Chapter 399

1973 REPLACEMENT PART
(1979 reprint)

Organized Militia

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ORGANIZATION, TRAINING, ADMINISTRATION AND OPERATIONS

399.010 [Repealed by 1961 c.454 §213]

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399.020 [Repealed by 1961 c.454 §213]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399.030 [Repealed by 1961 c.454 §213]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 National Guard Reserve. (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 National Guard Reserve, and shall be composed principally of officers, warrant officers and enlisted men not eligible for general service under federal selective service laws.

(2) In time of peace the Oregon National Guard Reserve shall be maintained at cadre strength in numbers to be determined by the Governor.

(3) In time of peace the mission of the Oregon National Guard Reserve 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]

399.040 [Repealed by 1961 c.454 §213]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 §§43, 42]

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 men of his command to meet for ceremonies, parades or training at such times and places as he 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 he 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 he may deem necessary units or individuals of the organized militia when in his judgment 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 his judgment 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 duty; pay and allowances. (1) The Adjutant General, with the approval of the Governor, may order members of the organized militia to active duty. Members, while on such duty, shall receive the pay and allowances of their corresponding grades in the Armed Forces of the United States.

(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 employes under appropriate travel regulations issued by the Executive Department.

(3) In lieu of other provisions of this chapter, a medical examiner may be paid for his 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. [1961 c.454 §69]

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. 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:

(1) Upon certificate of the Adjutant General or the person designated by him that a unit of the organized militia is fully organized and has complied with the military laws and regulations during the preceding three months, the Secretary of State shall draw his warrant quarterly on the State Treasurer to the commander of the unit in the amount designated in the certificate.

(2) 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 Secretary of State shall draw his warrants accordingly. [1961 c.454 §70]

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 his designated representative, 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 his designated representative, 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 he may prescribe. Such commanding officer may in his discretion 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 his charge and the property of the state or the United States in his charge, be allowed to pass free through all tollgates and tunnels and over all tollbridges and also over all ferries if he 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 his commanding officer. [1961 c.454 §75(3)]

RIGHTS AND PRIVILEGES OF MEMBERS

399.205 Complaints of wrongs. Any member of the organized militia who believes himself wronged by his 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 man 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 him in his official capacity in the discharge of any duty under this chapter and ORS chapters 396 and 398, or an alleged omission by him to do an act which it was his duty to perform, or against any person acting under the authority or order of such officer, or by virtue of any warrant issued by him 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 his costs.

(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 he may be required to attend for military duty. [1961 c.454 §71]

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 he has passed such examination as to his physical, moral and professional qualifications 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 he 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 his unit 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 his 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 his commander. 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 his responsibility for all state and United States property and public money, and that he is not indebted to the state or to the organization to which he belongs. An officer so released shall be considered to have resigned upon presentation of evidence that he 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 his 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 himself 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 his behalf. He shall at all stages of the proceeding be allowed full access to records pertinent to his 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 him 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, condi-

tioned 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 him until the article is returned, or is disposed of pursuant to law or by order of the Governor. Until his accounts are examined and found correct, the accountability of such officer or his estate shall not be affected in any way by his 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 uniforming and equipping himself.

(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 as a result of graduation from the Oregon Military Academy or from Officer Candidate Schools of the active army attended in an Army National Guard status.

(b) Direct appointment as a 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 airman or civilian status.

(d) Graduation from United States Air Force aviation cadet training under an Air National Guard quota allotted to this state.

(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 he is properly entitled thereto. [1963 c.169 §3; 1967 c.163 §5]

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 National Guard Reserve for a period not to exceed six months after the termination of an emergency declared by him, 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]

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 of the organized militia. A person making a false oath as to any mate-

rial statement contained in such enlistment contract is guilty of perjury and shall be punished upon conviction as provided in ORS 162.120 (1969 Replacement Part). [1961 c.454 §65]

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 398.388, 398.404 and 399.205 shall be carefully explained to every enlisted member at the time of his enlistment or transfer or induction into, or at the time of his 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, and of the military department regulations prescribed by the Governor thereunder, shall be made available to any member of the organized militia, upon his request, for his personal examination. [1961 c.454 §199]

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 his 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 the rolls. When an enlisted person of the organized militia absents himself without leave and there is reason to believe that he does not intend to return, he 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]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
November 1, 1973.

Thomas G. Clifford

Legislative Counsel

CHAPTER 400
[Reserved for expansion]