Chapter 399

2009 EDITION

Organized Militia

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ORGANIZATION, TRAINING, ADMINISTRATION AND OPERATIONS

399.015 Army National Guard. The ground force of the organized militia shall be the Army National Guard and shall be composed of the army units which are a part of the Oregon National Guard on August 9, 1961, and such units as may be authorized thereafter, including the personnel who are enlisted, appointed or commissioned therein. All persons who are members of the Army National Guard shall be federally recognized as such. [1961 c.454 §39]

399.020 [Repealed by 1961 c.454 §213]

399.025 Air National Guard. The air force of the organized militia shall be the Air National Guard and shall be composed of the air force units which are a part of the Oregon National Guard on August 9, 1961, and such units as may be authorized thereafter, including the personnel who are enlisted, appointed or commissioned therein. All persons who are members of the Air National Guard shall be federally recognized as such. [1961 c.454 §40]

399.030 [Repealed by 1961 c.454 §213]

399.035 Oregon State Defense Force. (1) In addition to the federally recognized Oregon National Guard subject to call or order to federal service under laws of the United States, there shall be organized within the state a National Guard Reserve force. Such force shall be known as the Oregon State Defense Force, and shall be composed principally of officers, warrant officers and enlisted persons not eligible for general service under federal selective service laws.

(2) In time of peace the Oregon State Defense Force shall be maintained at cadre strength in numbers to be determined by the Governor.

(3) In time of peace the mission of the Oregon State Defense Force shall be to augment the Oregon National Guard as an internal security force. In time of war, it shall replace the Oregon National Guard as a state force when the National Guard is ordered into federal service.

(4) Whenever laws of the United States authorize the organization of such state forces under federal recognition, the Governor shall promulgate such regulations as are necessary to comply with such federal laws and obtain federal recognition for the force authorized by this section. [1961 c.454 §41; 1989 c.361 §6]

399.040 [Repealed by 1961 c.454 §213]

399.045 Organization and training; equality of treatment and opportunity. (1) The forces of the organized militia shall be organized, armed, disciplined, governed, administered and trained as prescribed by applicable federal and state laws and regulations.

(2) It hereby is declared to be the policy of the state that there shall be an equality of treatment and opportunity for all persons in the organized militia without regard to race, creed, color or national origin. [1961 c.454 §§42,43]

399.050 [Repealed by 1961 c.454 §213]

399.055 Assemblies, periodic training and other duty. Members and units of the organized militia shall assemble for training and shall participate in field training periods and active duty for training periods, maneuvers, schools, conferences or other similar duties at such times and places as are prescribed therefor by applicable federal and state laws and regulations. In addition to these periods, the commander of any organization may require the officers, warrant officers and enlisted persons of the command to meet for ceremonies, parades or training at such times and places as the commander may appoint. [1961 c.454 §44]

399.060 [Repealed by 1961 c.454 §213]

399.065 Ordering organized militia into active state service; martial law. (1) The Governor shall have the power, in case of invasion, disaster, insurrection, riot, breach of the peace, or imminent danger thereof, to order into active service of the state for such period, to such extent and in such manner as the Governor may deem necessary all or any part of the organized militia. Such power shall include the power to order the organized militia or any part thereof to function under the operational control of the United States Army, Navy or Air Force commander in charge of the defense of any area within the state which is invaded or attacked or is or may be threatened with invasion or attack.

(2) The Governor may order into active service of the state for such period, to such extent and such manner as the Governor may deem necessary units or individuals of the organized militia when in the judgment of the Governor the services of such units or individuals are required for the furtherance of the organization, maintenance, discipline or training of the organized militia or for ceremonial functions of the state government.

(3) Whenever any portion of the organized militia is employed pursuant to this section, the Governor, if in the judgment of the Governor the maintenance of law and order will thereby be promoted, may by proclamation declare the county or city in which the troops are serving, or any specified portion

thereof, to be under martial law. [1961 c.454 §45]

399.070 [Repealed by 1961 c.454 §213]

399.075 Ordering organized militia to active state duty; pay and allowances. (1) The Adjutant General, with the approval of the Governor, may order members of the organized militia to active state duty. Members, while on active state duty, shall receive not less than the pay and allowances of their corresponding grades in the Armed Forces of the United States in accordance with a schedule approved by the Adjutant General for the period of time in active state duty. Active state duty under this subsection includes, but is not limited to, support of federal, state and local drug eradication, interdiction and other counterdrug operations under a counterdrug support plan approved by the Governor, and reasons related to homeland security. When participating in such support operations, and to the extent authorized by 32 U.S.C. 112, applicable regulations of the National Guard Bureau and the Oregon Counterdrug Support Plan, the Oregon Military Department is designated as a law enforcement agency for the purpose of carrying out federal asset forfeiture laws only.

(2) Members of the organized militia serving on courts-martial, courts of inquiry, efficiency boards, medical boards or other special duty requiring absence from their stations or business under competent orders may be reimbursed for necessary expenses incurred at the rate established for state employees under appropriate travel regulations issued by the Oregon Department of Administrative Services.

(3) In lieu of other provisions of this chapter, a medical examiner may be paid for services and necessary disbursements and a properly appointed judge advocate may be paid for legal services and necessary disbursements in any suit, action or proceeding, such amounts as shall be approved by the Governor.

(4) Members of the organized militia shall not receive from the state the pay or the pay and allowances provided for by this section when eligible for such pay and allowances from federal funds.

(5) Notwithstanding any of the provisions of this chapter, members of the organized militia may with their consent perform without pay or without pay and allowances any of the types of military duty prescribed in this chapter and ORS chapters 396 and 398 pursuant to orders issued by competent military authority; provided however, that necessary traveling expenses, subsistence and per diem allowances may be furnished such members within the discretion of the Adjutant General and within the amount appropriated therefor.

(6) All pay and allowances provided for by this chapter, except per diem, mileage and expenses while traveling under orders shall be subject to be applied to the payment of penalties and fines imposed by military courts, and to the payment of any shortage of or injury to state or United States property or funds for which a member of the organized militia is responsible or accountable where such responsibility has been fixed by competent authority.

(7)(a) Except as provided in paragraph (b) of this subsection, members of the organized militia who are ordered to active state duty shall be considered temporary employees of the military department.

(b) Members of the organized militia who are ordered to active state duty are not subject to ORS chapter 240 and ORS 243.650 to 243.782.

(8) The limitations on employment imposed by ORS 238.082 (2) and (3) do not apply to a retired member of the Public Employees Retirement System who has attained normal retirement age and is on active state duty. Hours served by a person under this subsection shall not be counted for the purpose of the limitations on employment imposed by ORS 238.082 (2) and (3). [1961 c.454 §69; 1997 c.486 §1; 2003 c.311 §1; 2009 c.390 §§2,9]

399.080 [Repealed by 1961 c.454 §213]

399.085 Credit for active federal service. For all purposes under this chapter and ORS chapters 396 and 398, members of the organized militia who enter and serve in the active military service of the United States in time of war under a call or order by the President or who enter and serve on active duty in the military service of the United States in time of peace in their status within the National Guard of the United States or Air National Guard of the United States and who thereafter return to the military service of the state, shall be entitled to credit for time so served as if such service had been rendered to the state. [1961 c.454 §47]

399.090 [Repealed by 1961 c.454 §213]

399.095 Militia unit funds. (1) There shall be paid to each unit of the organized militia such amount within funds available as the Adjutant General may determine, not in excess of $2,000 a year, for care of state and federal property or other necessary military expenses not otherwise provided for, including rent of armories as follows:

(a) Upon certificate of the Adjutant General or the person designated by the Adjutant General that a unit of the organized militia is fully organized and has complied with the military laws and regulations dur-

ing the preceding three months, the Oregon Department of Administrative Services shall draw a warrant quarterly on the State Treasurer to the commander of the unit in the amount designated in the certificate.

(b) Whenever any unit is divided into two separate parts and stationed at different localities, an additional sum of $300 per year may be paid to such unit, and the total sum shall be divided and apportioned between the two parts by the Adjutant General, and the Oregon Department of Administrative Services shall draw warrants accordingly.

(2) A custodian of a Unit Headquarters Fund may maintain a checking account in any financial institution authorized to do business in Oregon if the financial institution is also authorized to provide checking account services and has its accounts insured by the Federal Deposit Insurance Corporation or other similar federal agency which insures financial institutions. All moneys for a Unit Headquarters Fund shall be deposited, spent and accounted for according to regulations adopted and published by the Oregon Military Department. [1961 c.454 §70; 1983 c.107 §1; 1983 c.740 §125; 1989 c.360 §12; 2005 c.512 §41]

399.100 [Repealed by 1961 c.454 §213]

399.105 Militia unit facilities. Unless furnished by the United States, the state shall provide adequate armory accommodations, bases, camps, target ranges and other facilities and shall maintain such facilities for units of the Oregon National Guard allotted to the state under the laws of the United States, accepted by the Governor and organized under the authority of this chapter and ORS chapters 396 and 398. [1961 c.454 §46]

399.110 [Repealed by 1961 c.454 §213]

399.115 Trespassers and disturbers to be placed in arrest; sales and gambling prohibited. (1) Any person who trespasses upon any armory, arsenal, camp, range, base or other facility of the organized militia or other place where any unit of the organized militia is performing military duty, including training, or who in any way or manner interrupts or molests the discharge of military duties by any member of the organized militia or of the Armed Forces of the United States or who trespasses or prevents the passage of troops of the organized militia or of the Armed Forces of the United States in the performance of their military duties may be placed in arrest by the commanding officer, or the designated representative of the commanding officer, of the unit performing such military duty at the place where the offense is committed and may be held in arrest during the continuance of the performance of such military duty, but not to exceed 12 hours.

(2) The commanding officer or the designated representative of the commanding officer, of any unit of the organized militia performing military duty in or at any armory, arsenal, camp, range, base or other facility of the organized militia or other place where such unit is performing military duty may prohibit persons who hawk, peddle, vend or sell goods, wares, merchandise, food products or beverages upon the streets and highways from conducting sales or auctions, and may prohibit all gambling within the limits of such armory, arsenal, camp, range, base or other facility of the organized militia or other place where such unit is performing military duty or within such limits not exceeding one mile therefrom as the commanding officer may prescribe. Such commanding officer may in the discretion of the commanding officer abate as common nuisances all such sales, actions and gambling. [1961 c.454 §74]

399.120 [Repealed by 1961 c.454 §213]

399.125 Repossession of military property by state. (1) When the Governor orders the return to the state of any arms, equipment, military stores or other military property belonging to the state, or for which the state is responsible, such arms and military property shall be delivered immediately to the officer authorized in the order to receive it, who shall give a receipt for the property and describe its condition in the receipt. If the property mentioned in the order is not promptly delivered as directed, the officer named in the order may take immediate possession of the same in the name of the state.

(2) No person shall resist any officer in the performance of the duty required by this section. [1961 c.454 §76]

399.130 [Repealed by 1961 c.454 §213]

399.135 Right of way on public streets and highways. The organized militia in the performance of its military duties shall have the right of way over any persons or vehicles on any public street or highway of this state, except United States mail carriers, fire apparatus and other emergency vehicles. Any person who hinders or delays, or obstructs, the organized militia in the performance of its military duties, is guilty of a misdemeanor. [1961 c.454 §72]

399.140 [Repealed by 1961 c.454 §213]

399.145 Free passage through tollgates and tunnels and over tollbridges and ferries. Any person belonging to the organized militia shall, together with the conveyance in the charge of the person and the property of the state or the United States in the charge of the person, be allowed to pass free

through all tollgates and tunnels and over all tollbridges and also over all ferries if the person is in uniform or presents an order for duty or certificate of an order for duty. [1961 c.454 §73]

399.150 Oaths and affirmations. Oaths and affirmations required in any matter connected with the military service may be administered by any duly commissioned officer of the organized militia or other officer authorized to administer oaths under the laws of the state, and no charge shall be made nor shall any fee be accepted for such service. [1961 c.454 §51]

399.155 Unlawful wearing of uniform or insignia. No member of the organized militia shall wear, when on or off duty, any uniform or any device, strap, knot or insignia of any design or character used as a designation of grade, rank or office, such as are by law or regulation, duly promulgated, prescribed for the use of the organized militia, without the permission of the commanding officer. [1961 c.454 §75(3)]

RIGHTS AND PRIVILEGES OF MEMBERS

399.205 Complaints of wrongs. Any member of the organized militia who is wronged by the commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the Governor or Adjutant General. [1961 c.454 §200]

399.210 Eligibility to state office of federally paid members of organized militia. Any officer or enlisted person of the militia of this state who receives compensation from the United States as a federally recognized member of the organized militia shall not be ineligible by reason thereof to hold lucrative office or seat in the Legislative Assembly within the meaning of section 10, Article II of the Oregon Constitution. [1961 c.454 §48]

399.215 Exemption from jury duty. Active members of the organized militia shall be exempt from duty to act as a juror. [1961 c.454 §49]

399.220 [1961 c.454 §50; repealed by 1973 c.794 §34]

399.225 Relief from civil or criminal liability; security for costs; exemption from civil process. (1) Members of the organized militia ordered into active service of the state pursuant to this chapter shall not be liable civilly or criminally for any act or acts done by them in the performance of their duty. When an action or proceeding of any nature is commenced in any court by any person against any officer of the militia for any act done by the officer in an official capacity in the discharge of any duty under this chapter and ORS chapters 396 and 398, or an alleged omission by the officer to do an act which it was the duty of the officer to perform, or against any person acting under the authority or order of such officer, or by virtue of any warrant issued by the officer pursuant to law, the defendant may require the person instituting or prosecuting the action or proceeding to file security for the payment of costs that may be awarded to the defendant therein, and the defendant in all cases may make a general denial and give the special matter in evidence. A defendant in whose favor a final judgment is rendered in an action or a final order is made in a special proceeding shall recover the costs of the defendant.

(2) No member of the organized militia of the state shall be arrested on any civil process while going to, remaining at, or returning from any place at which the member may be required to attend for military duty. [1961 c.454 §71]

399.230 [1989 c.317 §1; 2003 c.72 §2; 2003 c.311 §2; 2003 c.387 §11; 2005 c.78 §1; 2009 c.12 §1; renumbered 659A.086 in 2009]

399.235 [1989 c.317 §2; 2001 c.621 §79; 2003 c.387 §12; renumbered 659A.088 in 2009]

399.238 Applications for relief of obligations or liabilities or stay of civil or administrative proceedings by state service members. (1) As used in this section, "service member" means:

(a) A member of the organized militia who is called into active service under ORS chapter 399.

(b) A member of the Oregon National Guard who is called into active service outside this state under Title 10 or Title 32 of the United States Code.

(2) A service member may, while in active service or within one year after that service ends, apply to a court or an administrative body:

(a) For relief with respect to any obligation or liability incurred by the member before the period of active service began. The court or administrative body, after appropriate notice and hearing, may grant relief unless the court or administrative body determines that the ability of the member to comply with the terms of the obligation or liability has not been materially affected by active service.

(b) For a stay of a civil or administrative proceeding in which the service member is a party. The court or administrative body, after appropriate notice, shall grant the stay unless the court or administrative body determines that the ability of the service member to appear is not materially affected by active service.

(3) The court or administrative body may not charge or collect any fee from a service member who applies to the court or administrative body for relief under this section.

(4) An application filed under this section may not be deemed as consent to jurisdiction in any action or proceeding.

(5) The period of a service member's active service may not be included in computing any period limited by law, rule or order for bringing any action or proceeding before a court or administrative body for or against the service member or the service member's heirs, executors, administrators or assigns. [2003 c.387 §9; 2005 c.79 §1; 2007 c.400 §1; 2009 c.345 §3]

Note: Section 2, chapter 400, Oregon Laws 2007, provides:

Sec. 2. (1) Except as provided in subsection (2) of this section, the amendments to ORS 399.238 by section 1 of this 2007 Act apply to administrative proceedings commenced before, on or after the effective date of this 2007 Act [January 1, 2008].

(2) The amendments to ORS 399.238 by section 1 of this 2007 Act do not apply to any proceeding in which a final order has been entered after all opportunity for administrative review has been exhausted. [2007 c.400 §2]

Note: 399.238 and 399.240 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 399 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

399.240 Limitation on rate of interest incurred by state service members during period of active service. (1) As used in this section:

(a) "Interest" includes service charges, renewal fees or other charges or fees associated with an obligation or liability.

(b) "Service member" means:

(A) A member of the organized militia who is called into active service of the state by the Governor under ORS 399.065 (1) for 30 or more consecutive days.

(B) A member of the Oregon National Guard who is called into active federal service under Title 10 of the United States Code.

(2) Notwithstanding ORS 82.010, 83.095, 708A.255, 723.502, 723.730 and 725.340, an obligation or liability bearing interest at a rate in excess of six percent per year incurred by a service member before being called into active service may not, during any part of the period of active service, bear interest in excess of six percent per year except by court order.

(3) The service member shall provide written notice to the creditor requesting that the rate of interest be reduced to six percent per year and shall include proof of the official orders showing that the service member is being called into active service of the state by the Governor under ORS 399.065 (1) or into active federal service under Title 10 of the United States Code.

(4) A creditor that receives a request under subsection (3) of this section to reduce a rate of interest may apply to the court for a determination that the ability of a service member to pay interest on an obligation or liability at a rate in excess of six percent per year is not materially affected because of the active service of the member. If a court determines that the ability of a service member to pay interest on an obligation or liability at a rate in excess of six percent per year is not materially affected because of the active service of the member, the court may order an interest rate that is just.

(5) A creditor must recompute the payment schedule to amortize the balance of the obligation or liability over the remainder of the obligation or liability at a rate of interest determined under subsection (2) or (4) of this section. [2003 c.387 §4; 2005 c.79 §2; 2009 c.541 §20]

Note: See second note under 399.238.

399.245 Definitions for ORS 399.245 to 399.265. As used in ORS 399.245 to 399.265:

(1) "Commission" means the Oregon Student Assistance Commission.

(2) "Qualified applicant" means an Oregon resident who:

(a) Is a member of the Oregon National Guard;

(b) Maintains minimum academic standards at the qualified institution of higher education;

(c) Meets participation standards in the Oregon National Guard as prescribed by the Oregon Military Department;

(d) Is a full-time student; and

(e) Serves one year in the Oregon National Guard for each year a scholarship is granted.

(3) "Qualified institution of higher education" means any two-year or four-year, nonprofit, generally accredited institution of higher education located in this state, including community colleges and accredited schools of nursing located in this state.

(4) "Scholarship" means a scholarship equal in value to $800 to be used to pay the educational expenses of the applicant at a qualified institution of higher education during the period for which the scholarship is granted, of which no more than 100 scholarships shall be awarded annually. [1989 c.717 §1; 1999 c.704 §21]

Note: 399.245 to 399.265 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 399 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

399.255 Scholarship program; award; duration; ineligible courses of study. (1) Subject to the availability of funds, the Oregon Military Department shall contract with the Oregon Student Assistance Commission to disburse to qualified applicants, awards made to the applicants on behalf of the Oregon National Guard Scholarship Program as determined by the Oregon Military Department.

(2) If the qualified applicant who receives a scholarship under ORS 399.245 to 399.265 meets the standards of the Oregon Military Department for renewal of the scholarship, the scholarship may be renewed upon application until the applicant has received a scholarship for a total of four undergraduate years.

(3) A qualified applicant who receives a scholarship under ORS 399.245 to 399.265 must attend the qualified institution of higher education upon which the scholarship application was based unless the commission authorizes the scholarship to be used at a different institution.

(4) No scholarship shall be made to any student enrolled in a course of study required for or leading to a degree in theology, divinity or religious education. [1989 c.717 §2]

Note: See note under 399.245.

399.265 Award prior to completion of service requirement; repayment required after insufficient service. A qualified applicant may be awarded a scholarship under ORS 399.245 to 399.265 before completing the national guard service requirement. However, if an applicant fails to fulfill the service requirement, the applicant shall pay to the Oregon Student Assistance Commission the amount of the scholarship received plus interest for each year for which a scholarship was awarded but for which the service requirement was not met. [1989 c.717 §3]

Note: See note under 399.245.

399.270 [1997 c.67 §2; repealed by 2001 c.139 §3]

399.275 Tuition waiver program; amount of waiver; qualifications; priority. (1) As used in this section and ORS 399.280:

(a) "Eligible post-secondary institution" has the meaning given that term in ORS 348.180.

(b) "Surviving family member" means a spouse or dependent of a member of the Oregon National Guard who is killed while on active duty.

(2) Subject to the availability of funds, the Oregon Military Department may contract with the Oregon Student Assistance Commission to:

(a) Disburse to eligible post-secondary institutions the dollar amount of tuition waivers authorized by this section and approved for payment by the department; and

(b) Provide to the department a compilation of the total dollar amount of the tuition waivers approved for each academic term included in the contract.

(3) The department shall regularly provide to the commission the names of members of the Oregon National Guard and surviving family members for whom tuition waivers may be approved.

(4) Any member of the Oregon National Guard or surviving family member who registers for classes at an eligible post-secondary institution may receive a tuition waiver of up to 100 percent of the resident tuition charges imposed by that institution, except that in the case of a not-for-profit independent institution, the tuition waiver may not exceed 100 percent of the resident tuition at Oregon State University.

(5)(a) A member of the Oregon National Guard may receive the tuition waiver authorized by this section at any time if the member maintains satisfactory performance with the Oregon National Guard and pursues a course of study in the eligible post-secondary institution in a manner that satisfies the usual requirements of the institution.

(b) A surviving family member may receive the tuition waiver authorized by this section if the surviving family member pursues a course of study in the eligible post-secondary institution in a manner that satisfies the usual requirements of the institution.

(c) The member of the Oregon National Guard or surviving family member is responsible for payment of the balance of the tuition charges not provided for by the tuition waiver program.

(6) When determining to whom the tuition waivers shall be granted, priority shall be given to those members of the Oregon National Guard who have previously received tuition waivers while serving in the Oregon National Guard and surviving family members who have previously received tuition waivers.

(7) The department shall apply qualifications and limitations to the tuition waiver program that are consistent with efficient and effective program management as determined by the Adjutant General. [1995 c.158 §1; 1997 c.67 §3; 2001 c.139 §1; 2005 c.200 §1]

Note: 399.275 and 399.280 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 399 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

399.280 Eligibility; required period of military service; repayment required after withdrawal from courses or insufficient service. (1) The tuition waiver program described in this section and ORS 399.275 is not available to any member of the Oregon National Guard or surviving family member who has a baccalaureate degree.

(2) A member of the Oregon National Guard or surviving family member may obtain only one undergraduate degree under the tuition waiver program established by this section and ORS 399.275. Only courses that meet degree requirements shall be approved for tuition waivers. A member of the Oregon National Guard or surviving family member may not receive a tuition waiver for any noncredit course.

(3) If a member of the Oregon National Guard or surviving family member voluntarily withdraws from a course for which the member is receiving a tuition waiver, the member is liable for all costs relating to withdrawal, including but not limited to all the costs billed by the eligible post-secondary institution to the Oregon Military Department.

(4) A member of the Oregon National Guard with no prior military service must complete basic military training, military occupational specialty training or skill-level training prior to being eligible for tuition waivers under this section and ORS 399.275. However, the Adjutant General may waive this requirement if the Adjutant General determines that a tuition waiver would be in the interests of the Oregon National Guard.

(5) A member of the Oregon National Guard who receives tuition waivers under this section and ORS 399.275 shall agree in writing to serve in the Oregon National Guard for four years after the completion of the courses for which tuition waivers were given. A member who receives tuition waivers may be asked to reimburse the State of Oregon if the member leaves the Oregon National Guard during the four-year period.

(6) The Oregon Military Department shall establish any limitations and controls it considers necessary to ensure maximum fiscal efficiency and productivity of the tuition waiver program established by this section and ORS 399.275. [1995 c.158 §2; 1997 c.67 §4; 2001 c.139 §2; 2005 c.200 §2]

Note: See note under 399.275.

399.285 [1995 c.158 §3; 1997 c.67 §5; repealed by 2001 c.139 §3]

399.290 [1995 c.158 §4; 1997 c.67 §6; repealed by 2001 c.139 §3]

COMMISSIONED AND WARRANT OFFICERS

399.405 Appointment of commissioned officers. All commissioned officers of the organized militia shall be appointed and promoted by the Governor upon recommendation of the Adjutant General. [1961 c.454 §53]

399.410 Applicability of chapter to warrant officers. The provisions of this chapter relating to commissioned officers shall apply to warrant officers, except that warrant officers who have been absent without leave may be discharged as prescribed by applicable federal and state laws and regulations. [1961 c.454 §63]

399.415 Qualifications of officers; oath. (1) No person shall be appointed or promoted as a commissioned officer of the organized militia unless the person has passed such examination as to the physical, moral and professional qualifications of the person as may be prescribed by applicable federal and state laws and regulations.

(2) No person shall be recognized as a commissioned officer of the organized militia and no appointment as such shall become effective until the person has taken and subscribed an oath of office as prescribed by applicable federal and state laws and regulations. Such oath shall be taken and subscribed before an officer of the organized militia authorized to administer oaths as provided in ORS 399.150, or before a notary public. [1961 c.454 §54]

399.420 Assignment and transfer of officers; residence of officers. (1) Commissioned officers may be assigned, reassigned, transferred or detailed to and from units within the organized militia as prescribed by applicable federal and state laws and regulations.

(2) An officer must reside within reasonable commuting distance of the station to which the unit of the officer is assigned. The Adjutant General shall determine what constitutes a reasonable distance in all cases of doubt. [1961 c.454 §55]

399.425 Resignations. (1) A commissioned officer of the organized militia may tender resignation at any time. Such resignation will be tendered in writing through proper military channels in accordance with applicable federal and state laws and regulations. Such resignations shall take effect when properly accepted and announced in orders.

(2) A commissioned officer desiring to accept an appointment or to enlist in the active Army, Navy, Air Force, Marine Corps or Coast Guard of the United States or a reserve component thereof shall first obtain a

conditional release from the commander of the officer. Such conditional release shall be issued in accordance with this chapter and ORS chapters 396 and 398 and military department regulations, and shall include certification that the officer is properly cleared of responsibility for all state and United States property and public money, and that the officer is not indebted to the state or to the organization to which the officer belongs. An officer so released shall be considered to have resigned upon presentation of evidence that the officer has accepted an appointment or enlisted in the force to which released, and the resignation shall be announced in orders.

(3) No officer shall be allowed to resign a commission who is under arrest, suspension or who is under orders to be returned to any military court for delinquency. [1961 c.454 §56]

399.430 Absence without leave considered resignation. (1) Any officer who absents self without leave for 60 days shall be considered to have resigned, and the vacancy shall be announced in appropriate orders.

(2) Any officer who is absent without leave from annual active duty training shall be considered to have resigned, and the vacancy shall be announced in appropriate orders. [1961 c.454 §57]

399.435 Efficiency and medical examining boards; appointment. (1) The efficiency, moral character and general fitness for retention in the organized militia of any commissioned officer may be investigated and determined by an efficiency examining board. The members of an efficiency examining board shall be senior in rank to the officer under investigation unless unavoidable.

(2) The physical fitness for further service of any commissioned officer in the organized militia may be investigated and determined by a medical examining board of officers.

(3) Efficiency and medical examining boards shall be appointed by the Governor upon recommendation of the Adjutant General except that whenever an examining board is to be appointed for the purpose of determining fitness of any officer for continued federal recognition, such board shall be appointed by the commander designated in the applicable laws of the United States and the regulations issued thereunder. [1961 c.454 §58]

399.440 Efficiency and medical examining boards; procedure and functions. Efficiency and medical examining boards appointed by the Governor hereby are vested with the powers of courts of inquiry and courts-martial. Such boards shall follow the practice and procedure prescribed by applicable federal and state laws and regulations. Any officer ordered to appear before such a board shall be allowed to appear in person or by counsel, to cross-examine witnesses and to call witnesses on behalf of the officer. The officer shall at all stages of the proceeding be allowed full access to records pertinent to the case and be furnished copies of same. Failure to appear before such examining board shall be sufficient ground for a finding by such board that the officer ordered to appear be discharged from the service of the state. If the findings of such board are unfavorable to an officer and are approved as provided by applicable laws of the United States or this chapter and ORS chapters 396 and 398, the Governor shall relieve the officer from duty and shall give the officer a discharge in such form as may be appropriate. If the discharge of an officer is recommended solely because of physical inability to perform active service, such officer may be transferred to the retired reserve if eligible. [1961 c.454 §59]

399.445 Officer bonds. Officers of the organized militia shall give bonds and security as may be required by the Adjutant General to secure the state against loss on account of misuse or misapplication of state or federal property and funds. Such bonds shall be conditioned upon faithful performance of all duties and the accounting for all property and funds for which the officer 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 of the organized militia without specifically naming them. The premiums on bonds shall be charged to funds appropriated for the support of the organized militia. [1961 c.454 §60]

399.450 Responsibility for public property. An officer receiving public property for military purposes shall be accountable for the article so received by the officer until the article is returned, or is disposed of pursuant to law or by order of the Governor. Until the accounts of the officer are examined and found correct, the accountability of such officer or the estate of the officer shall not be affected in any way by resignation, discharge, change in official position or death. The Governor shall have the power to relieve officers of accountability upon good cause shown. [1961 c.454 §61]

399.455 [1961 c.454 §62; repealed by 1963 c.169 §11]

399.456 Uniform allowance. (1) A person who is appointed as a commissioned officer or warrant officer of the Oregon National Guard under the circumstances set forth in subsection (2) of this section shall,

on the date of original appointment as a commissioned officer or warrant officer, be eligible to receive from the state an allowance of $170 for the purpose of purchasing military uniforms and equipment.

(2) Payment of the allowances set forth in subsection (1) of this section shall be limited to officers and warrant officers appointed under the following circumstances:

(a) Commissioned in the Oregon Army National Guard upon graduation from an approved Army commissioning program.

(b) Direct appointment as an officer or Warrant Officer of the Oregon Army National Guard from enlisted or civilian status.

(c) Commissioned in the Oregon Air National Guard as a result of direct appointment from enlisted or civilian status.

(d) Commissioned in the Oregon Air National Guard upon graduation from an approved Air Force commissioning program.

(e) Commissioned in the Oregon Army National Guard from the reserve forces of the Navy, Marine Corps or Air Force.

(f) Commissioned in the Oregon Air National Guard from the reserve forces of the Army, Navy or Marine Corps.

(3) The allowances set forth in subsection (1) of this section shall be paid from moneys available to the military department only after the officer has furnished satisfactory evidence to the Adjutant General that the officer is properly entitled thereto. [1963 c.169 §3; 1967 c.163 §5; 1981 c.24 §1]

399.460 Oregon National Guard Association. All commissioned officers and warrant officers of the organized militia, including retired officers and warrant officers thereof, may organize themselves into an association, the name of which shall be the Oregon National Guard Association. The association may adopt bylaws not inconsistent with the statutes of this state and may alter and amend such bylaws. [1961 c.454 §52]

ENLISTED PERSONNEL

399.505 Enlistment, period of service, transfer, discharge and extensions of enlistments. (1) The qualifications for enlistment and reenlistment, the periods of enlistment, reenlistment and voluntary extension of enlistment, the period of service, the form of oath to be taken and the manner and form of transfer and discharge of enlisted personnel of the organized militia shall be those prescribed by applicable federal and state laws and regulations.

(2) The Governor is authorized to extend the period of any enlistment, reenlistment, voluntary extension of enlistment or the period of service of enlisted personnel of the Oregon State Defense Force for a period not to exceed six months after the termination of an emergency declared by the Governor, the legislature, the President or Congress.

(3) Whenever the period of enlistment, reenlistment, voluntary extension of enlistment, and the period of service of enlisted personnel of the reserve components of the Armed Forces of the United States are extended, the Governor shall extend the period of any enlistment, reenlistment, voluntary extension of enlistment or the period of service of enlisted personnel in the corresponding force of the organized militia for the same period. [1961 c.454 §64; 1989 c.361 §7]

399.510 Contract and oath of enlistment. Every person who enlists or reenlists in any force of the organized militia shall sign an enlistment contract and shall take and subscribe such oath or affirmation of enlistment as may be prescribed by applicable federal and state laws and regulations. Such oath shall be taken and subscribed before any commissioned officer or warrant officer of the organized militia or of any component of the Armed Forces of the United States. A person making a false oath as to any material statement contained in such enlistment contract is guilty of perjury and shall be punished upon conviction as provided by law. [1961 c.454 §65; 1981 c.24 §2]

399.515 Sections to be explained. This section and ORS 398.006, 398.008, 398.052, 398.083, 398.132, 398.136, 398.204, 398.252, 398.302 to 398.400, 398.404 and 399.205 shall be carefully explained to every enlisted member at the time of enlistment or transfer or induction into, or at the time of an order to duty in or with any of the forces of the organized militia or within 30 days thereafter. They shall also be explained annually to each unit of the organized militia. A complete text of ORS chapter 398 and ORS 399.205, of the military department regulations prescribed by the Governor thereunder and of the regulations issued by the Adjutant General under ORS 396.160 and 398.420, shall be made available to any member of the organized militia, upon request, for personal examination. [1961 c.454 §199; 2005 c.512 §31]

399.520 Noncommissioned officers. All noncommissioned officers of the organized militia shall be appointed in the discretion of the appointing officer upon the nomination of the officer under whose immediate command they are to serve. Appointing officers shall be designated in military department regulations issued pursuant to ORS 396.305. The appointment of a noncommissioned officer may be terminated as prescribed by such regulations. [1961 c.454 §66]

399.525 Discharges. (1) An enlisted person may be discharged from any force of the organized militia prior to the expiration of the term of enlistment under such conditions as may be prescribed by applicable federal and state laws and regulations.

(2) An enlisted person discharged from a force of the organized militia shall receive a discharge in writing in such form and of such type or classification as may be prescribed by applicable laws and regulations of the United States and by military department regulations issued pursuant to this chapter and ORS chapters 396 and 398. [1961 c.454 §67]

399.530 Dropping from rolls. When an enlisted person of the organized militia absents self without leave and there is reason to believe that the person does not intend to return, the person may be discharged in accordance with military department regulations issued pursuant to ORS 396.305. [1961 c.454 §68]

PENALTIES

399.990 Penalties. Any person violating ORS 399.125 is guilty of a misdemeanor punishable by imprisonment in the county jail not to exceed six months and a fine not to exceed $500. The fine shall be recovered by an action brought by the district attorney in the name of the state and shall be deposited in the General Fund in the State Treasury, to be available for general governmental expenses. [1961 c.454 §77; 1963 c.169 §8]

CHAPTER 400

[Reserved for expansion]