

# State of Wisconsin



2003 Assembly Bill 19

Date of enactment: **November 11, 2003**  
Date of publication\*: **November 25, 2003**

## 2003 WISCONSIN ACT 69

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.

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

**SECTION 1.** 21.01 (2) of the statutes is amended to read:

21.01 (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, ~~includes~~ means both the Wisconsin army national guard and the Wisconsin air national guard.

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

21.025 (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 Wisconsin 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 mil-

itary forces, including the reserve components. Persons in the retired reserve may serve in the Wisconsin state defense force.

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

21.025 (2) (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 Wisconsin national guard is mobilized for active federal duty.

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

**21.07 Decorations and awards.** The adjutant general may prescribe decorations and awards for the Wisconsin 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.

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

21.13 (1) If any state resident who is a member of the 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

\* Section 991.11, WISCONSIN STATUTES 2001-02 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

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.

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

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

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

21.16 (1) No person may wear the uniform of the Wisconsin 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.

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

21.18 (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 and 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. 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. Vacancies on the military staff of the governor shall be filled by appointment from officers actively serving in the Wisconsin national guard. Interim vacancies shall be filled by appointment by the adjutant general for the residue of the unexpired term.

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

21.19 (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 Wisconsin national guard when not required for use by the Wisconsin 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.

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

21.19 (3) (b) Notwithstanding s. 13.48 (14) (c), the department, under the authority and procedures established in par. (a), may sell and convey the Wisconsin 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).

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

21.28 (1) The adjutant general shall recommend a candidate for appointment as the United States property and fiscal officer for the Wisconsin national guard, subject to the concurrence of the governor, from federally commissioned officers actively serving in the Wisconsin 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.

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

**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 Wisconsin 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 Wisconsin 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.

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

**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, Wisconsin in the national guard, as may be prescribed by department of defense and national guard regulations.

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

**21.35 Federal laws and regulations; no discrimination.** The organization, armament, equipment, and discipline of the ~~Wisconsin~~ 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 ~~Wisconsin~~ national guard because of sex, color, race, creed, or sexual orientation and no member of the ~~Wisconsin~~ national guard may be segregated within the ~~Wisconsin~~ 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.

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

21.48 (1) Each officer and enlisted person of the ~~Wisconsin~~ 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.

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

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

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

21.50 (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 ~~Wisconsin~~ national guard responsible to the state for moneys and military property.

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

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

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

21.75 (1) (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.

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

21.75 (1) (d) "Service member" means a person resident of this state who may be called into active state service.

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

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

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

21.80 (3) (a) *Prerequisites.* (intro.) 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:

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

21.80 (3) (a) 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.

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

21.80 (3) (a) 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.

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

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

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

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

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

**2003 Wisconsin Act 69**

**2003 Assembly Bill 19**

**39.48 Armed forces.** If a student who is a resident of Wisconsin and a member of ~~the Wisconsin~~ a national guard or a member of a reserve unit of the U.S. armed forces withdraws from a private nonprofit college or university located in this state after September 11, 2001, because he or she is called into state active duty under ch. 21 or into active service with the U.S. armed forces for at least 30 days, the college or university shall, at the student's request, grant the student an incomplete in all the courses and permit the student to complete the courses,

within 6 months after leaving state service or active service, without paying additional tuition or fees.

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

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

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