

## 2003 ASSEMBLY BILL 19

**AN ACT** *to amend* 21.01 (2), 21.025 (1), 21.025 (2) (d), 21.07, 21.13 (1), 21.13 (2), 21.16 (1), 21.18 (3), 21.19 (2), 21.19 (3) (b), 21.28 (1), 21.30, 21.32, 21.35, 21.48 (1), 21.49 (1) (ar), 21.50 (3), 21.72 (1) (c), 21.75 (1) (a), 21.75 (1) (d), 21.80 (3) (a) (intro.), 21.80 (3) (a) 1., 21.80 (3) (a) 4., 36.11 (47) (intro.), 38.12 (13) (intro.), 39.48 and 40.05 (4g) (a) 3.; and *to create* 21.80 (1) (a) 3. of the statutes; **relating to:** benefits and eligibility of Wisconsin residents who are members of the national guard in another state.

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*Analysis by the Legislative Reference Bureau*

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

- 1           **SECTION 1.** 21.01 (2) of the statutes is amended to read:
- 2           21.01 **(2)** The Wisconsin national guard shall be organized into army national
- 3           guard and air national guard units, and “national guard” when used in this chapter,

**ASSEMBLY BILL 19****SECTION 1**

1 unless the context otherwise requires, ~~includes~~ means both the Wisconsin army  
2 national guard and the Wisconsin air national guard.

3 **SECTION 2.** 21.025 (1) of the statutes is amended to read:

4 21.025 (1) **AUTHORITY AND NAME.** The adjutant general may establish a plan for  
5 organizing a military force to be known as the Wisconsin state defense force. The  
6 adjutant general may organize the Wisconsin state defense force under the plan if  
7 all or part of the ~~Wisconsin~~ national guard is called into the service of the United  
8 States. It shall be distinct from the national guard, uniformed, and composed of  
9 officers, commissioned or assigned, and of enlisted personnel who volunteer for  
10 service. Membership in the Wisconsin state defense force may not include any  
11 person who is in the active military forces, including the reserve components.  
12 Persons in the retired reserve may serve in the Wisconsin state defense force.

13 **SECTION 3.** 21.025 (2) (d) of the statutes is amended to read:

14 21.025 (2) (d) The adjutant general may organize a cadre force of not more than  
15 12 personnel at each state-owned armory. Each cadre force shall establish  
16 recruitment lists of persons interested in becoming members of the state defense  
17 force, which may be used to recruit full units for the state defense force in case the  
18 ~~Wisconsin~~ national guard is mobilized for active federal duty.

19 **SECTION 4.** 21.07 of the statutes is amended to read:

20 **21.07 Decorations and awards.** The adjutant general may prescribe  
21 decorations and awards for the ~~Wisconsin~~ national guard and the state defense force,  
22 the form and issue thereof made under rules adopted by the adjutant general and  
23 approved by the governor.

24 **SECTION 5.** 21.13 (1) of the statutes is amended to read:

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1           21.13 (1) If any state resident who is a member of the a national guard of any  
2 state or of the state defense force is prosecuted by any civil or criminal action for any  
3 act performed by the member while in the performance of military duty and in  
4 pursuance of military duty, the action against the member shall be defended by  
5 counsel, which may include the attorney general, appointed for that purpose by the  
6 governor upon the recommendation of the adjutant general. The adjutant general  
7 shall make the recommendation if the act performed by the member was in the line  
8 of duty. The costs and expenses of any such defense shall be audited by the  
9 department of administration and paid out of the state treasury and charged to the  
10 appropriation under s. 20.455 (1) (b) and if the jury or court finds that the member  
11 of the national guard against whom the action is brought acted within the scope of  
12 his or her employment as a member, the judgment as to damages entered against the  
13 member shall also be paid by the state.

14           **SECTION 6.** 21.13 (2) of the statutes is amended to read:

15           21.13 (2) Any civil action or proceeding brought against a member of the a  
16 national guard or the state defense force under sub. (1) is subject to ss. 893.82 and  
17 895.46.

18           **SECTION 7.** 21.16 (1) of the statutes is amended to read:

19           21.16 (1) No person may wear the uniform of the ~~Wisconsin~~ national guard or  
20 of the U.S. army, air force, navy, or marine corps, or a reserve component of the U.S.  
21 armed forces, except a person who is regularly enrolled in the U.S. army, air force,  
22 navy, or marine corps, a reserve component of the U.S. armed forces, the national  
23 guard of one of the states or one of the student cadet companies armed and recognized  
24 by the national or a state government, a person retired from active service or a  
25 reserve component, or a person who is an inmate of any veterans' or soldiers' home.

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1 Any person violating this subsection shall forfeit not less than \$10 nor more than  
2 \$100. The district attorney of the county in which any such offense is committed shall  
3 bring an action in the name of the state against the offender.

4 **SECTION 8.** 21.18 (3) of the statutes is amended to read:

5 21.18 (3) All staff officers appointed under sub. (1), except the adjutant general  
6 whose tenure is governed by ss. 15.31 and 17.07 (5), shall hold their positions unless  
7 terminated earlier by resignation, disability, or for cause and unless federal  
8 recognition of the officer's commission under 32 USC 323 is refused or withdrawn.  
9 The governor shall remove an officer whose federal recognition is refused or  
10 withdrawn, effective on the date of the loss of federal recognition. The terms of the  
11 deputy adjutants general for army and air shall be 5 years beginning on the first day  
12 of the 7th month of the term of the adjutant general. The deputy adjutants general  
13 may be reappointed to successive terms. Vacancies on the military staff of the  
14 governor shall be filled by appointment from officers actively serving in the  
15 Wisconsin national guard. Interim vacancies shall be filled by appointment by the  
16 adjutant general for the residue of the unexpired term.

17 **SECTION 9.** 21.19 (2) of the statutes is amended to read:

18 21.19 (2) The department of military affairs on behalf of the state may rent to  
19 appropriate organizations or individuals state-owned lands, buildings, and facilities  
20 used by, acquired for, or erected for the Wisconsin national guard when not required  
21 for use by the Wisconsin national guard. Such rental shall not be effective unless in  
22 writing and approved by the governor and the adjutant general or a designee in  
23 writing.

24 **SECTION 10.** 21.19 (3) (b) of the statutes is amended to read:

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1           21.19 **(3)** (b) Notwithstanding s. 13.48 (14) (c), the department, under the  
2 authority and procedures established in par. (a), may sell and convey the Wisconsin  
3 national guard armory located at 1225 E. Henry Clay Street, Whitefish Bay,  
4 Milwaukee County. The proceeds of a sale shall be used first to pay off all bonds, all  
5 or a part of which were used to construct or purchase the property. Any moneys  
6 remaining from the sale shall be paid into the state treasury and credited to the  
7 appropriation under s. 20.465 (1) (g).

8           **SECTION 11.** 21.28 (1) of the statutes is amended to read:

9           21.28 **(1)** The adjutant general shall recommend a candidate for appointment  
10 as the United States property and fiscal officer for the Wisconsin national guard,  
11 subject to the concurrence of the governor, from federally commissioned officers  
12 actively serving in the Wisconsin national guard. The candidate shall be nominated  
13 by the governor, subject to the concurrence of the U.S. secretary of the army, if the  
14 nominee is serving in the army national guard, or the U.S. secretary of the air force,  
15 if the nominee is serving in the air national guard.

16           **SECTION 12.** 21.30 of the statutes is amended to read:

17           **21.30 Chief surgeons; powers and duties.** The chief surgeons for army and  
18 air shall, under direction of the adjutant general, have general supervision of the  
19 medical units of the Wisconsin national guard and state defense force when  
20 organized. The chief surgeons shall make recommendations concerning  
21 procurement of medical supplies for state active duty operations, for the  
22 procurement and training of medical personnel and for the publication of Wisconsin  
23 national guard directives on medical subjects. The chief surgeons shall submit an  
24 annual report of the affairs and expenses of their departments to the adjutant  
25 general.

**ASSEMBLY BILL 19****SECTION 13**

1           **SECTION 13.** 21.32 of the statutes is amended to read:

2           **21.32 Physical examinations.** The chief surgeons for army and air shall  
3 provide for such physical examinations and inoculations of officers, enlistees, and  
4 applicants for enlistment, ~~Wisconsin~~ in the national guard, as may be prescribed by  
5 department of defense and national guard regulations.

6           **SECTION 14.** 21.35 of the statutes is amended to read:

7           **21.35 Federal laws and regulations; no discrimination.** The  
8 organization, armament, equipment, and discipline of the ~~Wisconsin~~ national guard  
9 shall be that prescribed by federal laws or regulations; and the governor may by order  
10 perfect such organization, armament, equipment, and discipline, at any time, so as  
11 to comply with such laws and regulations insofar as they are consistent with the  
12 Wisconsin code of military justice. Notwithstanding any rule or regulation  
13 prescribed by the federal government or any officer or department thereof, no person,  
14 otherwise qualified, may be denied membership in the ~~Wisconsin~~ national guard  
15 because of sex, color, race, creed, or sexual orientation and no member of the  
16 ~~Wisconsin~~ national guard may be segregated within the ~~Wisconsin~~ national guard  
17 on the basis of sex, color, race, creed, or sexual orientation. Nothing in this section  
18 prohibits separate facilities for persons of different sexes with regard to dormitory  
19 accommodations, public toilets, showers, saunas, and dressing rooms.

20           **SECTION 15.** 21.48 (1) of the statutes is amended to read:

21           **21.48 (1)** Each officer and enlisted person of the ~~Wisconsin~~ national guard on  
22 active duty in the state under orders of the governor on a state pay basis shall receive  
23 the base pay and allowances of an officer or enlisted person of equal rank in the  
24 corresponding branch of the U.S. armed forces except that the base pay so provided  
25 shall not be less than \$50 per day.

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1           **SECTION 16.** 21.49 (1) (ar) of the statutes is amended to read:

2           21.49 (1) (ar) “Guard member” means any person who is a member of the  
3           ~~Wisconsin~~ national guard.

4           **SECTION 17.** 21.50 (3) of the statutes is amended to read:

5           21.50 (3) The adjutant general, with the approval of the governor may obtain  
6           and pay for out of the annual military appropriation an adequate indemnity bond  
7           covering all of the officers of the ~~Wisconsin~~ national guard responsible to the state  
8           for moneys and military property.

9           **SECTION 18.** 21.72 (1) (c) of the statutes is amended to read:

10          21.72 (1) (c) “Service member” means a member of a reserve unit of the U.S.  
11          armed forces or a member of the ~~Wisconsin~~ a national guard unit of any state who  
12          is a resident of Wisconsin.

13          **SECTION 19.** 21.75 (1) (a) of the statutes is amended to read:

14          21.75 (1) (a) “Active state service” means active service for 30 days or more in  
15          the national guard or the state defense force under an order of the governor issued  
16          under this chapter or active service for 30 days or more in the national guard under  
17          32 USC 502 (f) or 506 that is not considered to be “service in the uniformed services,”  
18          as defined in 38 USC 4303 (13). “Active state service” includes active service for 30  
19          days or more in the national guard of any state under the order of a governor of that  
20          state.

21          **SECTION 20.** 21.75 (1) (d) of the statutes is amended to read:

22          21.75 (1) (d) “Service member” means a ~~person~~ resident of this state who may  
23          be called into active state service.

24          **SECTION 21.** 21.80 (1) (a) 3. of the statutes is created to read:

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1           21.80 (1) (a) 3. Active service in the national guard under an order of the  
2 governor of that state.

3           **SECTION 22.** 21.80 (3) (a) (intro.) of the statutes is amended to read:

4           21.80 (3) (a) *Prerequisites.* (intro.) Subject to par. (d), any person who is a  
5 resident of this state and absent from a position of employment because of active  
6 service is entitled to the reemployment rights and benefits specified in this section  
7 if all of the following apply:

8           **SECTION 23.** 21.80 (3) (a) 1. of the statutes is amended to read:

9           21.80 (3) (a) 1. Except as provided in par. (b), the person or an appropriate  
10 officer in the national guard of this or another state or the state defense force has  
11 given advanced notice of the active service to the person's employer.

12           **SECTION 24.** 21.80 (3) (a) 4. of the statutes is amended to read:

13           21.80 (3) (a) 4. In the case of active service in the national guard in this or  
14 another state or the state defense force, the active service has not been terminated  
15 under other than honorable conditions.

16           **SECTION 25.** 36.11 (47) (intro.) of the statutes is amended to read:

17           36.11 (47) (intro.) If a student who is a resident of Wisconsin and a member of  
18 ~~the Wisconsin~~ a national guard or a member of a reserve unit of the U.S. armed forces  
19 withdraws from school after September 11, 2001, because he or she is called into state  
20 active duty under ch. 21 or into active service with the U.S. armed forces for at least  
21 30 days, the board shall, at the student's request, do one of the following for all  
22 courses from which the student had to withdraw:

23           **SECTION 26.** 38.12 (13) (intro.) of the statutes is amended to read:

24           38.12 (13) ARMED FORCES. (intro.) If a student who is a resident of Wisconsin  
25 and a member of ~~the Wisconsin~~ a national guard or a member of a reserve unit of the



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1 U.S. armed forces withdraws from school after September 11, 2001, because he or she  
2 is called into state active duty under ch. 21 or into active service with the U.S. armed  
3 forces for at least 30 days, the district board shall, at the student's request, do one  
4 of the following for all courses from which the student had to withdraw:

5 **SECTION 27.** 39.48 of the statutes is amended to read:

6 **39.48 Armed forces.** If a student who is a resident of Wisconsin and a member  
7 of ~~the Wisconsin~~ a national guard or a member of a reserve unit of the U.S. armed  
8 forces withdraws from a private nonprofit college or university located in this state  
9 after September 11, 2001, because he or she is called into state active duty under ch.  
10 21 or into active service with the U.S. armed forces for at least 30 days, the college  
11 or university shall, at the student's request, grant the student an incomplete in all  
12 the courses and permit the student to complete the courses, within 6 months after  
13 leaving state service or active service, without paying additional tuition or fees.

14 **SECTION 28.** 40.05 (4g) (a) 3. of the statutes is amended to read:

15 40.05 **(4g)** (a) 3. On the date on which he or she is activated, is either a member  
16 of ~~the Wisconsin~~ a national guard or a member of a reserve component of the U.S.  
17 armed forces or is recalled to active military duty from inactive reserve status.

18

(END)