

ACT 196

S. B. 925.

A Bill for an Act Relating to the National Guard; Amending Chapter 353 of the Revised Laws of Hawaii 1955, as Amended.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 353 of the Revised Laws of Hawaii 1955, as amended, is hereby amended to read as follows:

**“CHAPTER 353
MILITIA; NATIONAL GUARD**

Sec. 353-1. The Militia. The militia of the State shall consist of every resident able bodied male citizen of the United States who is 17 years old or older and under 46 years of age and all other able bodied male residents of such age who have declared their intention to become citizens of the United States. The militia of the State shall be composed of four classes: (a) the federally organized and recognized national guard, (b) the remainder of the organized militia to be known as the Hawaii state guard, (c) the naval

militia, (d) 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 guard. 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 guard, or otherwise as the exigencies require.

Sec. 353-2. Exemptions. The following are exempt from military duty: all persons exempted from military duty under the laws of the United States, all judges and magistrates of the several courts of the State, and the members of the legislature.

Sec. 353-3. 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 male 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 guard shall, upon the order of the governor, report for duty with organizations designated by him.

Sec. 353-4. Composition. The Hawaii national guard shall consist of the army national guard, the air national guard, the inactive national guard, and other such organizations and units now or hereafter 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 men are appointed or enlisted.

Sec. 353-5. Command. The governor shall be the commander in chief of the forces comprising the militia. He is authorized to promulgate such rules, regulations and forms therefor as are not inconsistent with law, and to carry into full effect the provisions of law relative thereto. The provisions of chapter 6C, Revised Laws of Hawaii 1955, as amended, shall not apply. Such rules, regulations and forms shall have the force of law.

Sec. 353-6. 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 or organization prescribed by the secretaries of the army and of the air force. He may change the location of units, and subject to the approval of the appropriate secretary, redesignate units or organizations.

Sec. 353-7. Adjutant general shall be the executive head of the department of defense and commanding general of the national guard and shall be appointed and be subject to removal as set forth in section 14A-2, Revised Laws of Hawaii 1955, as amended. He shall serve for the term as set forth in section 6, Article IV, of the constitution. No person shall be eligible

for appointment as adjutant general unless he 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 guard 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 shall have served as a commissioned officer in one or more of such armed services for at least ten years.

Sec. 353-8. Adjutant general; rank, compensation. The adjutant general shall have the grade of a general officer. There shall be paid monthly by the State to the adjutant general, the pay and allowances as fixed by federal law for a member of the armed forces of the United States of like grade and length of service.

Sec. 353-9. 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.

He shall supervise all of the forces comprising the military components of the department of defense of the State. Such 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.

Sec. 353-10. 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. He 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. He 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 this 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. Such 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 his department.

Sec. 353-11. Deputy adjutant general. The adjutant general may appoint and remove at his pleasure a deputy adjutant general, who shall have a grade no higher than brigadier general. He shall perform duties assigned

to him by the adjutant general and shall act for and in the place of the adjutant general during his absence or disability.

Sec. 353-12. 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 men, 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 such office, have a grade no higher than brigadier general. Such assistant adjutants general, when in the full time employment of the department of defense, may receive the pay and allowance of his 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 men 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 such unit or organization.

Sec. 353-13. 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 his 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.

Sec. 353-14. 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 qualifi-

cations 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.

Sec. 353-15. 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:

(a) 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.

(b) 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 chapter 67 of Title 10, United States Code, may at his request be discharged, or with the approval of the governor be placed on the retired list.

(c) Any commissioned officer who shall have served in the same grade in the military service of the State for a continuous period of not less than ten years, upon his request, may be honorably discharged or placed on the retired list.

(d) Any officer who is rendered surplus by the disbandment of his unit, or who changes his residence within the State and is unable to serve with the unit to which he was assigned, shall be absorbed in another unit of the army or air national guard, or if there be no such other available unit such officer shall be transferred to an inactive status as authorized by the secretary of the army or the air force, and may be ordered to perform appropriate duties.

(e) 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 him 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.

(f) At any time the physical fitness for the service of any officer may, upon order of the governor, 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 his office, and the report is approved by the governor, the officer may be discharged or placed on the retired list.

(g) 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 as provided in paragraphs (e) or (f) above within a period of three months from the time he is ordered to report before such board may be discharged with the approval of the governor.

(h) Upon the approval by the governor of a sentence of dismissal rendered by a court-martial, the officer shall be dismissed.

Sec. 353-16. 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 his appointment to an office and assignment to a unit, upon official orders, appear before an examining board and successfully pass such test as to his physical, moral and professional fitness as may be prescribed by the secretary of the army or the air force.

Sec. 353-17. 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.

Sec. 353-18. 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 such active duty shall rank next to officers of like grade upon the active list.

Sec. 353-19. Regulations governing armories, etc. The adjutant general may make regulations to establish procedures governing the care and custody of armories, rifle ranges, reservations, and installations on license from the federal government. He may permit the use of or may temporarily rent such portions of armories, rifle ranges, reservations, and installations on license from the federal government as will not interfere with the military use thereof. He shall establish the rentals to be charged for such use, and all monies received from such rentals shall be deposited into the general fund of the State. The provisions of chapter 6C, Revised Laws of Hawaii 1955, as amended, shall not apply.

Sec. 353-20. 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 re-enlisted in the army or air national guard whose services during his preceding term of enlistment have not been honest and faithful.

Sec. 353-21. 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.

Sec. 353-22. 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 re-enlist on the day following their discharge and the vacancy caused by their discharge has not been filled.

Sec. 353-23. Oath required. Every person appointed or commissioned as an officer or who enlists or re-enlists 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.

Sec. 353-24. False swearing; perjury. 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.

Sec. 353-25. 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.

Sec. 353-26. 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. 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.

Sec. 353-27. Dishonorable discharge, effect. Any officer or enlisted man of the militia who is dishonorably dismissed or discharged from the national guard, shall thereby be disqualified from holding any office or employment in the service of the State, or any county, unless pardoned by the governor.

Sec. 353-28. 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 any of the provisions of this section shall be punishable as a court-martial may direct.

Sec. 353-29. 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 such duty by order of the proper authority.

Sec. 353-30. Order to active service. In case of war, insurrection, invasion, riot or imminent danger thereof, or any forcible obstruction to the execution of the laws, or reasonable apprehension thereof, or for assistance to civil authorities in disaster relief or civil defense, the governor may order the national guard or other component of the militia or any part thereof into active service.

Sec. 353-31. Regulations for United States Army and Air Force 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 Uniform Code of Military Justice and regulations governing the army and air force of the United States as far as such code and regulations are consistent with the laws of this State, shall be enforced and regarded as a part of this chapter until the forces are relieved from duty. As to offenses committed when the Uniform Code of Military Justice is in force, courts-martial shall possess, in addition to the jurisdiction and power of sentence and punishment here vested in them, all additional jurisdiction and power of sentence and punishment exercisable by like courts under the Uniform Code of Military Justice or the regulations or laws governing the United States army or air force, or the customs and usages thereof, subject to the limitations prescribed by this chapter and chapter 352. Any violation of the Uniform Code of Military Justice which constitutes a felony under the laws of the State shall be prosecuted in the courts of the State.

Sec. 353-32. Appeals. From every judgment made by court-martial under the provisions of this chapter, an appeal may be to the supreme court in a like manner as an appeal from a decision of a circuit judge. The appeal shall not of itself stay the operation of the decision appealed from, but the supreme court may stay the same upon motion upon such conditions as it may deem proper.

Sec. 353-33. 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 one hundred dollars.

Sec. 353-34. Interference by civilian, penalty. Every commanding

officer when on duty may ascertain and fix the necessary bounds and limits to his 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. Any such person may be put and kept under guard until the parade, encampment or duty be concluded. The commanding officer, as soon as practicable, shall turn over such person to any police officer.

Sec. 353-35. 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.

Sec. 353-36. 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 his 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.

Sec. 353-37. Failure to return arms, etc. Every member of the militia who shall wilfully neglect to return to the armory or headquarters of the unit to which he belongs, any arms, uniform or equipment issued to him by the State or its officers, within six days after being notified by his 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 30 days.

Sec. 353-38. 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 such 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 30 days.

Sec. 353-39. 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 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.

Sec. 353-40. Pay of enlisted men while on active duty. Enlisted men 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 men of similar rank in the United States army and air force, respectively; provided, that the aggregate of such pay and allowances, computed on a daily basis, shall in no event be less than the amount equal to eight times the hourly wage specified in section 94-3, Revised Laws of Hawaii 1955, as amended.

Sec. 353-41. Uniform maintenance allowance for enlisted men. Enlisted men of the army or air national guard while participating in annual field training or year round field training, when federal pay is authorized, shall, except when actually called or ordered into the service of the United States by or under the authority of the President, receive a uniform maintenance allowance of seventy cents per day from the State.

Sec. 353-42. No pay without orders. No officer or enlisted man of the army or air national guard shall be entitled to receive the pay herein provided unless the orders detailing him for duty or subsequent orders, specify that pay is to be received for the service rendered.”

SECTION 2. This Act shall take effect upon its approval.

(Approved June 4, 1967.)