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SB-1501 Military and veterans: enlisted persons. (2017-2018)

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Senate Bill No. 1501

CHAPTER 118

An act to amend Section 20282 of the Government Code, to amend Sections 182, 210, 212, 215, 223, 252, 254, 255, 257, 258, 259, 262, 263, 266, 267, 268, 269, 280, 289, 296, 321, 322, 324, 325, 326, 327, 342, 363, 364, 368, 372, 375, 395.04, 414, 422, 450.1, 455, 458.1, 463, 465, 551, 552, 562, and 648 of, and to amend the heading of Article 3 (commencing with Section 250) of Chapter 3 of Part 1 of Division 2 of, the Military and Veterans Code, and to amend Section 32177.5 of the Revenue and Taxation Code, relating to military.

[Approved by Governor July 16, 2018. Filed with Secretary of State July 16, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1501, Committee on Veterans Affairs. Military and veterans: enlisted persons.

Existing law establishes within state government a Military Department that includes the office of the Adjutant General, the California National Guard, the State Military Reserve, the California Cadet Corps, and the Naval Militia. Existing law also generally governs the administration of military and veterans' affairs, including those relating to enlisted men and women.

This bill would make technical amendments to modify references throughout the code to "enlisted man or woman" or "enlisted men or women" to instead refer to "enlisted person" or "enlisted persons."

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 20282 of the Government Code is amended to read:

20282. All officers, warrant officers, and enlisted persons who after October 1, 1961, are placed on full-time active duty with the office of the Adjutant General, pursuant to Sections 142, 321, 340 and 551, or former Section 167 of the Military and Veterans Code, shall become members in the manner and under the same conditions as under this article apply to other state employees. The retirement benefit provisions of the Military and Veterans Code shall not apply to those persons. This section shall not apply to the Adjutant General or the Assistant Adjutant General.

SEC. 2. Section 182 of the Military and Veterans Code is amended to read:

182. The Adjutant General shall keep a correct account of all expenses necessarily incurred, including pay of officers and enlisted persons, subsistence of militia, transportation of the militia, and all military property of the state. Those expenses shall be audited and paid in the same manner as other military accounts are audited and paid.

SEC. 3. Section 210 of the Military and Veterans Code is amended to read:

210. The National Guard consists of:

- (a) General officers.
- (b) The several staff corps and departments prescribed in tables of organization of the United States Army or United States Air Force or tables of organization for the National Guard.
- (c) The officers and enlisted persons on the retired and the reserve lists.
- (d) The organizations forming the National Guard and persons enlisted or commissioned therein.

SEC. 4. Section 212 of the Military and Veterans Code is amended to read:

212. The inactive National Guard shall consist of those organizations, officers, and enlisted persons as are authorized and prescribed by the laws of the United States and regulations issued thereunder.

SEC. 5. Section 215 of the Military and Veterans Code is amended to read:

215. For all purposes under this code, commissioned officers, warrant officers and enlisted persons of the California National Guard, California Air National Guard, and California National Guard Reserve who have heretofore or hereafter performed service in the United States Army, United States Air Force, United States Navy, or a reserve component thereof shall be entitled to credit for time so served as if that service had been rendered in the state forces. Service in the state forces shall include all full-time active duty and part-time duty performed heretofore or hereafter either as an enlisted person, warrant officer or commissioned officer pursuant to any prior or present section or sections or provisions of this code. Federal law notwithstanding, in computing state service for retirement with pay under this authority, full-time active service and part-time duty or service with the Armed Forces of the United States or any reserve component thereof shall be considered.

SEC. 6. Section 223 of the Military and Veterans Code is amended to read:

223. All officers, warrant officers, and enlisted persons of the militia and all persons on duty with the militia shall give any bonds and security as may be required and within the time prescribed by the Adjutant General to secure the state against loss on account of misuse or misapplication of state or company property or funds or the property or funds of the United States in use by the State of California.

All bonds shall be conditioned upon the faithful performance of all duties and the accounting for all property and moneys, including organization funds, for which the obligee is responsible or accountable.

The Adjutant General may in lieu of the foregoing enter into an agreement conditioned in like terms and for the same purpose with a qualified surety company to bond all officers, warrant officers, and enlisted persons of the militia, and all persons on duty with the militia without specifically naming them. The agreement shall also provide that the report and final action of military or naval authorities having jurisdiction for fixing responsibility for loss or damage shall be conclusive proof of the responsibility or liability of any officer, warrant officer, or enlisted person in a suit brought to enforce the obligation of the bond.

The premiums on bonds shall be charged to those funds appropriated for the support of the militia as the Governor directs.

SEC. 7. The heading of Article 3 (commencing with Section 250) of Chapter 3 of Part 1 of Division 2 of the Military and Veterans Code is amended to read:

Article 3. Enlisted Persons

SEC. 8. Section 252 of the Military and Veterans Code is amended to read:

252. Appointments of noncommissioned and petty officers shall conform to the tables of organization and to the rules and regulations prescribed by the United States for the government and administration of the National Guard. All noncommissioned and petty officers shall be appointed by the commanding officer of the division, brigade, regiment, separate battalion, squadron, marine division, or similar organization, upon the recommendation of the commanding officer of the unit in which they are to serve. Noncommissioned and petty officers of separate companies, troops, batteries, detachments, and similar units, not forming part of an existing higher tactical organization, shall be appointed by the Adjutant General. When an examination is required by federal laws or regulations or by state regulations, no enlisted person shall be appointed until he or she has successfully passed the examination.

SEC. 9. Section 254 of the Military and Veterans Code is amended to read:

254. Enlisted persons may be transferred to or from organizations or units. Noncommissioned officers may be reduced one or more grades upon good cause appearing therefor. In transferring or reducing an enlisted person or noncommissioned officer the procedure laid down in regulations for the National Guard shall be followed.

An order discharging a member of the militia may be vacated by the Adjutant General for good cause; provided, a certificate or other evidence of discharge has not been delivered to the discharged member.

SEC. 10. Section 255 of the Military and Veterans Code is amended to read:

255. Every enlisted person who enters the National Guard or who is a member of the unorganized militia when called into the service of the state, may be provided by the state with a service or dress uniform, or both, corresponding in make and general appearance to the service or dress uniform of the United States Army.

SEC. 11. Section 257 of the Military and Veterans Code is amended to read:

257. When an enlisted person of the National Guard is sixty-four years of age, he or she shall be retired from active service or discharged.

SEC. 12. Section 258 of the Military and Veterans Code is amended to read:

258. In time of war or other emergency or imminent danger thereof, the Governor may detail retired enlisted persons to active duty and on conclusion of the emergency return them to the retired list.

SEC. 13. Section 259 of the Military and Veterans Code is amended to read:

259. Separation from service of an enlisted person of the National Guard or the unorganized militia called into active service is effected by death or by discharge by proper authority.

SEC. 14. Section 262 of the Military and Veterans Code is amended to read:

262. An enlisted person discharged from the National Guard or the unorganized militia when called or ordered into active service of the state shall receive a discharge in writing in a form and with those qualifications as may be prescribed under the laws and regulations prescribed for the government of the National Guard by the United States and that are not inconsistent with this code. The certificates of discharge may be in the form of an honorable, a general, or undesirable discharge. Bad conduct and dishonorable discharges shall be awarded only by courts-martial as provided in this code.

SEC. 15. Section 263 of the Military and Veterans Code is amended to read:

263. When an enlisted person of the National Guard or the unorganized militia called into active service is absent without leave and there is reason to believe that the enlisted person does not intend to return; or quits his or her organization or place of duty with the intent to avoid hazardous duty or to shirk important service, that person is a deserter.

SEC. 16. Section 266 of the Military and Veterans Code is amended to read:

266. An enlisted person who has been dropped as a deserter shall not be restored to duty without prior disposition of the charge of desertion standing against him or her. The charge shall be disposed of by trial by court-martial; by restoration to duty, desertion admitted, upon a written application of the soldier admitting the desertion; or by the setting aside of the charge of desertion in case it had been erroneously made.

SEC. 17. Section 267 of the Military and Veterans Code is amended to read:

267. A deserter shall not be restored to duty without trial except by the Governor or by an officer authorized to appoint a general court-martial. Restoration to duty without trial shall not remove the charge of desertion or relieve the enlisted person from any of the forfeitures attached to that offense. Setting aside a charge of desertion as having been erroneously made shall remove the charge of desertion and all stoppages and forfeitures arising therefrom.

SEC. 18. Section 268 of the Military and Veterans Code is amended to read:

268. All time lost while absent without leave or in desertion, in excess of twenty-four hours, shall be made good unless the enlisted person is sooner discharged by proper authority.

SEC. 19. Section 269 of the Military and Veterans Code is amended to read:

269. No enlisted person who has been dishonorably discharged from the military or naval service of this state, or of another state, territory or district, or of the United States shall be permitted to enter again the military or naval service of this state without the approval of the Governor of this state.

SEC. 20. Section 280 of the Military and Veterans Code is amended to read:

280. Except where this chapter is inconsistent therewith, Chapter 3 (commencing with Section 210) of Part 1 of Division 2 is hereby incorporated by reference in this chapter and those provisions shall apply to the Naval Militia and the officers and enlisted persons thereof with the same force and effect as if the provisions were set out in detail in this chapter.

In applying Chapter 3 (commencing with Section 210) of Part 1 of Division 2 to this chapter, the term "Naval Militia" shall be substituted for the term "National Guard" and the term "Navy Department" for the term "War Department."

SEC. 21. Section 289 of the Military and Veterans Code is amended to read:

289. The officers, chief warrant officers, warrant officers, and enlisted persons of the Naval Militia shall be of any amount and grades prescribed by the Governor and shall be of the same number and grades as are authorized or prescribed by the laws and regulations of the United States for similar organizations of the United States Navy or as authorized or prescribed by the laws and regulations of the Navy Department for the Naval Militia.

SEC. 22. Section 296 of the Military and Veterans Code is amended to read:

296. Every enlisted person who enters the Naval Militia may be provided by the state with a service or dress uniform, or both, corresponding in make and appearance to the service or dress uniform of the United States Navy.

SEC. 23. Section 321 of the Military and Veterans Code is amended to read:

321. Enlisted persons, while on active duty in the service of the state, shall receive the same pay and allowances as enlisted persons of similar grade in the United States Army, United States Air Force, and United States Navy, except that enlisted persons in the pay grade of E1 through E4 ordered to active duty pursuant to Section 143 or 146, while on active duty, shall receive not less than the minimum daily rate of pay applicable to a pay grade of E5 in the active military service of the United States. It is the intent of the Legislature that the foregoing minimum payments to enlisted persons in the pay grade of E1 through E4 may be paid from the State Emergency Fund when, in the judgment of the Director of Finance, there is a case of actual necessity for which no appropriation has been made. All full-time active duty previously or hereafter performed in the service of the state shall be credited for purposes of determining longevity and service within the provisions of this section and Section 340.

SEC. 24. Section 322 of the Military and Veterans Code is amended to read:

322. Officers, warrant officers, and enlisted persons on active duty in the service of the state, except in situations described in Section 188, shall be reimbursed for their necessary traveling and other expenses in accordance with the rules and regulations adopted by the Department of Human Resources.

SEC. 25. Section 324 of the Military and Veterans Code is amended to read:

324. Whenever an officer of the National Guard or Naval Militia is detailed for special duty in any matter relating to the National Guard or Naval Militia, by order of the Governor, that officer shall be allowed the same pay and allowances as officers of similar grade in the United States Army and United States Navy and actual traveling expenses. An enlisted person similarly detailed shall be allowed the same pay and allowances as enlisted persons of similar grade in the United States Army and United States Navy and actual traveling expenses, except that family allowances shall not be allowed to those enlisted persons. An officer of the National Guard or Naval Militia may, with his or her consent, be detailed for special duty without expense to the state, except and provided, however, the officer may be paid actual traveling expenses. An officer of the National Guard or Naval Militia may, with his or her consent, be detailed for duty and may be paid compensation in a grade lower than the officer actually holds provided the officer voluntarily waives all compensation in excess of the lower grade.

If not inconsistent with the performance of required military duty, members of the National Guard may perform emergency services as defined in Section 18531 of the Government Code, and as provided in Section 19888 of the Government Code, and

shall receive as compensation therefore the going wages paid for similar service at or near the place of performance.

SEC. 26. Section 325 of the Military and Veterans Code is amended to read:

325. Whenever an officer or enlisted person of the United States Army or United States Navy or United States Air Force, detailed by the Department of the Army or the Department of the Navy or the Department of the Air Force for service with the National Guard or Naval Militia, is detailed by the Governor for special duty or requested to perform any duty involving travel not specially directed by the Department of the Army or the Department of the Navy or the Department of the Air Force, the officer or enlisted person shall be allowed his or her actual traveling expenses, but no per diem.

SEC. 27. Section 326 of the Military and Veterans Code is amended to read:

326. Commissioned officers, warrant officers and enlisted persons and former commissioned officers, warrant officers and enlisted persons of the United States Army, United States Air Force, United States Navy, or any reserve component thereof, California National Guard, State Military Reserve, California National Guard Reserve, California Defense and Security Corps, California State Guard, California Reserve and Retired List or the active militia, may, with his or her consent, be detailed for active duty with a security section which the Adjutant General is hereby authorized to maintain in his or her office. A commissioned officer, warrant officer or enlisted person who is detailed for duty as provided in this section may be paid compensation in any grade or rank lower than the person actually holds provided the commissioned officer, warrant officer or enlisted person voluntarily waives all compensation in excess of the lower grade or rank.

SEC. 28. Section 327 of the Military and Veterans Code is amended to read:

327. Officers, warrant officers, and enlisted persons on active duty in the service of the state shall be eligible for health care benefits 30 days after being called to active duty.

SEC. 29. Section 342 of the Military and Veterans Code is amended to read:

342. The appeals board is empowered to hear and determine all issues concerning any obligation of the State of California to provide to any officer, warrant officer, or enlisted person on active duty with the Office of the Adjutant General any rights or benefits provided in Section 3, Public Law 108, Chapter 225, 81st Congress, First Session, and any and all issues arising under or in connection with that law. In doing so, the appeals board shall follow the same procedures in all respects as are provided in Division 4 (commencing with Section 3200) of the Labor Code for the determination of workers' compensation claims. The orders, decisions, and awards of the appeals board issued in exercising this jurisdiction are subject to review and rehearing in the manner provided in Sections 5900 to 5956, inclusive, of the Labor Code.

SEC. 30. Section 363 of the Military and Veterans Code is amended to read:

363. Every officer and enlisted person shall be responsible to the officer under whose immediate command he or she serves for prompt and unhesitating obedience to lawful orders, faithful performance of duty, and the preservation and proper use of the property in his or her possession that belongs to the United States, the State of California, or the appropriate military organization. Each officer and enlisted person shall at all times, without equivocation, obey the lawful orders of his or her superior officers.

SEC. 31. Section 364 of the Military and Veterans Code is amended to read:

364. Any officer or enlisted person of the National Guard or Naval Militia who willfully fails to attend any parade or encampment, or who neglects or refuses to obey the lawful command of his or her superior officer on any day of parade or encampment, or who fails to perform any military duty that may be lawfully required of him or her, or who uses disrespectful language toward his or her superior officer or commits any act of insubordination, is guilty of a misdemeanor.

SEC. 32. Section 368 of the Military and Veterans Code is amended to read:

368. Each company, troop, squadron, battery, detachment, and unit shall assemble for drill and instruction, including indoor target practice, not less than forty-eight times each year unless excused by the Governor or other competent authority, and shall in addition thereto participate in encampments, maneuvers, or other exercises, including outdoor target practice, for at least fifteen consecutive days in each year unless excused by competent authority.

In addition to those drills and periods of duty above specified the commanding officer of any unit may require the officers and enlisted persons of his or her command to meet for parade, drill, and instruction at the times and places as he or she may appoint.

SEC. 33. Section 372 of the Military and Veterans Code is amended to read:

372. Officers and enlisted persons may be warned for duty by stating the substance of the order, by reading the order to the person warned, by delivering a copy of the order to that person, by leaving a copy of the order at the last known place of abode or business of that person with some person of the age of discretion, or by sending a copy of the order or its substance to that person by registered mail directed to the enlisted person at his or her last known place of abode or business or to the post office nearest thereto.

In addition to or in lieu of the foregoing, notice may be given by posting a copy of the order at the entrance to the nearest post office to the military or naval headquarters issuing the order, at the entrances of the city hall or county courthouse of the city or county where the headquarters are located, and by causing a copy of the warning order to be published in a newspaper of general circulation in that county.

SEC. 34. Section 375 of the Military and Veterans Code is amended to read:

375. Officers and enlisted persons of the active militia not in the service of the United States shall be subject to and governed by this code while outside this state under the order or authorization of the Governor under Section 142 in like manner and to the same extent as when on duty within this state under orders of the Governor. Military courts may be convened and held outside the state with the same jurisdiction and power of punishment as if held within the state. Offenses and delinquencies committed outside the state may be tried and punished either within or without the state after the termination of the duty.

SEC. 35. Section 395.04 of the Military and Veterans Code is amended to read:

395.04. During the time that as an officer or enlisted person of the California National Guard, who is on full-time active duty in the military service of the state, and is engaged, with the approval of the Adjutant General, in the military service of the state in attendance at drills, camps, or special exercises, sponsored by federal authority or by the United States Department of Defense, as a member of the National Guard of the United States, he or she shall receive salary, pay, and compensation as provided in Sections 320 and 321.

SEC. 36. Section 414 of the Military and Veterans Code is amended to read:

414. Every officer and enlisted person to whom public property has been issued shall be personally responsible to the state for that property. No one shall be relieved from this responsibility, unless it is shown, to the satisfaction of the Governor, that the loss or destruction of the property was unavoidable and in no way the fault of the person responsible for the loss. In all other cases the value of the property lost or destroyed, in the amount determined by a surveying officer or a board as herein provided, shall be charged against the person at fault or, with the concurrence of the appropriate commanding officer, against the command to or for which it had been issued, and if not relieved from the charge by the Governor, there shall be an indebtedness from that person or command to the state.

SEC. 37. Section 422 of the Military and Veterans Code is amended to read:

422. Any person other than an officer, warrant officer, or enlisted person of the California National Guard, or of the unorganized militia when called into the service of the state or of the State Military Reserve or who may be appointed under Section 141 or who may be authorized by Sections 502, 502.1, or 502.2 or who may be a member of the Naval Militia of this state, or who may be a member of the military forces of another state or of the United States Army, United States Air Force, United States Navy, United States Marine Corps, United States Coast Guard Service or United States or State Forest Service, or personnel of the Department of Fish and Wildlife, or members of the Department of the California Highway Patrol, or an inmate of any veterans' or soldiers' home, or other person authorized by the laws of the United States or of this state, who at any time wears the uniform of the United States Army, United States Air Force, or United States Navy, or of the armed forces of the United States or any organization thereof, or National Guard or Naval Militia, or any part of that uniform, or a uniform or part of a uniform similar thereto, is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or by imprisonment in the county jail not exceeding 60 days, or by both.

SEC. 38. Section 450.1 of the Military and Veterans Code is amended to read:

450.1. (a) Under regulations as the Governor may prescribe, and under any additional regulations as may be prescribed by the Adjutant General, limitations may be placed on the powers granted by this section with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers exercising command authorized to exercise those powers, the applicability of this section to an accused who demands trial by court-martial, and the kinds of courts-martial to

which the case may be referred upon that demand. Except in the case of the imposition of fines upon officers and warrant officers, punishment may not be imposed upon any member of the California National Guard under this section if the member has, before the imposition of punishment, demanded trial by court-martial in lieu of punishment. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized hereunder. If authorized by regulations of the Adjutant General, a commanding officer who under the Uniform Code of Military Justice would exercise general court-martial jurisdiction or an officer of general rank in command may delegate his or her powers under this section to a principal assistant.

(b) Subject to subdivision (a), any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial:

(1) Upon officers of his or her command:

(A) Restriction to certain specified limits, with or without suspension from duty, for not more than 30 consecutive days.

(B) If imposed by an officer who under the Uniform Code of Military Justice would exercise general court-martial jurisdiction or an officer of general rank in command:

(i) Arrest in quarters for not more than 30 consecutive days.

(ii) Impose a fine of not more than 15 days pay per month for two months.

(iii) Restriction to certain specified limits with or without suspension from duty for not more than 60 consecutive days.

(iv) Detention of not more than 15 days' pay per month for three months.

(2) Upon other personnel of his or her command:

(A) Correctional custody for not more than seven consecutive days.

(B) Impose a fine of not more than seven days' pay.

(C) Reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction.

(D) Extra duties, including fatigue or other duties, for not more than 14 consecutive days.

(E) Restriction to certain specified limits, with or without suspension from duty, for not more than 14 consecutive days.

(F) Detention of not more than 14 days' pay.

(G) If imposed by an officer of the grade of major or above:

(i) Correctional custody for not more than 30 consecutive days.

(ii) Impose a fine of not more than 15 days' pay per month for two months.

(iii) Reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than two pay grades.

(iv) Extra duties, including fatigue or other duties, for not more than 45 consecutive days.

(v) Restrictions to certain specified limits, with or without suspension from duty, for not more than 60 consecutive days.

(vi) Detention of not more than 15 days' pay per month for three months.

The punishments heretofore prescribed by subdivision (b) (1) A, B(i) and (iii) and subdivision (b) (2) A, D, E, G(i), (iv) and (v) hereof may be imposed only during annual active duty for training or active state service, except that extra duties may be imposed upon enlisted persons while in armory drill status for two hours (to be completed not later than 2400 hours) for two consecutive drills.

Detention of pay shall be for a stated period of not more than one year but if the offender's term of service expires earlier, the detention shall terminate upon that expiration. No two or more of the punishments of arrest in quarters, correctional custody, extra duties, and restriction may be combined to run consecutively in the maximum amount imposable for each. Whenever any of those punishments are combined to run consecutively, there shall be an apportionment. In addition, forfeiture of pay may not be combined with detention of pay without an apportionment. For the purposes of this subdivision, "correctional custody" means the physical restraint of a person during duty or nonduty hours and may include extra duties, fatigue duties, or hard labor. If

practicable, correctional custody shall not be served in immediate association with persons awaiting trial or held in confinement pursuant to trial by court-martial.

(c) An officer in charge may impose upon enlisted members assigned to the unit of which he or she is in charge any of the punishments authorized under subdivision (b)(2)(A) to (G), inclusive, as the Adjutant General may specifically prescribe by regulation.

(d) The officer who imposes the punishment authorized in subdivision (b), or his or her successor in command, may, at any time, suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or a fine imposed under subdivision (b), whether or not executed. In addition, the officer may, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights, privileges, and property affected. The officer may also mitigate reduction in grade to a fine or detention of pay. When mitigating:

(1) arrest in quarters to restriction;

(2) correctional custody to extra duties or restriction, or both; or

(3) extra duties to restriction;

the mitigated punishment shall not be for a greater period than the punishment mitigated. When mitigating a fine to detention of pay, the amount of the detention shall not be greater than the amount of the fine. When mitigating reduction in grade to a fine or detention of pay, the amount of the fine or detention shall not be greater than the amount that could have been imposed initially under this article by the officer who imposed the punishment mitigated.

(e) A person punished under this section who considers his or her punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subdivision (d) by the officer who imposed the punishment. Before acting on an appeal from a punishment of:

(1) arrest in quarters for more than seven days;

(2) correctional custody for more than seven days;

(3) a fine of more than seven days' pay;

(4) reduction of one or more pay grades from the fourth or a higher pay grade;

(5) extra duties for more than 14 days;

(6) restriction for more than 14 days; or

(7) detention of more than 14 days' pay;

the authority who is to act on the appeal shall refer the case to a judge advocate of the California National Guard for consideration and advice, and may so refer the case upon appeal from any punishment imposed under subdivision (b).

(f) The imposition and enforcement of disciplinary punishment under this section for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this section; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(g) The Adjutant General may, by regulation, prescribe the form of records to be kept of proceedings under this article and may also prescribe that certain categories of those proceedings shall be in writing.

SEC. 39. Section 455 of the Military and Veterans Code is amended to read:

455. Courts of inquiry shall consist of at least three members and may be ordered by the Governor to examine into the nature of any transaction of or accusation or imputation against any officer or enlisted person. The courts shall not be ordered except upon the request of the officer concerned or whose conduct is to be inquired into or upon the request of the enlisted person concerned.

The members of the court may be officers or qualified enlisted persons, and the court may include both officers and qualified enlisted persons.

The practice and procedure of the court of inquiry shall be in accordance with the Articles of War and like tribunals appointed for similar purposes in the United States Army, United States Air Force, and United States Navy. The court shall, without delay, report to the officer ordering it, the evidence adduced, a statement of the facts, and, when required, an opinion thereon.

Boards for conducting investigations and investigating officers may be appointed in accordance with the rules and regulations adopted for the appointment of similar boards and officers in the United States Army, United States Air Force, and United States Navy.

SEC. 40. Section 458.1 of the Military and Veterans Code is amended to read:

458.1. The Courts-Martial Appellate Panel shall have power over the following:

(a) The issuance of extraordinary writs relative to all matters arising under the following:

- (1) The provisions of this code.
- (2) The Uniform Code of Military Justice.
- (3) Any regulation issued by the Governor pertaining to members of the California active militia.
- (4) Court-martial actions pending before any military judge of the California Military Department.

(b) Adjudicating appeals of sentences of a court-martial that have been approved by the convening authority, as described in Section 455.1, and which include:

- (1) Dismissal, in the case of a commissioned or warrant officer.
- (2) Dishonorable discharge, in the case of an enlisted person.
- (3) Bad-conduct discharge, in the case of an enlisted person.
- (4) Forfeiture of all pay and allowances.
- (5) Any confinement.

(c) The practices and procedures of the Courts-Martial Appellate Panel shall follow the federal Manual for Courts-Martial described in Section 102 and the California Manual for Courts-Martial.

SEC. 41. Section 463 of the Military and Veterans Code is amended to read:

463. Military courts may issue all process and mandates, including writs and warrants, necessary and proper to carry into full effect the powers vested in those courts. Process or mandates may be directed to the sheriff of any county, any peace officer, the police of any city and the marshals of any town or city, or to any officer or enlisted person appointed by the court to serve or execute process or mandates. All officers to whom process or mandates are directed shall execute the process or mandates and make return of their acts thereunder according to the requirements thereof.

SEC. 42. Section 465 of the Military and Veterans Code is amended to read:

465. Presidents of courts-martial, one-officer special courts-martial, and summary court officers shall have power to issue warrants to arrest an accused person and to bring him or her before the court for trial. A court shall be ordered for his or her trial within the time similarly prescribed by the rules and regulations of the United States Army. If a copy of the charges and specifications is not served, or a court is not ordered within the time herein limited, the arrest shall cease, but the charges and specifications may be served, a court ordered, and the officer or enlisted person be brought to trial after the release from arrest within the time prescribed by the rules and regulations of the United States Army in similar circumstances. The appearance of the accused, without objection and pleading to the charges, shall be a waiver of any defect or irregularity of service of any of the papers mentioned in this section.

SEC. 43. Section 551 of the Military and Veterans Code is amended to read:

551. The Governor is hereby authorized to prescribe rules and regulations not inconsistent with the provisions of this chapter governing the enlistment, organization, administration, equipment, maintenance, training, and discipline of forces. The rules and regulations, insofar as the Governor deems practicable and desirable, shall conform to existing law governing and pertaining to the National Guard and the rules and regulations adopted thereunder and shall prohibit the acceptance of gifts, donations, gratuities, or anything of value by those forces or any member of those forces from any individual, firm, association, or

corporation by reason of that membership. Former Section 167 shall at no time apply to the forces herein authorized except that all officers, warrant officers, and enlisted persons on active duty with the Office of the Adjutant General shall be appointed by the Governor, with consideration of the recommendation of the Adjutant General. All officers, warrant officers and enlisted persons on active duty under former Section 167 who are ordered into federal service by federal authority during the emergency or who are ordered by state authority to perform duty with the forces herein authorized shall not thereby lose the rights and privileges provided in former Section 167 and shall be restored to those rights and privileges upon completion of that service or duty.

Members of the California National Guard not ordered to federal service or who are not required to perform federal service or who have been deferred from federal duty may perform service as members of the California National Guard on state active duty on behalf of the forces herein authorized and may be compensated as provided in Sections 320 and 321.

SEC. 44. Section 552 of the Military and Veterans Code is amended to read:

552. Officers and warrant officers of the forces herein authorized on active duty in the service of the state shall receive the same pay and allowances as officers of similar grade in the Army of the United States.

An officer, warrant officer or enlisted person of the forces herein authorized may, with his or her consent, be detailed for duty and may be paid compensation in any grade lower than the officer, warrant officer, or enlisted person actually holds; provided, the officer, warrant officer or enlisted person voluntarily waives all compensation in excess of the lower grade in which he or she is detailed to duty.

Whenever an officer or warrant officer of the forces herein authorized is detailed for special duty in any matter relating to those forces, by order of the Governor, he or she shall be allowed the same pay and allowances as officers or warrant officers of similar grade in the Army of the United States and actual traveling expenses. An enlisted person similarly detailed shall be allowed the same pay and allowances as enlisted persons of similar grade in the Army of the United States and actual traveling expenses, except that family allowances shall not be allowed those enlisted persons. An officer, warrant officer or enlisted person of the forces herein authorized may, with his or her consent, be detailed for special duty without expense to the state, except and provided, however, he or she may be paid his or her actual traveling expenses.

In addition to the pay and allowances authorized in this code, personnel of the forces created herein having administrative functions connected therewith may be paid not more than twenty dollars (\$20) per month for the performance of those duties according to rules and regulations adopted by the Adjutant General.

All enlistments of members of the active militia may be extended by the Adjutant General if necessary during the existence of a national emergency.

SEC. 45. Section 562 of the Military and Veterans Code is amended to read:

562. In all cases in which any officer, warrant officer or enlisted person of the State Military Reserve, when organized or authorized as a cadre or otherwise, when in the performance of ordered duty, or when ordered into the active service of the state, is wounded, injured, disabled, or killed in active service, or in the performance of ordered duty and in line of duty, the officer or warrant officer or enlisted person or the dependents of that officer or warrant officer or enlisted person shall be entitled to receive compensation from the state in accordance with the provisions of Division 4 (commencing with Section 3201) of the Labor Code. In all such cases, an officer, warrant officer, enlisted person shall be held and deemed to be an employee of the state. The compensation to be awarded to any such officer, warrant officer, enlisted person shall be ascertained, determined, and fixed upon the basis of his or her average income from all sources during the year immediately preceding the date of the injury or death or the commencement of the disability, but the compensation shall in no case exceed the maximum prescribed in Division 4 (commencing with Section 3201) of the Labor Code.

In the determination of the benefits to be awarded any member of the State Military Reserve or his or her dependents under the provisions of this section it shall be conclusively presumed that the average yearly earning of the injured or deceased member is not less than two thousand five hundred dollars (\$2,500). Any injury, death, or disability shall be deemed to have been suffered in line of duty unless the same resulted from misconduct or disobedience of lawful orders by the injured or deceased member.

SEC. 46. Section 648 of the Military and Veterans Code is amended to read:

648. (a) Except as provided by subdivision (b), decorations authorized by this code and decorations, medals, badges, ribbons, and insignia authorized by the laws or regulations of the United States pertaining to the National Guard, Air National Guard, and Naval Militia may be worn by officers, warrant officers, and enlisted persons in accordance with the code, laws, or regulations. However, decorations awarded by other states and territories of the United States may be worn, but shall be subordinated to those issued by federal and state laws or regulations. No other decorations, medals, badges, ribbons, or insignia may be worn. A violation of this section shall constitute a misdemeanor.

(b) Decorations authorized by this code and decorations or medals from the Armed Forces of the United States, the California National Guard, State Military Reserve, or Naval Militia, or any service medals or badges awarded to the members of such forces, may be worn by uniformed public safety personnel in accordance with the code, laws, or regulations, during the business week prior to Veterans Day and Memorial Day, the day of Veterans Day and Memorial Day, and the business day immediately following Veterans Day and Memorial Day. The employer of the uniformed public safety personnel shall retain the right to prohibit the wearing of military decorations pursuant to this subdivision if the employer determines that wearing the military decorations poses a safety hazard to the uniformed public safety personnel or to the public.

SEC. 47. Section 32177.5 of the Revenue and Taxation Code is amended to read:

32177.5. No tax shall be imposed upon the sale of distilled spirits by brandy manufacturers, distilled spirits manufacturers, rectifiers, importers, and distilled spirits wholesalers to the following listed instrumentalities of the armed forces of the United States organized under Army, Air Force, Navy, Marine Corps, or Coast Guard regulations and located upon territory within the geographical boundaries of the state:

(a) Army, Air Force, Navy, Marine Corps, and Coast Guard exchanges.

(b) Officers', noncommissioned officers', and enlisted persons' clubs or messes.

If any manufacturer, rectifier, importer or wholesaler has paid the tax on alcoholic beverages, except beer and wine, thereafter sold to an instrumentality of the Armed Forces so located, the taxpayer may claim and shall be allowed credit with respect to the tax so paid in any report filed or assessment paid under this part.