the United States, or in the armed forces of the United States or a reserve component thereof and has served as a commissioned officer in one or more of the armed services for at least ten years. [L 1967, c 196, pt of §1; HRS §121-7; gen ch 1985; am L 1987, c 28, §1; am L 1988, c 135, §1]

Cross References

General authority and organization, see §26-21.

" **§121-8 Adjutant general; rank, salary.** The adjutant general shall have the grade of a general officer. The salary of the adjutant general shall be subject to section 26-52. [L 1967, c 196, pt of §1; HRS §121-8; am L 1982, c 129, §6]

" **§121-9 Adjutant general; duties.** The adjutant general shall perform such duties as are prescribed by law and such other military duties consistent with the regulations and customs of the armed forces of the United States as required by the governor.

The adjutant general shall supervise all of the forces comprising the military components of the department of defense of the State. The supervisory power shall include the command, discipline, training, and recruiting of the armed forces of the State, military operations, distribution of troops, inspections, armament, military education and instruction, fiscal operations, administration, and supply.

The adjutant general is authorized to confer the powers of police officers, including the power to arrest, to employees of the department who are engaged as security guards for national guard and emergency management facilities; provided that such powers shall remain in force and effect only while the security guards are in the actual performance of their duties as security guards. [L 1967, c 196, pt of §1; HRS §121-9; am L 1969, c 249, §1; am L 1973, c 65, §1; gen ch 1985; L 2014, c 111, §28]

" **§121-10 Administration.** The adjutant general shall from time to time make and publish such orders and regulations, not inconsistent with law, as are necessary to bring the organization, armament, equipment, and discipline of the organized militia to a state of efficiency as nearly as possible approaching that of the army and air force of the United States. The adjutant general shall attest all commissions issued to military officers, appointments issued to warrant officers, maintain personnel records, superintend preparation of all letters and reports required by the United States from the State. The adjutant general shall have charge of the state military reservations, armories, and all other property of the State kept or used for military purposes. The adjutant general shall take an inventory at least once each year of all military stores, property, and funds under the adjutant general's jurisdiction. The adjutant general shall be the official custodian of the military records of all persons from the State who served in the armed forces of the United States during times of war or grave national emergency, including those records which are turned over to the State by the federal agency of selective service. The records shall be preserved perpetually in accordance with rules and regulations established by the adjutant general.

The adjutant general shall make an annual report of the operations of the adjutant general's department. [L 1967, c 196, pt of §1; HRS §121-10; gen ch 1985]

Cross References

Annual report, see §93-12.

" **[§121-10.5] Prisoner of war and missing in action designations.** The State of Hawaii hereby recognizes the designations of prisoner of war and missing in action as valid descriptions of casualty status and category classification for military personnel. [L 2010, c 88, §1]

" **§121-11 Deputy adjutant general.** The adjutant general may appoint and remove at the adjutant general's pleasure a deputy adjutant general, who shall have a grade no higher than brigadier general. The deputy adjutant general shall perform duties assigned to the deputy adjutant general by the adjutant general and shall act for and in the place of the adjutant general during the adjutant general's absence or disability. [L 1967, c 196, pt of §1; HRS §121-11; gen ch 1985]

" **§121-12 Staff for military components, organization.** (a) The headquarters staff of the national guard shall be composed of the army national guard component, which shall include a selective service section, and the air national guard component. The headquarters shall be staffed by such officers, warrant officers and enlisted personnel, in the grades and branches of service as may be authorized by the secretaries of the army and the air force. The army division and the air division shall each be headed by an assistant adjutant general, who shall, while holding the office, have a grade no higher than brigadier general. The assistant adjutants general, when in the full-time employment of the department of defense, may receive the pay and allowance of their grade as fixed by the tables of the regular army or air force of the United States.

(b) The army national guard shall be organized and equipped as prescribed from time to time by the secretary of the army. Subject to the foregoing, it shall consist of not less than one brigade, or the equivalent thereof, to be organized by the order of the governor and be located throughout the State in accordance with military needs.

(c) The air national guard shall be organized and equipped as prescribed from time to time by the secretary of the air force.

(d) The inactive national guard consists of officers, warrant officers, and enlisted personnel transferred to it from the national guard in accordance with regulations promulgated by the secretaries of the army and the air force as appropriate. Members shall be assigned appropriately within the state headquarters for administration only, and attached to an active unit or organization for potential assignment and service with the unit or organization. [L 1967, c 196, pt of §1; HRS §121-12; am L 1969, c 15, §1(b)]

" **§121-13 Commissioned by commander in chief.** All commissioned officers of the army or air national guard shall be commissioned by the commander in chief but the commander in chief may refuse to issue a commission to any person, if in the commander in chief's opinion, the person is in any way

unqualified or unworthy to be an officer. All commissions in the military service of this State shall be in the name and by authority of the State, sealed with the state seal, signed by the governor, attested by the adjutant general, and recorded in rosters periodically prepared and printed by the department of defense. [L 1967, c 196, pt of §1; HRS §121-13; gen ch 1985]

" **§121-14 Officers and warrant officers; qualifications, appointment, tenure.** Commissioned officers and warrant officers shall be citizens of the United States and shall be at least twenty-one years of age or such lower age as may be authorized for appointment as reserve officers of the army or the air force by federal laws and regulations. They shall be appointed upon the order of the governor, subject to federal recognition as commissioned officers and warrant officers in the army or air national guard, except as to those officers appointed as aides-de-camp to the governor and staff positions not requiring federal recognition. Officers and warrant officers whose appointments are subject to federal recognition shall meet the qualifications prescribed by the secretary of the army or the air force, as the case may be. The commissions of all officers and appointments of warrant officers shall continue in force indefinitely and until they are separated from the service of the national guard in accordance with this chapter. [L 1967, c 196, pt of §1; HRS §121-14]

" **§121-15 Commissioned and warrant officers; transfer to inactive list, retirement, separation.** Officers may be transferred to the inactive or retired lists, or separated from the service as follows:

- (1) An officer may be honorably discharged by reason of resignation, removal of residence from the State, failure to meet or maintain the requirements for federal recognition, or acceptance of an incompatible office.
- (2) An officer who is eligible to be placed on the retired list under federal law, or who has completed the years of service required for retirement under title 10, United States Code, chapter 1223 may at the officer's request be discharged, or with the approval of the governor be placed on the retired list.
- (3) Any commissioned officer who has served in the same grade in the military service of the State for a continuous period of not less than ten years, upon the commissioned officer's own request, may be honorably discharged or placed on the retired list.

- (4) Any officer who is rendered surplus by the disbandment of the officer's unit, or who changes the officer's residence within the State and is unable to serve with the unit to which the officer was assigned, shall be absorbed in another unit of the army or air national guard, or if there be no such other available unit the officer shall be transferred to an inactive status as authorized by the secretary of the army or of the air force, and may be ordered to perform appropriate duties.
- (5) At any time the moral character, capacity, and general fitness for the service of any officer may be investigated and determined by an efficiency board of three commissioned or warrant officers, senior in rank to the officer if possible, to be appointed by the governor. The investigation shall be thorough and impartial, and may include misconduct in civil life for which the officer is not amenable to trial by court-martial. If the findings are unfavorable to the officer and are approved by the governor, the officer shall be discharged.
- (6) At any time the physical fitness for the service of any officer, upon order of the governor, may be investigated and determined by a board of not less than three commissioned officers, not less than two of whom shall be medical officers. If the board reports the officer to be physically unable to perform the duties of the officer's office, and the report is approved by the governor, the officer may be discharged or placed on the retired list.
- (7) Any officer who is under sentence of imprisonment by a civil court for any offense involving moral turpitude, whether suspended or not, or who has been absent without leave for three months, or who refuses or neglects to report before the board provided in paragraph (5) or (6) within a period of three months from the time the officer is ordered to report before the board may be discharged with the approval of the governor.
- (8) Upon the approval by the governor of a sentence of dismissal rendered by a court-martial, the officer shall be dismissed. [L 1967, c 196, pt of §1; HRS §121-15; gen ch 1985; am L 1986, c 339, §1; am L 2012, c 34, §4]

" **§121-16 Examination of officers and warrant officers.**
Every officer and warrant officer of the army or air national

guard, except those for whom federal recognition is not required shall, upon the officer's or warrant officer's appointment to an office and assignment to a unit, upon official orders, appear before an examining board and successfully pass such test as to the officer's or warrant officer's physical, moral, and professional fitness as may be prescribed by the secretary of the army or the air force. [L 1967, c 196, pt of §1; HRS §121-16; gen ch 1985]

" **§121-17 Resignations.** Resignations of officers and warrant officers shall be in writing addressed to the adjutant general and shall state the reasons for the resignation. Resignations shall be transmitted through immediate commanding officers, who shall make indorsements thereon, and shall take effect when accepted by the adjutant general and announced in orders. [L 1967, c 196, pt of §1; HRS §121-17]

" **§121-18 Retired list.** Officers shall be placed on the retired list in the grade held at the time of retirement and may if promoted by the commander in chief be placed on such list in the next higher grade. Retired officers shall only be placed on active duty by order of the commander in chief and while on active duty shall rank next to officers of like grade upon the active list. [L 1967, c 196, pt of §1; HRS §121-18]

" **§121-19 Regulations governing armories, etc.** Any law to the contrary notwithstanding, the adjutant general may make regulations to establish procedures governing the care and custody of armories, rifle ranges, reservations and installations that are either set aside to the department of defense or on license from the federal government. The adjutant general may permit the use of or may temporarily rent to civic, community, veterans and other nonprofit public organizations and groups, such portions of armories, rifle ranges, reservations and installations as will not interfere with the military use thereof. The adjutant general shall establish the rentals to be charged for their use and all moneys received from the rentals shall be deposited into the general fund of the State. Chapter 91 shall not apply. [L 1967, c 196, pt of §1; HRS §121-19; am L 1975, c 108, §2; gen ch 1985]

Attorney General Opinions

Allowance of use of armories for private functions must be in accordance with this section if armories are on license from the federal government, and in accordance with §171-11 if armories are on lands set aside by executive orders. Att. Gen. Op. 71-1.

" **§121-20 Enlistment.** Enlistment in the army or air national guard shall be in a manner, form, and for a period of time as may be provided by the laws of the United States, and regulations issued from time to time. No person shall be enlisted in the army or air national guard whose services during the person's preceding term of enlistment have not been honest and faithful. [L 1967, c 196, pt of §1; HRS §121-20; gen ch 1985]

" **§121-21 Discharge.** Discharges shall be granted for the convenience of the State and for the same reasons and in like manner as are from time to time prescribed by federal laws and regulations for the army or air national guard. [L 1967, c 196, pt of §1; HRS §121-21]

" **§121-22 Warrants of noncommissioned officers.** The warrants of noncommissioned officers and appointments of private first-class and rated specialists shall be continued in force after discharge by reason of expiration of term of service if they reenlist on the day following their discharge and the vacancy caused by their discharge has not been filled. [L 1967, c 196, pt of §1; HRS §121-22]

" **§121-23 Oath required.** Every person appointed or commissioned as an officer or who enlists or reenlists shall sign and take an oath of allegiance to the State and the United States, in a form as may be prescribed by the regulations issued by the commander in chief. A person making a false oath as to any statement contained in any enlistment paper or oath shall be guilty of perjury and upon conviction thereof shall be sentenced as provided by law. [L 1967, c 196, pt of §1; HRS §121-23]

" **§121-24 Oaths and affirmations; false swearing; perjury.**
(a) All commissioned officers of the army or air national guard shall have the power to administer oaths and affirmations in all matters pertaining to or concerning military service or property, but in no case shall they charge any fee therefor. Any person who falsely swears or affirms to any oath or affirmation so administered may be tried before any circuit court, and, upon conviction, shall be deemed guilty of perjury and sentenced for such offense as prescribed by law.

(b) For purposes of initial entry into the Hawaii national guard, any commissioned officer of the active or reserve components of any of the armed forces of the United States shall have the power to administer appropriate oaths and affirmations. [L 1967, c 196, pt of §1; HRS §121-24; am L 1988, c 52, §1]

Cross References

Perjury, see §§710-1060 to 710-1069.5.

" **§121-25 Exemption from arrest and service.** No member of the army or air national guard or of the militia of the State shall be arrested or subjected to service under any civil process while going to, remaining at, or returning from any place of military duty in pursuance of an order of the President of the United States or the governor. [L 1967, c 196, pt of §1; HRS §121-25]

" **§121-26 Relief from civil or criminal liability.** Members of the army or air national guard or the militia ordered into active service of the State by any proper authority shall not be liable, civilly or criminally, for any act or acts done by them in pursuance of duty in such service. The attorney general, the attorney general's deputy, special deputy, or appointee shall defend all actions brought civilly or criminally for acts or omissions against any member of the army, air national guard, or militia which reasonably appear to have occurred during the performance of service under this chapter, or chapter 122, or during a call-up under section 121-30, and reasonably done within the line or performance of duty. No action or proceedings shall be prosecuted or maintained against a member of a military court or an officer or person acting under its authority or reviewing its proceedings, on account of the approval or imposition or collection of a fine or penalty, or the execution of any writ, warrant, execution, process, or mandate of a military court. [L 1967, c 196, pt of §1; HRS §121-26; am L 1976, c 21, §1; gen ch 1985]

Note

Chapter 122 referred to in text is repealed. For similar provisions, see Hawaii state defense force, chapter 122A.

" **§121-27 Dishonorable discharge, effect.** Any officer or enlisted member of the militia who is dishonorably dismissed or discharged from the national guard, shall be disqualified from holding any office or employment in the service of the State, or any county, unless pardoned by the governor. [L 1967, c 196, pt of §1; HRS §121-27; am L 1969, c 15, §1(c)]

" **§121-28 Report for service, drills, and exercises.** Every member of the army or air national guard not excused therefrom

shall report for active service whenever so ordered or called by the President of the United States or the governor. Every member not excused therefrom shall participate in assemblies for drill and instruction at any designated armory or rendezvous, encampments, maneuvers, or other exercise, to the extent prescribed by regulations of the Department of the Army and Department of the Air Force of the United States. Failure to comply with this section shall be punishable as a court-martial may direct. [L 1967, c 196, pt of §1; HRS §121-28]

Attorney General Opinions

Pursuant to Uniformed Services Employment and Reemployment Rights Act of 1994, as well as state law, it appeared that Hawaii police department was precluded from refusing request by an employee for military leave if the employee had been so ordered to duty. Att. Gen. Op. 97-7.

" **§121-29 Active service.** Active service is any duty or service done under or in pursuance of an order or call of the President of the United States or an order of the governor. Any officer or body of troops while on active service may be relieved from duty by order of the proper authority. [L 1967, c 196, pt of §1; HRS §121-29]

" **§121-30 Order to active service.** In case of war, insurrection, invasion, riot, or imminent danger thereof; an emergency or disaster; or danger from flood, fire, storm, earthquake, civil disturbances, or terrorist events; any forcible obstruction to the execution of the laws, or reasonable apprehension thereof; or for assistance to civil authorities in disaster relief or emergency management, the governor may order the national guard or other component of the militia or any part thereof into active service. The governor or the governor's designated representative may also order the national guard into active service:

- (1) In nonemergency situations for duty and training in addition to the drill and instruction required by section 121-28;
- (2) To provide support to other states in response to a request for assistance under the Emergency Management Assistance Compact under chapter 128F; and
- (3) To detect, prevent, prepare for, investigate, respond to, or recover from any of the events for which an order to active service may be made. [L 1967, c 196, pt of §1; HRS §121-30; am L 1983, c 70, §1; am L 2014, c 111, §6]

Attorney General Opinions

Pursuant to Uniformed Services Employment and Reemployment Rights Act of 1994, as well as state law, it appeared that Hawaii police department was precluded from refusing request by an employee for military leave if the employee had been so ordered to duty. Att. Gen. Op. 97-7.

" **§121-31 Hawaii Code of Military Justice to apply.**

Whenever any portion of the militia, including the army or air national guard, is on active service pursuant to the order of the governor, or is on duty or ordered to assemble for duty in time of war, insurrection, invasion, public danger, or to aid the civil authorities on account of any breach of the peace, tumult, riot, resistance to the process of the State, or imminent danger thereof, or while engaged in disaster relief or for any other cause, the Hawaii Code of Military Justice and rules adopted to administer and implement that Code, shall be enforced and regarded as a part of this chapter until the forces are relieved from duty. [L 1967, c 196, pt of §1; HRS §121-31; am L 1982, c 171, §3]

Cross References

Hawaii code of military justice, see chapter 124A.

" **§121-32 REPEALED.** L 1982, c 171, §5.

" **§121-33 Interference by civilian, penalty.** Every commanding officer when on duty may ascertain and fix the necessary bounds and limits to the commanding officer's parade or encampment. Whoever intrudes within the limits of the parade or encampment after being forbidden, or whoever interrupts, molests, or obstructs any officer or soldier while on duty shall be guilty of a misdemeanor and shall be punishable by a fine not exceeding \$25. The person may be put and kept under guard until the parade, encampment, or duty is concluded. The commanding officer, as soon as practicable, shall turn over the person to any police officer. [L 1967, c 196, pt of §1; HRS §121-33; gen ch 1985]

Cross References

Classification of offense and authorized punishment, see §§701-107, 706-640, 663.

" **§121-34 Right-of-way on street, violation, and penalty.** Any portion of the army or air national guard while parading, drilling, moving in convoy, or performing any military duty pursuant to orders and according to law, shall have the right-of-way in any street or highway through which they may pass; provided that the carriage of the United States mail or the legitimate functions of the police and the progress and operations of fire engines and fire departments shall not be interfered with thereby. Any person who wilfully interferes or obstructs such right-of-way shall be guilty of a misdemeanor and shall be punishable by a fine not exceeding \$100. [L 1967, c 196, pt of §1; HRS §121-34]

Cross References

Classification of offense and authorized punishment, see §§701-107, 706-640, 663.

" **§121-34.5 Use of electric guns.** Members of the army or air national guard who have been qualified by training and are authorized by their commanders may use electric guns, as specifically provided in section 134-16(c) and (d), when assisting civil authorities in disaster relief, emergency management, or law enforcement functions; provided that "training" for the purposes of this section means a course of instruction or training in the use of any electric gun authorized pursuant to this section, that is provided or authorized by the manufacturer or is manufacturer-approved or is an electric gun training program approved by the army or air national guard, prior to deployment or issuance of electric guns and related equipment. [L 2011, c 144, §2; am L 2014, c 111, §8]

" **§121-35 Property of State.** All property purchased by the State for the army or air national guard shall be and remain the property of the State. All property of the United States issued to the army or air national guard or to the militia shall, for the purpose of this chapter, and any other similar and applicable law, be deemed to be the property of the State. [L 1967, c 196, pt of §1; HRS §121-35]

" **§121-36 Responsibility for property.** Every officer commanding a unit shall be charged with and be responsible for the arms, accouterments, ammunition, clothing, or other military property or stores issued to or belonging to the officer's command, and shall be accountable to the State for the same in case of their being lost or damaged otherwise than by unavoidable accident, or in actual service. All officers and

members of the militia having arms or other property of the State in their possession shall be accountable to the State in a like manner. [L 1967, c 196, pt of §1; HRS §121-36; gen ch 1985]

" **§121-37 Failure to return arms, etc.** Every member of the militia who wilfully neglects to return to the armory or headquarters of the unit to which the member belongs, any arms, uniform, or equipment issued to the member by the State or its officers, within six days after being notified by the member's commanding officer to do so, shall be guilty of a misdemeanor, and shall be punishable by a fine not exceeding \$50 or imprisonment for not more than thirty days. [L 1967, c 196, pt of §1; HRS §121-37; gen ch 1985]

Cross References

Classification of offense and authorized punishment, see §§701-107, 706-640, 663.

" **§121-38 Wearing of uniform for private purposes.** Any member of the national guard or other component of the militia wearing a uniform or any portion thereof issued by the United States or the State, except for military purposes, without permission being first obtained from an officer authorized to grant this permission by the governor, is guilty of a misdemeanor, and shall be punishable by a fine not exceeding \$25, or imprisonment for not more than thirty days. [L 1967, c 196, pt of §1; HRS §121-38]

Cross References

Classification of offense and authorized punishment, see §§701-107, 706-640, 663.

" **§121-39 Pay of officers and warrant officers while on active duty.** Officers and warrant officers of the army or air national guard while on active duty of the State shall receive the pay and allowances of officers and warrant officers of similar grades of the United States Army and Air Force, respectively; provided that:

- (1) The State shall allow officers and warrant officers to directly deposit their pay by electronic means to their personal banking accounts; and
- (2) No pay or allowances shall be made to officers or warrant officers for any service for which they receive military pay and allowances from the United

States. [L 1967, c 196, pt of §1; HRS §121-39; am L 2007, c 31, §1]

" **§121-40 Pay of enlisted personnel while on active duty.**

Enlisted personnel of the army and air national guard while on active duty in the service of the State, except during periods of annual field training or year-round field training, shall receive the same pay and allowances as enlisted personnel of similar rank in the United States Army and Air Force respectively; provided that the:

- (1) State shall allow enlisted personnel to directly deposit their pay by electronic means to their personal banking accounts; and
- (2) Aggregate of the pay and allowances, computed on a daily basis, shall in no event be less than the amount equal to ten times the hourly wage specified in section 387-2. [L 1967, c 196, pt of §1; HRS §121-40; am L 1969, c 15, §1(b); am L 1981, c 198, §1; am L 1986, c 339, §2; am L 2007, c 31, §2]

" **§121-41 REPEALED.** L 2013, c 10, §2.

" **§121-42 No pay without orders.** No officer or enlisted member of the army or air national guard shall be entitled to receive the pay herein provided unless the orders detailing the officer or enlisted member for duty or subsequent orders, specify that pay is to be received for the service rendered. [L 1967, c 196, pt of §1; HRS §121-42; am L 1969, c 15, §1(c); gen ch 1985]

" **[§121-43] Nonforfeiture for absence.** (a) Every employee of a private employer who is a member of the national guard shall be entitled to absent oneself from the employee's employment duties while engaged in the performance of ordered national guard service and while going to and returning from such service. Such person shall:

- (1) If still qualified to perform the person's employment duties, be restored by such employer or the employer's successor in interest to such position or to a position of like seniority, status, and pay; or
- (2) If not qualified to perform the person's employment duties, by reason of disability sustained during ordered national guard service, but qualified to perform the duties of any other position in the employ of such employer or the employer's successor in interest, be offered employment and, if such person so requests, be employed by such employer or the

employer's successor in interest in such other position the duties of which such person is qualified to perform as will provide such person like seniority, status, and pay, or the nearest approximation thereof consistent with the circumstances in such person's case,

unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so.

- (b) (1) Any person who is restored to or employed in a position in accordance with the provisions of subsection (a) shall be considered as having been on furlough or leave of absence; shall be so restored or reemployed without loss of seniority; shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person was ordered to national guard service; and shall not be discharged from such employment position without cause within one year after such restoration or reemployment.
- (2) Any person who is restored to or employed in a position in accordance with the provisions of subsection (a) should be so restored or reemployed in such manner as to give such person such status in the person's employment as the person would have enjoyed if such person had continued in such employment continuously from the time such person became engaged in the performance of ordered national guard service until the time of such person's restoration to such employment, or reemployment.
- (3) Any person who holds a position described in subsection (a) shall not be denied retention in employment or any promotion or other incident or advantage of employment because of any obligation as a member of the national guard. [L 1979, c 5, §1; gen ch 1985]

" **[\$121-44] Youth challenge program.** (a) Notwithstanding any other law to the contrary, the department may receive, expend, use, manage, and invest money, services, or property, real, personal, or mixed, that may be given, bequeathed, devised, or in any other manner provided, from sources other than the legislature or the federal government, for any purpose authorized under the Hawaii national guard youth challenge program, as described in that certain grant program under the

National Guard Bureau, and not inconsistent with any terms or conditions imposed by the donor, this section, or chapter 84.

(b) A gift of money shall be deposited by the director of finance in a separate account in the state treasury and expended in accordance with law and any terms and conditions that may pertain to the gift. Unless otherwise specified as a term or condition, the department may convert a gift of property into money. Income derived from property or the conversion of property may be used for the purposes described in this section and to pay for the storage, handling, management, repair, maintenance, and distribution of other properties held by the department for these purposes.

(c) All expenditures made pursuant to this section shall be subject to the approval of the adjutant general.

(d) In the case of services and property, real, personal, or mixed received, the department shall thereafter be responsible for their management, repair, and maintenance.

(e) The source making the gift shall not be liable upon any claim for injury arising from the donated property; provided that this provision shall not affect the responsibility or liability of manufacturers of defective products nor shall it affect the responsibilities of negligent persons who cause dangerous conditions that result in injury.

(f) The department shall maintain records of each gift, the essential facts of gift management, details relating to expenditures of all money made pursuant to this section, and the current disposition, use, and condition of each gift held by the department. This information shall be compiled and reported annually to the legislature and the governor, and shall be made available to the general public free of charge. [L 1995, c 233, §2]

" **§121-45 Tuition assistance for Hawaii national guard personnel to attend the University of Hawaii.** (a) The adjutant general, subject to the availability of funds, may award tuition assistance to qualified enlisted persons, warrant officers, and company grade officers (0-1 through 0-3) in the Hawaii national guard who are:

- (1) Residents of the State, as defined by the board of regents pursuant to section [304A-402]; and
- (2) Undergraduate students working toward a degree on any campus of the University of Hawaii.

(b) The adjutant general shall adopt rules in accordance with this chapter to carry out the purposes of this section. The rules shall include:

- (1) Descriptions of the minimum military and academic qualification of personnel who may be awarded full or partial tuition assistance under this section;
 - (2) Listings of acceptable fields of study, degrees, and periods of eligibility for personnel who may be awarded tuition assistance under this section;
 - (3) Procedures for demonstrating the ongoing, satisfactory military and academic performance of personnel who have accepted tuition assistance under this section;
 - (4) Explanations of any reenlistment obligations for personnel who have accepted tuition assistance under this section;
 - (5) Procedures for administratively transferring moneys for tuition assistance awarded under this section from the department of defense to the University of Hawaii; and
 - (6) Procedures for enforcing this subsection.
- (c) Chapters 42F, 103D, and 103F shall not apply to this section. [L 1996, c 291, §2; am L 1997, c 190, §6; am L 2006, c 75, §7]