

CHAPTER 21

DEPARTMENT OF MILITARY AFFAIRS

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21.01 Composition of national guard. (1) The organized militia of this state shall be known as the “Wisconsin national guard” and shall consist of members appointed or enlisted therein in accordance with federal law or regulations governing or pertaining to the national guard.

(2) The Wisconsin national guard shall be organized into army national guard and air national guard units, and “national guard” when used in this chapter, unless the context otherwise requires, means both the Wisconsin army national guard and the Wisconsin air national guard.

History: 1975 c. 189; 1983 a. 27; 2003 a. 69.

21.015 Department duties. The department of military affairs shall:

(1) Administer the national guard.

(2) Provide facilities for the national guard and any other support available from the appropriations under s. 20.465.

History: 1983 a. 27.

21.025 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 Wisconsin state defense force. The adjutant general may organize the Wisconsin state defense force under the plan if all or part of the national guard is called into the service of the United States. It shall be distinct from the national guard, uniformed, and composed of officers, commissioned or assigned, and of enlisted personnel who volunteer for service. Membership in the Wisconsin state defense force may not include any person who is in the active military forces, including the reserve components. Persons in the retired reserve may serve in the Wisconsin state defense force.

(2) ORGANIZATION; RULES AND REGULATIONS. (a) The governor may prescribe rules and regulations not inconsistent with this section governing the enlistment, organization, administration, equipment, maintenance, training, and discipline of such forces, except that such rules and regulations, insofar as the governor deems practicable and desirable, shall conform to existing law governing and pertaining to the national guard and the rules and regulations promulgated thereunder and shall prohibit the acceptance of gifts, donations, gratuities, or anything of value by such

forces or by any member of such forces from any person by reason of such membership.

(b) The governor may form an aviation unit of the state defense force and formulate the rules and regulations therefor and prescribe the duties thereof consistent with the functions of the state defense force.

(c) Officers and enlistees, while on active duty under orders of the governor, shall receive the base pay and allowances of the identical grade in the United States army.

(d) The adjutant general may organize a cadre force of not more than 12 personnel at each state–owned armory. Each cadre force shall establish recruitment lists of persons interested in becoming members of the state defense force, which may be used to recruit full units for the state defense force in case the national guard is mobilized for active federal duty.

(3) REQUISITIONS; ARMORIES; OTHER BUILDINGS. For the use of such forces, the governor may requisition from the federal government such arms and equipment as may be available, and the governor may make available to the state defense force the facilities of state armories and their equipment and such other state premises and property as may be available and may, through the department of military affairs, rent or lease buildings or parts of buildings and grounds for armory purposes or continue in possession of such premises leased by the department of military affairs for the use of the national guard, paying rental therefor out of funds appropriated under s. 20.465 (1) (a). All leases so made shall terminate upon dissolution of the Wisconsin state defense force regardless of the term provided therein unless the premises shall be needed for national guard purposes, in which case the lease may be assigned by the department of military affairs to the national guard organization intending to occupy the premises.

(4) USE WITHOUT THIS STATE. Such forces shall not be required to serve outside the boundaries of this state except:

(a) Upon the request of the governor of another state, the governor of this state may order any portion or all of such forces to assist the military or police forces of such other state who are actually engaged in defending such other state. Such forces may be recalled by the governor at the governor’s discretion.

(b) Any organization, unit, or detachment of such forces, upon order of the officer in immediate command thereof, may continue in fresh pursuit of insurrectionists, saboteurs, enemies or enemy forces beyond the borders of this state into another state until they are apprehended or captured by such organization, unit, or detachment or until the military or police forces of the other state or the forces of the United States have had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons, provided such other state shall have given authority by law for such pursuit by such forces of this state. Any such person who shall be apprehended or captured in such other state by an organization, unit, or detachment of the forces of this state shall without unnecessary delay be surrendered to the military or police forces of the state in which the person is taken or to the United States, but such surrender shall not constitute a waiver by this state of its right to extradite or prosecute such person for any crime committed in this state.

(5) PERMISSION TO FORCES OF OTHER STATES. (a) Any military forces or organization, unit, or detachment thereof, of another state who are in fresh pursuit of insurrectionists, saboteurs, enemies or enemy forces may continue such pursuit into this state until the military or police forces of this state or the forces of the United States have had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons, and such military forces of such other state may arrest or capture such persons within this state while in fresh pursuit.

(b) Any such person who shall be captured or arrested by the military forces of such other state while in this state shall without unnecessary delay be surrendered to the military or police forces of this state to be dealt with according to law.

(c) This subsection shall not be construed to make unlawful any arrest in this state which would otherwise be lawful.

(6) FEDERAL SERVICE. Nothing in this section shall be construed as authorizing such forces, or any part thereof to be called, ordered, or in any manner drafted, as such into the military service of the United States, but no person shall by reason of enlistment or commission in any such forces be exempted from military service under any law of the United States.

(7) CIVIL GROUPS. No civil organization, society, club, post, order, fraternity, association, brotherhood, body, union, league, or other combination of persons or civil group shall be enlisted in such forces as an organization or unit.

(8) DISQUALIFICATIONS. No person shall be commissioned or enlisted in such forces who is not a citizen of the United States or who has been expelled or dishonorably discharged from any military or naval organization, of this state, or of another state, or of the United States.

(9) OATH OF OFFICERS. The oath to be taken by officers commissioned in such forces shall be substantially in the form prescribed for officers of the national guard.

(10) ENLISTEES. No person shall be enlisted for more than one year, but such enlistment may be renewed. The oath to be taken upon enlistment in such forces shall be substantially in the form prescribed for enlistees of the national guard.

(11m) RETENTION OF ITEMS OF UNIFORM. (a) Officers and enlistees of the “Wisconsin State Defense Force” who have served honorably therein for a period of at least one year and are active members of their respective units at the time of its demobilization shall, upon application to the unit commander, be permitted to retain the items of uniform prescribed by the governor by rule.

(b) The uniform prescribed under par. (a) may be worn only on occasions of ceremony. “Occasions of ceremony” means 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, and meetings or functions of associations formed for military purposes, the membership of which is composed largely or entirely of honorably discharged veterans of the services.

(11n) LABOR DISPUTES. The state defense force shall not be used to interfere with the orderly process of a labor dispute.

(13) SHORT TITLE. This section may be cited as the “State Defense Force Act”.

History: 1975 c. 94 ss. 6, 91 (1); 1983 a. 27; 1987 a. 63 ss. 3, 13; 1991 a. 316; 2003 a. 69.

21.03 Distribution of arms. The governor may receive and distribute, according to law, the quota of arms and military equipment which the state may receive from the government of the United States under the provisions of any acts of congress providing for arming and equipping the national guard and the state defense force.

History: 1987 a. 63 s. 13.

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

21.04 Camp Williams. (1) The state camp grounds near Camp Douglas, Juneau County, shall be known as “Camp Williams”. The officer in charge of Camp Williams shall have at said camp the police powers possessed by officials at state hospitals, as provided in s. 46.058 (2).

(2) The adjutant general may grant to the federal government the right to use any area of Camp Williams upon such conditions as 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 government of the United States.

History: 1979 c. 221 s. 2202 (37); 1991 a. 316.

21.05 Term of enlistment; requirements. 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 national guard bureau.

21.06 Exemptions from certain county duties. Every member of the state military forces shall be 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.

21.07 Decorations and awards. The adjutant general may prescribe decorations and awards for the national guard and the state defense force, the form and issue thereof made under rules adopted by the adjutant general and approved by the governor.

History: 1975 c. 189; 1981 c. 207; 1983 a. 27; 1987 a. 63 s. 13; 2003 a. 69.

21.09 Training; special schools; pay and allowances. The governor may order the national guard to assemble for training at any military establishment within or without the state specified and approved by the department of defense and fix the dates and places thereof, and the governor may order members of the national guard, at their option, to attend such special schools for military training as may be authorized by the state or federal government. For such training and attendance at special schools, members of the national guard shall receive such pay and allowances as the federal government or the governor may authorize.

History: 1991 a. 316.

21.11 Call to active service. (1) In case of war, insurrection, rebellion, riot, invasion or resistance to the execution of the laws of this state or of the United States; in the event of public disaster resulting from flood, conflagration or tornado; in order to assess damage or potential damage and to recommend responsive action as a result of natural or man-made events; or 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, the governor may order into active service

all or any portion of the national guard. If the governor is absent, or cannot be immediately communicated with, any such civil officer may, if the officer deems the occasion so urgent, make such application, which shall be in writing, to the commanding officers of any company, battalion or regiment, who may upon approval of the adjutant general, if the danger is great and imminent, order out that officer's command to the aid of such civil officer. Such order shall be delivered to the commanding officer, who shall immediately communicate the order to each, and every subordinate officer, and every company commander receiving the same shall immediately communicate the substance thereof to each member of the company, or if any such member cannot be found, a notice in writing containing the substance of such order shall be left at the last and usual place of residence of such member with some person of suitable age and discretion, to whom its contents shall be explained.

(2) 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. Any person who advises or endeavors to persuade an officer or soldier to refuse or neglect to appear at such place or obey such order shall forfeit not less than \$200 nor more than \$1,000.

(3) The adjutant general may activate members of the national guard for the purpose of serving on an honors detail of a military honors funeral for a deceased veteran under s. 45.19.

History: 1979 c. 221; 1991 a. 316; 1993 a. 246; 1999 a. 62, 136.

21.12 Exemption from civil authority. During the time the state military forces are performing military duty pursuant to proper orders issued by the governor or by the governor's authority, all members thereof while going to, remaining at or returning from a place of duty shall be 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 pursuant to any lawful military order. Any such order shall be deemed prima facie lawful.

History: 1991 a. 316.

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).

21.13 Defense of members of guard; payment of judgments. (1) If any state resident who is a member of a national guard of any state or of the state defense force is prosecuted by any civil or criminal action for any act performed by the member while in the performance of military duty and in pursuance of military duty, the action against the member shall be defended by counsel, which may include the attorney general, appointed for that purpose by the governor upon the recommendation of the adjutant general. The adjutant general shall make the recommendation if the act performed by the member was in the line of duty. The costs and expenses of any such defense shall be audited by the department of administration and paid out of the state treasury and charged to the appropriation under s. 20.455 (1) (b) and if the jury or court finds that the member of the national guard 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 also be paid by the state.

(2) Any civil action or proceeding brought against a member of a national guard or the state defense force under sub. (1) 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.

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).

21.15 Penalty for retention of military property. No person may retain at any time any arms, equipment or military stores of any kind belonging to the state or any federally owned property issued to the state, unless the property has been issued to the person pursuant to law and the proper authority permits the person to retain the property in the discharge of a public duty. No person may use any public arms, equipment, clothing or military stores belonging to the state, either as owner or bailee, for the person's private use. Any person violating this section shall forfeit not less than \$50 nor more than \$200.

History: 1979 c. 221.

21.155 Nondelivery of arms; resisting officer. No person who possesses under the laws of this state any arms, equipment or other military property may willfully neglect or refuse, after lawful demand is made for the return of the property by order of the governor, to return the property promptly. No person may knowingly resist any officer who is lawfully taking possession of such arms, equipment or other military property. Any person violating this section shall forfeit not less than \$50 nor more than \$200.

History: 1979 c. 221.

21.16 Penalty for unauthorized wearing of uniforms.

(1) No person may wear the uniform of the national guard or of the U.S. army, air force, navy, or marine corps, or a reserve component of the U.S. armed forces, except a person who is regularly enrolled in the U.S. army, air force, navy, or marine corps, a reserve component of the U.S. armed forces, the national guard of one of the states or one of the student cadet companies armed and recognized by the national or a state government, a person retired from active service or a reserve component, or a person who is an inmate of any veterans' or soldiers' home. Any person violating this subsection shall forfeit not less than \$10 nor more than \$100. The district attorney of the county in which any such offense is committed shall bring an action in the name of the state against the offender.

(2) Nothing in this section shall be construed as prohibiting persons of the theatrical profession from wearing such uniform in any playhouse or theater while actually engaged in following said profession.

(3) Nothing in this section shall be construed as prohibiting the members of any uniform rank of civic societies from the wearing of such uniforms.

(4) Whenever the national guard, or any part thereof, is called into active service on account of war, insurrection, rebellion, riot, invasion, resistance to the execution of the laws of this state, or of the United States, or on account of public disaster, no civic organization or member thereof shall parade or appear in uniform in the locality where said national guard is in service.

History: 1979 c. 221; 1983 a. 27; 2003 a. 69.

21.17 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 cause the area to be marked in such a manner so as to warn against encroachment by unauthorized persons, but not to unnecessarily obstruct travel on any public highway. No person may encroach or enter upon the area without the consent of the officer.

(2) No person may intercept, molest, abuse or otherwise interfere with any member of the national guard or any other military force organized under the laws of this state 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.

21.18 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, with a rank of brigadier general, unless selected for a military position requiring federal recognition as a major general.

(c) A deputy adjutant general for air, with a rank of brigadier general, unless selected for a military position requiring federal recognition as a major general.

(d) Two assistant adjutants general for army, who may hold the rank of brigadier general.

(e) An assistant adjutant general for air, who may hold the rank of brigadier general.

(f) A chief surgeon for army, who may be a general officer.

(g) A chief surgeon for air, who may be a general officer.

(h) A staff judge advocate for army, who may be a general officer.

(i) A staff judge advocate for air, who may be a general officer.

(j) A state chaplain, either army or air, who may be a general officer.

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

(1m) In the event any of the deputy adjutants general, for army or for air, are 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.

(2) No person shall be appointed on the governor's staff who has not had previous military experience.

(3) 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 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. The governor shall remove an officer whose federal recognition is refused or withdrawn, effective on the date of the loss of federal recognition.

(4) 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.

(5) The adjutant general shall appoint persons to fill vacancies in positions in the military staff of the governor. 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 residue of the unexpired term.

History: 1981 c. 35; 1983 a. 391; 1987 a. 63; 2003 a. 25, 69, 326.

21.19 Adjutant general; powers and duties. **(1)** The adjutant general shall be chief of staff to the governor. The adjutant general shall have the custody of all property, military records, correspondence and other documents relating to the national guard and any other military forces organized under the laws of this state. The adjutant general may appoint an assistant quartermaster general to issue and account for state property. The adjutant general shall be the medium of military correspondence with the governor and perform all other duties pertaining to the office or prescribed by law, including the preparation and submission to the governor of reports under s. 15.04 (1) (d).

(1m) The adjutant general shall administer, with the approval of the governor, state–federal cooperative funding agreements.

(2) The department of military affairs on behalf of the state may 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. Such rental shall not be effective unless in writing and approved by the governor and the adjutant general or a designee in writing.

(3) (a) The department of military affairs on behalf of the state, upon appraisal by the state chief engineer submitted to the governor in writing, may sell and convey upon such terms as the department of military affairs may determine, with the approval of the governor in writing, any state–owned property acquired or erected for state military purposes, which property is no longer useful to the national guard.

(b) Notwithstanding s. 13.48 (14) (c), the department, under the authority and procedures established in par. (a), may sell and convey the national guard armory located at 1225 E. Henry Clay Street, Whitefish Bay, Milwaukee County. The proceeds of a sale shall be used first to pay off all bonds, all or a part of which were used to construct or purchase the property. Any moneys remaining from the sale shall be paid into the state treasury and credited to the appropriation under s. 20.465 (1) (g).

(4) The adjutant general shall be the auditor of military accounts, and all accounts or claims payable from the treasury of the state for military purposes shall be regularly audited by the adjutant general before payment. The adjutant general shall cause to be prepared and issued all necessary books and forms required by the adjutant general's office for the national guard. All of the books and forms shall be made to conform as nearly as practicable to those in use in the United States army.

(5) 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.

(6) The adjutant general as quartermaster general shall also be chief of all logistical services.

(7) (a) The adjutant general as quartermaster general shall:

1. Have charge of all the military property of the state and shall carefully preserve, repair and account for the property.

2. Keep in such manner as the governor directs, and subject to the governor's inspection, an account of all moneys received and expended.

3. Perform the customary duties of the office, and of the office of chief of all logistical services, and have the custody of all records, returns and papers pertaining to those offices.

(b) The transportation of all troops, arms, accoutrements, stores and other property and the preparation for encampments shall be contracted for by the adjutant general under direction of the governor.

(8) The adjutant general or a designee shall issue all necessary supplies to members and units of the national guard and may contract for the purchase and transportation of such supplies, subject to s. 16.71 (1).

(9) When any military property belonging to the state as owner or bailee is wrongfully held by another person, the adjutant general may bring an action in the name of the state to recover possession of the same or the money value thereof.

(10) The adjutant general may, upon receipt of meritorious requests for state service flags for public use and within the limits of the appropriation made under s. 20.465 (1) (e), furnish such flags without charge to the persons or organizations requesting them.

(11) The adjutant general shall provide such medical supplies and services as are necessary 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).

(12) The adjutant general shall provide from the appropriation under s. 20.465 (1) (c) a United States flag to the next of kin of each deceased member of the national guard who dies as a result of state service under s. 21.11.

(13) The adjutant general shall 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 subsection shall be credited to the appropriation account under s. 20.465 (1) (i).

(14) The adjutant general shall 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.

History: 1975 c. 189, 421; 1977 c. 196 s. 131; 1977 c. 273; 1981 c. 35; 1983 a. 27; 1983 a. 333 s. 6; 1983 a. 524; 1991 a. 316; 1993 a. 184; 1995 a. 27, 417; 1997 a. 27; 2001 a. 107; 2003 a. 33, 69, 163.

21.20 Civil service status. All full–time state–paid employees of the department of military affairs shall be under the classified service, except the adjutant general, the executive assistant to the adjutant general, the deputy adjutants general for army and air and the administrator of the division of emergency management.

History: 1971 c. 164; 1979 c. 221; 1981 c. 35; 1989 a. 31; 1995 a. 247.

21.21 Printing report of convention of officers. Upon the request of the adjutant general and upon the order of the department of administration the state printer shall print and deliver to the adjutant general not to exceed 1,000 copies of the report of the annual convention of the officers of the national guard which the adjutant general shall distribute; but such report shall not exceed 150 pages.

History: 1991 a. 316.

21.25 Badger Challenge program. (1) The department of military affairs may administer the Badger Challenge program for disadvantaged youth. If the department administers the Badger Challenge program under this subsection, it shall recruit 25% of each class from families who are eligible to receive temporary assistance for needy families under 42 USC 601 et seq. If the department of military affairs administers the Badger Challenge program under this subsection, it shall promulgate rules for administering the Badger Challenge program.

(2) The department of military affairs may assess and collect a reasonable fee from persons participating in the Badger Challenge program. Fees collected under this subsection shall be credited to the appropriation under s. 20.465 (4) (g).

History: 1997 a. 237; 1999 a. 9; 2001 a. 16.

21.26 Youth Challenge program. (1) The department of military affairs shall administer the Youth Challenge program for disadvantaged youth under 32 USC 509.

(2) Annually, the department of military affairs shall do all of the following:

(a) Calculate 40% of the average cost per pupil attending the Youth Challenge program and report this information to the department of public instruction.

(b) Notwithstanding s. 118.125, report to each school district in which a pupil attending the program is enrolled the pupil's name and the name and address of the pupil's custodial parent or guardian.

History: 1997 a. 237; 2001 a. 109.

21.28 United States property and fiscal officer. (1) The adjutant general shall recommend a candidate for appointment as the United States 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 United States 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 32 USC 323 is refused or withdrawn.

(3) Any action by the governor to remove the officer appointed under sub. (1) 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.

21.30 Chief surgeons; powers and duties. The chief surgeons for army and air shall, under direction of the adjutant general, have general supervision of the medical units of the national guard and state defense force when organized. The chief surgeons shall make recommendations concerning procurement of medical supplies for state active duty operations, for the procurement and training of medical personnel and for the publication of national guard directives on medical subjects. The chief surgeons shall submit an annual report of the affairs and expenses of their departments to the adjutant general.

History: 1975 c. 189, 421; 1981 c. 35; 1987 a. 63 s. 13; 2003 a. 69.

21.32 Physical examinations. The chief surgeons for army and air shall provide for such physical examinations and inoculations of officers, enlistees, and applicants for enlistment in the national guard, as may be prescribed by department of defense and national guard regulations.

History: 1975 c. 94 s. 91 (1); 1975 c. 189, 422; 1981 c. 35; 2003 a. 69.

21.33 Pay department. The quartermaster general acting as paymaster under orders from the governor may draw from the state treasury the money necessary for paying troops in camp or on active service, and shall furnish such security for the same as the secretary of administration may direct. The amount due on account of the field, staff, or other officers, noncommissioned staff and band, company, or enlistees, not herein enumerated, if any, shall be paid to the person to whom the same shall be due, on the properly signed and certified payrolls.

History: 1975 c. 94 s. 91 (1); 2003 a. 33.

21.35 Federal laws and regulations; no discrimination. The organization, armament, equipment, and discipline of the national guard shall be that prescribed by federal laws or regulations; and the governor may by order perfect such organization, armament, equipment, and discipline, at any time, so as to comply with such laws and regulations insofar as they are consistent with the Wisconsin code of military justice. Notwithstanding any rule or regulation prescribed by the federal government or any officer or department thereof, no person, otherwise qualified, may be denied membership in the national guard because of sex, color, race, creed, or sexual orientation and no member of the national guard may be segregated within the national guard 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, public toilets, showers, saunas, and dressing rooms.

History: 1975 c. 94; 1981 c. 112; 2003 a. 69.

21.36 National guard rules and regulations. (1) The rules of discipline and the regulations of the armed forces of the U.S. shall, so far as the same are applicable, 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 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, and 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.

(2) The governor may make and publish rules, regulations, and orders for the government of the national guard, not inconsistent with the law, and cause the rules, regulations, or orders,

together with any related laws, to be printed and distributed in book form, or another form, in any number that the governor considers necessary. The governor may provide for all books and forms that may be necessary for the proper discharge of the duty of all officers. The governor may delegate the authority under this subsection to the adjutant general by executive order.

History: 1979 c. 221; 1983 a. 192; 1991 a. 269, 316; 2001 a. 107.

21.37 The Wisconsin code of military justice. The Wisconsin code of military justice as created by [chapter 20, laws of 1969](#), shall govern the conduct of all members of the national guard and any other military force organized under the laws of this state. The revisor of statutes shall not print the Wisconsin code of military justice in the statutes.

Limitation of court martial to service connected crimes. 1970 WLR 172.

21.38 Uniform of Wisconsin national guard. The uniform of the national guard shall be that prescribed by regulations for the corresponding branch of the United States armed forces.

21.42 Status, powers and property of units. (1) Every federally recognized company sized unit, when such organization is perfected, shall without any further proceeding constitute a corporate body to be known by the name by which such company is officially designated under the military laws and regulations of the state, and shall possess all the powers necessary and convenient to accomplish the objects and perform the duties prescribed by law.

(2) The members of such company sized unit in good standing and no others shall constitute the members of such corporation and shall elect 3 trustees who shall manage and administer the business of such corporation. The trustees shall elect one of their number president, and one vice president and shall also elect a secretary.

(3) Each such company sized unit may take by purchase, devise, gift or otherwise and hold property and with the approval of the adjutant general sell, convey and mortgage such property so long as such company sized unit is an existing unit and a part of the national guard of Wisconsin. All such property shall be in the custody and control of the trustees.

(4) Whenever any such company sized unit shall be disbanded as provided by law such corporation shall cease to exist and all property belonging to it shall become the property of the state.

21.43 Commissions and rank. The governor shall issue commissions to all officers whose appointments are approved by the governor. Every commission shall be countersigned by the secretary of state and attested by the adjutant general and continue as provided by law. Each officer so commissioned shall take and file with the department of military affairs the oath of office prescribed by [article IV, section 28, of the constitution](#). 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 service in the national guard creditable for pay, and if of equal service then by lot.

History: 1983 a. 27, 192.

21.47 Examinations for promotion or appointments. The governor may order any subordinate officer or person nominated or recommended for promotion or appointment in the national guard 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 may be recommended or appointed, and may take such action on the report of such examining officer or board of officers as the governor deems to be for the best interests of the service. The governor may also require the physical examination provided for admission to the United States army or air force.

History: 1983 a. 27; 1991 a. 316.

21.48 Pay. (1) Each officer and enlisted person of the national guard on active duty in the state under orders of the governor on a state pay basis 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 except that the base pay so provided shall not be less than \$50 per day.

(2) The governor may, by orders, duplicates of which shall be filed with the secretary of state, fix the pay of any member of the governor's staff, or other members of the national guard for any special service under orders.

(3) The governor may order, with their consent, to active duty in the department of military affairs, any departmental officers of the governor's staff, including the adjutant general and the deputy adjutants general, and while so assigned the officers shall receive the pay, but not the allowances, of an officer of equal grade in the armed forces of the United States.

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

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

(ae) "Department" means the department of military affairs.

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

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

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

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

1g. A public institution of higher education under the Minnesota-Wisconsin student reciprocity agreement under s. 39.47.

1m. A public institution of higher education under an interstate agreement under s. 39.42.

2. Except as provided in subs. 1g. and 1m., an accredited institution of higher education located in this state, as defined in 20 USC 1002.

3. Any technical college established under ch. 38.

(c) "Tuition grant" means any tuition cost reimbursement payment made by the department under sub. (3).

(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.

(d) Failing to meet the national guard service eligibility criteria established by the department or absent without leave for more than 9 unit training assemblies.

(e) 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).

(f) Failing to achieve a minimum grade point average of 2.0 or an average grade of "C" for the semester for which reimbursement is requested.

(3) TUITION GRANTS. (a) Any eligible guard member upon satisfactory completion of a full-time or part-time course in a qualifying school is eligible for a tuition grant equal to 100% of the actual tuition charged by the school or 100% 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 90 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) (f).

(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).

(3m) REPAYMENT OF GRANTS. The department shall require a guard member who has received a grant under this section to repay the amount of the grant to the department if the national guard member, on or after September 1, 2001, 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.

(4) LIMITATIONS. (a) No guard member is eligible for benefits 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 grants may be authorized under this section. The department shall determine if an active draft has been established. Any termination of the 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. (3) (d) and par. (a).

(c) No guard member may receive a grant under sub. (3) for any semester in which he or she received a grant under s. 45.25.

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.

21.50 Military property accountability. (1) Each commanding officer to whom state or federal military property is issued may be required to execute to the state a bond, with such sureties and in such form and amount as the adjutant general shall approve, conditioned for the faithful preservation and care of all such arms, accoutrements, moneys, or stores, that the officer received, to indemnify the state against loss by misuse or misapplication by the officer or any other person; to account for all of the same according to law, and to deliver the same to any officer lawfully entitled thereto, on demand, and to pay all sums lawfully appraised for losses or damages.

(2) The unit commander is the legal custodian of the money, property and effects of any company sized unit or detachment of the national guard, whether said property is owned by said unit or detachment or its members collectively, or has been issued to it or any of its officers, for its use by state or United States authority, and may sue for and recover possession of the same, whenever wrongfully withheld from the unit commander's custody or the custody of the unit or detachment.

(3) The adjutant general, with the approval of the governor may obtain and pay for out of the annual military appropriation an adequate indemnity bond covering all of the officers of the national guard responsible to the state for moneys and military property.

(4) Each company commander, with the approval of the adjutant general, may employ an armorer to assist in the proper care

of military property for which the company commander is accountable.

History: 1975 c. 189, 421; 1991 a. 316; 2003 a. 69.

21.51 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.

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

History: 1979 c. 221.

21.54 Resignation of officer. A commissioned officer may resign the officer's commission to the officer's immediate commanding officer, in writing, who shall promptly forward the same through military channels to the adjutant general. The governor shall, by order, accept or reject the same, and, if accepted, fix the date of its taking effect. No resignation shall take effect except as so ordered.

History: 1991 a. 316.

21.56 Lost and obsolete property. (1) All state–owned military property issued to any officer or armory facility manager shall be audited annually as a part of the annual inspection of federal property accounts. When damages other than fair 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 pecuniarily liable, and may require a depreciated payment, as determined by the adjutant general, into the state treasury. If it is determined that the property was damaged, destroyed or lost without fault or neglect on the part of those responsible, all concerned may be relieved of liability.

(2) 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).

History: 1971 c. 100 s. 23; 1975 c. 189; 1989 a. 31.

21.57 Disposition of property on separation and death. (1) Whenever any officer who is responsible for state property is separated or reassigned, all property in the officer's possession or for which the officer is responsible shall be delivered to the person designated to receive the property by the adjutant general. No separation shall be effective until all property accounts have been settled.

(2) In case of the death of any officer having custody of state property, the next in command shall immediately take charge of such property and deliver the same to the person appointed to receive the property by the adjutant general.

History: 1975 c. 189, 421.

21.59 Issue of subsistence. The adjutant general, during state active duty of the national guard or state defense force, shall issue subsistence to personnel.

History: 1975 c. 94 s. 91 (1); 1975 c. 189; 1987 a. 63 s. 13.

21.60 Discharge of enlistees. Enlistees shall be discharged as provided in the laws and regulations of the United States governing the national guard.

History: 1975 c. 94 s. 91 (1).

21.61 Armories. (1) The governing body of any city, village, town or county in which one or more companies of the national guard may be located may erect or purchase a suitable armory for the purpose of drill and for the safekeeping of the arms, equipment, uniforms and other military property furnished by the state, and for public meetings and conventions, when such use will not

interfere with the use of such building by the national guard. Plans and specifications for such armories shall be inspected and approved by the governor and the adjutant general who shall file with the governing body of the city, village, town or county a certificate of such inspection and approval prior to the erection thereof.

(3) The governing body of any city, village, town or county in which any such company of the national guard may be located may purchase land and build armories in the same manner as the governing body is now authorized by law to build other city, village, town or county buildings, and when unable to agree upon the price of land with its owner may, if in its opinion necessary, appropriate land for the purpose of building armories in the same manner as the governing body is now authorized by law to appropriate real estate for other city, village, town or county buildings. In case however a city, village, town or county shall have aided in the erection of an armory and the company or companies of the national guard for which the armory was erected shall at any time be disbanded, then the armory shall become the property of the city, village, town or county in which the armory is erected.

(4) Such armory, when erected or purchased, shall be under the control and charge of the governor, the adjutant general and commanding officer of the company or companies of the national guard for which it has been provided. The commanding officer shall cause to be deposited therein, all arms, uniforms and equipment received from the governor and the adjutant general who may make such rules as they deem proper for the observance of all officers and persons having charge of such armories or occupying any part thereof.

(5) Whenever any county, city, town or village erects a building as a memorial to the soldiers, sailors and marines who served in any war or armed conflict of the United States and makes provision therein for the accommodation of one or more companies of the national guard having no regularly established armory, the governor, adjutant general or other state officers having control of armory accommodations and regulations shall, whenever practicable, rent the armory provided in such memorial building for the use of companies of the national guard.

History: 1975 c. 189; 1983 a. 27; 1993 a. 246.

21.612 Transfer of lands for military purposes. Any county, city, town or village may transfer land or may acquire land for the purpose of transferring the same, by gift or otherwise, to the state for state military purposes, and any such transfers or acquisitions heretofore made for such purposes are validated.

History: 1973 c. 90.

21.616 Facilities for administration and training. The department of military affairs is authorized and directed, when contributions therefor are made available by the federal government under the national defense facilities act of 1950 or any act or acts amendatory thereof or supplementary thereto, to expand, rehabilitate, equip or convert facilities owned by the state and to acquire, construct, expand, rehabilitate, equip or convert additional facilities. The department of military affairs may on the part of the state accept such federal contributions in the manner prescribed by federal law or regulation, and may accept on behalf of the state the lawful terms and conditions thereof. The department of military affairs shall take such steps and have all the functions and powers necessary, consistent with the appropriation therefor, to acquire contributions under any such federal act and to undertake and complete any such project in conformity with the applicable federal act and this section.

21.62 Rules for issuance of state property to bands. The governor may, by orders, prescribe and establish such rules and regulations for the issuing of state property to bands and the giving of security therefor, the mustering, inspection, property and other returns, as the governor deems proper.

History: 1991 a. 316.

21.63 Grounds for mustering out of units. If any company sized unit or detachment falls below the minimum in membership, becomes insubordinate, lax in discipline or negligent in drill or other duties, if its members lose interest in their organization, if, upon inspection, it appears that the unit or detachment is not properly organized or conducted, or if the unit or detachment does not make musters and returns, the governor may muster out the unit or detachment and may direct all persons holding arms, equipment and military stores to return the property. Any person, not a member of the national guard in good standing, who retains arms or other property belonging to the state, as owner or bailee, after the governor directs the return of the property, shall forfeit not less than \$50 nor more than \$200.

History: 1979 c. 221.

21.70 Counter-drug activities. (1) The governor may request volunteers of 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 section to duty in federally funded status. The governor may delegate his or her authority under this section 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 section.

(2) A national guard member assisting in drug interdiction and counter-drug activities under this section shall obey and execute the instructions of a law enforcement officer involved in these activities given to the national guard member through the military chain of command.

History: 1991 a. 47.

21.72 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), 146.50 (5) (a) or (b), (6g) (a), (7), or (8) (a) or (f), 250.05 (5), 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), 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. III 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 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 state active duty under ch. 21 or on active duty in the U.S. armed forces. 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 state active duty under ch. 21 or on active duty in the U.S. armed forces. 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 of military affairs shall assist any service member who needs assistance to renew or extend a license under this section.

(6) The department of military affairs 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.

21.75 Soldiers’ and sailors’ relief act; state service.

(1) DEFINITIONS. In this section:

(a) “Active state service” means active service for 30 days or more in the national guard or the state defense force under an order of the governor issued under this chapter or active service for 30 days or more in the national guard under 32 USC 502 (f) or 506 that is not considered to be “service in the uniformed services,” as defined in 38 USC 4303 (13). “Active state service” includes active service for 30 days or more in the national guard of any state under the order of a governor of that state.

(b) “Court” means a court of record.

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

(cm) “Period of active state service” means the period beginning on the date on which the service member receives an order to enter active state service and ending on the date of the service member’s release from active state service or death while in active state service.

(d) “Service member” means a resident of this state who may be called into active state service.

(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 active state service 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 active state service and may either during or after the period of active service 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 active state service if executed by a service member who subsequently is called into active state service. 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 active state service.

(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 active state service.

(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 active state service. 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 active state service or that the plaintiff is unable to determine if the defendant is in active state service. If an affidavit is not filed showing that the defendant is not in active state service, 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 active state service 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 active state service, 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 active state service, 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 active state service or within 30 days after the end of that period of active state service, and it appears that the service member was prejudiced in making a defense by reason of his or her active state service, 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 active state service 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 active state service is involved as a party, or within 60 days after the end of the period of active state service, 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 active state service.

(7) STAY OR VACATION OF EXECUTIONS OR ATTACHMENTS. In any court action that is commenced against a service member before or after entering active state service, or within 60 days after the period of active state service 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 active state service.

(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 active state service and 3 months 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 active state service 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 active state service or by or against his or her heirs, executors, administrators 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 active state service.

(10) MAXIMUM INTEREST RATE. No obligation or liability bearing interest at a rate in excess of 6% per year incurred by a service member in active state service before his or her entry into that service may, during any part of the period of active state service, bear interest in excess of 6% 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% per year is not materially affected by reason of his or her active state service, 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 active state service in respect to any premises for which the agreed rent does not exceed \$1,200 per month, occupied chiefly for dwelling purposes by the spouse, children, or other dependents of a service member who is in active state service, 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 3 months unless the court determines that the ability of the tenant to pay the agreed rent is not materially affected by the active state service. 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 active state service that was incurred before the service member's period of active state service 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 active state service 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 active state service, 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 active state service, 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 fore-

closure, 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 3 months after the service member's period of active state service, unless the court ordered the foreclosure, sale, or seizure of property before the beginning of the service member's period of active state service 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 active state service, 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 active state service 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 active state service 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 military service and for 90 days after the member's completion of military service, 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 active state service and for 3 months 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 active state service.

(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 active state service, 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 active state service.

(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 SERVICE; 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 active service of a service member shall be prima facie evidence as to any of the following facts:

1. That the service member named has been in active state service.

2. The period of the active state service, including the date the service member was ordered into active state service.

3. The monthly pay received by the service member in active state service at the time the certificate was issued.

4. If the service member died while in active state service, 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 prima facie evidence of the facts stated in the certificate and of the authority of the signer to issue the certificate.

(c) When a service member in active state service has been reported missing to the department, the service member shall be presumed to continue in active state service 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 active state service, or within 6 months after that service 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 active state service. 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 service:

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 active state service and, from the date of the end of the period of active state service or from the date of requesting the

relief if made after the service 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 active state service, 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 active state service 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 active state service and, from the date of the end of the period of active state service or from the date of requesting the relief if made after the service is ended, for a period equal to the period of active state service 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 active state service 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 after December 14, 2001, by a service member in active state service 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 called into active state service has coverage under a professional liability insurance policy that does not cover claims filed with respect to the service member during the period of active state service 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 called into active state service 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 active state service 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 active state service, 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 active state service.

History: 2001 a. 24, 105; 2003 a. 69.

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

(1) DEFINITIONS. In this section:

(a) “Active service” means any of the following:

1. Active service in the national guard or the state defense force under an order of the governor issued under this chapter or active service in the national guard under [32 USC 502](#) (f) that is not considered to be service in the uniformed services.

2. Active service with the state laboratory of hygiene under [s. 36.25 \(11\) \(em\)](#) for the purpose of assisting the department of health and family 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 service in the national guard 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) “Service in the uniformed services” has the meaning given in [38 USC 4303](#) (13).

(g) “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 called into active 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 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 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 service or service in the uniformed services 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 service in the national guard in this or another state or the state defense force, the active 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 service in the uniformed services described in [38 USC 4312](#) (c) (1) to (4) and all of the following periods of active service are not included in calculating the 5-year period specified in par. (a) 2.:

1. Any period of active service, as defined in sub. (1) (a) 1., beyond that 5-year period that is required to complete an initial period of obligated active service.

2. Any period of active service, as defined in sub. (1) (a) 1., 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 service before the expiration of the 5-year period.

3. Any period of active service, as defined in sub. (1) (a) 1., 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 service that was performed by a person who was ordered to, or retained in, active 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 uniformed services.

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

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 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 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 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 service wishes to receive the reemployment rights and benefits specified in this sec-

tion, 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 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 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 subds. 4. and 5., if a person who has been absent from a position of employment because of active 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 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 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 subds. 4. and 5., if a person who has been absent from a position of employment because of active 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 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 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 subds. 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 minimum 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 service or service in the uniformed services does not, except as permitted under par. (c), exceed 5 years, and, in the case of

active service in the national guard 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. 45.35 (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 service or service in the uniformed services so long as the requirements under par. (a) are met.

(4) REEMPLOYMENT POSITIONS. (a) *Prompt reemployment required.* 1. Subject to subds. 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 service was for less than 91 days promptly on completion of that period of active 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 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 service began.

2. Subject to subds. 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 service was for more than 90 days promptly on completion of that period of active 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 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 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 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 service, the employer shall reemploy the person promptly on completion of that period of active 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 service or in the position of employment in which the person was employed on the date on which the person's period of active service began for any reason other than disability incurred in or aggravated during a period of active 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 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 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 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 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 service.

(b) *Continuation of benefits.* 1. Subject to subds. 2. to 5., a person who is absent from employment because of active service is considered to be on furlough or leave of absence while performing the active 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, status, 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 service began or that is established while the person is performing the active service.

2. If an employer shows that a person who is absent from a position of employment because of active 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 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 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 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 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 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 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 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 service and if after returning from that active 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 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 complaint 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.

(8) RULES. The department of military affairs shall promulgate rules implementing this section.

History: 2001 a. 26, 109; 2003 a. 33, 69.