

UTAH NATIONAL GUARD AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill modifies provisions related to the Utah National Guard.

Highlighted Provisions:

This bill:

- ▶ allows for reenlistment bonus assistance to a member of the Utah National Guard;
- ▶ modifies the constitution of the Utah State Defense Force;
- ▶ adds a provision for the acceptance of gifts to the Utah National Guard;
- ▶ amends provisions related to benefits for the executive director of the Department of Veterans and Military Affairs;
- ▶ requires the deputy director for veterans services to be a veteran;
- ▶ clarifies a definition related to veteran preference eligibility to include the words "service member";
- ▶ reenacts provisions related to a leave of absence from employment for reserve members of the armed forces; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

39A-1-201, as renumbered and amended by Laws of Utah 2022, Chapter 373

39A-1-203, as enacted by Laws of Utah 2022, Chapter 373

39A-3-105, as enacted by Laws of Utah 2022, Chapter 373

39A-3-202, as last amended by Laws of Utah 2023, Chapter 44

39A-3-204, as renumbered and amended by Laws of Utah 2022, Chapter 373

39A-4-101, as renumbered and amended by Laws of Utah 2022, Chapter 373

33 **67-22-2**, as last amended by Laws of Utah 2023, Chapter 205
34 **71A-1-202**, as enacted by Laws of Utah 2023, Chapter 44
35 **71A-2-101**, as last amended by Laws of Utah 2023, Chapter 16 and renumbered and
36 amended by Laws of Utah 2023, Chapter 44

37 ENACTS:

38 **39A-3-205**, Utah Code Annotated 1953
39 **39A-9-101**, Utah Code Annotated 1953
40 **71A-8-105**, Utah Code Annotated 1953

41

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

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

44 **39A-1-201. Adjutant general -- Appointment -- Term -- Qualifications.**

45 (1) There shall be one adjutant general of the Utah National Guard appointed by the
46 governor.

47 (2) The adjutant general is the commanding general of the Utah National Guard and the
48 Utah State Defense Force and [~~holds office for a term of six years, unless terminated by~~
49 ~~resignation, disability, age, in accordance with Subsection (6), or for cause~~] serves at the
50 pleasure of the governor.

51 (3) The individual appointed to the office shall:

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

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

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

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

62 (5) The adjutant general shall establish a succession plan consistent with Section
63 53-2a-804 to ensure the continuity of command.

64 (6) An officer is no longer eligible to hold the office of adjutant general after attaining
65 the age of 64 years.

66 (7) The adjutant general shall ensure the readiness, training, discipline, and operations
67 of the Utah National Guard.

68 Section 2. Section **39A-1-203** is amended to read:

69 **39A-1-203. Director of joint staff -- Assistant adjutants general -- Chief of staff**
70 **for the Air Force.**

71 (1) There is authorized an assistant adjutant general for the Army, an assistant adjutant
72 general for the Air Force, a chief of staff for the Air Force, a land component commander, and
73 a director of joint staff.

74 (2) The adjutant general, with the approval of the governor, may appoint assistant
75 adjutant generals, a chief of staff for the Air Force, a land component commander, and a
76 director of joint staff with pay from the state.

77 (3) The assistant adjutants general, the chief of staff for the Air Force, the land
78 component commander, and the director of joint staff shall be at least a federally recognized
79 field grade commissioned officer of the Utah National Guard with not less than five years
80 military service in the armed forces of a state or of the United States, at least three of which
81 shall have been commissioned in the Utah National Guard. The officers shall hold office at the
82 pleasure of the adjutant general.

83 (4) The adjutant general may detail an officer without the required commissioned
84 service in the Utah National Guard to a position in this section only with the written approval
85 of the governor.

86 Section 3. Section **39A-3-105** is amended to read:

87 **39A-3-105. General officer salary and benefits.**

88 (1) Full-time, state employed general officers or officers appointed to a general officer
89 position shall receive a salary that makes the total federal and state compensation at least
90 commensurate with the pay and allowances for their military grade or assigned position, time
91 in grade, and time in service as established in the United States Department of Defense Finance
92 and Accounting Services annual pay and allowances chart.

93 (2) General officers appointed to state employment shall receive the benefits and
94 protections in Section [~~39-1-36~~] 71A-8-105 for the term of the appointment.

95 Section 4. Section **39A-3-202** is amended to read:

96 **39A-3-202. Pay and care of soldiers and airmen disabled while on state active**
97 **duty.**

98 (1) (a) Before a service member may be considered disabled in accordance with this
99 section, the Adjutant General shall determine whether the service member's illness, injury, or
100 disease was contracted or occurred through the fault or gross negligence of the service member.
101 If the service member is determined to be at fault for an injury or developed a disability
102 through his or her own grossly negligent actions, the service member is not entitled to any care,
103 pension, or benefit in accordance with this section.

104 (b) Notwithstanding Subsection (1)(a) the service member may be eligible for benefits
105 in accordance with Title 34A, Chapter 2, Workers' Compensation Act, and Chapter 3, Utah
106 Occupational Disease Act.

107 (2) A member of the Utah National Guard or Utah State Defense Force who is disabled
108 through illness, injury, or disease contracted or incurred while on state active duty or while
109 reasonably proceeding to or returning from duty is eligible to receive workers' compensation
110 benefits in accordance with Title 34A, Chapter 2, Workers' Compensation Act.

111 (3) (a) If the disability temporarily incapacitates the service member from pursuing the
112 service member's usual business or occupation, the service member is eligible to receive
113 workers' compensation benefits in accordance with Title 34A, Chapter 2, Workers'
114 Compensation Act, and Chapter 3, Utah Occupational Disease Act.

115 (b) For the duration of the service member's inability to pursue a business or
116 occupation, the adjutant general shall provide compensation so that the total compensation,
117 including the disability compensation received under Subsection (3)(a) is commensurate with
118 the injured service member's lost pay. The adjutant general shall consider lost civilian and
119 military pay in the compensation.

120 (4) A service member who is permanently disabled, shall receive pensions and benefits
121 from the state that individuals under like circumstances in the Armed Forces of the United
122 States receive from the United States.

123 (5) If a service member dies as a result of an injury, illness, or disease contracted or
124 incurred while on state active duty or while reasonably proceeding to or returning from active
125 duty, the surviving spouse, minor children, or dependent parents of the service member shall

126 receive compensation as directed in Section 39A-3-203.

127 (6) Costs incurred by reason of this section shall be paid out of the funds available to
128 the Utah National Guard.

129 (7) The adjutant general, with the approval of the governor, shall make and publish
130 regulations to implement this section.

131 (8) Nothing in this section shall in any way limit or condition any other payment to a
132 service member that the law allows.

133 Section 5. Section **39A-3-204** is amended to read:

134 **39A-3-204. National Guard Death Benefit Account.**

135 (1) There is created within the General Fund a restricted account known as "National
136 Guard Death Benefit Account."

137 (2) (a) The restricted account shall be funded from funds appropriated by the
138 Legislature.

139 (b) Funds in the restricted account may only be used to pay the death benefit authorized
140 in Section [~~39A-3-204~~] 39A-3-203.

141 (c) The restricted account may accrue interest which shall be deposited into the
142 restricted account.

143 (d) At the close of any fiscal year, any balance in the fund in excess of \$2,000,000 shall
144 be transferred to the General Fund.

145 Section 6. Section **39A-3-205** is enacted to read:

146 **39A-3-205. Recruitment and retention bonus assistance for Utah National Guard**
147 **members -- Use and allocation -- Appropriation.**

148 (1) The Utah National Guard may provide recruitment and retention bonus assistance
149 to a member of the Utah National Guard for the purpose of recruitment and retention, if, at the
150 time the individual receives the assistance, the individual is an active member in good standing
151 with the Utah National Guard.

152 (2) The adjutant general may award recruitment and retention bonus assistance as the
153 adjutant general considers necessary to meet recruitment and retention needs.

154 (3) The adjutant general of the state shall pay recruitment and retention bonus
155 assistance directly to the individual.

156 (4) The adjutant general may recoup recruitment and retention bonus assistance funds

157 from a recipient if a recipient fails to meet the requirements of the program.

158 (5) The adjutant general shall establish regulations, procedures, forms, and reports
 159 necessary to administer the allocation of assistance and payment of funds under this section.

160 (6) The adjutant general may use no more than 10% of the funds for administration of
 161 the program as the adjutant general considers necessary.

162 Section 7. Section **39A-4-101** is amended to read:

163 **39A-4-101. Utah State Defense Force -- How constituted.**

164 (1) Unless exempt under Subsection ~~[(2)]~~ (3), all able-bodied ~~[citizens, and all~~
 165 ~~able-bodied individuals of foreign birth who have declared their intention to become citizens,~~
 166 ~~are 18 years old or older and younger than 64 years old, and are residents of this state]~~ male
 167 inhabitants of the state, between the ages of 18 and 45 years old, except such as are exempted
 168 by law, constitute the Utah State Defense Force.

169 (2) Individuals 18 years old or older, who are residents of the state, may volunteer for
 170 consideration by the adjutant general to be members of the Utah State Defense Force.

171 ~~[(2)]~~ (3) Individuals exempt from Subsection (1) include:

172 (a) individuals exempted from military service by laws of the United States;

173 (b) individuals exempted from military service by the laws of this state;

174 (c) all individuals who have been honorably discharged from the armed forces, or
 175 volunteer forces of the United States;

176 (d) active members of any regularly organized fire or police department in any city or
 177 town, but a member of the active defense force may not be relieved from duty because the
 178 individual joined any volunteer fire company or department;

179 (e) judges and clerks of courts of record;

180 (f) state and county civil officers holding office by election;

181 (g) state officers appointed by the governor for a specified term of office;

182 (h) ministers of the gospel; and

183 (i) practicing physicians and hospital officers and assistants.

184 ~~[(3)]~~ (4) All individuals described in Subsection (1) are liable to military duty in case
 185 of war, insurrection, invasion, tumult, riot, or public disaster, or imminent danger of any of
 186 these, or after voluntarily enlisting in the National Guard of this state.

187 Section 8. Section **39A-9-101** is enacted to read:

188 **CHAPTER 9. GIFTS TO THE UTAH NATIONAL GUARD**189 **39A-9-101. Acceptance of gifts.**

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

195 (2) The adjutant general is the acceptance authority for gifts described in Subsection
196 (1).

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

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

202 (5) Acceptance authorities will ensure compliance with the restrictions and limitations
203 contained in Section 63G-6a-2404.

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

206 (a) delegation of gift acceptance authority;

207 (b) the method and criteria for accepting gifts;

208 (c) identification of existing accounts for gift proceeds to be deposited into;

209 (d) use and purpose of gifts;

210 (e) prohibitions; and

211 (f) exceptions to the policy.

212 Section 9. Section **67-22-2** is amended to read:

213 **67-22-2. Compensation -- Other state officers.**

214 (1) As used in this section:

215 (a) "Appointed executive" means the:

216 (i) commissioner of the Department of Agriculture and Food;

217 (ii) commissioner of the Insurance Department;

218 (iii) commissioner of the Labor Commission;

- 219 (iv) director, Department of Alcoholic Beverage Services;
- 220 (v) commissioner of the Department of Financial Institutions;
- 221 (vi) executive director, Department of Commerce;
- 222 (vii) executive director, Commission on Criminal and Juvenile Justice;
- 223 (viii) adjutant general;
- 224 (ix) executive director, Department of Cultural and Community Engagement;
- 225 (x) executive director, Department of Corrections;
- 226 (xi) commissioner, Department of Public Safety;
- 227 (xii) executive director, Department of Natural Resources;
- 228 (xiii) executive director, Governor's Office of Planning and Budget;
- 229 (xiv) executive director, Department of Government Operations;
- 230 (xv) executive director, Department of Environmental Quality;
- 231 (xvi) executive director, Governor's Office of Economic Opportunity;
- 232 (xvii) executive director, Department of Workforce Services;
- 233 (xviii) executive director, Department of Health, Nonphysician;
- 234 (xix) executive director, Department of Human Services;
- 235 (xx) executive director, Department of Transportation;
- 236 (xxi) executive director, Department of Veterans and Military Affairs;
- 237 (xxii) executive director, Public Lands Policy Coordinating Office, created in Section
- 238 63L-11-201; and
- 239 (xxiii) Great Salt Lake commissioner, appointed under Section 73-32-201.
- 240 (b) "Board or commission executive" means:
- 241 (i) members, Board of Pardons and Parole;
- 242 (ii) chair, State Tax Commission;
- 243 (iii) commissioners, State Tax Commission;
- 244 (iv) executive director, State Tax Commission;
- 245 (v) chair, Public Service Commission; and
- 246 (vi) commissioners, Public Service Commission.
- 247 (c) "Deputy" means the person who acts as the appointed executive's second in
- 248 command as determined by the Division of Human Resource Management.
- 249 (2) (a) The director of the Division of Human Resource Management shall:

250 (i) before October 31 of each year, recommend to the governor a compensation plan for
251 the appointed executives and the board or commission executives; and

252 (ii) base those recommendations on market salary studies conducted by the Division of
253 Human Resource Management.

254 (b) (i) The Division of Human Resource Management shall determine the salary range
255 for the appointed executives by:

256 (A) identifying the salary range assigned to the appointed executive's deputy;

257 (B) designating the lowest minimum salary from those deputies' salary ranges as the
258 minimum salary for the appointed executives' salary range; and

259 (C) designating 105% of the highest maximum salary range from those deputies' salary
260 ranges as the maximum salary for the appointed executives' salary range.

261 (ii) If the deputy is a medical doctor, the Division of Human Resource Management
262 may not consider that deputy's salary range in designating the salary range for appointed
263 executives.

264 (c) (i) Except as provided in Subsection (2)(c)(ii), in establishing the salary ranges for
265 board or commission executives, the Division of Human Resource Management shall set the
266 maximum salary in the salary range for each of those positions at 90% of the salary for district
267 judges as established in the annual appropriation act under Section 67-8-2.

268 (ii) In establishing the salary ranges for an individual described in Subsection (1)(b)(ii)
269 or (iii), the Division of Human Resource Management shall set the maximum salary in the
270 salary range for each of those positions at 100% of the salary for district judges as established
271 in the annual appropriation act under Section 67-8-2.

272 (3) (a) (i) Except as provided in Subsection (3)(a)(ii), the governor shall establish a
273 specific salary for each appointed executive within the range established under Subsection
274 (2)(b).

275 (ii) If the executive director of the Department of Health is a physician, the governor
276 shall establish a salary within the highest physician salary range established by the Division of
277 Human Resource Management.

278 (iii) The governor may provide salary increases for appointed executives within the
279 range established by Subsection (2)(b) and identified in Subsection (3)(a)(ii).

280 (b) The governor shall apply the same overtime regulations applicable to other FLSA

281 exempt positions.

282 (c) The governor may develop standards and criteria for reviewing the appointed
283 executives.

284 (4) Salaries for other Schedule A employees, as defined in Section 63A-17-301, that
285 are not provided for in this chapter, or in Title 67, Chapter 8, Utah Elected Official and Judicial
286 Salary Act, shall be established as provided in Section 63A-17-301.

287 (5) (a) The Legislature fixes benefits for the appointed executives and the board or
288 commission executives as follows:

289 (i) the option of participating in a state retirement system established by Title 49, Utah
290 State Retirement and Insurance Benefit Act, or in a deferred compensation plan administered
291 by the State Retirement Office in accordance with the Internal Revenue Code and its
292 accompanying rules and regulations;

293 (ii) health insurance;

294 (iii) dental insurance;

295 (iv) basic life insurance;

296 (v) unemployment compensation;

297 (vi) workers' compensation;

298 (vii) required employer contribution to Social Security;

299 (viii) long-term disability income insurance;

300 (ix) the same additional state-paid life insurance available to other noncareer service
301 employees;

302 (x) the same severance pay available to other noncareer service employees;

303 (xi) the same leave, holidays, and allowances granted to Schedule B state employees as
304 follows:

305 (A) sick leave;

306 (B) converted sick leave if accrued prior to January 1, 2014;

307 (C) educational allowances;

308 (D) holidays; and

309 (E) annual leave except that annual leave shall be accrued at the maximum rate
310 provided to Schedule B state employees;

311 (xii) the option to convert accumulated sick leave to cash or insurance benefits as

312 provided by law or rule upon resignation or retirement according to the same criteria and
313 procedures applied to Schedule B state employees;

314 (xiii) the option to purchase additional life insurance at group insurance rates according
315 to the same criteria and procedures applied to Schedule B state employees; and

316 (xiv) professional memberships if being a member of the professional organization is a
317 requirement of the position.

318 (b) Each department shall pay the cost of additional state-paid life insurance for its
319 executive director from its existing budget.

320 (6) The Legislature fixes the following additional benefits:

321 (a) for the executive director of the State Tax Commission a vehicle for official and
322 personal use;

323 (b) for the executive director of the Department of Transportation a vehicle for official
324 and personal use;

325 (c) for the executive director of the Department of Natural Resources a vehicle for
326 commute and official use;

327 (d) for the commissioner of Public Safety:

328 (i) an accidental death insurance policy if POST certified; and

329 (ii) a public safety vehicle for official and personal use;

330 (e) for the executive director of the Department of Corrections:

331 (i) an accidental death insurance policy if POST certified; and

332 (ii) a public safety vehicle for official and personal use;

333 (f) for the adjutant general a vehicle for official and personal use; [~~and~~]

334 (g) for each member of the Board of Pardons and Parole a vehicle for commute and
335 official use[-]; and

336 (h) for the executive director of the Department of Veterans and Military Affairs a
337 vehicle for commute and official use.

338 Section 10. Section **71A-1-202** is amended to read:

339 **71A-1-202. Department of Veterans and Military Affairs -- Executive director --**
340 **Responsibilities.**

341 (1) The executive director is the chief administrative officer of the department.

342 (2) The executive director is responsible for:

- 343 (a) the administration and supervision of the department;
- 344 (b) the coordination of policies and program activities conducted through the
345 department;
- 346 (c) the development and approval of the proposed budget of the department;
- 347 (d) preparing an annual report for presentation not later than November 30 of each year
348 to the Government Operations Interim Committee which covers:
- 349 (i) services provided to veterans, service members, and their families;
- 350 (ii) services provided by third parties through the Veterans Assistance Registry;
- 351 (iii) coordination of veterans services by government entities with the department; and
- 352 (iv) the status of military missions within the state;
- 353 (e) advising the governor on matters pertaining to veterans and military affairs
354 throughout the state, including active duty service members, reserve duty service members,
355 veterans, and their families;
- 356 (f) developing, coordinating, and maintaining relationships with Utah's congressional
357 delegation and appropriate federal agencies; and
- 358 (g) entering into grants, contracts, agreements, and interagency transfers necessary to
359 support the department's programs.

360 (3) The executive director may appoint deputy directors to assist the executive director
361 in carrying out the department's responsibilities.

362 (4) A deputy director, described in Subsection (3), of veterans' services shall be a
363 veteran.

364 Section 11. Section **71A-2-101** is amended to read:

365 **71A-2-101. Veterans' preference -- Definitions.**

366 (1) As used in this chapter:

367 (a) "Government entity" means the state, any county, municipality, special district,
368 special service district, or any other political subdivision or administrative unit of the state,
369 including state institutions of education.

370 (b) "Individual with a disability" means a veteran or service member who has
371 established the existence of a service-connected disability or is receiving compensation,
372 disability retirement benefits, or a pension because of a public statute administered by the VA
373 or a military department.

374 (c) "Preference eligible" means:

375 (i) any individual who is a veteran or service member;

376 (ii) an individual with a disability, regardless of the percentage of disability;

377 (iii) the spouse or surviving spouse of a veteran or service member;

378 (iv) a purple heart recipient; or

379 (v) a retired member of the armed forces.

380 (2) Terms defined in Section 71A-1-101 apply to this chapter.

381 Section 12. Section **71A-8-105** is enacted to read:

382 **71A-8-105. Reserve member of armed forces -- Leave of absence from**
383 **employment -- Liability of employers.**

384 (1) Any member of a reserve component of the armed forces of the United States who,
385 pursuant to military orders, enters active duty, active duty for training, inactive duty training, or
386 state active duty shall, upon request, be granted a leave of absence from employment, but for
387 no more than five years.

388 (2) Members of the Utah National Guard or the State Defense Force, when ordered to
389 state military service by the governor, have the same rights and protections as provided by
390 federal law for activation to federal military service for the duration of their state service not to
391 exceed five years.

392 (3) General officers of the Utah National Guard or the State Defense Force, when
393 appointed to state employment by the governor or the adjutant general, have the same rights
394 and protections as provided by federal law for activation to federal military service for the
395 duration of their state appointment, even if it exceeds five years.

396 (4) Upon satisfactory release from state or federal orders, or from hospitalization
397 incidental to the orders, the member shall be permitted to return to the prior employment and
398 have the same rights and protections as provided by federal law for activation to federal
399 military service as it pertains to seniority, status, pay, and vacation the member would have had
400 as an employee if the member had not been absent for military purposes.

401 (5) Any employer who willfully deprives an employee who is absent as a member
402 under this chapter of any of the benefits under this chapter or discriminates in hiring for any
403 employment position, public or private, based on membership in any reserve component of the
404 armed forces, is guilty of a class B misdemeanor.

405 Section 13. **Effective date.**

406 If approved by two-thirds of all the members elected to each house, this bill takes effect
407 upon approval by the governor, or the day following the constitutional time limit of Utah
408 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
409 the date of veto override.