

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99-661, set out as an Effective Date of 1986 Amendment note under section 1074a of Title 10, Armed Forces.

§ 322. Discharge of enlisted members

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

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- (2) his Federal recognition is withdrawn.

(b) An enlisted member who is discharged from the National Guard is entitled to a discharge certificate similar in form and classification to the corresponding certificate prescribed for members of the Regular Army or the Regular Air Force, as the case may be.

(c) In time of peace, an enlisted member of the National Guard may be discharged before his enlistment expires, under such regulations as may be prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be.

(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 out-

rank 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 last 24 words of 2d sentence); restated June 15, 1933, ch. 87, §13 (1st sentence, and last 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”.