

SB287 INTRODUCED



1 SB287
2 ITYF66Z-1
3 By Senators Givhan, Jones, Bell, Hatcher
4 RFD: Veterans and Military Affairs
5 First Read: 04-Apr-24



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SYNOPSIS:

Under existing law, the Alabama Code of Military Justice creates a framework for disciplining members of the Alabama Army and Air National Guard.

This bill would update terminology and procedures for appointing staff judge advocates, clarify differences between general and special courts-martial, provide for progressive discipline, and make nonsubstantive, technical revisions to update existing code language to current style.

A BILL
TO BE ENTITLED
AN ACT

Relating to the Alabama Code of Military Justice; to amend Sections 31-2A-1, 31-2A-2, 31-2A-6, 31-2A-7, 31-2A-12, 31-2A-15, 31-2A-16, 31-2A-19, 31-2A-22, 31-2A-26, 31-2A-29, 31-2A-30, 31-2A-34, 31-2A-35, 31-2A-36, 31-2A-38, 31-2A-46, 31-2A-51, 31-2A-52, 31-2A-54, 31-2A-58b, 31-2A-66, 31-2A-73, 31-2A-112a, 31-2A-112b, 31-2A-130, and 31-2A-136, Code of Alabama 1975; to add Section 31-2A-26a to the Code of Alabama 1975; and to repeal Sections 31-2A-99, 31-2A-100, 31-2A-101, 31A-2A-102, 31-2A-104, 31-2A-105, 31-2A-110, 31-2A-112a,



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29 31-2A-112b, 31-2A-114, 31-2A-143, 31-2A-148, and 31-2A-149,
30 Code of Alabama 1975.

31 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

32 Section 1. Sections 31-2A-1, 31-2A-2, 31-2A-6, 31-2A-7,
33 31-2A-12, 31-2A-15, 31-2A-16, 31-2A-19, 31-2A-22, 31-2A-26,
34 31-2A-29, 31-2A-30, 31-2A-34, 31-2A-35, 31-2A-36, 31-2A-38,
35 31-2A-46, 31-2A-51, 31-2A-52, 31-2A-54, 31-2A-58b, 31-2A-66,
36 31-2A-73, 31-2A-112a, 31-2A-112b, 31-2A-130, and 31-2A-136,
37 Code of Alabama 1975, are amendeded to read as follows:

38 "§31-2A-1

39 For the purposes of this code, ~~unless the context~~
40 ~~otherwise requires,~~ the following words have the following
41 meanings:

42 (1) ACCUSER. ~~A person~~An individual who signs and swears
43 to charges, ~~any person~~any individual who directs that charges
44 nominally be signed and sworn to by another, and any other
45 ~~person~~individual who has an interest other than an official
46 interest in the prosecution of the accused.

47 (2) CADET, ~~or~~ CANDIDATE, ~~or MIDSHPMAN~~. ~~A person~~An
48 individual who is enrolled in or attending a state military
49 academy, a regional training institute, or any other formal
50 education program for the purpose of becoming a commissioned
51 officer in the state military forces.

52 (3) CLASSIFIED INFORMATION. Information that meets all
53 of the following requirements:

54 a. Any information or material that has been determined
55 by an official of the United States, the State of Alabama, or
56 any state or territory pursuant to law, ~~an~~ Presidential



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57 Executive order, Governor's Executive order, or regulation to
58 require protection against unauthorized disclosure for reasons
59 of national or state security.

60 b. Any restricted data, as defined in Section 11(y) of
61 the Atomic Energy Act of 1954, ~~+42 U.S.C. §_2014(y)+~~.

62 (4) CLERK OF THE COURT. Includes all individuals
63 employed or assigned to serve in this position by a state
64 staff judge advocate to manage and maintain court records.
65 This individual may administer oaths for charges and warrants.

66 ~~(4)~~ (5) CODE. This chapter.

67 ~~(5)~~ (6) COMMANDING OFFICER. Includes only commissioned
68 officers of the state military forces and shall include
69 officers in charge only when administering nonjudicial
70 punishment under Section 31-2A-15 (Article 15). The term
71 "commander" has the same meaning as "commanding officer"
72 unless the context otherwise requires. A commander is any
73 general officer, the Adjutant General, or any other officer
74 who, by virtue of position, is designated as a commanding
75 officer.

76 ~~(6)~~ (7) CONVENING AUTHORITY. Includes, in addition to
77 the ~~person~~ individual who convened the court, a commissioned
78 officer commanding for the time being or a successor in
79 command to the convening authority.

80 ~~(7)~~ (8) DAY. A calendar day, Unless unless otherwise
81 specified with respect to forfeiture of pay, ~~i means calendar~~
82 ~~day and the term~~ is not synonymous with the term "unit
83 training assembly." Any punishment authorized by this code
84 which is measured in terms of days, ~~shall~~ when served in a



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85 status other than annual field training, shall be construed to
86 mean succeeding duty days.

87 ~~(8)~~ (9) DUTY STATUS OTHER THAN STATE ACTIVE DUTY. Any
88 other type of duty not in federal service and not full-time
89 duty in the active service of the state; under an order issued
90 by authority of law and includes travel to and from such duty.

91 ~~(9)~~ (10) ENLISTED MEMBER. A person in an enlisted grade.

92 ~~(10)~~ (11) JUDGE ADVOCATE.

93 (a) A commissioned officer of the organized state
94 military forces who is a member in good standing of the bar of
95 the highest court of ~~a state~~ the State of Alabama, and who is
96 ~~either of the following:~~

97 ~~a.1. Certified~~ certified or designated as a judge
98 advocate in the Judge Advocate General's Corps of the Army,
99 Air Force, Navy, or the Marine Corps, or designated as a law
100 specialist as an officer of the Coast Guard, or a reserve
101 component of one of these.

102 ~~2. Certified as a non-federally recognized judge~~
103 ~~advocate, under regulations promulgated pursuant to this code,~~
104 ~~by the senior judge advocate of the commander of the force in~~
105 ~~the state military forces of which the accused is a member, as~~
106 ~~competent to perform such military justice duties required by~~
107 ~~this code. If there is no such judge advocate available, then~~
108 ~~such certification may be made by such senior judge advocate~~
109 ~~of the commander of another force in the state military~~
110 ~~forces, as the convening authority directs.~~

111 ~~b.~~ (b) In the instance when a judge advocate is detailed
112 under this code and is not a member of the bar of this state,



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113 the judge advocate shall be deemed admitted pro hac vice,
114 subject to filing a certificate with the military judge
115 setting forth his or her qualifications, and with notice and
116 approval of the Alabama State Bar and Chief Justice of the
117 Alabama Supreme Court, that ~~counsel~~ the judge advocate is all
118 of the following:

119 1. A commissioned officer of the Armed Forces of the
120 United States or a component thereof.

121 2. A member in good standing of the bar of the highest
122 court of a state.

123 3. ~~Meets the qualifications~~ Qualified ~~detailed~~ in
124 accordance with paragraph a subsection (a).

125 ~~(11)~~ (12) MILITARY COURT. A court-martial or a court of
126 inquiry.

127 ~~(12)~~ (13) MILITARY JUDGE. An official of a general or
128 special court-martial detailed in accordance with ~~Section~~
129 Sections 31-2A-26 and 31-2A-26a (~~Article~~ Articles 26 and 26a).

130 ~~(13)~~ (14) MILITARY OFFENSES. Those offenses prescribed
131 under Part X which are not also covered by federal or state
132 law.

133 ~~(14)~~ (15) NATIONAL SECURITY. The national defense and
134 foreign relations of the United States.

135 ~~(15)~~ (16) OFFICER. A commissioned or warrant officer.

136 ~~(16) OFFICER IN CHARGE. A member of the naval militia,~~
137 ~~the Navy, the Marine Corps, or the Coast Guard designated as~~
138 ~~such by appropriate authority.~~

139 (17) RECORD. When used in connection with the
140 proceedings of a court-martial, means either of the following:



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141 a. An official written transcript, written summary, or
142 other writing relating to the proceedings.

143 b. An official audiotape, videotape, digital image or
144 file, or similar material from which sound, or sound and
145 visual images, depicting the proceedings may be reproduced.

146 (18) RULES OF COURT. The applicable rules of court
147 shall be the Alabama Rules of Court, as applied in any state
148 or municipal court or appellate proceedings within the state.

149 ~~(18)~~ (19) SENIOR FORCE COMMANDER. The commander of the
150 same ~~force~~ service ~~of~~ within the state military forces as the
151 accused, with courts-martial convening authority, as delegated
152 by the Adjutant General.

153 ~~(19)~~ (20) SENIOR FORCE ARMY OR AIR STAFF JUDGE ADVOCATE.
154 The ~~senior~~ State Staff judge advocate Judge Advocate, or
155 delegate, of ~~for~~ the ~~commander~~ Adjutant General of the same
156 ~~force~~ service ~~of~~ within the state military forces as the accused
157 ~~and who is that commander's chief legal advisor.~~

158 ~~(20)~~ (21) STATE. The State of Alabama.

159 (22) STATES. One of the several states, the District of
160 Columbia, the Commonwealth of Puerto Rico, Guam, and the U.S.
161 Virgin Islands.

162 ~~(21)~~ (23) STATE ACTIVE DUTY. Full-time duty in the state
163 military forces under an order of the Governor or otherwise
164 issued by authority of law under Chapter 2 of ~~this title~~ Title
165 31 and paid in whole or in part by state funds, and includes
166 travel to and from such duty.

167 ~~(22)~~ (24) STATE MILITARY FORCES. The Alabama National
168 Guard, as defined in Title 32, United States Code, Section 271



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169 of the Constitution of Alabama ~~1901~~of 2022, and Section
170 31-2-3. The unorganized militia, state defense force, state
171 national guard, home guard, or any other name of any state
172 force that does not meet this definition shall ~~not be part of~~
173 ~~the "state military forces"~~be under the jurisdiction and terms
174 of this code, as defined in Section 31-2-3.

175 ~~(23)~~ (25) SUPERIOR COMMISSIONED OFFICER. A commissioned
176 officer superior in rank or command."

177 "§31-2A-2

178 (a) This code applies to all members of the state
179 military forces at all times and in all places, ~~except it does~~
180 ~~not apply to a member for any offenses committed while in a~~
181 ~~duty status under Title 10 U.S.C.~~

182 (b) Subject matter jurisdiction is established if a
183 clear and convincing nexus exists between an offense, either
184 military or non-military, and the state military force. When a
185 member is in any duty status (State Active Duty (SAD), T.32
186 and T.10) ~~under either Title 32 U.S.C. or State Active Duty~~
187 then a rebuttable presumption exists that the nexus is
188 established. A proper civilian court has primary jurisdiction
189 of an offense when an act or omission violates ~~both this code~~
190 ~~and~~ civilian criminal law, foreign or domestic. ~~In such a~~
191 ~~case, a court-martial may be initiated only after the civilian~~
192 ~~prosecutorial authority has declined to prosecute or dismissed~~
193 ~~the charge, provided jeopardy has not attached.~~ Courts-martial
194 shall have primary jurisdiction over all military offenses
195 defined in this code. ~~Jurisdiction over attempted crimes,~~
196 ~~conspiracy crimes, solicitation, and accessory crimes must be~~



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197 ~~determined by the underlying offense."~~

198 "§31-2A-6

199 (a) The ~~senior force judge advocates in~~Alabama Army or
200 Air National Guard State Staff Judge Advocate of each branch
201 of service within~~of~~ the ~~state's military forces~~Alabama
202 National Guard or that ~~judge advocate's~~State Staff Judge
203 Advocate's delegate or delegates shall make frequent
204 inspections in the field in supervision of the administration
205 of military justice ~~in for~~ that ~~force~~branch of service.

206 (b) Convening authorities shall at all times
207 communicate directly with their judge advocates in matters
208 relating to the administration of military justice. The judge
209 advocate of any command is entitled to communicate directly
210 with the judge advocate of a superior or subordinate command,
211 or with ~~the~~ a State Staff Judge Advocate.

212 (c) No ~~person~~individual who has acted as member,
213 military judge, trial counsel, defense counsel, or
214 investigating officer, or who has been a witness, in any case
215 may later act as a judge advocate providing legal advice to
216 ~~any~~the reviewing authority ~~upon~~concerning the same case."

217 "§31-2A-7

218 (a) Apprehension is the taking of ~~a person~~an individual
219 into custody.

220 (b) Any ~~person~~individual authorized by this code ~~or by~~
221 ~~Chapter 47 of Title 10, U.S.C.,~~ or by ~~regulations~~regulation
222 ~~issued under either,~~ to apprehend persons subject to this
223 code, any marshal of a court-martial appointed pursuant to the
224 provisions of this code, and any peace officer or civil



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225 officer having authority to apprehend offenders under the laws
226 of the United States or of ~~a state~~the State of Alabama, may do
227 so upon probable cause that an offense has been committed and
228 that the person apprehended committed it.

229 (c) Commissioned officers, warrant officers, petty
230 officers, and noncommissioned officers have authority to quell
231 quarrels, frays, and disorders among ~~persons~~individuals
232 subject to this code and to apprehend ~~persons~~individuals
233 subject to this code who take part therein.

234 (d) If an offender is apprehended outside the
235 ~~state~~State of Alabama, the offender's return to the area must
236 be in accordance with normal extradition procedures or by
237 reciprocal agreement, unless it is solely a military offense.

238 (e) No ~~person~~individual authorized by this article to
239 apprehend ~~persons~~individuals subject to this code or the place
240 where such offender is confined, restrained, held, or
241 otherwise housed may require payment of any fee or charge for
242 ~~so~~receiving, apprehending, confining, restraining, holding,
243 or otherwise housing ~~a person~~an individual except as otherwise
244 provided by Section 31-2-106."

245 "§31-2A-12

246 No member of the Alabama National Guard may be placed
247 in confinement in immediate association with enemy prisoners
248 or other foreign nationals not members of the Armed Forces.
249 This section does not preclude an Alabama National Guard
250 service member from being confined in a state, county, or
251 municipal jail or detention facility that may also house
252 illegal immigrants, immigrants, or foreign nationals within



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253 the same facility or holding cell."

254 "§31-2A-15

255 (a) Under such regulations as prescribed, any
256 commanding officer may impose disciplinary punishments for
257 minor offenses without the intervention of a court-martial
258 pursuant to this article. The Governor, the Adjutant General,
259 or an officer ~~or~~in a general or flag rank in command may
260 delegate the powers under this article to a principal
261 assistant who is a member of the Alabama National Guard.

262 (b) For the purposes of this article, the term "day"
263 shall mean the following:

264 (1) For the purposes of pay, one day shall equal one
265 active duty military payday.

266 (2) For all other purposes, one day shall equal one
267 calendar day.

268 (c) For the purposes of this ~~part~~section, all members
269 must be in military status when punishment is imposed.

270 (d) Any commanding officer serving as a brigade
271 commander (Army) or wing/group/base or the commander of a
272 geographically separated unit (Air) may impose upon enlisted
273 members of the officer's command any of the following:

274 (1) An admonition.

275 (2) A reprimand.

276 (3) The withholding of privileges for up to six
277 consecutive months.

278 (4) The forfeiture of pay of up to ~~eight~~12 days' ~~pay~~.

279 (5) A reduction to the next inferior pay grade, ~~if the~~
280 ~~grade from which demoted is within the promotion authority of~~



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281 ~~the commander imposing the reduction of an enlisted member who~~
282 ~~is E-6 and below.~~

283 (6) Extra duties, including fatigue or other duties,
284 for up to eight days, which need not be consecutive.

285 (7) Restriction to certain specified limits, with or
286 without suspension from duty, for not more than ~~eight~~14 days,
287 which need not be consecutive.

288 ~~(c) Any commanding officer of the grade of major or~~
289 ~~lieutenant commander, or above may impose upon enlisted~~
290 ~~members of the officer's command any of the following:~~

291 ~~(1) Any punishment authorized in subdivisions (1), (2),~~
292 ~~and (3) of subsection (d).~~

293 ~~(2) The forfeiture of pay of up to 12 days' pay.~~

294 ~~(3) A reduction to the lowest or any intermediate pay~~
295 ~~grade, if the grade from which demoted is within the promotion~~
296 ~~authority of the commanding officer imposing the reduction,~~
297 ~~but an enlisted member in a pay grade above E-4 may not be~~
298 ~~reduced more than two pay grades.~~

299 ~~(4) Extra duties, including fatigue or other duties,~~
300 ~~for not more than 14 days which need not be consecutive.~~

301 ~~(5) Restriction to certain specified limits, with or~~
302 ~~without suspension from duty, for not more than 14 days which~~
303 ~~need not be consecutive.~~

304 ~~(f)~~ (e) The Governor, the Adjutant General, an officer
305 exercising general court-martial convening authority, or an
306 officer of a general or flag rank in command may impose both
307 of the following:

308 (1) Upon officers of the officer's command, any



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309 punishment authorized in subdivisions ~~(1), (2), (3)~~, (1) - (4),
310 (6), and ~~(5)~~ (7) of subsection ~~(e)~~ (d).

311 (2) Upon enlisted members of the officer's command, any
312 punishment authorized in subsection (d).

313 ~~(g)~~ (f) Whenever any of those punishments are combined
314 to run consecutively, the total length of the combined
315 punishment cannot exceed the authorized duration of the
316 longest punishment in the combination, and there must be an
317 apportionment of punishments so that no single punishment in
318 the combination exceeds its authorized length under this
319 article.

320 ~~(h)~~ (g) Prior to the offer of non-judicial punishment,
321 the commanding officer shall determine whether restriction
322 shall be considered as a punishment. ~~Should the commanding~~
323 ~~officer determine that the punishment option may include~~
324 ~~restriction,~~ The determination of whether restriction is a
325 punishment option does not prohibit the accused ~~shall be~~
326 ~~notified of the~~ from requesting his or her right to demand
327 trial by special court-martial. ~~Should the commanding officer~~
328 ~~determine that the punishment option will not include~~
329 ~~restriction, the accused shall be notified that there is no~~
330 ~~right to trial by court-martial in lieu of non-judicial~~
331 ~~punishment.~~

332 ~~(i)~~ (h) The officer who imposes the punishment, or the
333 successor in command, at any time, may suspend, set aside,
334 mitigate, or remit any part or amount of the punishment and
335 restore all rights, privileges, and property affected. The
336 officer also may do either of the following:



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337 (1) Mitigate reduction in grade to forfeiture of pay.

338 (2) Mitigate extra duties to restriction.

339 The mitigated punishment shall not be for a greater
340 period than the punishment mitigated. When mitigating
341 reduction in grade to forfeiture of pay, the amount of the
342 forfeiture shall not be greater than the amount that could
343 have been imposed initially under this article by the officer
344 who imposed the punishment mitigated.

345 ~~(j)~~ (i) ~~A person~~ An individual punished under this
346 article who considers the punishment unjust or
347 disproportionate to the offense, through the proper channel,
348 may appeal to the next superior authority within ~~45~~30 days
349 after the punishment is either announced or sent to the
350 accused, as the commander may determine. The appeal shall be
351 promptly forwarded and decided. During the pendency of the
352 appeal, the punishment shall not be implemented. The superior
353 authority may exercise the same powers with respect to the
354 punishment imposed as may be exercised under subsection ~~(i)~~ (h)
355 by the officer who imposed the punishment. Before acting on an
356 appeal from a punishment, the authority that is to act on the
357 appeal may refer the case to a judge advocate for
358 consideration and advice.

359 ~~(k)~~ (j) The imposition and enforcement of disciplinary
360 punishment under this article for any act or omission is not a
361 bar to trial by court-martial or a civilian court of competent
362 jurisdiction for a serious crime or offense growing out of the
363 same act or omission and not properly punishable under this
364 article; however, the fact that a disciplinary punishment has



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365 been enforced may be shown by the accused upon trial and, when
366 ~~so~~ shown, it shall be considered in determining the measure of
367 punishment to be adjudged in the event of a finding of guilty.

368 ~~(l)~~ (k) Whenever a punishment of forfeiture of pay is
369 imposed under this article, the forfeiture may apply to pay
370 accruing before, on, or after the date that punishment is
371 imposed.

372 ~~(m)~~ (l) Regulations may prescribe the form of records to
373 be kept of proceedings under this article and may require that
374 certain categories of those proceedings be in writing.

375 ~~(n)~~ (m) The accused shall be informed of the location of
376 and right to consult counsel with regard to any non-judicial
377 punishment. The Commander shall ensure the ~~member~~accused is
378 given appropriate means to contact counsel."

379 "§31-2A-16

380 The three kinds of courts-martial in the state military
381 forces are:

382 (1) General courts-martial, consisting of either of the
383 following:

384 a. A military judge and not less than five members.

385 b. Only a military judge, if before the court is
386 assembled the accused, knowing the identity of the military
387 judge and after consultation with defense counsel, requests
388 orally on the record or in writing a court composed only of a
389 military judge and the military judge approves.

390 (2) Special courts-martial, consisting of ~~either of~~ the
391 following:

392 a. A military judge ~~and not less than three~~



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393 ~~members~~alone.

394 b. ~~Only a~~The military judge, ~~if one has been~~ shall be
395 detailed to the court, ~~and the accused under the same~~
396 ~~conditions as those prescribed in paragraph b. of subdivision~~
397 ~~(1) so requests~~ by the State Staff Judge Advocate of either
398 the Alabama Army or Air National Guard.

399 c. The military judge may hear cases arising from any
400 service or branch within the state military forces.

401 (3) Summary courts-martial, consisting of one
402 commissioned officer."

403 "§31-2A-19

404 Subject to Section 31-2A-17 (Article 17), special
405 courts-martial have jurisdiction to try ~~persons~~individuals
406 subject to this code for ~~any offense~~military-specific offenses
407 made punishable by this code, and under such limitations as
408 the Governor may prescribe, may adjudge any punishment not
409 forbidden by this code except dishonorable discharge,
410 dismissal, confinement for more than six months, or forfeiture
411 of pay exceeding 24 days., ~~which must be completed within one~~
412 ~~year~~ Additional punishments under this section include
413 reduction of soldiers or airmen in the rank of E-6 and below
414 to the rank of E-1. Soldiers or airmen in the rank of E-7
415 through E-9 can be reduced to the rank of E-4. Officers may be
416 reduced in rank to the highest rank where the officer last
417 served honorably before the underlying offense occurred."

418 "§31-2A-22

419 (a) General courts-martial may be convened by any one
420 of the following:



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421 (1) The Governor.

422 (2) The Adjutant General.

423 (3) ~~Any~~ General Officer ~~who is designated as a~~
424 ~~commander~~ serving in the Alabama Army or Air National Guard.

425 (b) If any ~~such~~ commanding officer is an accuser, the
426 court shall be convened by superior competent authority and
427 may in any case be convened by ~~such~~ the superior authority if
428 considered desirable by the authority."

429 "§31-2A-26

430 (a) A military judge shall be detailed to each general
431 ~~and special~~ court-martial. The military judge shall preside
432 over each open session of the court-martial to which the
433 military judge has been detailed.

434 (b) A military judge shall be all of the following:

435 (1) An active or retired commissioned officer.

436 (2) A member in good standing of the bar of the highest
437 court of a state or a member of the bar of a federal court for
438 at least five years.

439 (3) Either a certified military judge or a judge of a
440 court of competent jurisdiction who is approved by the
441 Adjutant General.

442 (c) In the instance when a military judge is not a
443 member of the bar of the highest court of the state, the
444 military judge shall be deemed admitted pro hac vice, subject
445 to filing a certificate with the state judge advocate setting
446 forth such qualifications provided in subsection (b) and with
447 notice and approval of the State Bar and Chief Justice of the
448 Alabama Supreme Court.



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449 (d) The military judge of a general ~~or special~~
450 court-martial shall be designated by the state judge advocate,
451 or a designee, for detail by the convening authority. Neither
452 the convening authority nor any staff member of the convening
453 authority shall prepare or review any report concerning the
454 effectiveness, fitness, or efficiency of the military judge
455 ~~se~~who is detailed, which relates to performance of duty as a
456 military judge.

457 (e) No ~~person~~individual is eligible to act as military
458 judge in a case if that ~~person~~individual is the accuser or a
459 witness, or has acted as investigating officer or a counsel in
460 the same case.

461 (f) The military judge of a court-martial may not
462 consult with the members of the court except in the presence
463 of the accused, trial counsel, and defense counsel nor vote
464 with the members of the court."

465 "§31-2A-29

466 (a) No member of a general or special court-martial may
467 be absent or excused after the court has been assembled for
468 the trial of the accused unless excused as a result of a
469 challenge, excused by the military judge for physical
470 disability or other good cause, or excused by order of the
471 convening authority for good cause.

472 (b) Whenever a general court-martial, other than a
473 general court-martial composed of a military judge only, is
474 reduced below five members, the trial may not proceed unless
475 the convening authority details new members sufficient in
476 number to provide not less than the applicable minimum number



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477 of five members. The trial may proceed with the new members
478 present after the recorded evidence previously introduced
479 before the members of the court has been read to the court in
480 the presence of the military judge, the accused, and counsel
481 for both sides.

482 (c) If the military judge of a general court-martial is
483 unable to proceed with the trial as a result of a challenge,
484 because of physical disability, or for other good cause, trial
485 shall proceed, subject to any applicable conditions of Section
486 31-2A-16(1)b. (Article 16(1)b.), after the detail of a new
487 military judge as if no evidence had previously been
488 introduced, unless a verbatim record of the evidence
489 previously introduced or a stipulation thereof is read in
490 court in the presence of the new military judge, the accused,
491 and counsel for both sides.

492 ~~(c) Whenever a special court-martial, other than a~~
493 ~~special court-martial composed of a military judge only, is~~
494 ~~reduced below three members, the trial may not proceed unless~~
495 ~~the convening authority details new members sufficient in~~
496 ~~number to provide not less than three members. The trial shall~~
497 ~~proceed with the new members present as if no evidence had~~
498 ~~been introduced previously at the trial, unless a verbatim~~
499 ~~record of the evidence previously introduced before the~~
500 ~~members of the court or a stipulation thereof is read to the~~
501 ~~court in the presence of the military judge, the accused, and~~
502 ~~counsel for both sides.~~

503 (d) If the military judge of a special court-martial
504 ~~composed of a military judge only~~ is unable to proceed with



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505 the trial as a result of a challenge, because of physical
506 disability, ~~as a result of a challenge,~~ or for other good
507 cause, the trial shall proceed, subject to any applicable
508 conditions of ~~Section 31-2A-16(1)b. or (2)b. (Article 16(1)b.~~
509 ~~or (2)b.)~~ Section 31-2A-16(2)b. and c. (Article 16(2)b. and
510 c.), after the detail of a new military judge as if no
511 evidence had previously been introduced, unless a verbatim
512 record of the evidence previously introduced or a stipulation
513 thereof is read in court in the presence of the new military
514 judge, the accused, and counsel for both sides."

515 "§31-2A-30

516 (a) Charges and specifications shall be signed by ~~a~~
517 ~~person~~ an individual subject to this code under oath before
518 either a commissioned officer or the clerk of the court as
519 authorized by Section 31-2A-136(a) (Article 136(a)) to
520 administer oaths and shall state both of the following:

521 (1) ~~That the~~ The signer has personal knowledge of, or
522 has investigated, the matters set forth therein.

523 (2) ~~That the~~ The charges and specifications are true in
524 fact to the best of the signer's knowledge and belief.

525 (b) Upon the preferring of charges, the proper
526 authority shall take immediate steps to determine what
527 disposition should be made thereof in the interest of justice
528 and discipline, and the person accused shall be informed of
529 the charges as soon as practicable."

530 "§31-2A-34

531 (a) Before directing the trial of any charge by general
532 or special court-martial, the convening authority shall refer



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533 it to a judge advocate for consideration and advice. The
534 convening authority may refer a specification under a charge
535 to a special court-martial after advice from the servicing
536 judge advocate. This advice of counsel to the convening
537 authority can be either in writing or verbal.

538 (b) The convening authority may not refer a
539 specification under a charge to a general ~~or special~~
540 court-martial for trial unless the convening authority has
541 been advised in writing by a judge advocate of all of the
542 following:

543 (1) The specification alleges an offense under this
544 code.

545 (2) The specification is warranted by the evidence
546 indicated in the report of investigation under Section
547 31-2A-32 (Article 32), if there is such a report.

548 (3) A court-martial would have jurisdiction over the
549 accused and the offense.

550 ~~(b)~~ (c) The advice of the judge advocate under
551 ~~subsection~~ subsections (a) and (b) with respect to a
552 specification under a charge shall include a written and
553 signed statement by the judge advocate containing both of the
554 following:

555 (1) Conclusions with respect to each matter set forth
556 in ~~subsection~~ subsections (a) and (b).

557 (2) Recommended action that the convening authority
558 should take regarding the specification. If the specification
559 is referred for trial, the recommendation of the judge
560 advocate shall accompany the specification.



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561 ~~(e)~~ (d) If the charges or specifications are not correct
562 formally or do not conform to the substance of the evidence
563 contained in the report of the investigating officer, formal
564 corrections, and such changes in the charges and
565 specifications as are needed to make them conform to the
566 evidence, may be made."

567 "§31-2A-35

568 The trial counsel shall serve or ~~caused~~ cause to be
569 served upon the accused a copy of the charges. No
570 ~~person~~ individual, against the ~~person's~~ individual's objection,
571 may be brought to trial before a general court-martial case
572 within a period of 45 days after the service of charges upon
573 the accused, or in a special court-martial, within a period of
574 ~~45~~ 30 days after the service of charges upon the accused."

575 "§31-2A-36

576 Pretrial, trial, and post-trial procedures, including
577 modes of proof, for court-martial cases arising under this
578 code, and for courts of inquiry, may be prescribed by the
579 Governor or the Adjutant General by rules, or as otherwise
580 provided by law, which shall apply the principles of law and
581 the rules of court under the State of Alabama, to include: (i)
582 the Alabama Rules of Evidence; (ii) Alabama Rules of Criminal
583 Procedure; (iii) Alabama Rules of Juvenile Procedure; and (iv)
584 Alabama Rules of Appellate Procedure ~~evidence generally~~
585 ~~recognized in military criminal cases in the courts of the~~
586 ~~Armed Forces but which may not be contrary to or inconsistent~~
587 ~~with this code."~~

588 "§31-2A-38



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589 (a) The trial counsel of a general or special
590 court-martial shall prosecute in the name of the state, and,
591 under the direction of the court, shall prepare the record of
592 the proceedings.

593 (b) (1) The accused has the right to be represented in
594 defense before a general or special court-martial or at an
595 investigation under Section 31-2A-32 (Article 32) as provided
596 in this subsection.

597 (2) The accused may be represented by civilian counsel
598 at the provision and expense of the accused.

599 (3) The accused may be represented by either of the
600 following:

601 a. ~~By military~~Military counsel detailed under Section
602 31-2A-27 (Article 27).

603 b. ~~By military~~Military counsel of the accused's own
604 selection if that counsel is reasonably available as
605 determined under subdivision (7).

606 (4) If the accused is represented by civilian counsel,
607 military counsel detailed or selected under subdivision (3)
608 shall act as associate counsel unless excused at the request
609 of the accused.

610 (5) Except as provided under subdivision (6), if the
611 accused is represented by military counsel of his or her own
612 selection under paragraph (3)b., any military counsel detailed
613 under paragraph (3)a. shall be excused.

614 (6) The accused is not entitled to be represented by
615 more than one military counsel. However, the ~~person~~individual
616 authorized under rules prescribed under Section 31-2A-27



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617 (Article 27) to detail counsel, in that ~~person's~~individual's
618 sole discretion:

619 a. May detail additional military counsel as assistant
620 defense counsel.

621 b. If the accused is represented by military counsel of
622 the accused's own selection under paragraph (3)b., may approve
623 a request from the accused that military counsel detailed
624 under paragraph (3)a. act as associate defense counsel.

625 (7) The ~~senior force judge advocate~~State Staff Judge
626 Advocate of the same force of which the accused is a member,
627 shall determine whether the military counsel selected by an
628 accused is reasonably available.

629 (c) In any court-martial proceeding resulting in a
630 conviction, the defense counsel may do any of the following:

631 (1) Forward for attachment to the record of proceedings
632 a brief of such matters as counsel determines should be
633 considered in behalf of the accused on review, including any
634 objection to the contents of the record which counsel
635 considers appropriate.

636 (2) Assist the accused in the submission of any matter
637 under Section 31-2A-60 (Article 60).

638 (3) Take other action authorized by this code."

639 "§31-2A-46

640 The trial counsel, the defense counsel, and the
641 court-martial shall have equal opportunity to obtain witnesses
642 and other evidence as prescribed by regulations and provided
643 by law. Process issued in court-martial cases to compel
644 witnesses to appear and testify and to compel the production



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645 of other evidence shall apply the principles of law and the
646 ~~rules of courts-martial generally recognized in military~~
647 ~~criminal cases in the courts of the Armed Forces of the United~~
648 ~~States, but which may not be contrary to or inconsistent with~~
649 ~~this code~~Alabama Rules of Criminal Procedure. Process shall
650 run to any part of the United States, or the territories,
651 commonwealths, and possessions, and may be executed by civil
652 officers as prescribed by the laws of the place where the
653 witness or evidence is located or outside of the ~~United~~
654 ~~States~~State of Alabama. A court-martial convened under this
655 code may subpoena and compel the presence of witnesses and the
656 production of documents in the same manner as a circuit court
657 in a criminal case. Such subpoena, however, shall be signed
658 and issued by the assigned military judge and shall comply
659 with the requirements of Chapter 21 of Title 12. ~~Any reference~~
660 ~~therein to the issuance of process by a clerk of court shall~~
661 ~~not apply in a court-martial proceeding."~~

662 "§31-2A-51

663 (a) Voting by members of a general ~~or special~~
664 court-martial on the findings and on the sentence shall be by
665 secret written ballot. The junior member of the court shall
666 count the votes. The count shall be checked by the president,
667 who shall forthwith announce the result of the ballot to the
668 members of the court.

669 (b) The military judge shall rule upon all questions of
670 law and all interlocutory questions arising during the
671 proceedings. Any such ruling made by the military judge upon
672 any question of law or any interlocutory question other than



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673 the factual issue of mental responsibility of the accused is
674 final and constitutes the ruling of the court. However, the
675 military judge may change the ruling at any time during the
676 trial. Unless the ruling is final, if any member objects
677 thereto, the court shall be cleared and closed and the
678 question decided by a voice vote as provided in Section
679 31-2A-52 (Article 52), beginning with the junior in rank.

680 (c) Before a vote is taken on the findings, the
681 military judge, in the presence of the accused and counsel,
682 shall instruct the members of the court as to the elements of
683 the offense and charge them with all of the following:

684 (1) The accused must be presumed to be innocent until
685 his or her guilt is established by legal and competent
686 evidence beyond reasonable doubt.

687 (2) In the case being considered, if there is a
688 reasonable doubt as to the guilt of the accused, the doubt
689 must be resolved in favor of the accused and the accused must
690 be acquitted.

691 (3) If there is a reasonable doubt as to the degree of
692 guilt, the finding must be in a lower degree as to which there
693 is no reasonable doubt.

694 (4) The burden of proof to establish the guilt of the
695 accused beyond reasonable doubt is upon the state.

696 (d) Subsections (a), (b), and (c) do not apply to a
697 court-martial composed of a military judge only. The military
698 judge of ~~such~~ a court-martial shall determine all questions of
699 law and fact arising during the proceedings and, if the
700 accused is convicted, adjudge an appropriate sentence. The



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701 military judge of such a court-martial shall make a general
702 finding, and in addition, on request, shall find the facts
703 specially. If an opinion or memorandum of decision is filed,
704 it will be sufficient if the findings of fact appear therein."

705 "§31-2A-52

706 (a) No person may be convicted of an offense except as
707 provided in Section 31-2A-45(b) (Article 45(b)) or by the
708 concurrence of two-thirds of the members present at the time
709 the vote is taken.

710 (b) All other questions to be decided by the members of
711 a general ~~or special~~ court-martial shall be determined by a
712 majority vote, but a determination to reconsider a finding of
713 guilty or to reconsider a sentence, with a view toward
714 decreasing it, may be made by any lesser vote which indicates
715 that the reconsideration is not opposed by the number of votes
716 required for that finding or sentence. A tie vote on a
717 challenge disqualifies the member challenged. A tie vote on a
718 motion relating to the question of the accused's sanity is a
719 determination against the accused. A tie vote on any other
720 question is a determination in favor of the accused.

721 (c) Pursuant to its authority under Article XV, Section
722 271 of the Constitution of Alabama of ~~1901~~2022, the
723 Legislature finds and declares that Article I, Section 11 of
724 the Constitution of Alabama of ~~1901~~2022, does not apply to a
725 court-martial proceeding. Courts-martial existed before the
726 existence of the ~~Constitution~~ constitution, and their
727 existence is recognized in the ~~Constitution~~ constitution.
728 Further, courts-martial are an executive agency belonging to



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729 the executive branch, not the judicial branch, and were
730 created by the Legislature pursuant to its authority under
731 Article XV, Section 271, to provide for disciplining the
732 militia."

733 "§31-2A-54

734 (a) Each general and special court-martial shall keep a
735 separate record of the proceedings in each case brought before
736 it, and the record shall be authenticated by the signature of
737 the military judge. If the record cannot be authenticated by
738 the military judge by reason of his or her death, disability,
739 or absence, it shall be authenticated by the signature of the
740 trial counsel or by that of a member, if the trial counsel is
741 unable to authenticate it by reason of his or her death,
742 disability, or absence. In a court-martial consisting of only
743 a military judge, the record shall be authenticated by the
744 court reporter under the same conditions which would impose
745 such a duty on a member under this subsection.

746 (b) (1) A complete verbatim record of the proceedings
747 and testimony shall be prepared in each general ~~and special~~
748 court-martial case resulting in a conviction.

749 (2) In all other court-martial cases, the record shall
750 contain such matters as may be prescribed by regulations.

751 (c) Each summary court-martial shall keep a separate
752 record of the proceedings in each case, and the record shall
753 be authenticated in the manner as may be prescribed by
754 regulations.

755 (d) A copy of the record of the proceedings of each
756 general and special court-martial shall be given to the



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757 accused as soon as it is authenticated and once the accused
758 provides timely notice of appeal."

759 "§31-2A-58b

760 (a) (1) A court-martial sentence described in
761 subdivision (2) shall result in the forfeiture of pay, or of
762 pay and allowances, due that member during any period of
763 confinement or parole. The forfeiture pursuant to this article
764 shall take effect on the date determined under Section
765 31-2A-57(a) (Article 57(a)) and may be deferred as provided by
766 that article. The pay and allowances forfeited, in the case of
767 a general court-martial, shall be all pay and allowances due
768 that member during such period and, in the case of a special
769 court-martial, shall be two-thirds of all pay due that member
770 during such period.

771 (2) A sentence covered by this article is any sentence
772 that includes ~~either of the following:~~

773 ~~a. Confinement for more than six months.~~

774 ~~b. Confinement for six months or less and a bad-conduct~~
775 ~~discharge or dismissal~~ confinement for any period of time.

776 (b) In a case involving an accused who has dependents,
777 the convening authority or other person acting under Section
778 31-2A-60 (Article 60) may waive any or all of the forfeitures
779 of pay and allowances required by subsection (a) for a period
780 not to exceed six months. Any amount of pay or allowances
781 that, except for a waiver under this subsection, would be
782 forfeited shall be paid, as the convening authority or other
783 person taking action directs, to the dependents of the
784 accused.



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785 (c) If the sentence of a member who forfeits pay and
786 allowances under subsection (a) is set aside or disapproved
787 or, as finally approved, does not provide for a punishment
788 referred to in subdivision (a)(2), the member shall be paid
789 the pay and allowances which the member would have been paid,
790 except for the forfeiture, for the period during which the
791 forfeiture was in effect."

792 "§31-2A-66

793 The Governor shall establish a Military Court-Martial
794 Review Panel which shall be composed of one or more panels,
795 and each ~~such~~ panel shall be composed of not less than three
796 appellate military judges. The military judges selected for
797 the Military Court-Martial Review Panel shall be active, ~~or~~
798 retired, or an individual who served for a minimum of eight
799 years as a judge advocates~~advocate of the Department of~~
800 ~~Defense of the United States~~within the Alabama Army or Air
801 National Guard. Further composition and selection of judges
802 for the panel shall be established by regulation pursuant to
803 Sections 131 and 271 of the ~~Official Recompilation of the~~
804 Constitution of Alabama of ~~1901~~2022, ~~as amended~~. For the
805 purpose of reviewing courts-martial cases, the body may sit in
806 panels or as a whole in accordance with the rules prescribed
807 by the Governor. All appeals of decisions of courts-martial
808 shall proceed directly to the Military Court-Martial Review
809 Panel."

810 "§31-2A-73

811 (a) At any time within ~~two years~~30 days after notice of
812 approval by the convening authority of a court-martial



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813 sentence, the accused may petition the Adjutant General for a
814 new trial on the grounds of newly discovered evidence or fraud
815 on the court-martial.

816 (b) At any time within 4530 days of discovery of ~~fraud~~
817 ~~on the court-martial or~~ newly discovered evidence or fraud on
818 the court-martial, the accused may petition for a new trial
819 with the Military Court-Martial Review Panel. In the event the
820 accused's case is pending before the Alabama Supreme Court,
821 the appeal shall be stayed until the Military Court-Martial
822 Review Panel rules on the petition."

823 "§31-2A-112a

824 (a) Any person subject to this code who wrongfully
825 uses, possesses, manufactures, distributes, imports into the
826 customs territory of the United States, exports from the
827 United States, or introduces into an installation, vessel,
828 vehicle, or aircraft used by or under the control of the Armed
829 Forces of the United States or of any state military forces a
830 substance described in subsection (b) shall be punished as a
831 court-martial may direct.

832 (b) The substances referred to in subsection (a) are
833 the following:

834 (1) Opium, heroin, cocaine, amphetamine, lysergic acid
835 diethylamide, methamphetamine, phencyclidine, barbituric acid,
836 and marijuana and any compound or derivative of any ~~such of~~
837 these listed substance~~substances~~.

838 (2) Any substance not specified in subdivision (1) that
839 is listed on a schedule of controlled substances prescribed by
840 the President of the United States for the purposes of the



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841 Uniform Code of Military Justice of the Armed Forces of the
842 United States, 10 U.S.C. § 801 et seq.

843 (3) Any other substance not specified in subdivision
844 (1) or contained on a list prescribed by the President of the
845 United States under subdivision (2) that is listed in
846 Schedules I through V of Article 202 of the Controlled
847 Substances Act, 21 U.S.C. § 812 or that is listed under Title
848 20 of the Code of Alabama 1975."

849 "§31-2A-112b

850 Any ~~person~~individual subject to this code who
851 wrongfully possesses, manufactures, distributes, imports into
852 the customs territory of the United States, exports from the
853 United States, or introduces into an installation, vessel,
854 vehicle, or aircraft used by or under the control of the Armed
855 Forces of the United States or of any state military forces
856 drug paraphernalia as defined in Section 13A-12-260 shall be
857 punished as a court-martial may direct."

858 "§31-2A-130

859 Any ~~person~~individual subject to this code is guilty of
860 criminal trespass and shall be punished as a court-martial may
861 direct if he or she is convicted of either of the following:

862 (1) ~~who unlawfully enters~~Knowingly enters or remains
863 unlawfully in a ~~the~~ building or upon real property which is
864 fenced or enclosed in a manner designed to exclude intruders.

865 (2) ~~structure of another with intent to commit a~~
866 criminal offense therein is guilty of housebreaking and shall
867 be punished as a court-martial may directKnowingly enters or
868 remains unlawfully in or on a premises."



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869 "§31-2A-136

870 (a) The following persons may administer oaths for the
871 purposes of military administration, including military
872 justice:

873 (1) All judge advocates.

874 (2) All summary courts-martial.

875 (3) All adjutants, assistant adjutants, acting
876 adjutants, and personnel adjutants.

877 (4) All other persons designated by regulations of the
878 Armed Forces of the United States or by statute.

879 (b) The following persons may administer oaths
880 necessary in the performance of their duties:

881 (1) The ~~president~~ President of the United States,
882 military judge, ~~and~~ trial counsel, and the clerk of court for
883 all general and special courts-martial.

884 (2) The president and the counsel for the court of any
885 court of inquiry.

886 (3) All officers designated to take a deposition.

887 (4) All ~~persons~~ individuals detailed to conduct an
888 investigation.

889 (5) All recruiting officers.

890 (6) All other ~~persons~~ individuals designated by
891 regulations of the Armed Forces of the United States or by
892 statute.

893 (c) The signature without seal of any ~~such~~ person
894 listed in subsection (a) or (b), together with the title of
895 his or her office, is prima facie evidence of the person's
896 authority."



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897 Section 2. Section 31-2A-26a is added to the Code of
898 Alabama 1975, as follows:

899 §31-2A-26a

900 (a) A military judge shall be detailed to each special
901 court-martial. The military judge shall preside over each open
902 session of the special court-martial to which the military
903 judge has been detailed.

904 (b) A military judge shall be both of the following:

905 (1) A judge advocate who is a member in good standing
906 of the Alabama National Guard.

907 (2) A member in good standing of the State Bar of
908 Alabama for at least five years.

909 (c) The military judge of a special court-martial shall
910 be designated by a state staff judge advocate, or a designee,
911 for detail by the convening authority. Neither the convening
912 authority nor any staff member of the convening authority
913 shall prepare or review any report concerning the
914 effectiveness, fitness, or efficiency of the military judge
915 who is detailed, which relates to performance of duty as a
916 military judge.

917 (d) No individual is eligible to act as military judge
918 in a case if that individual is the accuser or a witness, or
919 has acted as investigating officer or a counsel in the same
920 case.

921 (e) The military judge of a special court-martial may
922 not consult or communicate with any party, or party's
923 representative, regarding a matter before them except in the
924 presence of the accused, or defense counsel and trial counsel.



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925 Section 3. Sections 31-2A-99, 31-2A-100, 31-2A-101,
926 31A-2A-102, 31-2A-104, 31-2A-105, 31-2A-110, 31-2A-112a,
927 31-2A-112b, 31-2A-114, 31-2A-143, 31-2A-148, and 31-2A-149,
928 Code of Alabama 1975, are repealed.

929 Section 4. This act shall become effective on October
930 1, 2024.