

UTAH NATIONAL GUARD AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jefferson S. Burton

Senate Sponsor: Heidi Balderree

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:



28 AMENDS:

29 **39A-1-201**, as renumbered and amended by Laws of Utah 2022, Chapter 373

30 **39A-1-203**, as enacted by Laws of Utah 2022, Chapter 373

31 **39A-3-105**, as enacted by Laws of Utah 2022, Chapter 373

32 **39A-3-202**, as last amended by Laws of Utah 2023, Chapter 44

33 **39A-3-204**, as renumbered and amended by Laws of Utah 2022, Chapter 373

34 **39A-4-101**, as renumbered and amended by Laws of Utah 2022, Chapter 373

35 **67-22-2**, as last amended by Laws of Utah 2023, Chapter 205

36 **71A-1-202**, as enacted by Laws of Utah 2023, Chapter 44

37 **71A-2-101**, as last amended by Laws of Utah 2023, Chapter 16 and renumbered and
38 amended by Laws of Utah 2023, Chapter 44

39 ENACTS:

40 **39A-3-205**, Utah Code Annotated 1953

41 **39A-9-101**, Utah Code Annotated 1953

42 **71A-8-105**, Utah Code Annotated 1953



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

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

46 **39A-1-201. Adjutant general -- Appointment -- Term -- Qualifications.**

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

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

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

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

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

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

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

64 (5) The adjutant general shall establish a succession plan consistent with Section
65 [53-2a-804](#) to ensure the continuity of command.

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

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

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

71 **39A-1-203. Director of joint staff -- Assistant adjutants general -- Chief of staff**
72 **for the Air Force.**

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

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

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

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

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

89 **39A-3-105. General officer salary and benefits.**

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

95 (2) General officers or other officers appointed to a general officer position and
96 appointed to state employment shall receive the benefits and protections in Section [~~39-1-36~~]
97 [71A-8-105](#) for the term of the appointment.

98 Section 4. Section ~~39A-3-202~~ is amended to read:

99 **39A-3-202. Pay and care of soldiers and airmen disabled while on state active**
100 **duty.**

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

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

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

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

118 (b) For the duration of the service member's inability to pursue a business or
119 occupation, the adjutant general shall provide compensation so that the total compensation,
120 including the disability compensation received under Subsection (3)(a) is commensurate with

121 the injured service member's lost pay. The adjutant general shall consider lost civilian and
122 military pay in the compensation.

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

126 (5) If a service member dies as a result of an injury, illness, or disease contracted or
127 incurred while on state active duty or while reasonably proceeding to or returning from active
128 duty, the surviving spouse, minor children, or dependent parents of the service member shall
129 receive compensation as directed in Section [39A-3-203](#).

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

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

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

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

137 **39A-3-204. National Guard Death Benefit Account.**

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

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

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

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

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

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

149 **39A-3-205. Recruitment and retention bonus assistance for Utah National Guard**
150 **members -- Use and allocation -- Appropriation.**

151 (1) The Utah National Guard may provide recruitment and retention bonus assistance

152 to a member of the Utah National Guard for the purpose of recruitment and retention, if, at the
 153 time the individual receives the assistance, the individual is an active member in good standing
 154 with the Utah National Guard.

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

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

159 (4) The adjutant general may recoup recruitment and retention bonus assistance funds
 160 from a recipient if a recipient fails to meet the requirements of the program.

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

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

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

166 **39A-4-101. Utah State Defense Force -- How constituted.**

167 (1) Unless exempt under Subsection [(2)] (3), ~~§~~ **→ in accordance with the Utah**
 167a **Constitution, Article XV, Section 1, ←§** ~~all able-bodied [citizens, and all~~
 168 ~~able-bodied individuals of foreign birth who have declared their intention to become citizens,~~
 169 ~~are 18 years old or older and younger than 64 years old, and are residents of this state]~~ male
 170 inhabitants of the state, between the ages of 18 and 45 years old, except such as are exempted
 171 by law, constitute the Utah State Defense Force.

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

174 [(2)] (3) Individuals exempt from Subsection (1) include:

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

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

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

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

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

- 183 (f) state and county civil officers holding office by election;
 - 184 (g) state officers appointed by the governor for a specified term of office;
 - 185 (h) ministers of the gospel; and
 - 186 (i) practicing physicians and hospital officers and assistants.
- 187 ~~[(3)]~~ (4) All individuals described in Subsection (1) are liable to military duty in case
 188 of war, insurrection, invasion, tumult, riot, or public disaster, or imminent danger of any of
 189 these, or after voluntarily enlisting in the National Guard of this state.

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

191 **CHAPTER 9. GIFTS TO THE UTAH NATIONAL GUARD**

192 **39A-9-101. Acceptance of gifts.**

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

198 (2) The adjutant general is the acceptance authority for gifts described in Subsection
 199 (1).

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

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

205 (5) Acceptance authorities will ensure compliance with the restrictions and limitations
 206 contained in Section [63G-6a-2404](#).

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

- 209 (a) delegation of gift acceptance authority;
- 210 (b) the method and criteria for accepting gifts;
- 211 (c) identification of existing accounts for gift proceeds to be deposited into;
- 212 (d) use and purpose of gifts;
- 213 (e) prohibitions; and

214 (f) exceptions to the policy.

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

216 **67-22-2. Compensation -- Other state officers.**

217 (1) As used in this section:

218 (a) "Appointed executive" means the:

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

220 (ii) commissioner of the Insurance Department;

221 (iii) commissioner of the Labor Commission;

222 (iv) director, Department of Alcoholic Beverage Services;

223 (v) commissioner of the Department of Financial Institutions;

224 (vi) executive director, Department of Commerce;

225 (vii) executive director, Commission on Criminal and Juvenile Justice;

226 (viii) adjutant general;

227 (ix) executive director, Department of Cultural and Community Engagement;

228 (x) executive director, Department of Corrections;

229 (xi) commissioner, Department of Public Safety;

230 (xii) executive director, Department of Natural Resources;

231 (xiii) executive director, Governor's Office of Planning and Budget;

232 (xiv) executive director, Department of Government Operations;

233 (xv) executive director, Department of Environmental Quality;

234 (xvi) executive director, Governor's Office of Economic Opportunity;

235 (xvii) executive director, Department of Workforce Services;

236 (xviii) executive director, Department of Health and Human Services, Nonphysician;

237 [~~(xix) executive director, Department of Human Services;~~]

238 [~~(xx)~~] (xix) executive director, Department of Transportation;

239 [~~(xxi)~~] (xx) executive director, Department of Veterans and Military Affairs;

240 [~~(xxii)~~] (xxi) executive director, Public Lands Policy Coordinating Office, created in

241 Section **63L-11-201**; and

242 [~~(xxiii)~~] (xxii) Great Salt Lake commissioner, appointed under Section **73-32-201**.

243 (b) "Board or commission executive" means:

244 (i) members, Board of Pardons and Parole;

245 (ii) chair, State Tax Commission;
246 (iii) commissioners, State Tax Commission;
247 (iv) executive director, State Tax Commission;
248 (v) chair, Public Service Commission; and
249 (vi) commissioners, Public Service Commission.

250 (c) "Deputy" means the person who acts as the appointed executive's second in
251 command as determined by the Division of Human Resource Management.

252 (2) (a) The director of the Division of Human Resource Management shall:
253 (i) before October 31 of each year, recommend to the governor a compensation plan for
254 the appointed executives and the board or commission executives; and
255 (ii) base those recommendations on market salary studies conducted by the Division of
256 Human Resource Management.

257 (b) (i) The Division of Human Resource Management shall determine the salary range
258 for the appointed executives by:
259 (A) identifying the salary range assigned to the appointed executive's deputy;
260 (B) designating the lowest minimum salary from those deputies' salary ranges as the
261 minimum salary for the appointed executives' salary range; and
262 (C) designating 105% of the highest maximum salary range from those deputies' salary
263 ranges as the maximum salary for the appointed executives' salary range.

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

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

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

275 (3) (a) (i) Except as provided in Subsection (3)(a)(ii), the governor shall establish a

276 specific salary for each appointed executive within the range established under Subsection
277 (2)(b).

278 (ii) If the executive director of the Department of Health and Human Services is a
279 physician, the governor shall establish a salary within the highest physician salary range
280 established by the Division of Human Resource Management.

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

283 (b) The governor shall apply the same overtime regulations applicable to other FLSA
284 exempt positions.

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

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

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

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

296 (ii) health insurance;

297 (iii) dental insurance;

298 (iv) basic life insurance;

299 (v) unemployment compensation;

300 (vi) workers' compensation;

301 (vii) required employer contribution to Social Security;

302 (viii) long-term disability income insurance;

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

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

306 (xi) the same leave, holidays, and allowances granted to Schedule B state employees as

307 follows:

- 308 (A) sick leave;
- 309 (B) converted sick leave if accrued prior to January 1, 2014;
- 310 (C) educational allowances;
- 311 (D) holidays; and
- 312 (E) annual leave except that annual leave shall be accrued at the maximum rate
313 provided to Schedule B state employees;
- 314 (xii) the option to convert accumulated sick leave to cash or insurance benefits as
315 provided by law or rule upon resignation or retirement according to the same criteria and
316 procedures applied to Schedule B state employees;
- 317 (xiii) the option to purchase additional life insurance at group insurance rates according
318 to the same criteria and procedures applied to Schedule B state employees; and
- 319 (xiv) professional memberships if being a member of the professional organization is a
320 requirement of the position.
- 321 (b) Each department shall pay the cost of additional state-paid life insurance for its
322 executive director from its existing budget.
- 323 (6) The Legislature fixes the following additional benefits:
- 324 (a) for the executive director of the State Tax Commission a vehicle for official and
325 personal use;
- 326 (b) for the executive director of the Department of Transportation a vehicle for official
327 and personal use;
- 328 (c) for the executive director of the Department of Natural Resources a vehicle for
329 commute and official use;
- 330 (d) for the commissioner of Public Safety:
- 331 (i) an accidental death insurance policy if POST certified; and
- 332 (ii) a public safety vehicle for official and personal use;
- 333 (e) for the executive director of the Department of Corrections:
- 334 (i) an accidental death insurance policy if POST certified; and
- 335 (ii) a public safety vehicle for official and personal use;
- 336 (f) for the adjutant general a vehicle for official and personal use; [~~and~~]
- 337 (g) for each member of the Board of Pardons and Parole a vehicle for commute and

338 official use[-]; and

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

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

342 **71A-1-202. Department of Veterans and Military Affairs -- Executive director --**
343 **Responsibilities.**

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

345 (2) The executive director is responsible for:

346 (a) the administration and supervision of the department;

347 (b) the coordination of policies and program activities conducted through the
348 department;

349 (c) the development and approval of the proposed budget of the department;

350 (d) preparing an annual report for presentation not later than November 30 of each year
351 to the Government Operations Interim Committee which covers:

352 (i) services provided to veterans, service members, and their families;

353 (ii) services provided by third parties through the Veterans Assistance Registry;

354 (iii) coordination of veterans services by government entities with the department; and

355 (iv) the status of military missions within the state;

356 (e) advising the governor on matters pertaining to veterans and military affairs

357 throughout the state, including active duty service members, reserve duty service members,
358 veterans, and their families;

359 (f) developing, coordinating, and maintaining relationships with Utah's congressional
360 delegation and appropriate federal agencies; and

361 (g) entering into grants, contracts, agreements, and interagency transfers necessary to
362 support the department's programs.

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

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

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

368 **71A-2-101. Veterans' preference -- Definitions.**

369 (1) As used in this chapter:

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

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

377 (c) "Preference eligible" means:

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

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

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

381 (iv) a purple heart recipient; or

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

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

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

385 **71A-8-105. Reserve member of armed forces -- Leave of absence from**
386 **employment -- Liability of employers.**

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

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

395 (3) General officers of the Utah National Guard or the State Defense Force or other
396 officers appointed to a general officer position, when appointed to state employment by the
397 governor or the adjutant general, have the same rights and protections as provided by federal
398 law for activation to federal military service for the duration of their state appointment, even if
399 the state appointment exceeds five years.

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

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

409 Section 13. **Effective date.**

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