

REFERENCE TITLE: Arizona state guard

State of Arizona  
Senate  
Fiftieth Legislature  
Second Regular Session  
2012

**S. B. \_\_\_\_\_**

Introduced by \_\_\_\_\_

AN ACT

AMENDING SECTIONS 26-122, 26-166, 26-168 AND 26-174, ARIZONA REVISED STATUTES; AMENDING TITLE 26, CHAPTER 1, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 26-174.01, 26-174.02 AND 26-174.03; AMENDING SECTION 26-1001, ARIZONA REVISED STATUTES; MAKING AN APPROPRIATION; RELATING TO THE ARIZONA STATE GUARD.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Section 26-122, Arizona Revised Statutes, is amended to  
3 read:  
4 26-122. Components of militia  
5 A. The militia is divided into the national guard of Arizona, the  
6 ARIZONA state guard ~~when organized~~, and the unorganized militia.  
7 B. The national guard consists of commissioned officers, warrant  
8 officers, enlisted personnel, organizations, staffs, corps and departments of  
9 the federally recognized and regularly commissioned, warranted and enlisted  
10 militia of the state, organized and maintained pursuant to law, and all  
11 members thereof honorably retired by age or disability.  
12 C. The numerical strength, composition, distribution, organization,  
13 arms, uniforms, equipment, training and discipline of the federally  
14 recognized national guard shall be prescribed by the governor in conformity  
15 with the allocation of units to the state by the department of the army and  
16 the department of the air force of the United States.  
17 D. The inactive national guard consists of commissioned, warranted and  
18 enlisted personnel relieved from assignment to the national guard by the  
19 adjutant general, or at their own request, under regulations prescribed by  
20 the department of national defense of the United States, and not reassigned  
21 to another component of the armed forces of the United States.  
22 E. The unorganized militia consists of members of the militia not  
23 members of the national guard or state guard when organized.  
24 Sec. 2. Section 26-166, Arizona Revised Statutes, is amended to read:  
25 26-166. Immunity of national guard and Arizona state guard  
26 members on active duty; arrest; civil actions;  
27 exemption from jury duty  
28 A. A member of the national guard OR THE ARIZONA STATE GUARD, unless  
29 charged with commission of a felony OR TREASON, shall not be arrested while  
30 on active duty with the national guard OR THE ARIZONA STATE GUARD in camp,  
31 maneuvers or formations, or while engaged in armory drill, or while on the  
32 way to or from such duties.  
33 B. In any civil action, a member of the national guard OR THE ARIZONA  
34 STATE GUARD is entitled to the same immunity protection afforded public  
35 employees and law enforcement for acts that occur within the scope of the  
36 national guard OR ARIZONA STATE GUARD member's duties if those acts are  
37 performed as a result of a direct order from a commanding officer or are  
38 otherwise consistent with current standard operating procedures and  
39 protocols.  
40 C. A member of the national guard OR THE ARIZONA STATE GUARD while on  
41 active duty shall not be liable for jury duty.

1           Sec. 3. Section 26-168, Arizona Revised Statutes, is amended to read:  
2           26-168. Absence from employment for military duty; vacation and  
3                                   seniority rights; violation; classification

4           A. An employer shall not refuse to permit members of the national  
5 guard, THE ARIZONA STATE GUARD or the United States armed forces reserves to  
6 take leaves of absence from employment for the purpose of complying with  
7 competent orders of the state or United States for active duty, or to attend  
8 camps, maneuvers, formations or armory drills. The leaves of absence shall  
9 not affect vacation rights that employees otherwise have, except that an  
10 employer need not consider the period of absence as a period of work in  
11 determining eligibility for vacation and the amount of vacation pay to which  
12 the employee is entitled.

13           B. A member of the national guard, THE ARIZONA STATE GUARD or the  
14 United States armed forces reserves shall not lose seniority or precedence  
15 while absent under competent military orders. On return to employment the  
16 employee shall be returned to the employee's previous position, or to a  
17 higher position commensurate with the employee's ability and experience as  
18 seniority or precedence would ordinarily entitle the employee.

19           C. An officer or employee of this state, or any department or  
20 political subdivision of this state, who is a member of the national guard,  
21 THE ARIZONA STATE GUARD or the United States armed forces reserves shall be  
22 entitled to leave of absence pursuant to section 38-610 from the individual's  
23 duties without loss of time or efficiency rating on all days during which the  
24 individual is engaged in field training as provided by this chapter, and for  
25 a period during leave of absence not to exceed thirty days in any two  
26 consecutive years the individual is entitled to pay. For THE purposes of  
27 this section, an officer or employee shall not be charged military leave for  
28 days on which the individual was not otherwise scheduled for work.

29           D. When ordered by the governor to perform training or duty under this  
30 section or section 26-171, subsection C, section 26-172, 26-174 or ~~section~~  
31 26-175, members of the Arizona national guard OR THE ARIZONA STATE GUARD  
32 shall have the protections afforded to persons on federal active duty by the  
33 soldiers and sailors civil relief act of 1940 (54 Stat. 1178; 50 United  
34 States Code App. sections 501 through 548 and 560 through 591) and by the  
35 uniformed services employment and reemployment rights act of 1994 (108 Stat.  
36 3149; 38 United States Code sections 4301 through 4333).

37           E. A person violating any provision of subsection A or B of this  
38 section is guilty of a class 1 misdemeanor. The county attorney shall  
39 prosecute violations of this section in superior court.

40           Sec. 4. Section 26-174, Arizona Revised Statutes, is amended to read:  
41           26-174. Arizona state guard; appropriation

42           ~~A. If the national guard of Arizona or a major portion thereof is~~  
43 ~~called into active federal service, or if the national guard or a major~~  
44 ~~portion thereof is alerted for federal service or for any other reason the~~  
45 ~~governor considers to be necessary, the governor may establish an armed force~~

1 ~~for the safety and protection of the lives and property of the citizens of~~  
2 ~~the state which shall be known as the Arizona state guard.~~

3 A. AN ARMED FORCE, KNOWN AS THE ARIZONA STATE GUARD, IS ESTABLISHED  
4 FOR THE PURPOSE OF SECURING THE SAFETY AND PROTECTION OF THE LIVES AND  
5 PROPERTY OF THE CITIZENS OF THIS STATE. THE INTENT OF THE ARIZONA STATE  
6 GUARD IS TO PROVIDE A MISSION-READY VOLUNTEER MILITARY FORCE FOR USE BY THIS  
7 STATE IN HOMELAND SECURITY AND COMMUNITY SERVICE ACTIVITIES AS A SUPPLEMENT  
8 TO THE NATIONAL GUARD OF ARIZONA. THE ARIZONA STATE GUARD EXISTS AS PART OF  
9 THE MILITIA UNDER ARTICLE XVI, SECTION 2, CONSTITUTION OF ARIZONA, AND A  
10 DEFENSE FORCE UNDER 32 UNITED STATES CODE SECTION 109.

11 B. THE MISSION OF THE STATE GUARD IS:

12 1. TO SUPPORT THIS STATE IN SECURING THE BORDER WITH MEXICO AND  
13 SUPPLEMENT THE EFFORTS OF LAW ENFORCEMENT AND STATE AGENCIES.

14 2. AUGMENT THE NATIONAL GUARD.

15 3. SUPPORT COUNTY AND MUNICIPAL LEADERS IN COMBATING INTERNATIONAL  
16 CRIMINAL ACTIVITY.

17 4. RESPOND TO NATURAL AND MANMADE DISASTERS.

18 5. SEARCH AND RESCUE EFFORTS.

19 6. SUPPORT COMMUNITY ACTIVITIES.

20 7. OTHER MISSIONS DIRECTED BY THE GOVERNOR.

21 ~~B.~~ C. The Arizona state guard ~~shall~~ insofar as practicable ~~be~~ IS  
22 governed by and subject to the ~~laws of the state~~ PROVISIONS OF THIS TITLE  
23 pertaining to the ARIZONA national guard. The ~~governor~~ LEGISLATURE, WITH THE  
24 GOVERNOR'S APPROVAL, shall issue or cause to be issued rules to govern  
25 administration and organization of the ARIZONA state guard.

26 ~~C. Appropriations made to the national guard shall be deemed~~  
27 ~~appropriated to both the national guard and the Arizona state guard, if and~~  
28 ~~when the latter organization is established, and any funds that are~~  
29 ~~unexpended from appropriations to the national guard may be used for~~  
30 ~~establishment and maintenance of the Arizona state guard.~~

31 D. THE SUM OF ONE MILLION DOLLARS IS APPROPRIATED FROM THE GANG AND  
32 IMMIGRATION INTELLIGENCE TEAM ENFORCEMENT MISSION BORDER SECURITY AND LAW  
33 ENFORCEMENT SUBACCOUNT ESTABLISHED BY SECTION 41-1724 EACH FISCAL YEAR TO THE  
34 ARIZONA STATE GUARD FOR ITS TRAINING, OPERATIONS AND MAINTENANCE COSTS. THE  
35 LEGISLATURE MAY APPROPRIATE ADDITIONAL AMOUNTS IF NECESSARY. THE ARIZONA  
36 STATE GUARD SHALL SUBMIT AN ANNUAL BUDGET TO THE LEGISLATURE.

37 E. PURSUANT TO SECTION 38-211, THE GOVERNOR SHALL APPOINT AND  
38 COMMISSION A COMMANDER OF THE ARIZONA STATE GUARD BASED ON THE APPLICANT'S  
39 BACKGROUND, AGE, EXPERIENCE, EDUCATION, ADVANCEMENT IN THE UNITED STATES ARMY  
40 AND WILLINGNESS TO SERVE. THE COMMANDER MAY APPOINT SUBORDINATE OFFICERS,  
41 WARRANT OFFICERS AND ENLISTED PERSONNEL. THE COMMANDER SHALL:

42 1. APPOINT KEY COMMAND AND STAFF POSITIONS. THE PERSONNEL COMPLEMENT  
43 OF THE ARIZONA STATE GUARD SHALL NOT EXCEED FOUR FULL-TIME EQUIVALENT  
44 EMPLOYEES.

1           2. INVESTIGATE AND EVALUATE MEMBERS OF THE ARIZONA STATE GUARD.  
2           3. PROMOTE AND ESTABLISH STANDARD OPERATING PROCEDURES, UNIT  
3 REGULATIONS AND OTHER ORDERS AND PUBLICATIONS TO MAINTAIN EFFICIENT  
4 OPERATIONS FOR MISSION ACCOMPLISHMENT.  
5           F. THE GOVERNOR MAY ACTIVATE THE ARIZONA STATE GUARD FOR ANY OF THE  
6 FOLLOWING:  
7           1. TO ASSIST THE NATIONAL GUARD.  
8           2. TO SUPPORT FEDERAL, STATE OR LOCAL AGENCIES IN RESPONDING TO  
9 NATURAL OR MANMADE DISASTERS.  
10          3. FOR OTHER EVENTS THAT WARRANT ACTIVATION, INCLUDING SUPPORTING LAW  
11 ENFORCEMENT IN THE PURSUIT, ARREST AND DETENTION OF INDIVIDUALS ENGAGING IN  
12 CROSS-BORDER CRIMINAL ACTIVITY.  
13          G. THE CHIEF OF POLICE OF A MUNICIPALITY OR COUNTY SHERIFF MAY REQUEST  
14 THE ACTIVATION OF THE ARIZONA STATE GUARD TO SUPPLEMENT LOCAL LAW ENFORCEMENT  
15 ASSETS IN SPECIFICALLY IDENTIFIED CIRCUMSTANCES. THE COMMANDER MAY ENTER  
16 INTO AGREEMENTS AND MEMORANDA OF UNDERSTANDING AS NECESSARY TO CLARIFY THE  
17 EXTENT AND PROCEDURES OF OPERATION.  
18          H. THE ARIZONA STATE GUARD SHALL NOT BE DEPLOYED OUTSIDE THE  
19 BOUNDARIES OF THIS STATE EXCEPT THAT ON THE WRITTEN REQUEST OF THE GOVERNOR  
20 OF ANOTHER STATE, AND AT THE DISCRETION OF THE GOVERNOR OF THIS STATE, THE  
21 GOVERNOR MAY ORDER ALL OR PART OF THE ARIZONA STATE GUARD TO ASSIST THE  
22 MILITARY OR POLICE FORCE OF THE OTHER STATE WHO ARE ACTUALLY ENGAGED IN  
23 DEFENDING THE OTHER STATE, SUBJECT TO THE FOLLOWING CONDITIONS:  
24          1. THE GOVERNOR OF THIS STATE MAY RECALL ANY DEPLOYED FORCES FOR ANY  
25 REASON AND AT THE GOVERNOR'S SOLE DISCRETION.  
26          2. THE GOVERNOR OF THE OTHER STATE MUST AGREE IN WRITING, BEFORE  
27 DEPLOYMENT, THAT TOTAL REIMBURSEMENT TO THIS STATE WILL BE MADE FOR THE FULL  
28 COST OF THE ACTIVATION, DEPLOYMENT AND RECALL.  
29          I. THE COMMANDER SHALL SUBMIT THE FOLLOWING REPORTS TO THE PRESIDENT  
30 OF THE SENATE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, THE GOVERNOR AND  
31 THE ADJUTANT GENERAL:  
32          1. ON JANUARY 1 OF EACH YEAR AN ANNUAL REPORT INCLUDING THE CURRENT  
33 READINESS OF THE ARIZONA STATE GUARD, CRITICAL FACTORS AFFECTING THE ASSIGNED  
34 MISSION AND A PROPOSED OPERATING BUDGET FOR THE NEXT FISCAL YEAR.  
35          2. ON REACHING MISSION CAPABILITY STATUS, A MONTHLY READINESS REPORT  
36 ON THE CAPABILITY OF THE FORCE TO CONDUCT ITS PRIMARY AND SECONDARY MISSIONS.  
37          J. THE COMMANDER OF THE ARIZONA STATE GUARD SHALL MAINTAIN AND  
38 PRESERVE THE INDIVIDUAL, UNIT AND ORGANIZATION RECORDS OF THE ARIZONA STATE  
39 GUARD.  
40          Sec. 5. Title 26, chapter 1, article 3, Arizona Revised Statutes, is  
41 amended by adding sections 26-174.01, 26-174.02 and 26-174.03, to read:  
42          26-174.01. Arizona state guard; recruitment of volunteers  
43          A. THE COMMANDER OF THE ARIZONA STATE GUARD SHALL PROVIDE FOR THE  
44 RECRUITMENT OF VOLUNTEERS FROM THROUGHOUT THIS STATE.

1 B. A PERSON SHALL NOT BE COMMISSIONED OR ENLISTED IN THE ARIZONA STATE  
2 GUARD:

3 1. UNLESS THE PERSON IS A CITIZEN, OR A LEGAL RESIDENT WHO HAS  
4 DECLARED THE INTENTION TO BECOME A CITIZEN, OF THE UNITED STATES.

5 2. IF THE PERSON HAS BEEN EXPELLED OR DISHONORABLY DISCHARGED FROM ANY  
6 MILITARY OR NAVAL FORCE OF THE UNITED STATES, THIS STATE OR ANOTHER STATE.

7 C. AT THE TIME OF COMMISSION OR ENLISTMENT, EACH MEMBER JOINING THE  
8 ARIZONA STATE GUARD SHALL TAKE AND SUBSCRIBE THE FOLLOWING OATH, IN ADDITION  
9 TO THE OATH REQUIRED BY LAW OF OFFICERS:

10 I DO SOLEMNLY SWEAR THAT I WILL WELL AND FAITHFULLY PERFORM MY  
11 DUTIES AS A MEMBER OF THE ARIZONA STATE GUARD TO THE BEST OF MY  
12 ABILITY. I WILL BEAR TRUE FAITH AND ALLEGIANCE TO THE STATE OF  
13 ARIZONA. I WILL SERVE THE STATE OF ARIZONA HONESTLY AND  
14 FAITHFULLY AGAINST ALL ENEMIES. I WILL OBEY THE ORDERS OF THE  
15 GOVERNOR AND THE OFFICERS PLACED OVER ME, ACCORDING TO LAW.

16 D. COMMISSION OR ENLISTMENT IN THE ARIZONA STATE GUARD DOES NOT EXEMPT  
17 A PERSON FROM SERVICE IN THE UNIFORMED SERVICE OF THE UNITED STATES UNDER  
18 FEDERAL LAW.

19 26-174.02. Arizona state guard; discipline and order

20 A. THE COMMANDER OF THE ARIZONA STATE GUARD SHALL:

21 1. ADOPT AND IMPLEMENT HIGH STANDARDS FOR MAINTAINING MILITARY  
22 DISCIPLINE AND ORDER.

23 2. APPLY AND USE THE UNIFORM CODE OF MILITARY JUSTICE, INQUIRIES,  
24 OFFICER BOARDS AND APPROPRIATE RULES AND MANUALS TO MAINTAIN DISCIPLINE AND  
25 ORDER.

26 B. THE UNIFORM CODE OF MILITARY JUSTICE (10 UNITED STATES CODE SECTION  
27 801 ET SEQ.) AND THE REGULATIONS ADOPTED UNDER THE UNIFORM CODE AND THE  
28 MANUAL FOR COURTS-MARTIAL OF THE UNITED STATES (EXECUTIVE ORDER 12473 OF  
29 APRIL 13, 1984) ARE ADOPTED FOR APPLICATION TO THE ARIZONA STATE GUARD.

30 26-174.03. Arizona state guard; assets and financial support

31 A. SUBJECT TO APPROPRIATION, EACH MEMBER OF THE ARIZONA STATE GUARD  
32 SHALL BE COMPENSATED NOT MORE THAN ONE HUNDRED DOLLARS PER DAY OF SERVICE  
33 UNDER COMPETENT ORDERS OF ACTIVATION OR IN ATTENDING NOT MORE THAN FIVE DAYS  
34 OF TRAINING PER YEAR. FULL-TIME ARIZONA STATE GUARD PERSONNEL ARE ELIGIBLE  
35 FOR COMPENSATION ACCORDING TO THE PAY GRADE AND TABLES ESTABLISHED BY THE  
36 ADJUTANT GENERAL AND GENERAL STAFF FOR THE ARIZONA NATIONAL GUARD PURSUANT TO  
37 SECTION 26-115.

38 B. WITH THE GOVERNOR'S APPROVAL, THE COMMANDER OF THE ARIZONA STATE  
39 GUARD MAY PROCURE A POLICY OF GROUP INSURANCE FOR MEMBERS OF THE ARIZONA  
40 STATE GUARD COVERING AND INSURING MEMBERS AGAINST INJURY WHILE SERVING UNDER  
41 COMPETENT ORDERS OF ACTIVATION OR ATTENDING TRAINING.

42 C. THE ARIZONA STATE GUARD IS EXEMPT FROM THE REQUIREMENTS OF TITLE  
43 41, CHAPTER 23. FOR THE USE OF THE ARIZONA STATE GUARD:

1           1. THE GOVERNOR MAY REQUISITION FROM THE UNITED STATES SECRETARY OF  
2 DEFENSE SPARE ARMS, AMMUNITION, CLOTHING AND EQUIPMENT AND, WHEN AUTHORIZED,  
3 SURPLUS MILITARY ASSETS.

4           2. THE GOVERNOR MAY MAKE AVAILABLE NATIONAL GUARD ARMORIES, EQUIPMENT  
5 AND OTHER STATE PREMISES AND PROPERTY.

6           3. SCHOOL DISTRICTS MAY ALLOW THE USE OF SCHOOL BUILDINGS AND GROUNDS  
7 ON TERMS PRESCRIBED BY THE COMMANDER OF THE ARIZONA STATE GUARD.

8           D. IN ADDITION TO LEGISLATIVE APPROPRIATION, THE ARIZONA STATE GUARD  
9 MAY ACCEPT UNCONDITIONAL GIFTS, GRANTS OR DEVICES FROM ANY PUBLIC OR PRIVATE  
10 SOURCE INCLUDING STATE AND LOCAL GOVERNMENT ENTITIES, AGENCIES,  
11 INSTRUMENTALITIES, POLITICAL SUBDIVISIONS AND BUDGET UNITS.

12           Sec. 6. Section 26-1001, Arizona Revised Statutes, is amended to read:  
13 26-1001. Definitions

14           In this chapter, unless the context otherwise requires:

15           1. "Accuser" means a person who signs and swears to charges, a person  
16 who directs that charges nominally be signed and sworn to by another and any  
17 other person who has an interest other than an official interest in the  
18 prosecution of the accused.

19           2. "Apprehend" or "apprehension" means taking a person into custody.

20           3. "Arrest" means the restraint of a person by an order, not imposed  
21 as a punishment for an offense, directing the person to remain within certain  
22 specified limits.

23           4. "Candidate" means a candidate of the Arizona military academy.

24           5. "Code" means the Arizona code of military justice as set forth in  
25 this chapter.

26           6. "Commanding officer" means only commissioned officers.

27           7. "Confinement" means the physical restraint of a person.

28           8. "Judge advocate" means an officer of the judge advocate general's  
29 corps of the United States army or the army national guard of the United  
30 States or an officer of the United States air force or the air national guard  
31 of the United States who is designated as a judge advocate.

32           9. "Military" means any or all of the armed forces of this state, the  
33 United States or any other state.

34           10. "Military judge" means an official of a general or special  
35 court-martial detailed in accordance with section 26-1026.

36           11. "National guard" means the national guard of Arizona and the  
37 ARIZONA state guard ~~when organized~~.

38           12. "Officer in charge" means a member of the National guard designated  
39 as the officer in charge by an appropriate authority.

40           13. "Record", if used in connection with the proceedings of a  
41 court-martial, means an official written transcript, written summary or other  
42 writing relating to the proceedings or an official audiotape, videotape or  
43 similar material from which sound, or sound and visual images, depicting the  
44 proceedings may be reproduced.

1           14. "State judge advocate" means the commissioned officer responsible  
2 for supervising the administration of military justice in the national guard.

3           15. "Superior commissioned officer" means a commissioned officer  
4 superior in rank or command.

5           Sec. 7. Appropriation; purpose; exemption

6           A. In addition to the monies appropriated pursuant to section 26-174,  
7 Arizona Revised Statutes, the sum of \$500,000 is appropriated from the gang  
8 and immigration intelligence team enforcement mission border security and law  
9 enforcement subaccount in fiscal year 2011-2012 to the Arizona state guard  
10 for training, operations and maintenance costs.

11           B. The appropriation made in subsection A of this section is exempt  
12 from the provisions of section 35-190, Arizona Revised Statutes, relating to  
13 lapsing of appropriations.

14           Sec. 8. Emergency

15           This act is an emergency measure that is necessary to preserve the  
16 public peace, health or safety and is operative immediately as provided by  
17 law.