**South Carolina General Assembly**

119th Session, 2011-2012

**A46, R63, S592**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Hayes, Leventis, Cromer, Rose, Scott, Knotts, Alexander and Ford

Document Path: l:\council\bills\ggs\22030zw11.docx

Companion/Similar bill(s): 3677

Introduced in the Senate on February 22, 2011

Introduced in the House on April 26, 2011

Last Amended on May 25, 2011

Passed by the General Assembly on May 26, 2011

Governor's Action: June 7, 2011, Signed

Summary: Offense of fraternization created

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/22/2011 Senate Introduced and read first time ([Senate Journal‑page 4](file:///h:\sj%20archive\2011\02-22-11.docx))

2/22/2011 Senate Referred to Committee on **General** ([Senate Journal‑page 4](file:///h:\sj%20archive\2011\02-22-11.docx))

4/7/2011 Senate Polled out of committee **General** ([Senate Journal‑page 11](file:///h:\sj%20archive\2011\04-07-11.docx))

4/7/2011 Senate Committee report: Favorable **General** ([Senate Journal‑page 11](file:///h:\sj%20archive\2011\04-07-11.docx))

4/8/2011 Scrivener's error corrected

4/13/2011 Senate Amended ([Senate Journal‑page 32](file:///h:\sj%20archive\2011\04-13-11.docx))

4/14/2011 Scrivener's error corrected

4/19/2011 Senate Read second time ([Senate Journal‑page 14](file:///h:\sj%20archive\2011\04-19-11.docx))

4/19/2011 Senate Roll call Ayes‑37 Nays‑3 ([Senate Journal‑page 14](file:///h:\sj%20archive\2011\04-19-11.docx))

4/20/2011 Senate Read third time and sent to House ([Senate Journal‑page 15](file:///h:\sj%20archive\2011\04-20-11.docx))

4/26/2011 House Introduced and read first time ([House Journal‑page 20](file:///h:\hj%20archive\2011\04-26-11.docx))

4/26/2011 House Referred to Committee on **Judiciary** ([House Journal‑page 21](file:///h:\hj%20archive\2011\04-26-11.docx))

5/18/2011 House Committee report: Favorable with amendment **Judiciary** ([House Journal‑page 65](file:///h:\hj%20archive\2011\05-18-11.docx))

5/24/2011 House Debate adjourned ([House Journal‑page 72](file:///h:\hj%20archive\2011\05-24-11.docx))

5/24/2011 House Debate adjourned until Wednesday, May 25, 2011 ([House Journal‑page 112](file:///h:\hj%20archive\2011\05-24-11.docx))

5/25/2011 House Amended ([House Journal‑page 84](file:///h:\hj%20archive\2011\05-25-11.docx))

5/25/2011 House Read second time ([House Journal‑page 84](file:///h:\hj%20archive\2011\05-25-11.docx))

5/25/2011 House Roll call Yeas‑105 Nays‑0 ([House Journal‑page 84](file:///h:\hj%20archive\2011\05-25-11.docx))

5/26/2011 House Read third time and returned to Senate with amendments ([House Journal‑page 7](file:///h:\hj%20archive\2011\05-26-11.docx))

5/26/2011 Senate Concurred in House amendment and enrolled ([Senate Journal‑page 78](file:///h:\sj%20archive\2011\05-26-11.docx))

5/27/2011 Senate Roll call Ayes‑27 Nays‑2 ([Senate Journal‑page 78](file:///h:\sj%20archive\2011\05-27-11.docx))

6/1/2011 Ratified R 63

6/7/2011 Signed By Governor

6/20/2011 Effective date 06/07/11

6/20/2011 Act No. 46

**VERSIONS OF THIS BILL**

[2/22/2011](file:///p:\pprever\2011-12\592_20110222.docx)

[4/7/2011](file:///p:\pprever\2011-12\592_20110407.docx)

[4/8/2011](file:///p:\pprever\2011-12\592_20110408.docx)

[4/13/2011](file:///p:\pprever\2011-12\592_20110413.docx)

[4/14/2011](file:///p:\pprever\2011-12\592_20110414.docx)

[5/18/2011](file:///p:\pprever\2011-12\592_20110518.docx)

[5/25/2011](file:///p:\pprever\2011-12\592_20110525.docx)

(A46, R63, S592)

**AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 25‑1‑3067 SO AS TO CREATE THE OFFENSE OF FRATERNIZATION; TO AMEND SECTION 25‑1‑10, RELATING TO THE STATE MILITARY CODE’S DEFINITIONS, SO AS TO DEFINE THE TERM “ORGANIZED MILITIA”; TO AMEND SECTION 25‑1‑40, RELATING TO THE APPLICABILITY OF THE UNIFORM CODE OF MILITARY JUSTICE, SO AS TO DELETE AN UNNECESSARY REFERENCE TO CAPITAL SENTENCES; TO AMEND SECTION 25‑1‑60, RELATING TO THE COMPOSITION AND CLASSES OF THE STATE MILITIA, SO AS TO CLARIFY THAT ACTIVE MEMBERS OF THE NATIONAL GUARD ARE NOT PART OF THE ORGANIZED MILITIA; TO AMEND SECTION 25‑1‑70, RELATING TO THE COMPOSITION OF THE NATIONAL GUARD, SO AS TO CLARIFY THE ADJUTANT GENERAL’S AUTHORITY TO ORGANIZE UNITS FOR STATE RECOGNIZED AND ORGANIZED POSITIONS; TO AMEND SECTION 25‑1‑120, RELATING TO MILITARY CORPORATIONS, SO AS TO CLARIFY THAT MILITARY CORPORATIONS ARE EXEMPT FROM FILING RETURNS WITH THE SOUTH CAROLINA DEPARTMENT OF REVENUE TO THE SAME EXTENT THEY ARE EXEMPT FROM FILING RETURNS WITH THE INTERNAL REVENUE SERVICE; TO AMEND SECTION 25‑1‑340, RELATING TO VACANCIES IN THE OFFICE OF THE ADJUTANT GENERAL, SO AS TO PROVIDE THAT AN INTERIM APPOINTEE SHALL HOLD THE RANK OF COLONEL OR HIGHER; TO AMEND SECTION 25‑1‑635, RELATING TO LEGAL ASSISTANCE SERVICES, SO AS TO CLARIFY THE PERSONAL LIABILITY EXEMPTION; TO AMEND SECTION 25‑1‑830, RELATING TO OFFICER SELECTION BOARDS, SO AS TO INCLUDE REFERENCES TO FEDERAL PERSONNEL ACTS; TO AMEND SECTION 25‑1‑1370, RELATING TO MAINTENANCE ALLOWANCES, SO AS TO PROVIDE THAT THESE FUNDS MUST BE DEPOSITED IN STATE ACCOUNTS FOR MILITARY DEPARTMENT OPERATIONS AND MAINTENANCE; TO AMEND SECTION 25‑1‑2420, RELATING TO CODE OF MILITARY JUSTICE DEFINITIONS, SO AS TO PROVIDE THAT THE TERM “STATE JUDGE ADVOCATE” MEANS A FEDERALLY RECOGNIZED NATIONAL GUARD JUDGE ADVOCATE; TO AMEND SECTION 25‑1‑2450, RELATING TO THE APPOINTMENT OF THE STATE JUDGE ADVOCATE, SO AS TO PROVIDE THAT THE STATE JUDGE ADVOCATE MUST BE FEDERALLY RECOGNIZED AS A JUDGE ADVOCATE; TO AMEND SECTION 25‑1‑2455, RELATING TO THE APPOINTMENT OF THE STATE MILITARY JUDGE, SO AS TO REQUIRE MEMBERSHIP AND GOOD STANDING IN THE SOUTH CAROLINA BAR; TO AMEND SECTION 25‑1‑2520, RELATING TO NONJUDICIAL DISCIPLINARY PUNISHMENT, SO AS TO ALLOW THE DELEGATION OF NONJUDICIAL PUNISHMENT AUTHORITY IN CERTAIN SITUATIONS; TO AMEND SECTION 25‑1‑2550, RELATING TO GENERAL COURTS‑MARTIAL JURISDICTION, SO AS TO INCREASE THE COURT’S PUNISHMENT AUTHORITY; TO AMEND SECTION 25‑1‑2560, RELATING TO SPECIAL COURTS‑MARTIAL JURISDICTION, SO AS TO INCREASE THE COURT’S PUNISHMENT AUTHORITY; TO AMEND SECTION 25‑1‑2570, RELATING TO SUMMARY COURTS‑MARTIAL JURISDICTION, SO AS TO INCREASE THE COURT’S PUNISHMENT AUTHORITY; TO AMEND SECTION 25‑1‑2580, RELATING TO THE APPOINTMENT OF GENERAL COURTS‑MARTIAL, SO AS TO PROVIDE THAT APPOINTMENT AUTHORITY MAY BE DELEGATED TO THE ADJUTANT GENERAL UNDER CERTAIN CIRCUMSTANCES; TO AMEND SECTION 25‑1‑2600, RELATING TO THE APPOINTMENT OF SUMMARY COURTS‑MARTIAL, SO AS TO PROVIDE THAT APPOINTMENT AUTHORITY MAY BE DELEGATED UNDER CERTAIN CIRCUMSTANCES; TO AMEND SECTION 25‑1‑2630, RELATING TO THE DETAIL OF TRIAL AND DEFENSE COUNSEL, SO AS TO CLARIFY THE STATE JUDGE ADVOCATE’S APPOINTMENT AUTHORITY; TO AMEND SECTION 25‑1‑2640, RELATING TO THE RECORDING OF PROCEEDINGS, SO AS TO PROVIDE THAT A QUALIFIED COURT REPORTER MAY BE HIRED TO RECORD COURT‑MARTIAL PROCEEDINGS; TO AMEND SECTION 25‑1‑2910, RELATING TO FRAUDULENT ENLISTMENTS, APPOINTMENTS, OR SEPARATIONS, SO AS TO PROVIDE JURISDICTION OVER SERVICEMEMBERS WHO COMMIT WILFUL MISCONDUCT TO INTENTIONALLY CAUSE THEIR SEPARATION; TO AMEND SECTION 25‑1‑3025, RELATING TO THE OFFENSE OF MALINGERING, SO AS TO PROVIDE JURISDICTION OVER SERVICEMEMBERS WHO COMMIT, PERFORM, OR UNDERTAKE SERVICE DISQUALIFYING ACTIVITIES; TO AMEND SECTION 25‑1‑3065, RELATING TO THE OFFENSE OF CONDUCT UNBECOMING AN OFFICER, SO AS TO DELETE THE ELEMENT THAT THE ACCUSED BE A COMMISSIONED OFFICER; AND TO AMEND SECTION 25‑1‑3160, RELATING TO CONSTRUCTION OF THE UNIFORM CODE OF MILITARY JUSTICE, SO AS TO ALLOW THE ADJUTANT GENERAL TO ESTABLISH PROCEDURES TO CONFORM STATE MILITARY JUDICIAL PROCEEDINGS WITH STATE CIRCUIT COURT PROCEEDINGS.**

Be it enacted by the General Assembly of the State of South Carolina:

**Military offense of fraternization created**

SECTION 1. Article 19, Chapter 1, Title 25 of the 1976 Code is amended by adding:

“Section 25‑1‑3067. A person subject to the Code of Military Justice, upon conviction of the following, may be punished as a court‑martial directs, if he:

(1) was in the chain of command of a lower ranking member of the military forces;

(2) exercised authority or command over that lower ranking member of the military forces;

(3) fraternized with that lower ranking member of the military forces on terms of military equality; and

(4) that under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the military forces or was of a nature to bring discredit upon the military forces.”

**“Organized militia” defined**

SECTION 2. Section 25‑1‑10 of the 1976 Code is amended by adding item (19) at the end to read:

“(19) ‘Organized militia’ refers to both the National Guard and the organized militia not in National Guard service. Individuals who are federally recognized by the National Guard Bureau are members of the National Guard. Individuals holding rank or privilege within the Military Department, but not federally recognized in that rank for service in the National Guard, are the organized militia not in National Guard service, and these individuals also may be referred to as ‘State Defense Forces’, the ‘State Guard’, or by other terms designated by the Adjutant General.”

**Reference to capital punishment deleted**

SECTION 3. Section 25‑1‑40 of the 1976 Code is amended to read:

“Section 25‑1‑40. Whenever a portion of the militia of the State is on duty under or pursuant to orders of the Governor or whenever a part of the militia is ordered to assemble for state duty, the systems, precedents, and procedures established in the Uniform Code of Military Justice for the governing of armed forces of the United States, so far as applicable and not in conflict with a rule or regulation of this code, is considered in full force and regarded as a part of this chapter until these forces are duly relieved from this duty. Nothing in this section is construed as relinquishing the state’s authority and jurisdiction in these matters. The Governor shall review the findings of all general courts‑martial convened during situations arising pursuant to this section.”

**Composition of state militia clarified**

SECTION 4. Section 25‑1‑60 of the 1976 Code is amended to read:

“Section 25‑1‑60. (A) The militia of this State consists of all able‑bodied persons over seventeen years of age who are:

(1) citizens of the United States residing within this State;

(2) citizens of the United States bound by law, lawful order, or contract to serve in the militia or military forces of this State; or

(3) persons who have declared their intention to become citizens of the United States and are bound by law, lawful order, or contract to serve in the militia or military forces of this State.

(B) The militia is divided into three classes:

(1) the National Guard;

(2) the organized militia not in National Guard service; and

(3) the unorganized militia.”

**Adjutant General’s authority to organize units and positions clarified**

SECTION 5. Section 25‑1‑70 of the 1976 Code is amended to read:

“Section 25‑1‑70. (A) The National Guard of South Carolina shall consist of the commissioned officers, warrant officers, enlisted men, organizations, staffs, units, and departments of the regularly commissioned, warranted, and enlisted militia of the State, organized and maintained pursuant to law.

(B) The Adjutant General may organize units or individuals for state recognized and organized positions. This authority extends to individuals who lack federal service or federal recognition, to the State Guard, and detachments under the authority of the Adjutant General.”

**Military corporations’ filing exemption clarified**

SECTION 6. Section 25‑1‑120 of the 1976 Code is amended to read:

“Section 25‑1‑120. (A) The officers, the enlisted personnel, or the officers and enlisted personnel or support groups of an organization or unit of the National Guard of South Carolina may organize themselves into a corporation for social purposes and for the purpose of holding, acquiring, and disposing of that property, real and personal, which the military organizations may possess or acquire. The corporation may not engage in business and may not be required to pay a filing or license fee to the State.

(B) These organizations may include:

(1) enlisted, officer, or all‑ranks clubs;

(2) family support groups;

(3) auxiliary organizations;

(4) service branch organizations;

(5) battalion, brigade, or unit fund organizations; or

(6) other such organizations that provide support to personnel and their families.

(C) Organizations incorporated pursuant to this section are exempt from filing returns with the South Carolina Department of Revenue to the same extent they are exempt from filing returns with the Internal Revenue Service.

(D) The corporations may raise funds and provide services, if retained funds are used for unit support, eleemosynary causes, or charitable purposes within their charter. The organizations may use armory or National Guard facilities, if there is no expense to the government. When any area of National Guard facilities is used, the National Guard and State shall have access to that area as needed or practical, and the use of that area by the corporation is not exclusive. Any sale of alcoholic beverages must conform to the limitations of sales under other provisions of law, except that sales within the unit, and not for profit, do not require licensing by the State.

(E) The Adjutant General and the Secretary of State shall coordinate and make provisions to standardize applications for incorporation. Incorporation may not be made under this article without the approval of the Adjutant General and the State Judge Advocate. All accounts and documents of the corporation organized under this article must be available for inspection and review by the Adjutant General.”

**Adjutant General interim appointee qualifications**

SECTION 7. Section 25‑1‑340 of the 1976 Code is amended to read:

“Section 25‑1‑340. If the Office of the Adjutant General is vacated because of the death, resignation, or retirement of the Adjutant General prior to the normal expiration of his term of office, the Governor shall appoint an officer of the active South Carolina National Guard, who is at least the rank of colonel, meets the eligibility requirements for a constitutional officer, and who has a minimum of fifteen years’ active commissioned service in the South Carolina National Guard, to fill out the unexpired term of the former incumbent. The appointee, upon being duly qualified, is subject to all the duties and liabilities incident to the office and receives the compensation provided by law for the Adjutant General during his term of service.”

**Personal liability exemption for legal assistance services**

SECTION 8. Section 25‑1‑635(I) of the 1976 Code is amended to read:

“(I) Services provided in the legal assistance program are considered an official function of the National Guard and must be provided at no cost to eligible personnel. Legal assistance attorneys, National Guard personnel, and civilian employees acting within the scope of their official duties, are exempt from personal liability for alleged negligent or wrongful acts, omissions for service, or advice rendered pursuant to the legal assistance program, so long as the attorneys, personnel, or employees neither requested nor received a fee or compensation other than their regular compensation for legal services provided to persons eligible for assistance under this section.”

**Officer selection boards**

SECTION 9. Section 25‑1‑830 of the 1976 Code is amended to read:

“Section 25‑1‑830. (A) Brigadier General selection board‑‑As required by Federal Personnel Acts, a board must be established by the Governor for the purpose of selecting qualified officers of the next lower grade to fill brigadier general officer vacancies in the South Carolina Army National Guard. The board shall consist of three general officers; composed of the Adjutant General and the active general officers of the South Carolina Army National Guard and, if necessary, the number of recently retired active general officers of the South Carolina Army National Guard necessary to constitute the board.

(B) Colonels‑‑As required by Federal Personnel Acts, a board must be established by the Adjutant General for the purpose of selecting qualified officers of the next lower grade to fill colonel vacancies in the South Carolina Army National Guard. This board shall consist of the five senior officers of the South Carolina Army National Guard, to include not over one officer from the state headquarters or one professional officer.”

**Operations and maintenance account deposit procedures**

SECTION 10. Section 25‑1‑1370(B) of the 1976 Code is amended to read:

“(B) Facilities owned, leased, or under the control of the military department may be rented periodically. The rental income, military fines, and other revenue sources must be deposited in state accounts for operations and maintenance of the military department. The Adjutant General shall promulgate regulations for a rental program and audit these funds.”

**“State Judge Advocate” defined**

SECTION 11. Section 25‑1‑2420 13 of the 1976 Code is amended to read:

“13. ‘State judge advocate’ means the federally recognized National Guard judge advocate responsible for supervising the administration of military justice in the military forces;”

**State judge advocate federal recognition requirement**

SECTION 12. Section 25‑1‑2450 of the 1976 Code is amended to read:

“Section 25‑1‑2450. (A) The Adjutant General shall appoint an officer of the military forces as state judge advocate. To be eligible for appointment, an officer must be a member of the South Carolina Bar and federally recognized as a judge advocate. The state judge advocate shall hold a military grade and rank as designated by the Adjutant General. Absent separate appointment, the senior judge advocate of the National Guard is the state judge advocate.

(B) The Adjutant General shall appoint judge advocates and legal officers who shall serve under the supervision of the state judge advocate.

(C) To be eligible for appointment, judge advocates or legal officers must be members of the South Carolina Bar.

(D) The state judge advocate or his assistants shall make frequent inspections in the field of supervision of the administration of military justice.

(E) Convening authorities at all times shall communicate directly with the state judge advocate or with judge advocates within their command in matters relating to the administration of military justice.

(F) A person who has acted as member, military judge, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer in a case may not act later as staff judge advocate or legal officer to a reviewing authority upon the same case.”

**South Carolina Bar membership requirement for state military judge**

SECTION 13. Section 25‑1‑2455(A) of the 1976 Code is amended to read:

“(A) A military judge must be appointed by the Adjutant General from among the military forces. To be eligible for appointment as a military judge, the person must be:

(1) a member in good standing of the South Carolina Bar;

(2) a judge advocate;

(3) an active member of the National Guard; and

(4) hold the rank of major or above.”

**Delegation of nonjudicial punishment authority**

SECTION 14. Section 25‑1‑2520 1 of the 1976 Code is amended to read:

“1. Under regulations that the Adjutant General may prescribe, limitations may be placed on the powers granted by this section with respect to the kind and amount of punishment authorized, the categories of general officers or commanders 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 a demand. However, punishment may not be imposed upon a member of the military forces 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 pursuant to this section. A colonel or general officer may delegate his nonjudicial punishment authority to an individual within his authority, who is no more than one grade inferior in rank, so long as the adjudged sentence is not executed until the delegating commander has approved the procedure and sentence.”

**General courts-martial punishment authority increased**

SECTION 15. Section 25‑1‑2550 of the 1976 Code is amended to read:

“Section 25‑1‑2550. Subject to Section 25‑1‑2540, general courts‑martial have jurisdiction to try persons subject to this code for an offense made punishable by the code. Under limitations the Governor may prescribe, or further limitations the Adjutant General may prescribe, a general court‑martial may order any of the following:

(1) dismissal, or dishonorable or bad‑conduct discharge;

(2) confinement of not more than twelve months;

(3) a fine of not more than forty days’ pay;

(4) reduction of enlisted personnel to the lowest pay grade;

(5) forfeiture of pay and allowances not to exceed forty days’ pay;

(6) a reprimand;

(7) any combination of these punishments.”

**Special courts-martial punishment authority increased**

SECTION 16. Section 25‑1‑2560 1 of the 1976 Code is amended to read:

“1. Subject to Section 25‑1‑2540, special courts‑martial have jurisdiction to try persons subject to this code for an offense made punishable by the code. Under limitations the Governor may prescribe, or further limitations the Adjutant General may prescribe, a special court‑martial may order any of the following punishments:

(1) bad‑conduct discharge;

(2) confinement of not more than six months;

(3) a fine of not more than twenty days’ pay;

(4) reduction of enlisted personnel to the lowest pay grade;

(5) forfeiture of pay and allowances not to exceed twenty days’ pay;

(6) a reprimand;

(7) any combination of these punishments.”

**Summary courts-martial punishment authority increased**

SECTION 17. Section 25‑1‑2570 of the 1976 Code is amended to read:

“Section 25‑1‑2570. Subject to Section 25‑1‑2540, summary courts‑martial have jurisdiction to try persons subject to the code, except officers, for an offense made punishable by the code. Under limitations the Governor or Adjutant General may prescribe, a summary court‑martial may order any of the following punishments:

(1) reduction of enlisted personnel by one pay grade, provided the grade of the accused is within the promotion authority of the convening authority;

(2) a fine of not more than ten days’ pay;

(3) imprisonment not to exceed thirty days;

(4) forfeiture of pay and allowances not to exceed ten days’ pay;

(5) any combination of these punishments.

A person to whom summary courts‑martial have jurisdiction may not be brought to trial before a summary court‑martial if he objects. If objection to trial by summary court‑martial is made by an accused, trial may be ordered by special or general court‑martial as appropriate.”

**Delegation of general courts-martial appointment authority**

SECTION 18. Section 25‑1‑2580 of the 1976 Code is amended to read:

“Section 25‑1‑2580. General courts‑martial may be appointed only by order of the Governor, who may delegate this authority to the Adjutant General. The Adjutant General may not sub‑delegate general courts‑martial appointment authority.”

**Delegation of Summary courts-martial appointment authority**

SECTION 19. Section 25‑1‑2600 of the 1976 Code is amended to read:

“Section 25‑1‑2600. Summary courts‑martial must be appointed by the Adjutant General and by other commanding officers of the National Guard who may be delegated the power of appointment by the Adjutant General. The power to appoint summary courts‑martial, when delegated by the Adjutant General, may be redelegated repeatedly from higher echelon of command to lower echelon of command which is considered best by each successive commander delegated that authority. When units without summary court‑martial authority report directly to the Adjutant General, he may delegate his summary court‑martial appointment authority to a staff officer who holds the rank of colonel or higher. Summary court officers have power and authority to administer oaths.”

**Detail of trial and defense counsel by state judge advocate**

SECTION 20. Section 25‑1‑2630 of the 1976 Code is amended to read:

“Section 25‑1‑2630. (1) For each general and special court‑martial, either the authority convening the court or the state judge advocate shall detail trial counsel and defense counsel, and the assistants he considers appropriate. A person who has acted as investigating officer, military judge, or court member in a case may not act later as trial counsel, assistant trial counsel, or unless expressly requested by the accused, as defense counsel or assistant defense counsel in the same case. A person who has acted for the prosecution may not act later in the same case for the defense, and a person who has acted for the defense may not act later in the same case for the prosecution.

(2) Trial counsel or defense counsel detailed for a general court‑martial must be:

(a) a person who is a member of the South Carolina Bar or a member of the bar of a federal court;

(b) certified as competent to perform the duties by the state judge advocate.

(3) In the case of a special court‑martial:

(a) The accused must be afforded the opportunity to be represented at the trial by counsel who has the qualifications prescribed under subsection (2) of this section unless counsel who has these qualifications may not be obtained on account of physical conditions or military exigencies. If counsel who has these qualifications may not be obtained, the court may be convened and the trial held, but the convening authority shall make a detailed written statement, to be appended to the record stating why counsel with these qualifications was not obtained.

(b) If the trial counsel is qualified to act as counsel before a general court‑martial, the defense counsel detailed by the convening authority must be a person similarly qualified.

(c) If the trial counsel is a member of the South Carolina Bar, the defense counsel detailed by the convening authority also must be a member of the South Carolina Bar.”

**Hiring of qualified court reporter to record proceedings**

SECTION 21. Section 25‑1‑2640 of the 1976 Code is amended to read:

“Section 25‑1‑2640. Under regulations the Adjutant General may prescribe, the convening authority of a general or special court‑martial or court of inquiry shall assign or hire qualified individuals, who shall record electronically the proceedings of and testimony taken before that court. Under like regulations the convening authority of a military court may detail or employ interpreters who shall interpret for the court.”

**Fraudulent enlistments, appointments, and separations**

SECTION 22. Section 25‑1‑2910 of the 1976 Code is amended to read:

“Section 25‑1‑2910. A person may be punished as a court‑martial may direct who:

(1) procures his own enlistment or appointment in the military forces by knowingly false representation or deliberate concealment as to his qualifications for that enlistment or appointment and receives pay or allowances for the enlistment or appointment; or

(2) procures his own separation from the military forces by knowingly false representation, wilful misconduct, or deliberate concealment as to a fact or status for that separation.”

**Military offense of “malingering” expanded**

SECTION 23. Section 25‑1‑3025 of the 1976 Code is amended to read:

“Section 25‑1‑3025. A person subject to this code must be punished as a court‑martial directs, if he, for the purpose of avoiding work, duty, or service in the military forces:

(1) feigns illness, physical disablement, mental lapse, or derangement;

(2) intentionally inflicts self‑injury, or commits, performs, or undertakes a service‑disqualifying activity;

(3) hires or attempts to hire another person to do his duty.”

**“Conduct unbecoming” defined**

SECTION 24. Section 25‑1‑3065 of the 1976 Code is amended to read:

“Section 25‑1‑3065. A person subject to the Code of Military Justice, who is convicted of conduct unbecoming a member of the National Guard, may be punished as a court‑martial directs.”

**Conformity with State Circuit Court procedures allowed**

SECTION 25. Section 25‑1‑3160 of the 1976 Code is amended to read:

“Section 25‑1‑3160. The Code of Military Justice must be so construed as to effectuate its general purpose to make it uniform so far as practical with the Uniform Code of Military Justice, Chapter 47, Title 10, United States Code, and the Manual for Courts‑Martial. Moreover, the Adjutant General may establish procedures to conform state military judicial proceedings with those used in circuit courts of this State. The systems and procedures established in the Uniform Code of Military Justice for the governing of military forces, so far as applicable and not in conflict with a statute or regulation prescribed in this code, is considered in full force and regarded as a part of this chapter.”

**Savings clause**

SECTION 26. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

**Severability clause**

SECTION 27. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

**Time effective**

SECTION 28. This act takes effect upon approval by the Governor.

Ratified the 1st day of June, 2011.

Approved the 7th day of June, 2011.

\_\_\_\_\_\_\_\_\_\_