

§ 974. Military musical units and musicians: performance policies; restriction on performance in competition with local civilian musicians

(a) MILITARY MUSICIANS PERFORMING IN AN OFFICIAL CAPACITY.—(1) A military musical unit, and a member of the armed forces who is a member of such a unit performing in an official capacity, may not engage in the performance of music in competition with local civilian musicians.

(2) For purposes of paragraph (1), the following shall, except as provided in paragraph (3), be included among the performances that are considered to be a performance of music in competition with local civilian musicians:

(A) A performance that is more than incidental to an event that—

- (i) is not supported, in whole or in part, by United States Government funds; and
- (ii) is not free to the public.

(B) A performance of background, dinner, dance, or other social music at an event that—

- (i) is not supported, in whole or in part, by United States Government funds; and
- (ii) is held at a location not on a military installation.

(3) For purposes of paragraph (1), the following shall not be considered to be a performance of music in competition with local civilian musicians:

(A) A performance (including background, dinner, dance, or other social music) at an official United States Government event that is supported, in whole or in part, by United States Government funds.

(B) A performance at a concert, parade, or other event, that—

- (i) is a patriotic event or a celebration of a national holiday; and
- (ii) is free to the public.

(C) A performance that is incidental to an event that—

- (i) is not supported, in whole or in part, by United States Government funds; or
- (ii) is not free to the public.

(D) A performance (including background, dinner, dance, or other social music) at—

- (i) an event that is sponsored by a military welfare society, as defined in section 2566 of this title;
- (ii) an event that is a traditional military event intended to foster the morale and welfare of members of the armed forces and their families; or
- (iii) an event that is specifically for the benefit or recognition of members of the armed forces, their family members, veterans, civilian employees of the Department of Defense, or former civilian employees of the Department of Defense, to the extent provided in regulations prescribed by the Secretary of Defense.

(E) A performance (including background, dinner, dance, or other social music)—

- (i) to uphold the standing and prestige of the United States with dignitaries and distinguished or prominent persons or groups of the United States or another nation; or

- (ii) in support of fostering and sustaining a cooperative relationship with another nation.

(b) PROHIBITION OF MILITARY MUSICIANS ACCEPTING ADDITIONAL REMUNERATION FOR OFFICIAL PERFORMANCES.—A military musical unit, and a member of the armed forces who is a member of such a unit performing in an official capacity, may not receive remuneration for an official performance, other than applicable military pay and allowances.

(c) RECORDINGS.—(1) When authorized under regulations prescribed by the Secretary of Defense for purposes of this section, a military musical unit may produce recordings for distribution to the public, at a cost not to exceed expenses of production and distribution.

(2) Amounts received in payment for a recording distributed to the public under this subsection shall be credited to the appropriation or account providing the funds for the production of the recording. Any amount so credited shall be merged with amounts in the appropriation or account to which credited, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such appropriation or account.

(d) PERFORMANCES AT FOREIGN LOCATIONS.—Subsection (a) does not apply to a performance outside the United States, its commonwealths, or its possessions.

(e) MILITARY MUSICAL UNIT DEFINED.—In this section, the term “military musical unit” means a band, ensemble, chorus, or similar musical unit of the armed forces.

(Added Pub. L. 110–181, div. A, title V, § 590(a)(1), Jan. 28, 2008, 122 Stat. 136; amended Pub. L. 111–84, div. A, title V, § 591(a), Oct. 28, 2009, 123 Stat. 2335.)

PRIOR PROVISIONS

A prior section 974, added Pub. L. 90–235, § 6(a)(6)(A), Jan. 2, 1968, 81 Stat. 762; amended Pub. L. 101–510, div. A, title III, § 327(e), Nov. 5, 1990, 104 Stat. 1532, related to civilian employment by enlisted members, prior to repeal by Pub. L. 105–261, div. A, title V, § 569(a), Oct. 17, 1998, 112 Stat. 2032.

AMENDMENTS

2009—Pub. L. 111–84 amended section generally. Prior to amendment, section related to uniform performance policies for military bands and other musical units.

[§ 975. Renumbered § 2390]

§ 976. Membership in military unions, organizing of military unions, and recognition of military unions prohibited

(a) In this section:

(1) The term “member of the armed forces” means (A) a member of the armed forces who is serving on active duty, (B) a member of the National Guard who is serving on full-time National Guard duty, or (C) a member of a Reserve component while performing inactive-duty training.

(2) The term “military labor organization” means any organization that engages in or attempts to engage in—

- (A) negotiating or bargaining with any civilian officer or employee, or with any mem-

ber of the armed forces, on behalf of members of the armed forces, concerning the terms or conditions of military service of such members in the armed forces;

(B) representing individual members of the armed forces before any civilian officer or employee, or any member of the armed forces, in connection with any grievance or complaint of any such member arising out of the terms or conditions of military service of such member in the armed forces; or

(C) striking, picketing, marching, demonstrating, or any other similar form of concerted action which is directed against the Government of the United States and which is intended to induce any civilian officer or employee, or any member of the armed forces, to—

(i) negotiate or bargain with any person concerning the terms or conditions of military service of any member of the armed forces,

(ii) recognize any organization as a representative of individual members of the armed forces in connection with complaints and grievances of such members arising out of the terms or conditions of military service of such members in the armed forces, or

(iii) make any change with respect to the terms or conditions of military service of individual members of the armed forces.

(3) The term “civilian officer or employee” means an employee, as such term is defined in section 2105 of title 5.

(b) It shall be unlawful for a member of the armed forces, knowing of the activities or objectives of a particular military labor organization—

(1) to join or maintain membership in such organization; or

(2) to attempt to enroll any other member of the armed forces as a member of such organization.

(c) It shall be unlawful for any person—

(1) to enroll in a military labor organization any member of the armed forces or to solicit or accept dues or fees for such an organization from any member of the armed forces; or

(2) to negotiate or bargain, or attempt through any coercive act to negotiate or bargain, with any civilian officer or employee, or any member of the armed forces, on behalf of members of the armed forces, concerning the terms or conditions of service of such members;

(3) to organize or attempt to organize, or participate in, any strike, picketing, march, demonstration, or other similar form of concerted action involving members of the armed forces that is directed against the Government of the United States and that is intended to induce any civilian officer or employee, or any member of the armed forces, to—

(A) negotiate or bargain with any person concerning the terms or conditions of service of any member of the armed forces,

(B) recognize any military labor organization as a representative of individual members of the armed forces in connection with

any complaint or grievance of any such member arising out of the terms or conditions of service of such member in the armed forces, or

(C) make any change with respect to the terms or conditions of service in the armed forces of individual members of the armed forces; or

(4) to use any military installation, facility, reservation, vessel, or other property of the United States for any meeting, march, picketing, demonstration, or other similar activity for the purpose of engaging in any activity prohibited by this subsection or by subsection (b) or (d).

(d) It shall be unlawful for any military labor organization to represent, or attempt to represent, any member of the armed forces before any civilian officer or employee, or any member of the armed forces, in connection with any grievance or complaint of any such member arising out of the terms or conditions of service of such member in the armed forces.

(e) No member of the armed forces, and no civilian officer or employee, may—

(1) negotiate or bargain on behalf of the United States concerning the terms or conditions of military service of members of the armed forces with any person who represents or purports to represent members of the armed forces, or

(2) permit or authorize the use of any military installation, facility, reservation, vessel, or other property of the United States for any meeting, march, picketing, demonstration, or other similar activity which is for the purpose of engaging in any activity prohibited by subsection (b), (c), or (d).

Nothing in this subsection shall prevent commanders or supervisors from giving consideration to the views of any member of the armed forces presented individually or as a result of participation on command-sponsored or authorized advisory councils, committees, or organizations.

(f) Whoever violates subsection (b), (c), or (d) shall be fined under title 18 or imprisoned not more than 5 years, or both, except that, in the case of an organization (as defined in section 18 of such title), the fine shall not be less than \$25,000.

(g) Nothing in this section shall limit the right of any member of the armed forces—

(1) to join or maintain membership in any organization or association not constituting a “military labor organization” as defined in subsection (a)(2) of this section;

(2) to present complaints or grievances concerning the terms or conditions of the service of such member in the armed forces in accordance with established military procedures;

(3) to seek or receive information or counseling from any source;

(4) to be represented by counsel in any legal or quasi-legal proceeding, in accordance with applicable laws and regulations;

(5) to petition the Congress for redress of grievances; or

(6) to take such other administrative action to seek such administrative or judicial relief,

as is authorized by applicable laws and regulations.

(Added Pub. L. 95-610, §2(a), Nov. 8, 1978, 92 Stat. 3085, §975; renumbered §976, Pub. L. 96-107, title VIII, §821(a), Nov. 9, 1979, 93 Stat. 820; amended Pub. L. 98-525, title IV, §414(a)(6), Oct. 19, 1984, 98 Stat. 2519; Pub. L. 99-661, div. A, title XIII, §1343(a)(2), Nov. 14, 1986, 100 Stat. 3992; Pub. L. 100-26, §7(k)(2), Apr. 21, 1987, 101 Stat. 284; Pub. L. 105-85, div. A, title X, §1073(a)(15), Nov. 18, 1997, 111 Stat. 1900.)

AMENDMENTS

1997—Subsec. (f). Pub. L. 105-85 substituted “shall be fined under title 18 or imprisoned not more than 5 years, or both, except that, in the case of an organization (as defined in section 18 of such title), the fine shall not be less than \$25,000.” for “shall, in the case of an individual, be fined not more than \$10,000 or imprisoned not more than five years, or both, and in the case of an organization or association, be fined not less than \$25,000 and not more than \$250,000.”

1987—Subsec. (a)(1) to (3). Pub. L. 100-26 inserted “The term” after each par. designation and struck out uppercase letter of first word after first quotation marks in each paragraph and substituted lowercase letter.

1986—Subsec. (a)(1). Pub. L. 99-661 struck out the second of two commas before “(B)”.

1984—Subsec. (a)(1). Pub. L. 98-525 added cl. (B) and redesignated existing cl. (B) as (C).

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE

Section 1 of Pub. L. 95-610 provided that:

“(a) The Congress makes the following findings:

“(1) Members of the armed forces of the United States must be prepared to fight and, if necessary, to die to protect the welfare, security, and liberty of the United States and of their fellow citizens.

“(2) Discipline and prompt obedience to lawful orders of superior officers are essential and time-honored elements of the American military tradition and have been reinforced from the earliest articles of war by laws and regulations prohibiting conduct detrimental to the military chain of command and lawful military authority.

“(3) The processes of conventional collective bargaining and labor-management negotiation cannot and should not be applied to the relationships between members of the armed forces and their military and civilian superiors.

“(4) Strikes, slowdowns, picketing, and other traditional forms of job action have no place in the armed forces.

“(5) Unionization of the armed forces would be incompatible with the military chain of command, would undermine the role, authority, and position of the commander, and would impair the morale and readiness of the armed forces.

“(6) The circumstances which could constitute a threat to the ability of the armed forces to perform their mission are not comparable to the circumstances which could constitute a threat to the ability of Federal civilian agencies to perform their functions and should be viewed in light of the need for effective performance of duty by each member of the armed forces.

“(b) The purpose of this Act [enacting this section] is to promote the readiness of the armed forces to defend the United States.”

[§ 977. Repealed. Pub. L. 108-375, div. A, title VI, § 651(e)(1), Oct. 28, 2004, 118 Stat. 1972]

Section, added Pub. L. 103-160, div. A, title III, §351(a), Nov. 30, 1993, 107 Stat. 1626; amended Pub. L. 105-85, div. A, title X, §1073(a)(16), Nov. 18, 1997, 111 Stat. 1901; Pub. L. 106-65, div. A, title X, §1066(a)(6),

Oct. 5, 1999, 113 Stat. 770, related to prohibition of assignment of active duty members to operation of commissary stores.

A prior section, added Pub. L. 96-342, title X, §1002(a), Sept. 8, 1980, 94 Stat. 1119; amended Pub. L. 97-22, §11(a)(1), July 10, 1981, 95 Stat. 137, provided that no one who originally enlisted after Sept. 7, 1980, in a regular armed services component and failed to serve at least 24 months of such enlistment would be eligible for Federal benefits otherwise receivable because of active service under such enlistment, except that such exclusion was not applicable to one discharged under section 1173 of chapter 61 of this title or to one later proved to be suffering from a disability resulting from an injury or disease incurred during enlistment, prior to repeal by Pub. L. 97-306, title IV, §408(c)(1), Oct. 14, 1982, 96 Stat. 1446. See section 5303A of Title 38, Veterans' Benefits, and provisions set out as notes under that section.

§ 978. Drug and alcohol abuse and dependency: testing of new entrants

(a)(1) The Secretary concerned shall require that, except as provided under paragraph (2), each person applying for an original enlistment or appointment in the armed forces shall be required, before becoming a member of the armed forces, to—

(A) undergo testing (by practicable, scientifically supported means) for drug and alcohol use; and

(B) be evaluated for drug and alcohol dependency.

(2) The Secretary concerned may provide that, in lieu of undergoing the testing and evaluation described in paragraph (1) before becoming a member of the armed forces, a member of the armed forces under the Secretary's jurisdiction may be administered that testing and evaluation after the member's initial entry on active duty. In any such case, the testing and evaluation shall be carried out within 72 hours of the member's initial entry on active duty.

(3) The Secretary concerned shall require an applicant for appointment as a cadet or midshipman to undergo the testing and evaluation described in paragraph (1) within 72 hours of such appointment. The Secretary concerned shall require a person to whom a commission is offered under section 2106 of this title following completion of the program of advanced training under the Reserve Officers' Training Corps program to undergo such testing and evaluation before such an appointment is executed.

(b) A person who refuses to consent to testing and evaluation required by subsection (a) may not (unless that person subsequently consents to such testing and evaluation)—

(1) be accepted for an original enlistment in the armed forces or given an original appointment as an officer in the armed forces; or

(2) if such person is already a member of the armed forces, be retained in the armed forces.

An original appointment of any such person as an officer shall be terminated.

(c)(1) A person determined, as the result of testing conducted under subsection (a)(1), to be dependent on drugs or alcohol shall be denied entrance into the armed forces.

(2) The enlistment or appointment of a person who is determined, as a result of an evaluation conducted under subsection (a)(2), to be dependent on drugs or alcohol at the time of such enlistment or appointment shall be void.