

(Aug. 10, 1956, ch. 1041, 70A Stat. 606.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--|---|
| 322(a) | 32:154 (last par., less 1st 26, and last 26, words). | June 3, 1916, ch. 134, § 72; restated June 4, 1920, ch. 227, subch. I, § 40; restated June 15, 1933, ch. 87, § 10, 48 Stat. 157; July 9, 1952, ch. 608, § 806(d), 66 Stat. 507. |
| 322(b) | 32:125 (less last 27 words). | June 3, 1916, ch. 134, § 110 (last par., less 1st 30, and last 25, words); restated Sept. 22, 1922, ch. 423, § 6 (last par., less 1st 30, and last 137, words); restated May 12, 1928, ch. 529 (less 1st 30, and last 25, words), 45 Stat. 500. |
| 322(c) | 32:125 (last 27 words). | |

Subsection (a) is substituted for 32:154 (last par., less 1st 26, and last 26, words) to reflect an opinion of the Judge Advocate General of the Army (JAGA 1953/9033, 3 Dec. 1953).

In subsection (b), the words "is entitled to a discharge certificate similar in form and classification to the corresponding certificate" are substituted for the words "shall receive a discharge in writing in such form and with such classification as is or shall be". The words "service in" are omitted as surplusage.

In subsection (c), the words "his enlistment expires" are substituted for the words "the expiration of terms of enlistment".

§ 323. Withdrawal of Federal recognition

(a) Whenever a member of the National Guard ceases to have the qualifications prescribed under section 301 of this title or ceases to be a member of a federally recognized unit or organization of the National Guard, his Federal recognition shall be withdrawn.

(b) Under regulations to be prescribed by the President, the capacity and general fitness of an officer of the National Guard for continued Federal recognition may be investigated at any time by an efficiency board composed of commissioned officers of—

(1) the Regular Army or the Army National Guard of the United States, or both, who outrank him and who are detailed by the Secretary of the Army, if he is a member of the Army National Guard; or

(2) the Regular Air Force or the Air National Guard of the United States, or both, who outrank him and who are detailed by the Secretary of the Air Force, if he is a member of the Air National Guard.

If the findings of the board are unfavorable to the officer and are approved by the President, his Federal recognition shall be withdrawn.

(c) If a member of the Army National Guard of the United States or the Air National Guard of the United States is transferred to the Army Reserve or the Air Force Reserve, as the case may be, under section 12105, 12213(a), or 12214(a) of title 10, his Federal recognition is withdrawn.

(d) The Federal recognition of a reserve commissioned officer of the Army or the Air Force who is—

(1) federally recognized as an officer of the National Guard; and

(2) subject to involuntary transfer to the Retired Reserve, transfer to an inactive status list, or discharge under chapter 1407, 1409, or 1411 of title 10;

shall, if not sooner withdrawn, be withdrawn on the date of such involuntary transfer or discharge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 607; Pub. L. 85-861, §§2(11), 33(c)(2), Sept. 2, 1958, 72 Stat. 1546, 1567; Pub. L. 103-337, div. A, title XVI, §§1630(2), 1676(a)(3), Oct. 5, 1994, 108 Stat. 2964, 3019.)

HISTORICAL AND REVISION NOTES
1956 ACT

| Revised section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|---|---|
| 323(a) | 32:154 (last 26 words of last par.). | June 3, 1916, ch. 134, § 76 (1st sentence, and 1st 24 words of 2d sentence); restated June 15, 1933, ch. 87, § 13 (1st sentence, and 1st 24 words of 2d sentence), 48 Stat. 158. |
| 323(b) | 32:115 (1st sentence, and 1st 24 words of 2d sentence). | June 3, 1916, ch. 134, § 110 (last 25 words of last par.); restated Sept. 22, 1922, ch. 423, § 6 (last 137 words of last par.); restated May 12, 1928, ch. 529 (last 25 words), 45 Stat. 501. |
| 323(c) | 50:1116 (last 15 words of 1st sentence). | July 9, 1952, ch. 608, § 706 (last 15 words of 1st sentence), 66 Stat. 503. |

In subsection (a) the words "ceases to have the qualifications prescribed under section 300 of this title" are substituted for 32:154 (last 26 words of last par.), since it is implicit that a member who could not be paid would lose his federally recognized status (see JAGA 1953/9033, 3 Dec. 1953). The last 23 words of subsection (a) are inserted as a necessary implication of the rule stated in section 309(c) of this title.

In subsection (b), the words "or warrant officer" are omitted, since section 101(9) of this title defines "officer" to include warrant officers. The word "detailed" is substituted for the word "appointed", since the filling of the positions involved is not appointment to an office in the constitutional sense. The word "commissioned" is inserted after the words "composed of", since the word "officer" alone, in 32:115, referred to a commissioned officer only (see opinion of the Judge Advocate General of the Army (JAGA 1953/4078, 6 May 1953)). The words "who outrank him" are substituted for the words "senior in rank to the officer under investigation".

In subsection (c), the opening clause is substituted for the words "such transfer". The words "his Federal recognition is withdrawn" are substituted for the words "shall terminate his federally recognized National Guard or Air National Guard status".

1958 ACT

| Section of title 32 | Source (U.S. Code) | Source (Statutes at Large) |
|---------------------|---|--|
| 323(d) | 50:1261 (as applicable to Federal recognition). | Sept. 3, 1954, ch. 1257, §§ 324 (as applicable to Federal recognition), 522(e)(1) (56th through 63d words), (e)(2) (78th through 85th words), 68 Stat. 1161, 1181. |
| 323(e) | 50:1352(e)(1) (56th through 63d words). 50:1352(e)(2) (78th through 85th words). | |

The change [in subsec. (b)(1) and (2)] is necessary to exclude from the efficiency board commissioned officers of the Army Reserve or Air Force Reserve, in accordance with the source law, the first sentence of section 76 of the Act of June 3, 1916, chapter 134 (formerly 32 U.S.C. 115 (1st sentence)).

In subsection (d), the words "notwithstanding section 115 of title 32" are omitted as surplusage.

In subsection (e), the words "if appropriate" are omitted as surplusage.

Editorial Notes

AMENDMENTS

1994—Subsec. (c). Pub. L. 103-337, §1676(a)(3), substituted “12105, 12213(a), or 12214(a)” for “3259, 3352(a), 8259, or 8352(a)”.

Subsecs. (d), (e). Pub. L. 103-337, §1630(2), added subsec. (d) and struck out former subsecs. (d) and (e) which read as follows:

“(d) Except as provided in sections 1005 and 1006 of title 10, the Federal recognition of a second lieutenant of the Army National Guard who is discharged under section 3820(c) of title 10 for failure of promotion shall be withdrawn on the date of that discharge.

“(e) Except as provided in sections 1005 and 1006 of title 10, the Federal recognition of a reserve officer of the Air Force who is not recommended for promotion under section 8368(c)(1) or (2) of title 10, or who is found to be not qualified for Federal recognition under section 8368(d) or (e) of title 10, shall be withdrawn.”

1958—Subsec. (b)(1). Pub. L. 85-861, §33(c)(2), substituted “the Regular Army or the Army National Guard of the United States, or both” for “a regular or reserve component of the Army”.

Subsec. (b)(2). Pub. L. 85-861, §33(c)(2), substituted “the Regular Air Force or the Air National Guard of the United States, or both” for “a regular or reserve component of the Air Force”.

Subsecs. (d), (e). Pub. L. 85-861, §2(11), added subsecs. (d) and (e).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1676(a)(3) of Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, and amendment by section 1630(2) of Pub. L. 103-337 effective Oct. 1, 1996, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 33(c)(2) of Pub. L. 85-861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85-861, set out as a note under section 101 of Title 10, Armed Forces.

SUSPENSION OF SUBSECTION (d) OF THIS SECTION

For authority of the President to suspend subsec. (d) of this section in time of war or emergency declared by Congress, see section 111 of this title.

§ 324. Discharge of officers; termination of appointment

(a) An officer of the National Guard shall be discharged when—

- (1) he becomes 64 years of age; or
- (2) his Federal recognition is withdrawn.

The official who would be authorized to appoint him shall give him a discharge certificate.

(b) Subject to subsection (a), the appointment of an officer of the National Guard may be terminated or vacated as provided by the laws of the State of whose National Guard he is a member, or by the laws of the Commonwealth of Puerto Rico, or the District of Columbia, Guam, or the Virgin Islands, of whose National Guard he is a member.

(c) Notwithstanding subsection (a)(1), an officer of the National Guard serving as a chaplain, medical officer, dental officer, nurse, veterinarian, Medical Service Corps officer, or biomedical sciences officer may be retained, with the officer's consent, until the date on which the officer becomes 68 years of age.

(Aug. 10, 1956, ch. 1041, 70A Stat. 607; Pub. L. 100-456, div. A, title XII, §1234(b)(6), Sept. 29, 1988, 102 Stat. 2059; Pub. L. 109-163, div. A, title X, §1057(b)(5), Jan. 6, 2006, 119 Stat. 3441; Pub. L. 110-417, [div. A], title V, §516(b), Oct. 14, 2008, 122 Stat. 4442; Pub. L. 111-383, div. A, title X, §1075(h)(4)(C), Jan. 7, 2011, 124 Stat. 4377.)

HISTORICAL AND REVISION NOTES

| <i>Revised section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
|------------------------|-----------------------------|--|
| 324(a) | 32:114 (less 1st sentence). | June 3, 1916, ch. 134, §77; restated June 15, 1933, ch. 87, §14; restated June 19, 1935, ch. 277, §4, 49 Stat. 391; July 9, 1952, ch. 608, §803 (11th par.), 66 Stat. 505. |
| 324(b) | 32:114 (1st sentence). | |

In subsection (a), the words “shall be discharged” are substituted for the words “shall thereupon cease to be a member thereof” since an official is required to give the officer a discharge certificate. The words “becomes 64 years of age” are substituted for the words “upon reaching the age of sixty-four years”. The words “his Federal recognition is withdrawn” are substituted for the words “When Federal recognition is withdrawn * * * as provided in section 115 of this title”.

In subsection (b), the words “Subject to subsection (a)” are inserted for clarity. The words “as provided by the laws” are substituted for the words “in such manner as * * * shall provide by law”.

Editorial Notes

AMENDMENTS

2011—Subsec. (b). Pub. L. 111-383 amended directory language of Pub. L. 109-163, §1057(b)(5). See 2006 Amendment note below.

2008—Subsec. (c). Pub. L. 110-417 added subsec. (c).

2006—Subsec. (b). Pub. L. 109-163, §1057(b)(5), as amended by Pub. L. 111-383, substituted “State of whose National Guard he is a member, or by the laws of the Commonwealth of Puerto Rico, or the District of Columbia, Guam, or the Virgin Islands, of whose National Guard he is a member” for “State or Territory of whose National Guard he is a member, or by the laws of Puerto Rico or the District of Columbia, if he is a member of its National Guard”.

1988—Subsec. (b). Pub. L. 100-456 struck out “, the Canal Zone,” after “Puerto Rico”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 111-383, div. A, title X, §1075(h), Jan. 7, 2011, 124 Stat. 4377, provided that the amendment made by section 1075(h)(4)(C) is effective as of Jan. 6, 2006, and as if included in Pub. L. 109-163 as enacted.

§ 325. Relief from National Guard duty when ordered to active duty

(a) RELIEF REQUIRED.—(1) Except as provided in paragraph (2), each member of the Army National Guard of the United States or the Air National Guard of the United States who is ordered to active duty is relieved from duty in the National Guard of his State, or of the Commonwealth of Puerto Rico, Guam, or the Virgin Islands or the District of Columbia, as the case may be, from the effective date of his order to active duty until he is relieved from that duty.

(2) An officer of the Army National Guard of the United States or the Air National Guard of the United States is not relieved from duty in the National Guard of his State, or of the Com-