

Jefferson S. Burton proposes the following substitute bill:

National Guard Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jefferson S. Burton

Senate Sponsor: Ann Millner

LONG TITLE

General Description:

This bill amends provisions related to the National Guard.

Highlighted Provisions:

This bill:

- defines terms;
- amends provisions related to the appointment of the adjutant general;
- amends provisions related to the management of the State Armory Board;
- clarifies what electronic means the State Armory Board may use in conducting meetings and taking official action;
- allows for the National Guard to repay student loans for active members of the National Guard using current funds;
- addresses the appointment and responsibilities of certain judge advocates;
- addresses the use of force by a military service member or a member of the National Guard in certain circumstances;
- provides that a military chaplain may solemnize a marriage; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

39A-1-201, as last amended by Laws of Utah 2024, Chapter 334

39A-2-101, as last amended by Laws of Utah 2022, Chapter 421 and renumbered and amended by Laws of Utah 2022, Chapter 373

39A-2-102, as last amended by Laws of Utah 2024, Chapter 268

39A-3-201, as last amended by Laws of Utah 2024, Chapter 28

39A-5-103, as renumbered and amended by Laws of Utah 2022, Chapter 373

39A-9-101, as enacted by Laws of Utah 2024, Chapter 334

63I-2-239, as enacted by Laws of Utah 2024, Third Special Session, Chapter 5

81-2-301, as enacted by Laws of Utah 2024, Chapter 366

81-2-305, as renumbered and amended by Laws of Utah 2024, Chapter 366

ENACTS:

39A-5-114.5, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 39A-1-201 is amended to read:

39A-1-201 . Adjutant general -- Appointment -- Term -- Qualifications.

(1) There shall be one adjutant general of the [~~Utah~~]National Guard[~~-appointed by~~] .

(2)(a) Beginning in the calendar year of 2027 and in every fourth year after 2027, the

governor shall, in the month of January, appoint an individual who meets the

qualifications under this section to serve a four-year term as the adjutant general.

(b) The four-year term for the adjutant general appointed under Subsection (2)(a) shall

begin on the day of the adjutant general's appointment.

(c) If an individual appointed to serve as the adjutant general for a four-year term under

Subsection (2)(a) is removed, resigns, or otherwise vacates the position of adjutant

general, the governor may appoint another individual to serve as the adjutant general

for the remainder of the unexpired four-year term.

(d)(i) If a vacancy in the position of adjutant general occurs before the year of 2027,

the governor shall appoint an individual who meets the qualifications under this

section to serve as the adjutant general.

(ii) An adjutant general appointed under Subsection (2)(d)(i) shall serve a term that

begins on the day of the adjutant general's appointment and ends when the

governor appoints an adjutant general to a four-year term in January of 2027, as

described in Subsection (2)(a).

~~[(2)]~~ (3) The adjutant general is the commanding general of the [~~Utah~~]National Guard and the Utah State Defense Force and serves at the pleasure of the governor.

~~[(3)]~~ (4) The individual appointed to the office shall:

(a) be a citizen of Utah and meet the requirements provided in Title 32, United States

Code;

(b) be a federally recognized commissioned officer, with the rank of colonel or higher, of the Army National Guard or the Air National Guard with no fewer than five years commissioned service in the ~~[Utah]~~ National Guard; and

(c) as determined by the governor, have sufficient knowledge and experience to command the ~~[Utah]~~ National Guard.

~~[(4)]~~ (5) Active service in the armed forces of the United States may be included in the requirement in Subsection ~~[(3)(b)]~~ (4)(b), if the officer was a member of the ~~[Utah]~~ National Guard when the officer entered that service.

~~[(5)]~~ (6) The adjutant general shall establish a succession plan consistent with Section 53-2a-804 to ensure the continuity of command.

~~[(6)]~~ (7) An officer is no longer eligible to hold the office of adjutant general ~~[after attaining the age of 64 years]~~ if the officer is 64 years old or older.

~~[(7)]~~ (8) The adjutant general shall ensure the readiness, training, discipline, and operations of the ~~[Utah]~~ National Guard.

(9) An individual who otherwise meets the qualifications under this section to serve as the adjutant general may serve multiple terms as the adjutant general if appointed by the governor under Subsection (2).

Section 2. Section **39A-2-101** is amended to read:

39A-2-101 . State Armory Board -- Creation -- Members -- A body corporate -- Powers -- Expenses.

(1) There is created a three member State Armory Board with the following members:

(a) the governor;

(b) the executive director of the Department of Government Operations; and

(c) the adjutant general of the ~~[Utah]~~ National Guard, appointed in accordance with Section 39A-3-102.

(2) The board is a body corporate with perpetual succession and the board's property is exempt from all taxes and assessments.

(3) The board may:

(a) have and use a common seal;

(b) sue and be sued;

(c) contract and be contracted with;

(d) take and hold by purchase, gift, devise, grant, or bequest real and personal property required for the board's use; and

(e) convert property received by gift, devise, or bequest, and not suitable for the board's uses, into other property as available, or into money.

(4) The board may:

(a) borrow money for the purpose of providing facilities, ranges, and training lands upon the sole credit of the real property to which the board has legal title; and

(b) secure loans described in Subsection (4)(a) by mortgage upon property to which the State Armory Board has legal title.

(5)(a) Property mortgaged for a loan as provided in Subsection (4)(b) shall be the sole security for the loan.

(b) A deficiency judgment may not be made, rendered, or entered against the board upon the foreclosure of a mortgage under Subsection (4)(b).

(c) The board may not mortgage property in one city for the purpose of obtaining money for the erection of armories in any other place.

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the National Guard shall make rules governing the management and operational needs of the board established under this section including rules for the appointment, duties, and responsibilities of the board's secretary.

Section 3. Section **39A-2-102** is amended to read:

39A-2-102 . Responsibilities of State Armory Board.

(1) The board shall supervise and control all facilities, ranges, training lands, and all real property held or acquired for the military purposes of the state.

(2) The board may:

(a) provide suitable facilities, ranges, and training lands for the different organizations of the National Guard;

(b) lease real property throughout the state wherever necessary for the use of organizations of the National Guard and for the storage of state and government property at a rental that the board considers reasonable;

(c) erect facilities and ranges at places within the state that it considers necessary upon

lands to which it has acquired the legal title;

(d) expend military funds to acquire legal title to lands and to construct facilities and ranges;

(e) sell and lease property that the board holds under Subsection (1) for purposes consistent with the mission of the [~~Utah~~] National Guard; and

(f) conduct meetings and take official action in person or as necessary via electronic means, including electronic mail, electronic messaging, telephone[~~-or~~], video teleconferencing, or a combination of these methods.

(3)(a) Subject to Subsection (3)(b), the board may take options for the purchase of any premises under lease to the state for National Guard purposes:

(i) at any time during the life of the lease; and

(ii) when the purchase is in the state's interest.

(b) An option is not binding upon the board until it is approved by the Legislature.

(4)(a) Before legally binding the state to sell or lease any real property owned by the National Guard, the board shall submit a description of the proposed sale to the Legislative Management Committee for [~~its~~] the Legislative Management Committee's review and recommendations.

(b) Before legally binding the state to purchase any interest in real property, the board shall submit a description of the proposed sale to the Legislative Management Committee for [~~its~~] the Legislative Management Committee's review and recommendations.

(c) The Legislative Management Committee shall review each proposal and may approve or disapprove the sale.

(5)(a) There is created an expendable special revenue fund known as the "State Armory Fund."

(b) The State Armory Fund shall consist of:

(i) proceeds from the sales and leases of real property authorized by this section;

(ii) appropriations by the Legislature; and

(iii) interest earned on the fund.

(c) Subject to the Legislative Management Committee's review and recommendation, the State Armory Board may expend money in the State Armory Fund to pay for the acquisition and sale of real property and the construction of new armories.

Section 4. Section **39A-3-201** is amended to read:

39A-3-201 . Tuition and fees assistance for National Guard members -- Use and

allocation -- Appropriation.

- (1)(a) As used in this section, "fees" means general course fees, in addition to tuition, that are:
- (i) imposed by an institution of higher education; and
 - (ii) required to be paid by a student to engage in a course of study at the institution of higher education.
- (b) "Fees" includes:
- (i) a special course fee; and
 - (ii) expenses for required:
 - (A) text books; and
 - (B) course related materials.
- (2) The ~~[Utah]~~ National Guard may provide tuition and fees assistance to a member of the ~~Utah~~ National Guard for study at an institution of higher education, subject to the following requirements:
- (a) the individual shall be, at the time the individual receives the assistance, an active member of the ~~[Utah]~~ National Guard; and
 - (b) the assistance is for tuition and fees only and may not be more than the resident tuition and fees for the actual course of postsecondary study engaged in by the individual.
- (3)(a) Tuition and fees assistance shall be awarded as the adjutant general considers necessary.
- (b) An individual may apply to the adjutant general ~~[of the state]~~ for assistance for each year during which the individual is an active member of the ~~[Utah]~~ National Guard.
- (c) The adjutant general may recoup funds if a recipient fails to meet the requirements of the program.
- (4) The adjutant general ~~[of the state]~~ shall:
- (a) [-] pay tuition and fees assistance directly to the institution of higher education from the funds appropriated[-] ; and
 - ~~[(5)]~~ (b) [The adjutant general of the state shall] establish regulations, procedures, forms, and reports necessary to administer the allocation of assistance and payment of funds under this section.
 - ~~[(6)]~~ (5) The adjutant general may [use no more] not use more than 10% of the funds for administration of the program as the adjutant general considers necessary.
- (6)(a) Subject to Subsections (6)(b) and (c), the adjutant general may allocate funds for

the repayment of student loans for members of the National Guard.

(b) In addition to the requirements described in Subsection (6)(c), a member of the National Guard qualifies for the repayment of the member's student loans if the member is currently an active member of the National Guard.

(c) The adjutant general shall administer the loan repayment option described in this Subsection (6) in accordance with policies and procedures established by the adjutant general, including:

(i) additional eligibility requirements;

(ii) repayment limits; and

(iii) any other condition the adjutant general determines is appropriate.

Section 5. Section **39A-5-103** is amended to read:

39A-5-103 . State staff judge advocate -- Appointment -- Qualifications -- Duties -- Assistants.

(1)(a) The adjutant general shall appoint a state staff judge advocate.

(b) The state staff judge advocate appointed under Subsection (1)(a) shall be:

(i) an officer of the National Guard;

(ii) a member of the Utah State Bar; and

(iii) designated as a state staff judge advocate officer.

(c) The state staff judge advocate appointed under Subsection (1)(a):

(i) is the senior legal officer for the National Guard and a member of the adjutant general's special staff; and

(ii) shall act as the primary legal advisor to the adjutant general on all matters involving military justice.

~~[(1)] (2)(a) The adjutant general [shall] may appoint [an officer of the National Guard as the] a state judge advocate.[-]~~

~~(b) The [offieer] state judge advocate appointed under Subsection (2)(a) shall be:~~

~~(i) an officer of the National Guard;~~

~~(ii) [-]a member of the Utah State Bar[, a United States federal court, branch qualified, and] ; and~~

~~(iii) [-]designated as a staff judge advocate officer.~~

~~[(2)] (c) The state judge advocate appointed under Subsection (2)(a) is:~~

~~(i) [-]the principal military legal advisor; and~~

~~(ii) [-]shall, in connection with rendering legal advice to the adjutant general, prepare pretrial advice, a post-trial review, and act, in concert with the state staff judge~~

233 advocate, as legal advisor to the adjutant general on all matters involving military
234 justice.

235 (3)(a) The adjutant general may appoint staff judge advocates for the individual services
236 of the National Guard.

237 (b) A service staff judge advocate appointed under Subsection (3)(a) shall be:

238 (i) an officer of the National Guard;

239 (ii) a member of the Utah State Bar; and

240 (iii) designated as a staff judge advocate officer.

241 (c) A service staff judge advocate appointed under Subsection (3)(a):

242 (i) is responsible for the provision of military justice legal advice to the service
243 assistant adjutant general of the branch state staff judge advocate; and

244 (ii) shall provide oversight to subordinate assistant staff judge advocates.

245 [(3)] (4)(a) The adjutant general may appoint assistant state judge advocates[as
246 considered necessary].

247 (b) [-AH] An assistant state judge [advocates] advocate appointed under Subsection (4)(a)
248 shall be:

249 (i) [-officers] an officer of the National Guard[-];

250 (ii) [-members] a member of the Utah State Bar[-branch qualified, and]; and

251 (iii) [-]designated as a staff judge advocate [officers] officer.

252 [(4)] (5)(a) The [SJA or an assistant SJA] state judge advocate or service staff judge
253 advocate shall make frequent inspections of military units throughout the state to
254 supervise the administration of military justice.

255 (b) The duty described in Subsection (5)(a) may be delegated to an assistant state judge
256 advocate.

257 [(5)] (6)(a) The convening authority shall review directly with [the SJA] the convening
258 authority's staff judge advocate all matters relating to the administration of military
259 justice and administrative actions.

260 (b) [-]The assistant state judge advocate or legal officer of any command may
261 communicate directly with the assistant state judge advocate or legal officer of a
262 superior or subordinate command, or with the [SJA] state staff judge advocate.

263 [(6)] (7) An individual who has acted as a member, military judge, trial counsel, assistant
264 trial counsel, defense counsel, assistant defense counsel, or investigating officer, or who
265 has been a witness for either the prosecution or defense, may not subsequently act as
266 assistant state judge advocate, [SJA] state judge advocate, state staff judge advocate,

service staff judge advocate, or legal officer to any reviewing authority upon the same case.

Section 6. Section **39A-5-114.5** is enacted to read:

39A-5-114.5 . Use of force in defense of equipment and personnel of the National Guard or military.

(1) As used in this section, "deadly force" means the same as that term is defined Section 76-2-404.

(2) A military service member or a member of the National Guard may use force, including deadly force, to defend military or National Guard equipment or personnel, if:

(a) the member is on official duty to defend equipment or personnel of the military or National Guard; and

(b) the use of force is used in accordance with the military or National Guard regulations and doctrine regarding the appropriate use of force in the defense of equipment or personnel.

(3)(a) Before a military service member or a member of the National Guard is assigned to official duty to defend equipment or personnel, the servicing staff judge advocate shall provide a briefing to the member on the rules for the use of force under this section and in accordance with military or National Guard regulations and doctrine.

(b) A military service member or a member of the National Guard who does not receive the briefing described in Subsection (3)(a) may still claim the privilege described in Subsection (2) if the member is not at fault for not receiving the briefing.

Section 7. Section **39A-9-101** is amended to read:

39A-9-101 . Acceptance of gifts.

(1) The [~~Utah~~]National Guard is authorized to receive gifts, contributions, and donations of all kinds, including tangible objects and real property made on the condition that the [~~Utah~~]National Guard uses the gifts, contributions, and donations for the benefit of, or in connection with, the [~~Utah~~]National Guard and [~~Utah~~]National Guard members, employees, or members' or employees' dependents.

(2) The adjutant general is the acceptance authority for gifts described in Subsection (1).

(3) The adjutant general may also accept gifts donated to benefit a state military museum or to create a memorial within the state honoring the activities of the [~~Utah~~]National Guard.

(4) A gift, grant, or donation described in this section will not revert to the General Fund and shall be considered non-lapsing funds.

(5) Acceptance authorities will ensure compliance with the restrictions and limitations

contained in Section 63G-6a-2404.

(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the [department] National Guard shall make rules for the acceptance of gifts, including establishing:

- (a) delegation of gift acceptance authority;
- (b) the method and criteria for accepting gifts;
- (c) identification of existing accounts for gift proceeds to be deposited into;
- (d) use and purpose of gifts;
- (e) prohibitions; and
- (f) exceptions to the policy.

Section 8. Section **63I-2-239** is amended to read:

63I-2-239 . Repeal dates: Title 39A.

[Reserved] Subsection 39A-1-201(2)(d), regarding a vacancy in the position of adjutant general that occurs before the year 2027 is repealed January 1, 2027.

Section 9. Section **81-2-301** is amended to read:

81-2-301 . Definitions for part.

As used in this part:

(1) "County clerk" means:

- (a) the county clerk of the county; or
- (b) an employee or designee of the county clerk who is authorized to issue marriage licenses or solemnize marriages.

(2) "Judge or magistrate of the United States" means:

- (a) a justice of the United States Supreme Court;
- (b) a judge of a court of appeals;
- (c) a judge of a district court;
- (d) a judge of any court created by an act of Congress, the judges of which are entitled to hold office during good behavior;
- (e) a judge of a bankruptcy court;
- (f) a judge of a tax court; or
- (g) a United States magistrate.

(3) "Minor" means an individual who is 16 or 17 years old.

(4)(a) "Native American spiritual advisor" means an individual who:

- (i) leads, instructs, or facilitates a Native American religious ceremony or service or provides religious counseling; and

(ii) is recognized as a spiritual advisor by a federally recognized Native American tribe.

(b) "Native American spiritual advisor" includes a sweat lodge leader, medicine person, traditional religious practitioner, or holy man or woman.

(c) "Military chaplain" means an individual who is a commissioned officer of:

(i) the Chaplain Corps of the United States Army;

(ii) the Chaplain Corps of the United States Navy, including the United States Coast Guard; or

(iii) the United States Air Force designated for duty as a chaplain.

Section 10. Section **81-2-305** is amended to read:

81-2-305 . Who may solemnize marriages -- Certificate.

(1) The following individuals may solemnize a marriage:

(a) an individual 18 years old or older who is authorized by a religious denomination to solemnize a marriage;

(b) a Native American spiritual advisor;

(c) the governor;

(d) the lieutenant governor;

(e) the state attorney general;

(f) the state treasurer;

(g) the state auditor;

(h) a mayor of a municipality or county executive;

(i) a justice, judge, or commissioner of a court of record;

(j) a judge of a court not of record of the state;

(k) a judge or magistrate of the United States;

(l) the county clerk of any county in the state or the county clerk's designee as authorized by Section 17-20-4;

(m) a senator or representative of the Utah Legislature;

~~[(nn)]~~ (n) a member of the state's congressional delegation;~~[-or]~~

~~[(oo)]~~ (o) a judge or magistrate who holds office in Utah when retired, under rules set by the Supreme Court; or

(p) a military chaplain.

(2) An individual authorized under Subsection (1) who solemnizes a marriage shall give to the couple married a certificate of marriage that shows the:

(a) name of the county from which the license is issued; and

(b) date of the license's issuance.

(3) Except for an individual described in Subsection (1)(l), an individual described in Subsection (1) has discretion to solemnize a marriage.

(4) Except as provided in Section 17-20-4 and Subsection (1)(l), and notwithstanding any other provision in law, no individual authorized under Subsection (1) to solemnize a marriage may delegate or deputize another individual to perform the function of solemnizing a marriage.

(5)(a) Within 30 days after the day on which a marriage is solemnized, the individual solemnizing the marriage shall return the marriage license to the county clerk that issued the marriage license with a certificate of the marriage over the individual's signature stating the date and place of solemnization and the names of two or more witnesses present at the marriage.

(b) An individual described in Subsection (5)(a) who fails to return the license is guilty of an infraction.

(c) An individual described in Subsection (5)(a) who knowingly or intentionally makes a false statement on a certificate of marriage is guilty of perjury and may be prosecuted and punished as provided in Title 76, Chapter 8, Part 5, Falsification in Official Matters.

(6)(a) An individual is guilty of a third degree felony if the individual knowingly:

(i) solemnizes a marriage without a valid marriage license; or

(ii) solemnizes a marriage in violation of this section.

(b) An individual is guilty of a class A misdemeanor if the individual knowingly, with or without a marriage license, solemnizes a marriage between two individuals who are 18 years old or older that is prohibited by law.

Section 11. Effective Date.

This bill takes effect on May 7, 2025.