

ACT 35

S.B. NO. 1704

A Bill for an Act Relating to the Hawaii State Guard.

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
HAWAII STATE GUARD**

§ -1 **Short title.** This chapter shall be known and may be cited as the “Hawaii State Guard Act”.

§ -2 **Hawaii state guard established.** The Hawaii state guard is established as a component of the militia of the State.

§ -3 **Rules.** The governor shall adopt rules pursuant to section 121-5 governing the recruitment, organization, administration, equipment, facilities, training, and discipline of the Hawaii state guard. Such rules shall, to the extent practicable, conform to regulations governing the national guard

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and shall be consistent with federal law and regulations pertaining to state defense forces.

§ -4 **Composition; enlistment; appointment.** (a) The Hawaii state guard shall consist of persons over the age of eighteen years voluntarily enlisted or appointed therein and such members of the unorganized militia as may be enrolled therein by draft or as otherwise provided by law.

(b) The officers of the Hawaii state guard shall be appointed by the governor.

(c) The governor shall prescribe by rules the qualifications for and terms of enlistment and appointment in the Hawaii state guard. Persons so enlisted or appointed shall subscribe to such oath as may be prescribed by the governor.

§ -5 **Uniform; rank precedence and command.** (a) The Hawaii state guard shall be uniformed. The governor shall prescribe by rules a distinctive uniform and insignia of the Hawaii state guard.

(b) Grades and ranks shall exist in the Hawaii state guard and shall be the same as those prescribed by federal law and regulations to exist in the army national guard. Members of the Hawaii state guard in the same grade shall rank among themselves in the same manner as is prescribed by federal law and regulations for members of the army national guard in like grade.

(c) The senior officer present in any organization or formation of the Hawaii state guard shall command, unless the governor shall designate another commanding officer. When in the active service of the State, an officer of the national guard assigned to any organization or formation of the Hawaii state guard is eligible to command that organization or formation, but an officer of the Hawaii state guard is not eligible to command an organization or formation of the national guard.

§ -6 **Discipline.** (a) The discipline of the Hawaii state guard shall, to the extent practicable, conform to that of the Hawaii army national guard.

(b) When in the active service of the Hawaii state guard, members of the Hawaii state guard are subject to chapter 124A. Members are deemed to be in the active service of the Hawaii state guard from the date and time specified in any order lawfully calling them into such service.

§ -7 **Discharge; dismissal.** (a) Upon expiration of the term of service for which enlisted or appointed, a member of the Hawaii state guard shall be entitled to a discharge; provided that no member shall be discharged by reason of expiration of term of service while employed in the active service of the Hawaii state guard under section -11.

(b) Subject to rules adopted by the governor, a member of the Hawaii state guard may be discharged or dismissed prior to the expiration of the member's term of service for misconduct, inefficiency, personal hardship, or such other cause as the governor may prescribe.

(c) No officer shall be dismissed or discharged under conditions other than honorable, except by sentence of a court-martial or by order of the governor upon recommendation of a board of officers.

(d) Subject to rules adopted by the governor, every discharge of a member of the Hawaii state guard shall reflect the character of the member's service.

§ -8 **Pay and allowances.** (a) When in the active service of the State, members of the Hawaii state guard shall receive from the State the same basic pay and allowance for subsistence as prescribed by federal law and regulations for members of the army national guard, of like grade and length

of service, when in the active service of the United States. Subject to rules adopted by the governor, members may be subsisted in kind in lieu of a monetary allowance therefor.

(b) Subject to rules adopted by the governor, members of the Hawaii state guard when in the active service of the State may be quartered at the expense of the State or paid a monetary allowance in lieu thereof.

§ -9 Arms and equipment; facilities. (a) Subject to the availability of funds, the Hawaii state guard shall be armed and equipped as prescribed by the governor.

(b) The governor, on such terms and conditions as may be prescribed by federal law and regulations and deemed acceptable by the governor, may accept arms, equipment, supplies, and facilities made available by the United States or any agency or instrumentality thereof for the use of the Hawaii state guard.

(c) To the extent permitted by federal law and regulations, armories and other facilities of the national guard, and such other state facilities as may be available may be utilized for:

- (1) Storage and maintenance of arms, equipment, and supplies of the Hawaii state guard; and
 - (2) Assembly, drill, and instruction of its members;
- provided that such use shall not interfere with use of armories or other national guard facilities by the national guard.

§ -10 Training. (a) Each organization of the Hawaii state guard shall assemble for training, drill, and instruction as ordered by the governor or the adjutant general.

(b) To the extent authorized and permitted by federal law and regulations, the governor or the adjutant general may:

- (1) Detail officers and members of the national guard to train and instruct the Hawaii state guard; and
- (2) Provide for the attendance of members of the Hawaii state guard at service schools and other courses of training or instruction conducted by the armed forces of the United States.

(c) When actually engaged in training, drill, or instruction prescribed by this section, a member of the Hawaii state guard shall be deemed to be in the active service of the State.

§ -11 Employment. Whenever the governor determines that, because of invasion, insurrection, riot, civil disorder, unlawful combination or conspiracy, catastrophe, natural or human caused disaster, or imminent danger thereof, the public safety and order cannot be preserved or the laws cannot be enforced by the civil authorities or the national guard, or as otherwise provided by law, the governor may call the Hawaii state guard, or such part of it as may be required, into the active service of the State for the duration of the condition which required its call.

§ -12 Federal service. Nothing in this chapter shall be construed as authorizing the Hawaii state guard or any part thereof to be called, ordered, or in any manner drafted as such into the military service of the United States; provided no person by reason of the person's enlistment or appointment in the Hawaii state guard shall be exempted from military service under any law of the United States.

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§ -13 **Civil groups.** No civil organization, society, club, post, order, fraternity, association, brotherhood, body, union, league, or other combination of persons or civil group shall be enlisted in the Hawaii state guard as an organization or unit.

§ -14 **Acceptance of gratuities.** No member of the Hawaii state guard, by reason of membership therein, shall solicit or accept any compensation, gift, donation, gratuity, or thing of value from any source whatever except the pay and allowances provided under this chapter. Any person who violates this section shall be punished as may be directed by non-judicial punishment or a court-martial.

§ -15 **Immunities.** (a) No member of the Hawaii state guard, while in the active service of the State or while going to or returning from the place where the member is required to be while performing that service, shall be arrested on any warrant except for treason or felony, or required to serve upon any jury or posse comitatus.

(b) No member of the Hawaii state guard shall be civilly liable for any act or omission occurring while in the active service of the State if that act or omission shall have been in the line of duty and in compliance with lawful military orders.

§ -16 **Courts-martial; nonjudicial punishment.** Any limitations in chapter 124A to the contrary notwithstanding, whenever this chapter specifically authorizes an act to be punished by court-martial or nonjudicial punishment, the court-martial may be convened or nonjudicial punishment imposed and punishment administered as though the act complained of were a violation of the punitive articles of chapter 124A."

SECTION 2. Chapter 122, Hawaii Revised Statutes, is repealed.

SECTION 3. **Severability.** If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 11, 1987.)