

CHAPTER 321

DEPARTMENT OF MILITARY AFFAIRS

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SUBCHAPTER I

GENERAL PROVISIONS

321.01 Definitions. In this chapter:

(1) “Active duty” means federal active duty or state active duty.

(2) “Department” means the department of military affairs.

(3) “Facility” includes armory, base, installation, and airfield.

(4) “Federal active duty” means full–time duty in the active military service of the United States, as defined in [10 USC 101](#) (d) or [32 USC 502](#), [503](#), or [904](#).

(5) “Law enforcement agency” means an agency of the federal government, a federally recognized Indian tribe or band, or a state or political subdivision of a state, whose purpose is the detection and prevention of crime and enforcement of laws or ordinances.

(6) “Law enforcement officer” means any person employed by a law enforcement agency who is authorized to make arrests for violations of the laws or ordinances that the person is employed to enforce.

(7) “Military property” includes arms, clothing, equipment, publications, supplies, and vehicles owned by or in the custody of the department.

(8) “Military records” means correspondence, medical records, personnel records, and other documents in the custody of the department.

(9) “National guard,” unless the context otherwise requires, means both the Wisconsin army national guard and the Wisconsin air national guard.

(10) “Political subdivision” means a city, village, town, or county.

(11) “State active duty” means full–time state duty in the national guard, or state defense force when activated, under an order of the governor or under an order otherwise issued by authority of law, and includes travel to and from that duty.

(12) “Unit” means a formally organized division or subset of the national guard or state defense force.

(13) “Wisconsin code of military justice” means the Wisconsin Code of Military Justice under ch. [322](#).

History: 2007 a. 200.

321.02 Powers and duties of the governor. (1) The governor may request volunteers from the national guard to provide assistance to federal, state and local law enforcement officers, within or outside the boundaries of this state, in drug interdiction and counter–drug activities under [32 USC 112](#). These activities may include the operation and maintenance of equipment and facilities. The governor may order, with their consent, any national guard members who volunteer under this subsection to duty in federally funded status. The governor may delegate his or her authority under this subsection to the adjutant general. The adjutant general shall follow all laws and regulations of the U.S. department of defense when ordering national guard members to perform drug interdiction and counter–drug activities under this subsection.

(2) A national guard member assisting in drug interdiction and counter–drug activities under this subsection shall obey the instructions of a law enforcement officer from the assisted agency involved in these activities that are given to the national guard member through the military chain of command.

History: 1991 a. 47; 2007 a. 200 ss. 141, 206; Stats. 2007 s. 321.02.

321.03 Powers and duties of the department. (1) The department shall do all of the following:

(a) Administer the national guard.

(b) Provide facilities and support for the national guard.

(c) Administer the Challenge Academy program for disadvantaged youth under [32 USC 509](#). The department shall determine eligibility criteria for the Challenge Academy consistent with federal law. Annually, the department shall do all of the following:

1. Calculate the state share of the average cost per pupil attending the Challenge Academy program and report this information to the department of public instruction.

2. Notwithstanding s. [118.125](#), report to each school district in which a pupil attending the program resides the pupil’s name and the name and address of the pupil’s custodial parent or guardian.

(d) Assist the department of transportation in making the determinations under s. 343.16 (2) (f).

(2) The department may do any of the following:

(a) Enter into an agreement to rent to appropriate organizations or individuals state–owned lands, buildings, and facilities used by, acquired for, or erected for the national guard when not required for use by the national guard. A rental agreement under this paragraph is not effective unless in writing and approved in writing by the adjutant general or his or her designee.

(b) Upon appraisal by the state chief engineer submitted to the governor in writing and with written approval of the governor sell and convey, any state–owned property acquired or erected for state military purposes, if the property is no longer useful to the national guard.

History: 1983 a. 27; 1997 a. 237; 2001 a. 109; 2005 a. 475; 2007 a. 162; 2007 a. 200 ss. 17 to 20m, 64 to 65, 86 to 88; Stats. 2007 s. 321.03.

321.04 Powers and duties of the adjutant general.

(1) The adjutant general or his or her designee shall do all of the following:

(a) Be the military chief of staff to the governor.

(b) Advise the governor on military issues and transmit military correspondence to and from the governor.

(c) Under orders from the governor, draw from the state treasury the money necessary for paying national guard members on state active duty.

(d) Provide necessary medical supplies and services to the national guard during periods of state active duty not otherwise provided under this chapter and ch. 102, to be charged to the appropriation under s. 20.465 (1) (c).

(e) Provide a United States flag or state flag to the next of kin of each deceased member of the national guard who dies during state active duty, to be charged to the appropriation under s. 20.465 (1) (c).

(f) Have control over all military property and military records and carefully preserve, repair, and account for the military property and records.

(g) Audit all military accounts and all accounts or claims payable from the treasury of the state for military purposes before payment.

(h) Keep an account of all moneys received and expended by the department.

(i) Administer, with the approval of the governor, state–federal cooperative funding agreements related to the department.

(j) Prepare the training of national guard members.

(k) Transport or contract for the transportation of national guard members and military property.

(L) Provide or contract for the provision of all necessary military property, lodging, and meals for members and units of the national guard, subject to s. 16.71 (1).

(m) Prepare and issue all necessary accounting books and forms for the national guard. All of the accounting books and forms shall conform as nearly as practicable to those in use in the U.S. army or air force.

(n) Cooperate with the federal government in the operation and maintenance of distance learning centers for the use of current and former members of the national guard and the U.S. armed forces. The adjutant general may charge rent for the use of a center by a nonmilitary or nonfederal person. All moneys received under this paragraph shall be credited to the appropriation account under s. 20.465 (1) (i).

(o) Provide the department of veterans affairs information on all necessary military points of contact and general deployment information for activated and deployed members of the national guard.

(p) Perform the duties under s. 321.51 (2) (e).

(q) Perform the customary duties of his or her office.

(r) Assist national guard members who may have been exposed to depleted uranium in obtaining the best practice health screening test from the federal department of veterans affairs to test for exposure to depleted uranium using a bioassay procedure involving methods sufficiently sensitive to detect depleted uranium at low levels.

(2) The adjutant general or his or her designee may do any of the following:

(a) Make, publish, and have printed policies, regulations, and instructions for the governance of the national guard.

(b) Provide for all books and forms necessary for the proper discharge of the duty of all officers of the national guard.

(c) When any military property is wrongfully held by another person, bring an action in the name of the state to recover possession of the property or the money value of the property.

(d) Upon receipt of a meritorious request for a state flag and within the limits of the appropriation under s. 20.465 (1) (e), furnish a flag without charge to the person who requested it.

(e) Activate members of the national guard to serve on an honors detail of military funeral honors for a person described under s. 45.60 (1).

(f) Perform the duties under 321.51 (2) (b).

History: 2007 a. 200 ss. 41, 62 to 63, 67, 71 to 81m, 96, 100, 207 to 213; Stats. 2007 s. 321.04.

321.05 Permission to forces of other states. (1) Any

military unit of another state that is in fresh pursuit of insurrectionists, terrorists, or enemy forces may continue the pursuit into this state until a military unit or law enforcement agency of this state or the U.S. military has had a reasonable opportunity to take up the pursuit or capture the persons. The military unit of the other state may arrest or capture those persons in this state while in fresh pursuit.

(2) Any person who is captured or arrested by the military unit of another state while in this state shall without unnecessary delay be surrendered to a military unit or law enforcement agency of this state.

History: 2007 a. 200 ss. 25 to 26; Stats. 2007 s. 321.05.

SUBCHAPTER II

MILITARY OFFICERS

321.10 Military staff of governor. (1) The military staff of the governor shall consist of the following:

(a) An adjutant general, with a minimum rank of brigadier general and a maximum rank of lieutenant general.

(b) A deputy adjutant general for army, whose rank may not exceed brigadier general, unless selected for a military position requiring federal recognition as a major general.

(c) A deputy adjutant general for air, whose rank may not exceed brigadier general, unless selected for a military position requiring federal recognition as a major general.

(d) Two assistant adjutants general for army, whose rank may not exceed brigadier general.

(e) A joint chief of staff, whose rank may may not exceed major general.

(f) An assistant adjutant general for air, whose rank may not exceed brigadier general.

(g) A chief surgeon for army, whose rank may not exceed major general.

(h) A chief surgeon for air, whose rank may not exceed major general.

(i) A staff judge advocate for army, whose rank may not exceed major general.

(j) A staff judge advocate for air, whose rank may not exceed major general.

(k) A state chaplain, either army or air, whose rank may not exceed major general.

(L) Such other officers as the governor deems necessary.

(2) In the absence or incapacity of the adjutant general, the senior ranking deputy adjutant general for army or air shall have all the powers and duties of the adjutant general.

(3) In the event a deputy adjutant general for army or for air is appointed to a military position as a major general, the adjutant general shall appoint, for any periods of absence of that deputy adjutant general due to other military duties, an acting deputy adjutant general. The adjutant general may appoint one of the assistant adjutants general as an acting deputy adjutant general.

(4) No person may be appointed to the governor's military staff who has not had previous state or U.S. military experience.

(5) All staff officers appointed under sub. (1), except the adjutant general whose tenure is governed by ss. 15.31 and 17.07 (5), shall hold their positions until terminated by resignation, disability, or death or for cause or unless federal recognition of the officer's commission under 32 USC 323 is refused or withdrawn. The governor shall remove an officer whose federal recognition is refused or withdrawn, effective on the date of the loss of federal recognition.

(6) The terms of the deputy adjutants general for army and air shall be 5 years beginning on the first day of the 7th month of the term of the adjutant general. The deputy adjutants general may be reappointed to successive terms.

(7) The adjutant general shall appoint persons to fill vacancies in positions on the military staff of the governor under sub. (1). Vacancies on the military staff of the governor shall be filled by appointment from officers actively serving in the national guard, except as provided in s. 15.31. Interim vacancies shall be filled by appointment by the adjutant general for the remainder of the unexpired term.

History: 1981 c. 35; 1983 a. 391; 1987 a. 63; 2003 a. 25, 69, 326; 2007 a. 200 ss. 51 to 60, 68, 215; Stats. 2007 s. 321.10.

321.11 United States property and fiscal officer.

(1) The adjutant general shall recommend a candidate for appointment as the U.S. property and fiscal officer for the national guard, subject to the concurrence of the governor, from federally commissioned officers actively serving in the national guard. The candidate shall be nominated by the governor, subject to the concurrence of the U.S. secretary of the army, if the nominee is serving in the army national guard, or the U.S. secretary of the air force, if the nominee is serving in the air national guard.

(2) The officer nominated under sub. (1) shall assume the duties of a U.S. property and fiscal officer under 32 USC 708, when properly ordered to active duty by the appropriate U.S. secretary, on the date specified in the order. The officer shall hold his or her position unless terminated earlier by resignation, disability or for cause and unless federal recognition of the officer's commission under 10 USC 14902, 14903, or 14905 is refused or withdrawn.

(3) Any action by the governor to remove the officer appointed under sub. (2) for cause shall be governed by the federal laws and military regulations governing removal of an officer for cause and shall be subject to review by the chief of the national guard bureau and by the U.S. secretary of the army, if the officer is commissioned by the army national guard, or by the U.S. secretary of the air force, if the officer is commissioned by the air national guard.

History: 1987 a. 63; 2003 a. 69; 2007 a. 200 ss. 89 to 90; Stats. 2007 s. 321.11.

321.12 Chief surgeons. (1) The chief surgeons for the army and air national guard shall, under direction of the adjutant general, have general supervision of the medical units of the national guard and, if organized, the state defense force. The chief surgeons shall make recommendations concerning the procurement of medical supplies and services for state active duty operations,

the procurement and training of medical personnel, and the publication of national guard directives on medical subjects.

(2) The chief surgeons for the army and the air national guard shall provide for any physical examinations and inoculations of officers, enlistees, and applicants for enlistment in the national guard that are prescribed by U.S. department of defense and national guard regulations.

History: 2007 a. 200 ss. 91 to 92, 94; Stats. 2007 s. 321.12.

321.13 Discharge of officers. Any officer may be discharged by the governor pursuant to the Wisconsin code of military justice or upon resignation or disability preventing full discharge of the duties of his or her office.

History: 1991 a. 316; 2007 a. 200 s. 124; Stats. 2007 s. 321.13.

321.14 Authority to administer oaths. Any officer of the national guard or any officer of the U.S. armed forces may administer oaths of enlistment in the national guard.

History: 1979 c. 221; 2007 a. 200 s. 125; Stats. 2007 s. 321.14.

321.15 Resignation of officer. A commissioned officer may resign his or her commission by submitting the written resignation to his or her immediate commanding officer. The commanding officer shall promptly forward the resignation through military channels to the adjutant general. The governor shall, by order, accept or reject the resignation, and, if accepted, fix the effective date of the resignation.

History: 1991 a. 316; 2007 a. 200 s. 126; Stats. 2007 s. 321.15.

SUBCHAPTER III

MILITARY PROPERTY

321.20 Distribution of military property. The governor may receive and distribute military property that the state receives from the U.S. government under federal laws providing for arming and equipping of the national guard and the state defense force.

History: 1987 a. 63 s. 13; 2007 a. 200 s. 32; Stats. 2007 s. 321.20.

Federal law prevents the state from regulating personnel criteria of the national guard. *Hazelton v. Personnel Commission*, 178 Wis. 2d 776, 505 N.W.2d 793 (Ct. App. 1993).

321.21 Military property accountability. (1) In this section, "money" means funds in the custody of the department.

(2) (a) Each commanding officer who is issued military property or money shall account for the property and money, deliver the property and money to any officer entitled to receive them, and pay for all losses or damages to that property or money.

(b) The unit commander has control of the money and military property of any unit of the national guard, whether the money or property is assigned to the unit or its members collectively, or has been issued to it or any of its officers, for its use, by the state or the United States. The unit commander may sue for and recover possession of the money or military property, whenever it is wrongfully withheld from the control of the unit.

(3) (a) All state-owned military property or money issued to any officer or armory facility manager shall be audited annually as a part of the annual inspection of federal property accounts. When damage, other than reasonable wear and tear, or loss of state-owned property is discovered, the adjutant general shall appoint a surveying officer to determine the cause and fix blame. Upon review, the adjutant general may hold responsible individuals financially liable. If it is determined that the property or money was damaged, destroyed or lost without fault or neglect on the part of those responsible, all concerned shall be relieved of liability.

(b) Whenever any state-owned military property becomes unsuitable, unserviceable, or no longer required for military purposes, it shall be disposed of as surplus property subject to s. 16.72 (4) and (5).

(4) (a) When an officer who is responsible for military property or money is separated or reassigned, all military property or money in the officer's possession or for which the officer is responsible shall become the responsibility of the person the adjutant general designates to receive the property or money. No separation or reassignment shall be effective until all accounts have been settled.

(b) If an officer having control of military property or money dies, the next in command shall immediately take charge of the property or money and deliver the property or money to the person the adjutant general appointed to control the property or money.

(5) (a) No person may retain at any time any military property or money, unless the property or money has been lawfully issued to the person and the proper authority permits the person to retain the property or money in the discharge of a public duty. No person may use military property or money for the person's unauthorized private use. Any person violating this paragraph shall forfeit not less than \$100 nor more than \$1,000.

(b) A person who possesses military property or money, after the adjutant general makes lawful demand for the return of the property or money shall return the property or money promptly. No person may knowingly resist any officer who is lawfully taking possession of the military property or money. Any person violating this paragraph shall forfeit not less than \$100 nor more than \$1,000.

History: 2003 a. 69; 2007 a. 200 ss. 47, 49, 121 to 122, 128, 130, 217; Stats. 2007 s. 321.21.

321.22 Camp Williams. (1) The state facility near Camp Douglas, Juneau County, shall be known as "Camp Williams". The officer in charge of Camp Williams may arrest a person for a violation that occurs at Camp Williams of a state law, local ordinance, or provision of the Wisconsin code of military justice.

(2) The adjutant general may grant to the federal government the right to use any area of Camp Williams upon conditions that the adjutant general deems advisable.

(3) In memory of 1st lieutenant Jerome A. Volk, the first Wisconsin air national guard pilot killed in combat during the Korean conflict, so much of Camp Williams as is under lease to the federal government for use of the air national guard shall be known as "Volk Field" during the time the property remains under lease to the U.S. government.

History: 1979 c. 221 s. 2202 (37); 1991 a. 316; 2007 a. 200 s. 33; Stats. 2007 s. 321.22.

321.23 Facilities and lands. (1) (a) A political subdivision or federally recognized Indian tribe or band in which one or more units of the national guard is located may build or purchase a suitable armory for the purpose of drill and for the safekeeping of military property, and for public meetings and conventions, when that use will not interfere with the use of the building by the national guard. The adjutant general and the building commission may review and approve or reject plans and specifications for the armories. The adjutant general and the department of administration shall file with the political subdivision or the federally recognized Indian tribe or band a certificate of inspection and approval before the construction of an armory.

(b) A political subdivision or federally recognized Indian tribe or band in which any unit of the national guard is located may purchase land and build armories in the same manner as the political subdivision or tribe or band is now authorized by law to build other buildings. When unable to agree upon the price of land with its owner, the political subdivision or federally recognized Indian tribe or band may appropriate land for the purpose of building armories in the same manner as the political subdivision or tribe or band is now authorized by law to appropriate real estate for other buildings. If a political subdivision or federally recognized Indian tribe or band aided in the building of an armory and the company or companies of the national guard for which the armory was built is disbanded, the armory shall become the property of

the political subdivision or tribe or band that aided in the building of the armory.

(c) The armory, when built or purchased, shall be under the control and charge of the governor, the adjutant general, and the commanding officer of the unit of the national guard for which it has been provided. The commanding officer shall deposit in the armory all military property received from the governor and the adjutant general. The adjutant general may issue regulations, instructions, or policies to be followed by all officers and persons having charge of the armories or occupying any part of the armories.

(d) Whenever any political subdivision or federally recognized Indian tribe or band constructs a building as a memorial to the members of the U.S. armed forces or national guard who served in any war or armed conflict of the United States and makes provision in the memorial building for the accommodation of one or more companies of the national guard having no regularly established armory, the adjutant general shall, whenever practicable, rent the armory provided in the memorial building for the use of those companies of the national guard.

(2) The department may, when contributions are made available by the federal government under federal law, expand, rehabilitate, equip, or convert facilities owned by the state and acquire, construct, expand, rehabilitate, equip, or convert additional facilities. The department may accept the federal contributions in the manner prescribed by federal law or regulation, and may accept the lawful terms and conditions of a federal contribution. The department has the duties and powers necessary, to acquire contributions under federal law and to undertake and complete a project described in this subsection in conformity with the applicable federal law and this subsection.

History: 2007 a. 200 s. 134, 137, 218; Stats. 2007 s. 321.23.

321.24 Encroachment on military areas and interference with military personnel. (1) The officer in charge of any area used or to be used for military purposes may mark the area to warn against encroachment by unauthorized persons, but may not unnecessarily obstruct travel on any public highway. No person may encroach upon or enter the area without the consent of the officer.

(2) No person may interfere with any member of the national guard or state defense force while the member is in the performance of military duty.

(3) Any person who violates sub. (1) or (2) shall forfeit not less than \$50 nor more than \$200. The officer in charge or a designee may arrest and detain the person for such reasonable time as may be necessary to deliver the person to civil authorities.

History: 1975 c. 94 s. 91 (1); 1975 c. 189, 199, 422; 1979 c. 221; 2007 a. 200 s. 50; Stats. 2007 s. 321.24.

SUBCHAPTER IV

NATIONAL GUARD AND STATE DEFENSE FORCE

321.30 Composition of national guard. (1) The organized militia of this state shall be known as the "Wisconsin national guard" and shall consist of members commissioned or enlisted in accordance with federal law or regulations governing the national guard.

(2) The Wisconsin national guard shall consist of the army national guard and the air national guard.

History: 1975 c. 189; 1983 a. 27; 2003 a. 69; 2007 a. 200 s. 16; Stats. 2007 s. 321.30.

321.31 Uniform of national guard. The uniform of the national guard shall be as prescribed by regulations for the corresponding branch of the U.S. armed forces.

History: 2007 a. 200 s. 102; Stats. 2007 s. 321.31.

321.32 Term of enlistment and discharge. Every person who enlists or receives a commission in the national guard shall serve for the term prescribed and satisfy the physical, educational and training requirements prescribed by the U.S. national guard bureau. Enlistees in the national guard shall be discharged as provided in the laws and regulations of the U.S. national guard bureau.

History: 2007 a. 200 s. 34; Stats. 2007 s. 321.32.

321.33 Commissions and rank. The governor shall appoint and issue commissions to officers. Every commission shall be signed by the secretary of state and the adjutant general. A commission shall continue unless terminated earlier by resignation, disability, or for cause or unless federal recognition of the officer's commission under 32 USC 323 is refused or withdrawn. Each commissioned officer shall take the oath of office prescribed by article IV, section 28, of the constitution and file it with the department. All commissioned officers shall take rank according to the date assigned them by their commissions, and when 2 of the same grade rank from the same date, their rank shall be determined by length of creditable service in the national guard, and if of equal creditable service then by lot.

History: 1983 a. 27, 192; 2007 a. 200 s. 104; Stats. 2007 s. 321.33.

321.34 Examinations for promotion or appointments. The governor or adjutant general may order any person nominated or recommended for promotion or appointment in the national guard or state defense force to be examined by any competent officer or board of officers, designated in orders for that purpose, as to that person's qualifications for the office to which that person is to be appointed or promoted. The governor or adjutant general may take action on the report of the examining officer or board of officers as he or she considers to be for the best interests of the national guard or state defense force. The governor or adjutant general may also require the person to take the physical examination provided for admission to the U.S. army or air force.

History: 1983 a. 27; 1991 a. 316; 2007 a. 200 s. 105; Stats. 2007 s. 321.34.

321.35 Pay. (1) Every officer and enlisted person on state active duty in the national guard shall receive the base pay and allowances of an officer or enlisted person of equal rank in the corresponding branch of the U.S. armed forces.

(2) The governor may fix the pay of any member of the military staff of the governor, or other members of the national guard or state defense force for any special state active duty.

(3) The governor may order, with the member's consent, to state active duty a member of his or her military staff who is a state employee. The assigned staff member shall receive the pay, but not the allowances, of an officer of equal grade in the U.S. armed forces.

History: 1973 c. 279; 1975 c. 94 s. 91 (1); 1975 c. 382, 422; 1981 c. 35, 129; 1991 a. 316; 2003 a. 69; 2007 a. 200 s. 106; Stats. 2007 s. 321.35.

321.36 Rules of discipline. The applicable rules of discipline and regulations of the U.S. armed forces shall constitute the rules of discipline and the regulations of the national guard. The rules and uniform code of military justice established by Congress and the U.S. department of defense for the armed forces shall be adopted so far as they are applicable and consistent with the Wisconsin code of military justice for the government of the national guard. The system of instruction and the drill regulations prescribed for the different arms and corps of the armed forces of the U.S. shall be followed in the military instruction and practice of the national guard, and the use of any other system is forbidden.

History: 2007 a. 200 s. 99; Stats. 2007 s. 321.36.

321.37 No discrimination. No person, otherwise qualified, may be denied membership in the national guard or state defense force because of sex, color, race, creed, or sexual orientation and no member of the national guard or state defense force may be segregated within the national guard or state defense force on the basis of sex, color, race, creed, or sexual orientation. Nothing in

this section prohibits separate facilities for persons of different sexes with regard to dormitory accommodations, toilets, showers, saunas, and dressing rooms.

History: 1975 c. 94; 1981 c. 112; 2003 a. 69; 2007 a. 200 s. 97; Stats. 2007 s. 321.37.

321.38 Decorations and awards. The adjutant general may prescribe decorations and awards for the national guard and the state defense force. The adjutant general shall adopt policies establishing the form and issuance of those decorations and awards.

History: 1975 c. 189; 1981 c. 207; 1983 a. 27; 1987 a. 63 s. 13; 2003 a. 69; 2007 a. 200 s. 36; Stats. 2007 s. 321.38.

321.39 Call to state active duty. (1) (a) The governor may order into state active duty members of the national guard under the following circumstances:

1. In case of war, insurrection, rebellion, riot, invasion, terrorism, or resistance to the execution of the laws of this state or of the United States.

2. In the event of public disaster resulting from flood, fire, tornado, or other natural disaster.

3. If the governor declares a state of emergency relating to public health under s. 166.03 (1) (b).

4. In order to assess damage or potential damage and to recommend responsive action as a result of an event listed in subds. 1. to 3.

5. Upon application of any marshal of the United States, the president of any village, the mayor of any city, the chairperson of any town board, or any sheriff in this state.

(b) If the governor is absent, or cannot be immediately communicated with, any of the persons listed in par. (a) 5. may, if the occasion is urgent, request assistance from the commander of any national guard unit. The commander shall obtain approval of the adjutant general before ordering the unit to provide assistance. If it is not feasible to obtain approval of the adjutant general, and the danger is great and imminent, the commander may order the unit to provide assistance without adjutant general approval. The order shall be delivered to every subordinate officer, who shall immediately communicate the substance of the order to the members of the unit. If a member cannot be found, the substance of the order, in writing, shall be left at the member's place of residence with some person of suitable age and discretion, to whom the order's contents shall be explained.

(2) (a) Any commissioned officer or enlisted member of the national guard who fails to carry out orders or fails to appear at the time or place ordered as provided in sub. (1) shall be punished under the Wisconsin code of military justice.

(b) Any person who assists an officer or member of the national guard in violating par. (a) shall be subject to a forfeiture of not less than \$200 nor more than \$1,000.

History: 1979 c. 221; 1991 a. 316; 1993 a. 246; 1999 a. 62, 136; 2005 a. 22; 2007 a. 200 ss. 38 to 40, 220 to 221; Stats. 2007 s. 321.39.

321.40 Educational benefits. (1) DEFINITIONS. In this section:

(a) "Full-time study" means a credit load of 12 or more academic credits in an academic term.

(b) "Guard member" means any person who is a member of the national guard.

(c) "Qualifying school" means any of the following:

1. The extension division and any campus of the University of Wisconsin System.

2. A public institution of higher education under the Minnesota-Wisconsin student reciprocity agreement under s. 39.47.

3. A public institution of higher education under an interstate agreement under s. 39.42.

4. Except as provided in subds. 2. and 3., an accredited institution of higher education located in this state, as defined in 20 USC 1002.

5. Any technical college established under ch. 38.

(d) “Tuition grant” means any tuition cost reimbursement payment made by the department under sub. (4).

(2) **ELIGIBLE GUARD MEMBER.** Eligibility for a tuition grant under this section is limited to a guard member who is not:

- (a) An officer.
- (b) An individual with a baccalaureate degree or its equivalent.
- (c) Failing to meet the national guard duty eligibility criteria established by the department or absent without leave for more than 9 unit training assemblies.

(d) Delinquent in child support or maintenance payments and who does not owe past support, medical expenses or birth expenses, as established by the appearance of the guard member’s name on the statewide support lien docket under s. 49.854 (2) (b), unless the guard member provides to the department a payment agreement that has been approved by the county child support agency under s. 59.53 (5) and that is consistent with rules promulgated under s. 49.858 (2) (a).

(e) Failing to achieve a minimum grade point average of 2.0 for the semester for which a tuition grant is applied for.

(f) Failing to be an actively drilling guard member upon the date of the satisfactory completion of a full–time or part–time course in a qualifying school.

(3) **TUITION GRANTS.** (a) Any eligible guard member upon satisfactory completion of a full–time or part–time course in a qualifying school may apply for a tuition grant equal to 100 percent of the actual tuition charged by the school or 100 percent of the maximum resident undergraduate tuition charged by the University of Wisconsin–Madison for a comparable number of credits, whichever amount is less.

(b) Application for tuition grants shall:

1. Be submitted to the department for approval of payment no later than 60 days after the completion date of the course;
2. Contain such information and be in such form as the department requires to establish that the applicant qualifies for the grant; and
3. Contain the signatures of both the guard member claiming the grant and a representative of the school, certifying that the member has satisfactorily completed the course and has achieved the minimum grade point average or grade, as required under sub. (2) (e).

(c) Except as provided under par. (d), upon determination that the applicant is eligible to receive the payment, the department shall make payment of the tuition grant to the applicant in the amount determined under par. (a).

(d) Tuition grants under this section shall be paid out of the appropriation under s. 20.465 (2) (a).

(4) **REPAYMENT OF GRANTS.** The department shall require a national guard member who has received a tuition grant under this section to repay the amount of the tuition grant to the department if the national guard member is separated from the national guard for misconduct, as defined in the rules and regulations of the national guard, including being absent without leave for more than 9 unit training assemblies. The department may elect to collect the amount owed under this subsection through the tax intercept program under s. 71.93.

(5) **LIMITATIONS.** (a) No guard member is eligible for a tuition grant under this section for more than 120 credits of part–time study or 8 full semesters of full–time study or the equivalent thereof.

(b) If the U.S. congress establishes an active draft after July 1, 1977, no new tuition grants may be authorized under this section. The department shall determine if an active draft has been established. Any termination of the tuition grant program under this paragraph shall allow persons receiving grants prior to the establishment of an active draft to receive full benefits subject to sub. (4) (d) [sub. (3) (d)] and par. (a).

NOTE: The correct cross–reference is shown in brackets. Corrective legislation is pending.

(c) No guard member may receive a tuition grant under sub. (4) [sub. (3)] for any semester in which he or she received a payment under s. 45.20 (2).

NOTE: The correct cross–reference is shown in brackets. Corrective legislation is pending.

(d) No guard member may receive a tuition grant under this section unless he or she is a member in good standing in the national guard at the time of completion of the course.

NOTE: Par. (d) was created as sub. (6) (d) by 2007 Wis. Act 200 and renumbered by the legislative reference bureau under s. 13.92 (1) (bm) 2.

History: 1977 c. 29, 418; 1981 c. 20; 1985 a. 29; 1987 a. 27, 403; 1989 a. 31; 1991 a. 39, 269; 1993 a. 399; 1995 a. 19; 1995 a. 27, ss. 1219t to 1223, 9127 (1); 1995 a. 404; 1997 a. 27, 237; 1999 a. 9; 2001 a. 16; 2003 a. 33, 69, 83; 2005 a. 22, 25; 2007 a. 20; 2007 a. 200 ss. 107, 109 to 120, 222 to 223; Stats. 2007 s. 321.40; s. 13.92 (1) (bm) 2.

321.41 Training; special schools; pay and allowances.

The governor or adjutant general may order the national guard or state defense force to assemble for training at any military establishment and fix the dates and places of that training. The governor or adjutant general may order members of the national guard or state defense force, at their option, to attend special schools for military training that are authorized by the state or federal government. The governor or adjutant general shall determine the amount that the members of the national guard or state defense force shall receive as pay and allowances for the training.

History: 1991 a. 316; 2007 a. 200 s. 37; Stats. 2007 s. 321.41.

321.42 Defense of members of guard; payment of judgments. (1)

(a) If any member of the national guard or of the state defense force or any resident of this state who is a member of the national guard of another state is prosecuted by any civil or criminal action for any act performed within the scope of his or her employment as a member, the governor, upon request of the adjutant general, shall appoint counsel to defend the member. The adjutant general shall make the request to appoint defense counsel if the act performed by the member was in the line of duty. The governor may appoint the attorney general to defend the member.

(b) The costs and expenses of the defense under par. (a) shall be audited by the department of administration and charged to the appropriation under s. 20.455 (1) (b). If the jury or court finds that the member against whom the action is brought acted within the scope of his or her employment as a member, the judgment as to damages entered against the member shall be paid by the state.

(2) Any civil action or proceeding brought against a member under sub. (1) (a) is subject to ss. 893.82 and 895.46.

History: 1977 c. 65; 1979 c. 34 s. 2102 (37) (a); 1979 c. 221; 1981 c. 20 s. 2202 (17) (a); 1985 a. 332 s. 253; 1987 a. 63 s. 13; 2003 a. 69; 2007 a. 200 s. 43 to 45; Stats. 2007 s. 321.42.

A national guard member on active duty, but operating his own car for his own purposes while on a pass, was not acting in the performance of a military duty. *Wuorinen v. State Farm Mutual Automobile Insurance Co.* 56 Wis. 2d 44, 201 N.W.2d 521 (1972).

This section controls over s. 102.03 (4), and the state must pay a judgment based on negligence occurring in the good faith performance of duty. *Mazurek v. Skaar*, 60 Wis. 2d 420, 210 N.W.2d 691 (1973).

321.43 Exemption from civil authority.

During the time the national guard or state defense force is performing military duty under orders issued by the governor or adjutant general, all of its members, while going to, remaining at, or returning from a place of duty are exempt from arrest or service of any process issued by a civilian court. In any civil or criminal prosecution against any member arising out of the member’s performing military duty, it shall be a defense that the member was acting in good faith or under a lawful military order. The order shall be considered lawful unless shown to be unlawful.

History: 1991 a. 316; 2007 a. 200 s. 42; Stats. 2007 s. 321.43.

Since this state has never granted a national guard member immunity from suit by another member for injuries negligently caused in the performance of military duty, the 1969 amendment of this section did not change the law. *Mazurek v. Skaar*, 60 Wis. 2d 420, 210 N.W.2d 691 (1973).

321.44 Exemptions from certain county duties. Every member of the national guard or state defense force is exempt

from service on any body of county residents summoned by the sheriff to assist in preserving the peace.

History: 1977 c. 318; 1979 c. 110; 2007 a. 200 s. 35; Stats. 2007 s. 321.44.

321.51 State defense force authorized. (1) AUTHORITY AND NAME. The adjutant general may establish a plan for organizing a military force to be known as the “state defense force.” The governor, or adjutant general if designated by the governor, may organize the state defense force, which may include an aviation unit, if all or part of the national guard is called into federal active duty. The state defense force shall be a uniformed force distinct from the national guard, composed of commissioned or assigned officers and enlisted personnel who volunteer for service. A person who is on active duty in the U.S. armed forces, including the active reserve components, may not serve in the state defense force. A person in the retired or inactive reserve may serve in the state defense force.

(2) ORGANIZATION; RULES AND REGULATIONS. (a) The governor or adjutant general, if designated by the governor, may prescribe regulations, instructions, and policies consistent with this section governing the enlistment, organization, administration, equipment, uniforms, maintenance, training, and discipline of the state defense force. The regulations, instructions, and policies, to the extent the governor considers necessary, shall conform to existing law governing the national guard. The regulations, instructions, and policies shall prohibit a member of the state defense force from accepting any gifts, donations, gratuities, or other things of value given to the member because he or she is a member of the state defense force other than wages and benefits paid by the state.

(b) If the state defense force is organized under sub. (1), the adjutant general may perform the duties under s. 321.04 (2) (a), (b), (c) and (d) for the state defense force.

(c) Officers and enlistees, while on state active duty, in the state defense force shall receive the base pay and allowances of the identical grade in the U.S. army.

(d) The adjutant general may organize a recruitment and training unit of not more than 12 persons at each state armory. The unit shall establish recruitment lists of persons interested in becoming members of the state defense force, recruit full units for the state defense force, and train the persons recruited.

(e) If the state defense force is organized under sub. (1), the adjutant general shall perform the duties under s. 321.04 (1) (a) to (n) and (q) for the state defense force.

(3) REQUISITIONS; ARMORIES; OTHER BUILDINGS. The governor or adjutant general, if designated by the governor, may requisition military property from the federal government for the use of the state defense force. The governor or adjutant general, if designated by the governor, may make available to the state defense force the facilities of state armories and military property and other state premises and property. The department may rent or lease buildings or parts of buildings and grounds for armory purposes or continue in possession of those premises leased by the department for the use of the national guard, paying rent from the appropriation under s. 20.465 (1) (a). All leases made under this subsection terminate upon dissolution of the state defense force regardless of the term provided in the lease, unless the premises are needed for national guard purposes. The lease for the premises needed for the national guard may be assigned by the department to the national guard organization that intends to occupy the premises.

(4) USE OUTSIDE THIS STATE. The state defense force may not serve outside the boundaries of this state unless one of the following applies:

(a) Upon the request of the governor of another state, the governor of this state orders all or part of the state defense force to assist a military unit or law enforcement agency of the other state. The governor may recall the state defense force from the other state at any time.

(b) Upon order of the officer in command, the state defense force continues in fresh pursuit of insurrectionists, terrorists, or enemy forces into another state until they are apprehended or captured or until a military unit or law enforcement agency of the other state or the forces of the United States have had a reasonable opportunity to take up the pursuit or to capture those persons. Any pursuit under this subsection may only take place if the other state gives authority for the pursuit. Any person who is captured in the other state by the state defense force shall without unnecessary delay be surrendered to a military unit or law enforcement agency of the state in which the person is captured or to the United States. The surrender of the person captured shall not constitute a waiver by this state of the right to extradite or prosecute the person for any crime committed in this state.

(5) FEDERAL ACTIVE DUTY. No unit of the state defense force may be drafted, as such, into the U.S. military. No person shall by reason of membership in the state defense force be exempted from federal active duty.

(6) DISQUALIFICATIONS. No person who has been expelled or dishonorably discharged from any military or naval organization of this state, of another state, or of the United States may be a member of the state defense force.

(7) OATH. The oath to be taken by officers or enlistees in the state defense force shall be substantially in the form prescribed for officers of the national guard. The oath shall be filed in the same manner as in the national guard.

(8) ENLISTEES. No person may be enlisted in the state defense force for more than one year, but enlistment may be renewed.

(9) RETENTION OF ITEMS OF UNIFORM. Officers and enlistees of the state defense force who have served honorably may, upon application to the unit commander, be permitted to retain items of their uniform. If retained, the uniform may be worn only on occasions essentially of a military character at which the uniform is more appropriate than civilian clothing, such as memorial services, military weddings, military funerals, military balls, military parades, military reunions, and meetings or functions of associations formed for military purposes, the membership of which is composed largely or entirely of honorably discharged members of the U.S. military, national guard, and state defense force.

(10) LABOR DISPUTES. The state defense force may not be used to interfere with the orderly process of a labor dispute.

History: 1975 c. 94 ss. 6, 91 (1); 1983 a. 27; 1987 a. 63 ss. 3, 13; 1991 a. 316; 2003 a. 69; 2007 a. 200 ss. 21 to 23, 29 to 30, 224 to 225; Stats. 2007 s. 321.51.

SUBCHAPTER V

RIGHTS OF SERVICE MEMBERS

321.60 Extension of licenses for service members.

(1) In this section:

(a) “License” means any of the following that is issued to an individual and applies to that individual:

1. A license issued under s. 13.63 or a registration issued under s. 13.64.
2. An approval specified in s. 29.024 (2g).
3. A license issued under s. 48.66 and 48.69.
4. A license, certificate of approval, provisional license, conditional license, certification, certification card, registration, permit, training permit, or approval specified in s. 49.45 (2) (a) 11., 51.42 (7) (b) 11., 51.421 (3) (a), 252.23 (2), 252.24 (2), 254.176, 254.178 (2) (a), 254.20 (2), (3), or (4), 254.64 (1) (a) or (b), 254.71 (2), 255.08 (2) (a), 256.15 (5) (a) or (b), (6g) (a), (7), or (8) (a) or (f), or 343.305 (6) (a) or a permit for the operation of a campground specified in s. 254.47 (1).
5. A business tax registration certificate issued under s. 73.03 (50).
6. A license, registration, registration certificate, or certification specified in s. 93.135 (1).

7. A license, as defined in s. 101.02 (20) (a).
8. A license issued under s. 102.17 (1) (c), 104.07, or 105.05.
10. A certificate issued under s. 103.275, 103.91, or 103.92.
11. A license or permit granted by the department of public instruction.
12. A license or certificate of registration issued by the department of financial institutions, or a division of it, under ss. 138.09, 138.12, 217.06, 218.0101 to 218.0163, 218.02, 218.04, 218.05, 224.72, or 224.93 or subch. IV of ch. 551.
13. A permit issued under s. 170.12.
14. A certification under s. 165.85.
15. A license, permit, or registration issued under ss. 218.0101 to 218.0163, 218.11, 218.12, 218.22, 218.32, 218.41, 218.51, 341.51, 343.305 (6), 343.61, or 343.62.
16. A license, registration, or certification specified in s. 299.08 (1) (a).
18. A license, permit, certificate, or registration that is granted under chs. 440 to 480.
19. A license issued under ch. 562 or s. 563.24.
20. A license issued under s. 628.04, 632.68 (2) or (4), or 633.14 or a temporary license issued under s. 628.09.
21. A license to practice law in this state.
22. A certificate granted by the technical college system board.

(b) “Licensing agency” means a board, examining board, affiliated credentialing board, office, commissioner, department, or division within a department that grants or issues a license.

(c) “Service member” means a member of a reserve unit of the U.S. armed forces, a member of the state defense force, or a member of a national guard unit of any state who is a resident of Wisconsin.

(2) Any license that a service member holds, the expiration date of which is after September 11, 2001, except a license to practice law, does not expire on the expiration date of the license if, on the expiration date, the service member is on active duty. If the supreme court agrees, a license to practice law that a service member holds, the expiration date of which is after September 11, 2001, does not expire on the expiration date of the license if, on the expiration date, the service member is on active duty. A license extended under this subsection expires 90 days after the service member is discharged from active duty.

(3) The licensing agency or the supreme court shall extend or renew a license extended under sub. (2) until the next date that the license expires or for the period that such license is normally issued, at no cost to the service member, if all of the following conditions are met:

(a) The service member requests an extension or renewal of the license within 90 days after the service member is discharged from active duty.

(b) The service member provides the licensing agency or supreme court with a copy of a federal or state document that specifies when the service member was called into active duty and when the service member was discharged from active duty.

(c) The service member meets all the requirements necessary for the extension or renewal of the license except that the service member need not meet the requirements that relate to continuing education or training.

(d) In the case of a license to practice law, the supreme court agrees to granting the extension or renewal.

(4) If a service member’s license is renewed or extended under sub. (3) no more than 180 days before the next date that the license would normally expire, the licensing agency, or supreme court if it agrees, shall allow the service member to renew or extend the license without complying with any continuing education or training requirements if complying with such requirement in the period before the license expires would cause the service member undue hardship. If a service member’s license is renewed or extended

under this subsection, the licensing agency or supreme court may require the service member to comply with any continuing education or training requirements within a reasonable time after receipt of the license.

(5) The department shall assist any service member who needs assistance to renew or extend a license under this section.

(6) The department shall prepare and distribute to appropriate agencies and persons, at no cost to those agencies or persons, a brochure explaining the provisions of this section.

History: 2001 a. 22; 2003 a. 69; 2005 a. 25; 2007 a. 130, 196; 2007 a. 200 s. 142; Stats. 2007 s. 321.60.

321.61 Service members civil relief for property taxes and mobile telephone contracts; federal active duty.

(1) (a) In this subsection, unless the context indicates otherwise:

1. “Interest and penalties” means interest and penalties accruing on taxes during the period of federal active duty and 6 months thereafter. In case several owners jointly own property, other than property held jointly or as marital property with the spouse of the person in federal active duty, interest and penalties means the proportionate share of the total interest and penalties commensurate with the equity in the property of the person in federal active duty.

2. “Person in federal active duty” means any man or woman who is serving in federal active duty for a period of 90 days or more.

3. “Property” means any real estate or personal property belonging to a person in federal active duty that was acquired prior to the commencement of the federal active duty or that was acquired by descent.

4. “Taxes” means any property taxes or special assessments or tax certificates evidencing those taxes and assessments not belonging to private buyers.

(b) To supplement and complement the provisions of 50 App. USC 501, and to afford and obtain greater peace and security for persons in federal active duty, the enforcement of certain tax obligations or liabilities that may prejudice the property rights of persons in federal active duty may be temporarily suspended as provided in this subsection.

(c) Any person in federal active duty or within 6 months after terminating that duty, or the person’s agent or attorney during that period, may petition the circuit court of any county in which the person owns property for relief under this subsection. Upon filing of the petition the court shall make an order fixing the time of hearing and requiring the giving of notice of the hearing. If after the hearing the court finds that the person is, or within 6 months next preceding the filing of the petition was, in federal active duty and owns property within the county on which taxes have fallen or will fall due, and that the person’s ability to pay the taxes has been materially adversely affected by reason of being in federal active duty, the court shall enter an order determining that the person is entitled to relief under this subsection. The court may suspend proceedings for the collection of taxes on the property for a period not exceeding 6 months after termination of the federal active duty of the person, or for the time reasonably necessary to complete the agreement provided in par. (g). Thereafter, the property shall not be included in tax certificates issued to enforce collection of taxes on property, and all proceedings for that purpose shall be suspended, except under terms that the court may order.

(d) Whenever any tax or assessment on real property, including all special assessments, is not paid when due, any interest or penalty under s. 74.47 and the maximum limitation of 6 percent per year under 50 App. USC 501 shall be waived for the purpose and under the conditions specified in this subsection.

(e) The penalties and interest waived under this subsection are those for nonpayment of all taxes or assessments, general or special, falling due during the period of federal active duty of any person against either real or personal property of which the person is the bona fide owner or in which the person has an interest.

(f) The person owning or having an interest in any property in respect to which the order under par. (c) is made, or the person’s

agent or attorney, may file a certified copy of the order of suspension with the county treasurer or with the city treasurer of cities authorized by law to sell lands for the nonpayment of taxes as to the taxes and assessments. The person shall file with the order an affidavit in triplicate, sworn to by the person or agent or attorney, setting forth the name of the owner, the legal description of the property, the type of property, when acquired, volume and page number where the deed was recorded if acquired by deed, and the name of the estate if acquired by descent, amount of delinquent taxes if any, and the names of the holders of any outstanding mortgage, lien, or other encumbrance. Upon receipt of the filing, the county treasurer or city treasurer shall record the order in the office of the register of deeds of the county and file a copy in the office of the treasurer, who shall make proper notation that a person in federal active duty is the holder of the legal title and has made application for special relief. The county treasurer or city treasurer shall immediately forward an additional copy of the order and affidavit to the office of the clerk of the town, city, or village where the property is located, or if it is located in a city, authorized to sell lands for nonpayment of its taxes, to the commissioner of assessments, who shall make an appropriate notation in the records.

(g) Any person seeking relief under this subsection, within 6 months after termination of federal active duty, or the person's agent or attorney, or in case of death of the person, the personal representative, surviving spouse, or heir, may apply to the county treasurer of the county, or the city treasurer of a city authorized by law to sell lands for the nonpayment of taxes, where the property is located, for an agreement for scheduled installment payments, covering the taxes accrued during the person's period of federal active duty, provided that the taxes will be paid over a period of time equal to a period no longer than twice the length of federal active duty of the person, in equal periodic installments of not less than \$10, and subject to any other terms as may be just and reasonable.

(h) In the event the applicant defaults in the performance of any of the provisions of the agreement, the treasurer shall notify the applicant of the default and the amount and date due, by written notice either served personally or by registered mail, return receipt requested, to the address set forth in the application. If the defaulted payment is not fully made within 10 days after service of the notice, then the treasurer, without further notice, may declare that the entire amount of the tax subject to the scheduled installments is immediately due and payable and that the agreement is terminated. The county treasurer shall notify the register of deeds and the town, city, or village treasurer of the termination, or if the city treasurer of cities authorized by law to sell lands for the nonpayment of taxes, the latter shall notify the register of deeds, the county treasurer, and the local officers and shall make appropriate notations of the termination on their records. The county treasurer, or city treasurer as to taxes of cities authorized by law to sell land for the nonpayment of taxes, may without further order of the court enforce the collection of such tax or assessment and sell such tax certificates together with the penalties and interest as may have accrued on the property from the date of default of the scheduled installment payment.

(2) (a) In this subsection:

1. "Commercial mobile service" has the meaning given in [47 USC 332](#) (d).

2. "Contract" means an agreement between a person in federal active duty and a mobile telephone service provider that requires the person in federal active duty to pay the mobile telephone service provider a monthly fee in exchange for the use of a mobile telephone.

3. "Mobile telephone service provider" means a person that is authorized by the federal communications commission to provide commercial mobile service.

(b) This subsection applies to a contract to which all of the following apply:

1. The contract was executed by or on behalf of a person in federal active duty who entered federal active duty after the contract was executed.

2. The contract covers a period in excess of one month.

(c) A person in federal active duty may suspend or terminate a contract to which this subsection applies without any penalties or additional fees at any time after the person in federal active duty has been issued orders into federal active duty by giving written notice to the mobile telephone service provider. The person in federal active duty shall include a copy of the orders into federal active duty as part of the notice. The notice may be given by 1st class mail to the address provided in the agreement with the mobile telephone service provider or provided in the mobile telephone service provider's billing statement or by delivering the notice to the mobile telephone service provider's branch office.

(d) Suspension or termination shall be effective 30 days after the first date on which the next payment is due and payable after the date on which the notice is mailed.

(e) Any amount paid in advance under the contract for a period after the effective date of the suspension or termination of the contract shall be refunded to the lessee by the lessor within 30 days after the effective date of the suspension or termination of the contract.

(f) Upon application of a mobile telephone service provider after receiving notice under this subsection and before the contract suspension or termination date provided for under par. (d), a court may make such modifications to or restrictions on the relief granted in this subsection as the court determines are appropriate under the circumstances.

(g) If a mobile telephone service provider assesses a person in federal active duty any penalty or fee after the person has suspended or terminated the contract under par. (c) or fails to make any refund required under par. (e), the person in federal active duty may bring an action for damages. If the person in federal active duty prevails in an action brought under this paragraph, the court shall order the mobile telephone service provider to pay the service member exemplary damages of \$2,000.

History: 2005 a. 22, 473; 2007 a. 200 ss. 143 to 147; Stats. 2007 s. 321.61.

321.62 Service members civil relief; state active duty.

(1) DEFINITIONS. In this section:

(a) "Court" means a Wisconsin circuit court, a Wisconsin court of appeals, or the Wisconsin supreme court.

(b) "Period of state active duty" means the period beginning on the date on which the service member receives an order to enter state active duty and ending on the date of the service member's release from state active duty or death while on state active duty.

(c) "Service member" means a member of the national guard or state defense force who is ordered into state active duty for 30 days or more.

(2) PROTECTION OF PERSONS SECONDARILY LIABLE. (a) If this section results in the stay or suspension of any obligation, liability, court action, order, writ, or judgment, the court that issued the stay or suspension may grant the same remedy to sureties, guarantors, endorsers, and others subject to the obligation, liability, court action, order, writ, or judgment.

(b) If a service member is the principal on a criminal bail bond and his or her state active duty causes the surety upon the bond to be prevented from enforcing the attendance of the service member at court, the court shall not enforce the provisions of the bond during the service member's period of state active duty and may either during or after the period of state active duty discharge the surety and exonerate the bail.

(c) A surety, guarantor, endorser, or other person subject to the obligation, liability, court action, order, writ, or judgment under par. (a) or (b) may waive in writing the rights afforded by this subsection, except that the waiver is not valid unless the waiver is executed as an instrument separate from the obligation, liability, court action, order, writ, or judgment. The waiver under this paragraph

is not valid after the beginning of the period of state active duty if executed by a service member who subsequently is ordered into state active duty. The waiver under this paragraph is not valid if executed by a dependent of a service member unless the waiver is executed during the period of state active duty.

(3) EFFECT ON RIGHTS UNDER A WRITTEN AGREEMENT. This section does not prevent the modification, termination, or cancellation of any contract, lease, bailment, or secured obligation, or the repossession, retention, foreclosure, sale, or forfeiture of property that is security for any obligation or which has been purchased or received under a contract, lease, or bailment under a written agreement of the parties if that agreement is executed during or after the period of state active duty.

(4) EXERCISE OF RIGHTS. No person may use the fact that a service member has applied for, or received, a stay, postponement, or suspension in the payment of a tax, fine, penalty, insurance premium, or other civil obligation or liability as the basis for doing any of the following:

(a) If the person is a lender, determining that the service member is unable to pay any such civil obligation or liability in accordance with the terms of the obligation or liability.

(b) If the person is a creditor, denying or revoking any credit extended to the service member, changing the terms of a credit agreement to which the service member is a party, or refusing to grant credit to the service member in substantially the amount or on substantially the terms requested by the service member.

(c) If the person is in the business of assembling or evaluating consumer credit information, making an adverse report on the creditworthiness of the service member.

(d) If the person is an insurer, refusing to insure the service member.

(5) DEFAULT JUDGMENTS, AFFIDAVITS, AND ATTORNEY REPRESENTATION. (a) If, in any court action, there is a default of any appearance of the defendant, the plaintiff, when requesting a default judgment, shall file with the court an affidavit setting forth facts showing that the defendant is not in state active duty. If the plaintiff is unable to file such an affidavit, the plaintiff shall, when requesting a default judgment, file an affidavit setting forth that the defendant is in state active duty or that the plaintiff is unable to determine if the defendant is in state active duty. If an affidavit is not filed showing that the defendant is not in state active duty, a default judgment may not be entered without a court order. A court may not order the entry of a default judgment if the defendant is in state active duty until the court has appointed an attorney to represent the defendant and protect the defendant's interests. Unless the court determines that the defendant is not in state active duty, the court may require, as a condition of entering judgment, the plaintiff to file a bond to indemnify the defendant, if he or she is in state active duty, against any loss or damage resulting from the judgment if any part of the judgment is later set aside. The court may make any other order as may be necessary to protect the interests of the defendant under this section.

(b) If a judgment is rendered in a court action against a service member during the period of state active duty or within 30 days after the end of that period of state active duty, and it appears that the service member was prejudiced in making a defense by reason of his or her state active duty, the court may reopen that judgment if all of the following conditions exist:

1. The service member moves the court to reopen the judgment within 90 days after his or her period of state active duty ends.

2. The service member has a meritorious or legal defense to the action.

(c) Vacating, setting aside, or reversing a judgment under this subsection does not impair any right or title acquired by a bona fide purchaser for value under the judgment.

(d) Any person who shall make or use an affidavit required under this subsection that he or she knows to be false shall be fined

not more than \$10,000 or imprisoned for not more than 9 months or both.

(6) STAY OF ACTION. During any stage of a court action in which a service member in state active duty is involved as a party, or within 60 days after the end of the period of state active duty, the court in which the action is pending may on its own motion, and shall, on application of the service member or some person acting on behalf of the service member, stay the action unless the court determines that the service member's ability to represent his or her interest in the action is not materially affected by reason of his or her state active duty.

(7) STAY OR VACATION OF EXECUTIONS OR ATTACHMENTS. In any court action that is commenced against a service member before or after entering state active duty, or within 60 days after the period of state active duty ends, the court may on its own motion, and shall, on application of the service member or some person acting on behalf of the service member, stay the execution of any judgment or order entered against the service member, or stay or vacate any attachment or garnishment regarding the service member's property, unless the court determines that the service member's ability to comply with the judgment or order is not materially affected by reason of his or her state active duty.

(8) DURATION AND TERMS OF STAYS. (a) Any stay of any action, attachment, execution, or garnishment under this section may be ordered for the period of the state active duty and 90 days after that period has ended, or for any part of that time.

(b) Any stay under par. (a) may be subject to such terms as may be just, including the payment of installments in an amount and at the times that the court determines.

(c) If the service member is a codefendant in an action, the plaintiff may, by leave of the court, proceed against the other codefendants.

(9) STATUTES OF LIMITATIONS. The period of state active duty may not be included in computing any period for the bringing of any action or proceeding in any court or before any public agency, as defined in s. 36.54 (2) (a) 2., by or against a person in state active duty or by or against his or her heirs, personal representatives, or assigns, whether the cause of action or proceeding or the right to bring the action or proceeding accrued before or during the period of state active duty.

(10) MAXIMUM INTEREST RATE. No obligation or liability bearing interest at a rate in excess of 6 percent per year incurred by a service member in state active duty before his or her entry into that duty may, during any part of the period of state active duty, bear interest in excess of 6 percent per year except by court order. If, upon application by an obligee, a court determines that the ability of the service member to pay interest upon the obligation or liability at a rate in excess of 6 percent per year is not materially affected by reason of his or her state active duty, the court may make any order that is just. In this subsection, "interest" includes service charges, renewal charges, fees, or other charges, other than insurance, in respect to the obligation or liability.

(11) EVICTION STAY. (a) No eviction may be made during the period of state active duty in respect to any premises for which the agreed rent does not exceed the amount specified in 50 USC App. 531, occupied chiefly for dwelling purposes by the spouse, children, or other dependents of a service member who is in state active duty, except upon order of a court in an action affecting the right of possession.

(b) In an action for eviction under par. (a), the court may on its own motion, and shall, on application of the service member or some person acting on behalf of the service member, stay the proceedings for not longer than 90 days unless the court determines that the ability of the tenant to pay the agreed rent is not materially affected by the state active duty. The court may make any other order in the eviction action as it considers necessary and just. If a stay or order is issued under this paragraph, the court may, upon

the request of the owner of the premises, make any other order as may be applicable to conserve the interests of all of the parties.

(c) Any person who knowingly takes part in any eviction prohibited under par. (a) except as provided in this subsection, or attempts to do so, shall be fined not more than \$10,000 or imprisoned not more than 9 months or both.

(12) ACTION TO ENFORCE OBLIGATION SECURED BY MORTGAGE.

(a) In this subsection, “obligation” means an obligation of a service member in state active duty that was incurred before the service member’s period of state active duty began and that is secured by a mortgage, deed of trust, or other security in the nature of a mortgage on real or personal property that is owned by the service member.

(b) If a court action against a service member is commenced during the service member’s period of state active duty to enforce an obligation for nonpayment of any sum due or for any other breach of terms occurring before or during the service member’s period of state active duty, the court shall hold a hearing on the matter. Unless the court determines that the service member’s ability to comply with the terms of the obligation is not materially affected by reason of his or her state active duty, the court on its own motion may, or upon application of the service member or another person on his or her behalf shall, do any of the following:

1. Stay the action as provided in this section.
2. Make such other disposition of the case as the court determines is equitable to the interests of all parties.

(c) 1. Notwithstanding the times provided in ss. 846.10, 846.101, 846.102, and 846.103 for sales of real property, no foreclosure, sale, or seizure of property for nonpayment of any sum due or for any other breach of terms is valid if it occurs during or within 90 days after the service member’s period of state active duty, unless the court ordered the foreclosure, sale, or seizure of property before the beginning of the service member’s period of state active duty and approves the foreclosure, sale, or seizure after it occurs.

2. Any person who knowingly causes a foreclosure, sale, or seizure of property that is invalid under subd. 1. shall be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

(13) PERSONAL PROPERTY CONTRACTS. When an action to resume possession of personal property, or to rescind or terminate a contract for the purchase of personal property, has been stayed under this section, the court may appoint 3 disinterested persons to appraise the property. Based upon the report of the appraisers, and unless undue hardship would result to the dependents of the service member in state active duty, the court may order that a sum be paid to the service member as a condition of resuming possession of the property or rescinding or terminating the contract.

(14) TERMINATION OF LEASES BY LESSEES. (a) This subsection applies to a lease to which all of the following apply:

1. The lease was executed by or on behalf of a service member who entered state active duty after the lease was executed.
2. The lease covers premises that are occupied for dwelling, professional, business, agricultural, or similar purposes by the service member, or the service member and his or her dependents.

(b) A lease to which this subsection applies may be terminated by the service member at any time after the beginning of the service member’s period of state active duty by giving notice in writing by personal delivery or first class mail to the landlord or the person who has been receiving rent or managing the property as the landlord’s agent.

(c) If the lease provides for monthly payment of rent, termination shall be effective 30 days after the first date on which the next rental payment is due and payable after the date on which the notice is delivered or mailed. In any other case, all of the following apply:

1. Termination shall be effective on the last day of the month after the month in which the notice was delivered or mailed.

2. Any unpaid rent for the period preceding termination shall be computed on a prorated basis.

3. The landlord or the landlord’s agent shall refund to the service member any rent paid in advance that applies to the period after termination.

(d) Upon application of a landlord after receiving notice under this subsection and before the lease termination date provided for in this subsection, a court may make such modifications to or restrictions on the relief granted in this subsection as the court determines are appropriate under the circumstances.

(e) No person may knowingly seize or retain personal property belonging to a service member who lawfully terminates a lease under this subsection, or in any manner interfere with the removal of the service member’s personal property from the premises covered by the lease, for the purpose of subjecting the personal property to a claim for rent accruing after the termination of the lease. Any person who violates this paragraph shall be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

(f) Section 704.29 does not apply to the termination of a lease as provided in this subsection.

(15) STORAGE LIENS. (a) Notwithstanding ss. 704.05 (5) and 704.90, no person may enforce a lien for storage of any household goods, furniture, or personal effects of a service member during the period in which the service member is in state active duty and for 90 days after the member’s completion of state active duty, except as permitted by a court order under par. (b).

(b) No person may exercise any right to foreclose or enforce a lien for the storage of household goods, furniture, or personal effects of a service member during the service member’s period of state active duty and for 90 days after that period ends except upon an order of the court. In an action under this paragraph, the court, after a hearing, may on its own motion, and shall, on application of the service member or some person acting on behalf of the service member, stay the proceeding or make such other order as may be equitable to conserve the interests of all parties, unless the court determines that the ability of the service member to pay storage charges due is not materially affected by his or her state active duty.

(c) Any person who violates par. (a) may be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

(16) DEPENDENT BENEFITS. Upon application to the court, a dependent of a service member is entitled to the same benefits given to a service member while in state active duty, unless the court determines that the ability of the dependent to comply with the terms of an obligation, contract, lease, or bailment is not materially impaired by reason of the service member’s state active duty.

(17) TRANSFERS OR ACQUISITIONS. If a court determines that any interest, property, or contract has been transferred or acquired with the intent to delay the enforcement of a civil right by taking advantage of this section, the court shall enter any judgment or make any order that is just, notwithstanding the provisions of this section.

(18) CERTIFICATE OF STATE ACTIVE DUTY; PERSON REPORTED MISSING. (a) In any action or proceeding under this section, a certificate signed by the adjutant general or a person designated by the adjutant general as to the period of state active duty of a service member shall be evidence as to any of the following facts unless shown to be incorrect:

1. That the service member named has been in state active duty.
2. The period of the state active duty, including the date the service member was ordered into state active duty.
3. The monthly pay received by the service member in state active duty at the time the certificate was issued.
4. If the service member died while in state active duty, the date and the place where he or she died.

(b) The adjutant general shall provide the certificate under par. (a) upon request of the service member or of a person acting on behalf of the service member or his or her estate, and any certificate so provided shall be evidence of the facts stated in the certificate and of the authority of the signer to issue the certificate unless shown to be incorrect.

(c) When a service member in state active duty has been reported missing to the department, the service member shall be presumed to continue in state active duty until accounted for, and no period limited under this section which begins or ends with the death of a service member shall begin or end until the death of the service member is determined by the department or by a court.

(19) INTERLOCUTORY ORDERS. A court may revoke, modify, or extend any interlocutory order made by the court under this section, upon the court's own motion or on the motion of a party, upon such notice to the parties as the court may require.

(20) STAY OF ENFORCEMENT OF OBLIGATIONS OR LIABILITIES. (a) A service member may, at any time during his or her period of state active duty, or within 180 days after that duty ends, apply to a court for relief with respect to any obligation or liability incurred by the service member before his or her period of state active duty. The court, after appropriate notice and hearing, may grant the following relief unless the court determines that the ability of the service member to comply with the terms of the obligation or liability has not been materially affected by his or her state active duty:

1. In the case of an obligation payable in installments under a contract for the purchase of real estate, or secured by a mortgage upon real estate, a stay of the enforcement of the obligation during the period of state active duty and, from the date of the end of the period of state active duty or from the date of requesting the relief if made after the state active duty is ended, for a period equal to the period of the remaining life of the installment contract or instrument evidencing the obligation plus a period of time equal to the period of state active duty, or any part of that combined period. The court may issue a stay under this paragraph if the service member makes payments of the balance of the principal and accumulated interest due and unpaid at the date of the end of the period of state active duty or from the date of requesting the relief, whichever is appropriate, in equal installments during the combined period and at the rate of interest as is prescribed in the contract or instrument evidencing the obligation for installments paid when due. The court may order other terms under this paragraph as are just.

2. In the case of any other obligation or liability, a stay of the enforcement of that obligation or liability during the service member's period of state active duty and, from the date of the end of the period of state active duty or from the date of requesting the relief if made after the duty is ended, for a period equal to the period of state active duty or any part of that period. The court may issue a stay under this paragraph if the service member makes payments of the balance of the principal and accumulated interest due and unpaid at the date of the end of the period of state active duty or from the date of requesting the relief, whichever is appropriate, in equal installments during the extended period and at the rate of interest as is prescribed for the obligation or liability when due. The court may order other terms under this paragraph as are just.

(b) When a court has granted a stay under this subsection, no penalty may accrue during the period that the terms and conditions of the stay are complied with by reason of the failure to comply with the terms or conditions of the obligation or liability in respect to which the stay was granted.

(21) POWER OF ATTORNEY EXTENSION FOR MISSING SERVICE MEMBER. (a) A power of attorney that was duly executed by a service member that is reported missing to the department and that designates the service member's spouse, parent or named relative as his or her attorney-in-fact for specified, or all, purposes, and that expires after the service member is reported missing, is extended for the period that the service member is missing.

(b) No power of attorney executed by a service member in state active duty may be extended under par. (a) if the document creating the power of attorney clearly indicates that the power granted expires on the date specified even if the service member, after the date of execution of the document, is reported missing to the department.

(22) PROFESSIONAL LIABILITY PROTECTION. (a) 1. If a service member who is ordered into state active duty has coverage under a professional liability insurance policy that does not cover claims filed with respect to the service member during the period of state active duty unless the premiums are paid for the coverage for that period, the insurer that provides the coverage shall suspend the service member's coverage under the policy upon receipt of a written request from the service member to do so. The insurer may not require that premiums be paid for the suspended coverage. The insurer shall refund any premium amount already paid for coverage of the service member for the period after the coverage is suspended or shall, at the option of the service member, apply such amount to payment of any premium that becomes due upon reinstatement of the coverage.

2. Subdivision 1. does not require the suspension of coverage for any other person who has coverage under the policy and who is not a service member ordered into state active duty or relieve any person of the obligation to pay premiums for coverage that is not required to be suspended under subd. 1.

(b) 1. Subject to subd. 2., an insurer that suspends coverage under par. (a) is not liable with respect to any claim that is based on the professional conduct, including the failure to take an action in a professional capacity, of the service member that occurs while the service member's professional liability coverage is suspended under this subsection.

2. For purposes of subd. 1., a claim that is based on the failure of a professional to make adequate provision for the care of patients during the professional's period of state active duty shall be considered to be based on an action or the failure to take action before the beginning of the period during which coverage is suspended under this subsection, unless professional services were provided after the date on which the suspension of coverage began.

(c) 1. If a service member whose professional liability insurance coverage is suspended under par. (a) transmits to the insurer, within 30 days after the date on which the service member is released from state active duty, a written request for reinstatement of his or her professional liability insurance coverage, the insurer must reinstate the coverage as of the date on which the insurer receives the written request. The period for which the coverage must be reinstated may not be less than the balance of the period for which the coverage would have continued under the policy had the coverage not been suspended.

2. Upon receipt of the written request under subd. 1., the insurer shall notify the service member of the due date for paying the premium for the insurance, and the service member shall pay the premium within 30 days after receiving the notice. For the minimum period of reinstatement required under subd. 1., the insurer may not increase the amount of the premium over the amount that was chargeable before the suspension of the coverage for that period, except to the extent of any general increase in premiums charged by the insurer for the same professional liability coverage for persons similarly covered by such insurance during the period of the suspension.

(d) 1. Any action or proceeding in any court or before any public agency, as defined in s. 36.54 (2) (a) 2., based on the alleged professional negligence or other professional liability of a service member whose professional liability insurance coverage has been suspended under par. (a) shall be stayed until the end of the period of suspension if all of the following apply:

a. The action or proceeding was commenced during the period of suspension.

b. The action or proceeding is based on an act or omission that occurred before the date on which the period of suspension began.

c. The professional liability insurance policy would, except for the suspension, on its face cover the alleged professional negligence or other professional liability of the service member.

2. Whenever an action or proceeding is stayed under subd. 1., the action or proceeding shall be considered to have been filed on the date on which the service member's coverage is reinstated under par. (c) 1.

3. In any action or proceeding in which a stay may be granted under subd. 1., the period during which the professional liability insurance coverage is suspended may not be included in computing any limitations period for commencing the action or proceeding.

(e) If a service member whose professional liability insurance coverage is suspended under par. (a) dies during the period of suspension, all of the following apply:

1. The requirement to stay any action or proceeding under par. (d) 1. terminates on the date of the service member's death.

2. The insurer that suspended the coverage is liable for any claim for damages for the professional negligence or other professional liability of the deceased service member in the same manner and to the same extent as the insurer would be liable if the service member had died while covered by the insurance but before the claim was filed.

(23) NOTICE OF BENEFITS UNDER THIS SECTION. The department shall provide each service member a brochure explaining this section when that service member enters state active duty.

History: 2001 a. 24, 105; 2003 a. 69; 2005 a. 149; 2007 a. 200 ss. 148 to 172; Stats. 2007 s. 321.62.

321.63 Local government employees or officers in federal active duty. (1) A local governmental unit, as defined in s. 66.0135 (1) (c), may grant a leave of absence to any employee or officer who is inducted or who enlists in the U.S. armed forces for a period of federal active duty of not more than 5 years unless the employee is involuntarily retained for a longer period. No salary or compensation of the employee or officer shall be paid, nor claim for the salary or compensation exist, during the leave of absence, except as provided in this section. If the employee's or officer's salary or compensation is less in the U.S. armed forces than was paid by the local governmental unit, that governmental unit may pay the employee or officer the difference between the salary or compensation paid by the U.S. armed forces and the salary or compensation that the employee or officer was paid by the local governmental unit at the time that he or she enlisted in or was inducted into the U.S. armed forces.

(2) The local governmental unit may provide for safeguarding the reinstatement and pension rights, as limited in this section, of any employee or officer so inducted or enlisted.

(3) No employee or officer who is appointed to fill the place of any employee or officer so inducted or enlisted shall acquire permanent tenure during the period of the replacement service.

(4) If the leave of absence under sub. (1) is granted to an elected or appointed official or employee and the official or employee has begun federal active duty, a temporary vacancy exists and a successor may be appointed to fill the unexpired term of the official or employee, or until the official or employee returns and files an election to resume the office if the date of the filing is prior to the expiration of the term. The appointment shall be made in the manner provided for the filling of vacancies caused by death, resignation, or otherwise, except that no election need be held to fill a temporary vacancy. The appointee has all the powers, duties, liabilities, and responsibilities and shall be paid and receive the compensation and other benefits of the office or position, unless otherwise provided by the local governmental unit. Within 40 days after the termination of federal active duty, the elected or appointed official or employee, upon filing with the clerk of the local governmental unit, a statement under oath of termination and that the official or employee elects to resume the

office or position, may resume the office or position for the remainder of the term for which elected or appointed. The person temporarily filling the vacancy shall cease to hold the office on the date of the filing.

History: 2005 a. 22, 253; 2007 a. 200 s. 173; Stats. 2007 s. 321.63.

321.64 Reemployment after completion of federal active duty or service. (1) (a) Any person who has enlisted or enlists in or who has been or is inducted or ordered into federal active duty for 90 days or more, and any person whose services are requested by the federal government for national defense work as a civilian during a period officially proclaimed to be a national emergency or a limited national emergency, who, to perform the duty or service, has left or leaves a position, other than a temporary position, in the employ of any political subdivision of the state or in the employ of any private or other employer, shall be restored to that position or to a position of like seniority, status, pay, and salary advancement as though service toward seniority, status, pay, or salary advancement had not been interrupted by the absence, if all of the following conditions are met:

1. The person presents to the employer evidence of satisfactory completion of the period of federal active duty or federal government service, or of discharge from the U.S. armed forces under conditions other than dishonorable.

2. The person is still qualified to perform the duties of the position.

3. The person makes application for reemployment and resumes work within 90 days after completion of the federal active duty or federal government service, military or civilian, or was so discharged from the U.S. armed forces, or within 6 months after release from hospitalization for duty-connected or service-connected injury or disease.

4. The employer's circumstances have not changed as to make it impossible or unreasonable to restore the person.

5. The federal active duty or federal government service was not for more than 5 years unless extended by law.

(b) Except as provided in par. (c), in the event of any dispute relating to the provisions under par. (a), the person may file a complaint regarding the matter with the department of workforce development. The department of workforce development shall process any complaint made under this paragraph in the same manner as employment discrimination complaints are processed under s. 111.39.

(c) If a dispute arises regarding a classified employee of the state relating to the provisions of par. (a), the complaint shall be filed with the director of the office of state employment relations. A decision of the director of the office of state employment relations may be reviewed under ch. 227.

(2) The service of any person who is or was restored to a position in accordance with sub. (1) shall be considered not to be interrupted by the absence, except for the receipt of pay or other compensation for the period of the absence and he or she shall be entitled to participate in insurance, pensions, retirement plans, or other benefits offered by the employer under established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time the person entered or was enlisted, inducted, or ordered into federal active duty or federal government service. The person whose position was restored may not be discharged from the position without cause within one year after restoration and the discharge is subject to all federal or state laws affecting any private employment and to the provisions of contracts that may exist between employer and employee. Each political subdivision shall contribute or pay all contributions of the employer to the applicable and existent pension, annuity, or retirement system as though the service of the employee had not been interrupted by federal active duty or federal government service.

(3) If an employer fails or refuses to comply with subs. (1) and (2), a person entitled to the benefits under subs. (1) and (2) may petition the circuit court to require the employer to comply with

those subsections. Upon the filing of the petition and on reasonable notice to the employer, the court may require the employer to comply with those subsections and to compensate the person for any loss of wages or benefits suffered by reason of the employer's action. The court shall order a speedy hearing and shall advance the case on the calendar. No fees or court costs may be taxed against a person petitioning the court under this subsection. The action commenced under this subsection against a private employer, and the trial or hearing of the action, shall be in any county in which the employment took place or in which the private employer maintains a place of business, and in all other cases shall be as provided in s. 801.50.

(4) No person who is appointed in the service of the state or of any political subdivision to fill the place of a person entering federal active duty or federal government service under sub. (1) shall acquire permanent tenure during the period of that replacement service.

(5) If the decision of the circuit court is appealed the person who petitioned the circuit court under sub. (3) need not file an appeal bond for the security for costs on the appeal.

(6) The restoration of classified employees of the state shall be governed by s. 230.32. The restoration of unclassified state employees shall be governed by this section.

History: 2005 a. 22; 2007 a. 200 s. 175; Stats. 2007 s. 321.64. Returning the Veteran to Work. Walther. Wis. Law. July 2006.

321.65 Reemployment rights after national guard, state defense force, or public health emergency service.

(1) DEFINITIONS. In this section:

(a) "Active state service" means any of the following:

1. State active duty or active duty in the national guard under 32 USC 502 (f).

2. Active service with the state laboratory of hygiene under s. 36.25 (11) (em) for the purpose of assisting the department of health services under s. 250.042 during a state of emergency relating to public health declared by the governor under s. 166.03 (1) (b) 1.

3. Active duty in the national guard of any state under an order of the governor of that state.

(b) "Employer" means a person engaging in any activity, enterprise, or business in this state employing one or more persons on a permanent basis. "Employer" includes the state and any office, department, independent agency, authority, institution, association, society, or other body in state government created or authorized to be created by the constitution or any law, including the legislature and the courts. "Employer" also includes a successor-in-interest of a person employing an individual who has provided notice to that person under sub. (3) (a).

(c) "Health benefit plan" has the meaning given in s. 632.745 (11).

(d) "Qualified" means having the ability to perform the essential tasks of an employment position.

(e) "Reasonable efforts" means, with respect to an action required by an employer under sub. (4) (a) 1., 2., 3., or 4., an action that does not place an undue hardship on the employer.

(f) "Undue hardship" means, with respect to an action required by an employer under sub. (4) (a) 1., 2., 3., or 4., significant difficulty or expense, when considered in light of all of the following:

1. The nature and cost of the action.

2. The overall financial resources of the facility involved in providing the action, the number of persons employed at the facility, the effect of providing the action on the resources and finances of the facility, and any other impact of the action on the operation of the facility.

3. The overall financial resources of the employer, the number of persons employed by the employer, and the number, type, and location of the employer's facilities.

4. The type of operation of the employer, including the composition, structure, and functions of the employer's workforce, the

geographic separateness from the employer of the facility involved in providing the action, and the administrative and financial relationship of the facility to the employer.

(2) MORE GENEROUS RIGHTS PERMITTED. Nothing in this section prohibits an employer from providing employees who are ordered into active state service with reemployment rights and benefits that are more generous to the employee than the rights and benefits provided under this section.

(3) REEMPLOYMENT RIGHTS. (a) *Prerequisites.* Subject to par. (d), any person who is a resident of this state and absent from a position of employment because of active state service is entitled to the reemployment rights and benefits specified in this section if all of the following apply:

1. Except as provided in par. (b), the person or an appropriate officer in the national guard of this or another state or the state defense force has given advanced notice of the active state service to the person's employer.

2. Except as provided in par. (c), the cumulative length of the absence from the position of employment and of all previous absences from a position of employment with the employer by reason of active state service or federal active duty does not exceed 5 years.

3. Except as provided in par. (f), the person reports to the employer or submits an application for reemployment to the employer as required under par. (e).

4. In the case of active state service in the national guard in this or another state or the state defense force, the active state service has not been terminated under other than honorable conditions.

(b) *Notice not required.* No notice is required under par. (a) 1. if the giving of that notice is precluded by military necessity or is otherwise impossible or unreasonable. A determination of military necessity for purposes of this paragraph shall be made according to rules and regulations promulgated by the adjutant general or the federal secretary of defense and is not subject to judicial review.

(c) *Length of absence limit.* The periods of federal active duty described in 38 USC 4312 (c) (1) to (4) and all of the following periods of active state service are not included in calculating the 5-year period specified in par. (a) 2.:

1. Any period of active state service beyond that 5-year period that is required to complete an initial period of obligated active state service.

2. Any period of active state service for which the person, through no fault of the person's own, was unable to obtain orders releasing the person from a period of active state service before the expiration of the 5-year period.

3. Any period of active state service that was performed to fulfill any additional training requirements determined and certified in writing by the federal secretary of the army, the federal secretary of the air force, or the adjutant general to be necessary for professional development or for completion of skill training or retraining.

4. Any period of active state service that was performed by a person who was ordered to, or retained in, active state service, other than for training, because of a state emergency declared by the governor, because of a war or national emergency declared by the president of the United States or Congress, because of insurrection, rebellion, riot, invasion, or resistance to the execution of the laws of this state or of the United States, or in support of an operational mission, a critical mission, or any other requirement of the U.S. armed forces.

(d) *Exceptions.* An employer is not required to reemploy a person under this section if the employer shows that any of the following applies:

1. The employer's circumstances have so changed as to make reemployment of the person impossible or unreasonable.

2. The position of employment that the person left to perform active state service was for a brief, nonrecurrent period and there was no reasonable expectation that the position of employment would continue indefinitely or for a significant period of time.

3. In the case of a person who is entitled to reemployment under sub. (4) (a) 3. or 4., the accommodations, training, or effort required under sub. (4) (a) 3. or 4. would pose an undue hardship on the employer.

(e) *Return procedures.* 1. Subject to subs. 4. and 5., if a person who has been absent from a position of employment because of active state service that lasted for less than 31 days, who has been absent from a position of employment for any period of time for the purpose of an examination to determine the person's fitness to perform active state service, or who has been absent from a position of employment because the person was hospitalized for or was convalescing from an illness or injury that was incurred in or aggravated during the performance of that active state service wishes to receive the reemployment rights and benefits specified in this section, the person must notify the person's employer of the person's intent to return to the position of employment by reporting to the employer by no later than the beginning of the first full regularly-scheduled work period on the first full calendar day following the completion of the active state service, examination, or period of hospitalization or convalescence, a period of time that allows for the safe transportation of the person from the place of active state service, examination, hospitalization, or convalescence to the person's residence, and a rest period of 8 hours following that transportation period or, if through no fault of the person's own reporting to the employer within that time is impossible or unreasonable, by reporting to the employer as soon as possible after that 8-hour rest period.

2. Subject to subs. 4. and 5., if a person who has been absent from a position of employment because of active state service that lasted for more than 30 days, but less than 181 days, or who has been absent from a position of employment because the person was hospitalized for or was convalescing from an illness or injury that was incurred in or aggravated during the performance of that active state service wishes to receive the reemployment rights and benefits specified in this section, the person must notify the person's employer of the person's intent to return to the position of employment by submitting to the employer an application for reemployment by no later than 14 days after the completion of the active state service, hospitalization, or convalescence or, if through no fault of the person's own submitting the application within that time is impossible or unreasonable, by submitting to the employer an application for reemployment by no later than the first full calendar day on which submission of the application becomes possible.

3. Subject to subs. 4. and 5., if a person who has been absent from a position of employment because of active state service that lasted for more than 180 days or who has been absent from a position of employment because the person was hospitalized for or was convalescing from an illness or injury that was incurred in or aggravated during the performance of that active state service wishes to receive the reemployment rights and benefits specified in this section, the person must notify the person's employer of the person's intent to return to the position of employment by submitting to the employer an application for reemployment by no later than 90 days after the completion of the active state service, hospitalization, or convalescence or, if through no fault of the person's own submitting the application within that time is impossible or unreasonable, by submitting to the employer an application for reemployment by no later than the first full calendar day on which submission of the application becomes possible.

4. The period of hospitalization or convalescence specified in subs. 1., 2., and 3. may not exceed 2 years, except that if through no fault of the person's own it is impossible or unreasonable for the person to report to the employer within the time specified in subd. 1. or to apply for reemployment within the time specified in subd. 2. or 3., that 2-year period shall be extended by the mini-

imum period of time required to accommodate the circumstances that made it impossible or unreasonable for the person to report or apply as so required.

5. A person who fails to report to the person's employer within the time specified in subd. 1. or who fails to apply for reemployment within the time specified in subd. 2. or 3. does not automatically forfeit the reemployment rights and benefits specified in this section. Instead, the person shall be subject to the rules, policies, and practices of the person's employer pertaining to discipline for unexcused absences from work.

(f) *Documentation.* 1. A person who submits an application for reemployment under par. (e) 2. or 3. must, on the request of the person's employer, provide to the employer documentation to establish that the application was submitted within the time limits specified in par. (e) 2. or 3., that the person's cumulative length of all absences from employment with the employer because of active state service and federal active duty does not, except as permitted under par. (c), exceed 5 years, and, in the case of active state service in the national guard in this or another state or the state defense force, that the person's service was not terminated under other than honorable conditions.

2. An employer may not refuse to reemploy a person who fails to provide any of the documentation specified in subd. 1. because that documentation does not exist or is not readily available at the time the employer requests that documentation. If after the person is reemployed documentation becomes available that establishes that the person does not meet a requirement specified in subd. 1., the employer may terminate the person's employment and the provision of any rights and benefits afforded to the person under this section.

3. An employer may not delay or attempt to defeat a reemployment right that the employer is obligated to provide under this section by demanding documentation that does not exist or is not readily available at the time of the demand.

(g) *Veterans preferences.* The right of a person to reemployment under this subsection does not entitle the person to retention, preference, or displacement rights over any person who has a superior claim under s. 45.03 (4), 62.13 (4) (d), 63.08 (1) (f), 63.37, 63.39 (2m), 66.0509 (1), 230.15 (2m), 230.16 (7) or (7m), 230.21 (1m), 230.25, or 230.275.

(h) *Prohibited bases for denial of reemployment.* In determining a person's right to reemployment and other benefits under this section, an employer may not deny reemployment or any other benefits based on the timing, frequency, duration, or nature of the person's active state service or federal active duty so long as the requirements under par. (a) are met.

(4) REEMPLOYMENT POSITIONS. (a) *Prompt reemployment required.* 1. Subject to subs. 3. and 4. and par. (b), an employer shall reemploy a person who is entitled to reemployment under sub. (3) and whose period of active state service was for less than 91 days promptly on completion of that period of active state service in the position of employment in which the person would have been employed if the continuous employment of the person with the employer had not been interrupted by that active state service so long as the person is qualified to perform the duties of that position or, if after reasonable efforts by the employer to qualify the person to perform those duties the person is not qualified to perform those duties, in the position of employment in which the person was employed on the date on which the person's period of active state service began.

2. Subject to subs. 3. and 4. and par. (b), an employer shall reemploy a person who is entitled to reemployment under sub. (3) and whose period of active state service was for more than 90 days promptly on completion of that period of active state service in the position of employment in which the person would have been employed if the continuous employment of the person with the employer had not been interrupted by that active state service or in a position of employment of like seniority, status, and pay so long as the person is qualified to perform the duties of that position

or, if after reasonable efforts by the employer to qualify the person to perform those duties the person is not qualified to perform those duties, in the position of employment in which the person was employed on the date on which the person's period of active state service began or in a position of employment of like seniority, status, and pay.

3. Subject to par. (b), in the case of a person who has a disability that was incurred in or aggravated during a period of active state service and who, after reasonable efforts by the employer to accommodate the disability, is not qualified due to the disability to perform the duties of the position of employment in which the person would have been employed if the continuous employment of the person with the employer had not been interrupted by the active state service, the employer shall reemploy the person promptly on completion of that period of active state service in any other position that is equivalent to that position in seniority, status, and pay, the duties of which the person is qualified to perform or would become qualified to perform with reasonable efforts by the employer, or, if there is no other position of employment available that is equivalent to that position in seniority, status, and pay, in a position that is the nearest approximation to that equivalent position in terms of seniority, status, and pay, consistent with the person's circumstances.

4. Subject to par. (b), in the case of a person who is not qualified to be employed in the position of employment in which the person would have been employed if the continuous employment of the person with the employer had not been interrupted by the person's active state service or in the position of employment in which the person was employed on the date on which the person's period of active state service began for any reason other than disability incurred in or aggravated during a period of active state service and who cannot become qualified to be so employed with reasonable efforts by the employer, the employer shall reemploy the person promptly on completion of that period of active state service in any other position that the person is qualified to perform and that is the nearest approximation to the position of employment in which the person would have been employed if the continuous employment of the person with the employer had not been interrupted by that active state service, with full seniority, or if no position of employment that is the nearest approximation to that position is available, in a position of employment that the person is qualified to perform and that is the nearest approximation to the position of employment in which the person was employed on the date on which the person's period of active state service began, with full seniority.

(b) *Multiple returning employees.* 1. If 2 or more persons who are entitled to reemployment under sub. (3) in the same position of employment have reported to the employer or applied for reemployment in that position, the person who left employment first shall have the prior right to reemployment in that position.

2. A person who is entitled to reemployment under sub. (3), but who is not reemployed because of subd. 1., shall be entitled to reemployment as provided in par. (a) 1., 2., 3., or 4., whichever is applicable, in a position of employment that provides for similar status and pay as the position described in subd. 1., consistent with the person's circumstances, with full seniority.

(5) **RIGHTS, BENEFITS, AND OBLIGATIONS.** (a) *Seniority.* A person who is reemployed under this section is entitled to the seniority and other rights and benefits determined by seniority that the person had on the last day of employment before the person's active state service began, plus all seniority and other rights and benefits determined by seniority that the person would have had if the continuous employment of the person with the employer had not been interrupted by that active state service.

(b) *Continuation of benefits.* 1. Subject to subds. 2. to 5., a person who is absent from employment because of active state service is considered to be on furlough or leave of absence while performing the active state service and is entitled to receive all rights and benefits not determined by seniority that are generally provided by the employer to employees having similar seniority, sta-

tus, and pay who are on furlough or leave of absence under a contract, agreement, policy, practice, or plan that is in effect on the day on which the active state service began or that is established while the person is performing the active state service.

2. If an employer shows that a person who is absent from a position of employment because of active state service has knowingly provided written notice of the person's intent not to return to a position of employment with the employer after that active state service and, in doing so, was aware of the specific rights and benefits under subd. 1. that the person would lose while absent from the position of employment, the person is not entitled to the rights and benefits specified in subd. 1. while absent from employment.

3. A person who is considered to be on furlough or leave of absence under subd. 1. while performing active state service is not entitled to any benefit to which the person would not otherwise be entitled if the person had remained continuously employed.

4. An employer may require a person who is considered to be on furlough or leave of absence under subd. 1. while performing active state service to pay the employee cost, if any, of any benefit that is continued under subd. 1. to the same extent that other employees who are on furlough or leave of absence are so required.

5. A person who is absent from a position of employment because of active state service is entitled to receive coverage under a health benefit plan during the absence and on reemployment as provided in sub. (6).

(c) *Protection from discharge.* An employer that reemploys under this section a person whose period of active state service lasted for more than 30 days, but less than 181 days, may not discharge the person within 180 days after the date of reemployment except for cause. An employer that reemploys under this section a person whose period of active state service lasted for more than 180 days may not discharge the person within one year after the date of reemployment except for cause.

(6) **CONTINUATION OF HEALTH CARE COVERAGE.** (a) *Option to continue coverage.* Notwithstanding s. 632.897, if a person who has coverage under a health benefit plan in connection with the person's employment is absent from a position of employment because of active state service, the insurer that issued the health benefit plan shall permit the person, and the person's dependents, to continue coverage under the health benefit plan until the first to occur of the following:

1. Eighteen months have elapsed since the person's absence from the position of employment began.

2. The day after the date on which the person is required under sub. (3) (e) to report to the employer or apply for reemployment.

(b) *Payment of premiums.* A person who elects to continue coverage under par. (a) and who is absent from a position of employment for 30 days or less may not be required to pay more than the employee share, if any, of the cost of the coverage. A person who elects to continue coverage under par. (a) and who is absent from a position of employment for more than 30 days may be required to pay up to 102% of the full premium for that coverage for the period of continued coverage that exceeds 30 days.

(c) *Reinstatement on reemployment.* If a person's coverage under a health benefit plan in connection with his or her employment was terminated because of the person's active state service and if after returning from that active state service the person is reemployed under sub. (3), coverage under the health benefit plan shall be reinstated for the person and the person's dependents immediately upon reemployment. With respect to the reinstated coverage, no exclusion or waiting period may be imposed that would not have been imposed had the coverage not been terminated because of the active state service.

(7) **ENFORCEMENT.** (a) *Complaint.* Any person who believes that his or her employer has failed or refused, or is about to fail or refuse, to provide to the person any reemployment right or benefit to which the person is entitled under this section may file a com-

plaint with the adjutant general, in such form as the adjutant general may prescribe by rule, summarizing the allegations that form the basis of the complaint. The adjutant general shall investigate the complaint and, if the adjutant general is reasonably satisfied that the person is entitled to the rights or benefits sought, the adjutant general shall endeavor to resolve the complaint by conference, conciliation, or persuasion. If the adjutant general is not reasonably satisfied that the person is entitled to the rights or benefits sought, the adjutant general may refuse to endeavor to resolve the complaint and shall notify the person who filed the complaint that the person may proceed under par. (b) 2. to enforce the person's rights under this section. If the adjutant general is not able to resolve the complaint, the adjutant general shall notify the person who filed the complaint that the person may proceed under par. (b) 1. or 2. to enforce the person's rights under this section.

(b) *Enforcement procedures.* 1. A person who receives notification under par. (a) that the adjutant general was unable to resolve the person's complaint may request the adjutant general to refer the complaint to counsel, which may include the attorney general, appointed by the governor on the recommendation of the adjutant general for the purpose of prosecuting complaints under this subdivision who shall file a complaint for appropriate relief with the department of workforce development.

2. Subdivision 1. does not preclude a person who has chosen not to file a complaint with the adjutant general under par. (a), whose complaint the adjutant general has refused to endeavor to resolve under par. (a), or who has chosen not to request the adjutant general to refer his or her complaint to counsel under subd. 1. from filing a complaint for appropriate relief with the department of workforce development.

3. The department of workforce development shall process a

complaint filed under subd. 1. or 2. in the same manner that employment discrimination complaints are processed under s. 111.39.

(c) *Retaliation prohibited.* An employer may not discharge or otherwise discriminate against any person for filing a complaint or attempting to enforce a right provided under this section or for testifying or assisting in any action or proceeding to enforce a right provided under this section.

(d) *Remedies.* If the department of workforce development finds that an employer has failed or refused, or is about to fail or refuse, to provide any reemployment right or benefit to which a person is entitled under this section or has discharged or otherwise discriminated against any person in violation of par. (c), the department of workforce development may order the employer to do any one or more of the following:

1. Take such action as will fully vindicate the rights and benefits of the person under this section.

2. Compensate the person for any loss of wages, salary, or other benefits suffered because of the failure or refusal to provide reemployment rights or benefits under this section or the discharge or other discrimination.

3. Pay the person, as liquidated damages, an amount that is equal to the amount ordered under subd. 2. if the department of workforce development finds that the failure or refusal to provide reemployment rights or benefits under this section or the discharge or other discrimination was willful.

4. Pay the person costs and reasonable actual attorney fees, if the person is not represented by counsel appointed under par. (b) 1.

History: 2001 a. 26, 109; 2003 a. 33, 69; 2005 a. 22, 253; 2007 a. 20 s. 9121 (6) (a); 2007 a. 200 ss. 176 to 186; Stats. 2007 s. 321.65.

Returning the Veteran to Work. Walther. Wis. Law. July 2006.