

1 insert 1–full text

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

2 AN ACT; relating to: powers and duties of the department of military affairs,
3 military officers, military property and assets, the national guard and state
4 defense force, rights of service personnel, and the Wisconsin code of military
5 justice.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft was prepared for the drafting subcommittee of the joint legislative council's special committee on recodification of ch. 21, military affairs. The special committee was directed to conduct a recodification of ch. 21, relating to military affairs, to include reorganizing the chapter in a logical manner, renumbering and retitling sections, consolidating related provisions, modernizing language, resolving ambiguities in language, making other necessary organizational changes, and making minor substantive changes.

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SECTION 1. Subchapter I of chapter 21 [precedes 21.01] of the statutes is created to read:

CHAPTER 21
SUBCHAPTER I
GENERAL PROVISIONS

SECTION 2. 21.01 of the statutes is created to read:

21.01 Definitions. In this chapter:

- (1) “Department” means the department of military affairs.
- (2) “General officer” means an army or air national guard officer with the rank of brigadier general, major general, lieutenant general, or general.
- (3) “Law enforcement officer” has the meaning given in s. 165.85 (2) (c).

****NOTE: This definition does not include tribal officers and does not apply to law enforcement officers from another state, which may not work for s. 21.02.

****NOTE: Are there other words that we should define for the whole chapter?. For example, military property may be a good candidate for defining for the subch. III problems.

SECTION 3. 21.02 (title) of the statutes is created to read:

21.02 Powers and duties of the governor.

SECTION 4. 21.70 (1) and (2) of the statutes are renumbered 21.02 (1) (a) and (b) and amended to read:

21.02 (1) (a) The governor may request volunteers of from the national guard to provide assistance to federal, state and local law enforcement officers, within or outside the boundaries of this state, in drug interdiction and counter-drug activities under 32 USC 112. These activities may include the operation and maintenance of equipment and facilities. The governor may order, with their consent, any national guard members who volunteer under this section to duty in federally funded status.

1 The governor may delegate his or her authority under this ~~section~~ subsection to the
 2 adjutant general. The adjutant general shall follow all laws and regulations of the
 3 U.S. department of defense when ordering national guard members to perform drug
 4 interdiction and counter-drug activities under this ~~section~~ subsection.

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

****NOTE: We need some language added in par. (b).

9 **SECTION 5.** 21.36 (2) of the statutes is renumbered 21.02 (2) and amended to
 10 read:

11 21.02 (2) The governor may make ~~and, publish, and have printed~~ rules,
 12 regulations, and orders for the ~~government~~ governance of the national guard, not
 13 inconsistent with the law, ~~and cause the rules, regulations, or orders, together with~~
 14 ~~any related laws, to be printed and distributed in book form, or another form, in any~~
 15 ~~number that the governor considers necessary.~~ The governor may provide for all
 16 books and forms that may be necessary for the proper discharge of the duty of all
 17 officers of the national guard. The governor may delegate the authority under this
 18 subsection to the adjutant general by executive order.

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

****NOTE: This subsection requires the delegation to the adjutant general by
 executive order, while sub. (1) (a) above does not require an executive order. Which one
 is correct?

19 **SECTION 6.** 21.015 (title) of the statutes is renumbered 21.03 (title) and
 20 amended to read:

21 **21.03 (title) Department Powers and duties of the department.**

History: 1983 a. 27.

1 **SECTION 7.** 21.015 (intro.) of the statutes is renumbered 21.03 (1) (intro.) and
2 amended to read:

3 21.03 **(1)** (intro.) The department of military affairs shall do all of the following:

4 **SECTION 8.** 21.015 (1) of the statutes is renumbered 21.03 (1) (a) and amended
5 to read:

6 21.03 **(1)** (a) Administer the national guard.

History: 1983 a. 27.

7 **SECTION 9.** 21.015 (2) of the statutes is renumbered 21.03 (1) (b) and amended
8 to read:

9 21.03 **(1)** (b) Provide facilities and support for the national guard ~~and any other~~
10 ~~support available from the appropriations under s. 20.465.~~

History: 1983 a. 27.

11 **SECTION 10.** 21.26 (1) and (2) of the statutes are consolidated, renumbered
12 21.03 (1) (c) and amended to read:

13 21.03 **(1)** (c) ~~The department of military affairs shall administer~~ Administer
14 ~~the Youth Challenge Academy program~~ for disadvantaged youth under 32 USC 509.

15 The department shall determine eligibility criteria for the Challenge Academy
16 consistent with federal law. ~~(2)~~ Annually, the department of military affairs shall

17 do all of the following:

18 (a) 1. Calculate 40% the state share of the average cost per pupil attending the
19 Youth Challenge program Academy program and report this information to the
20 department of public instruction.

21 (b) 2. Notwithstanding s. 118.125, report to each school district in which a pupil
22 attending the program resides, the pupil's name and the name and address of the
23 pupil's custodial parent or guardian.

1 **SECTION 11.** 21.19 (2) of the statutes is renumbered 21.03 (2) and amended to
2 read:

3 21.03 **(2)** ~~The department of military affairs on behalf of the state may rent~~ do
4 any of the following:

5 (a) Rent to appropriate organizations or individuals state-owned lands,
6 buildings, and facilities used by, acquired for, or erected for the national guard when
7 not required for use by the national guard. ~~Such~~ The rental shall ~~is~~ not be effective
8 unless in writing and approved by the governor and the adjutant general or a
9 designee in writing.

10 **SECTION 12.** 21.19 (3) (a) of the statutes is renumbered 21.03 (2) (b) and
11 amended to read:

12 21.03 **(2)** (b) ~~The department of military affairs on behalf of the state, upon~~
13 Upon appraisal by the state chief engineer submitted to the governor in writing, ~~may~~
14 ~~sell and convey upon such terms as the department of military affairs may determine~~
15 and with the written approval of the governor in ~~writing~~ sell and convey, any
16 state-owned property acquired or erected for state military purposes, ~~which if the~~
17 property is no longer useful to the national guard.

18 **SECTION 13.** 21.04 (title) and (1) (intro.) of the statutes are created to read:

19 **21.04 Powers and duties of the adjutant general.** **(1)** (intro.) The adjutant
20 general or his or her designee shall do all of the following:

21 **SECTION 14.** 21.19 (1) of the statutes is renumbered 21.04 (1) (a) and amended
22 to read:

23 21.04 **(1)** (a) ~~The adjutant general shall be~~ Be the military chief of staff to the
24 governor. ~~The adjutant general shall have the~~ (b) Have custody of all property,
25 military records, correspondence, and other documents relating to the national

1 guard and any other military forces organized under the laws of this state. The
 2 ~~adjutant general may appoint an assistant quartermaster general to issue and~~
 3 ~~account for state property. The adjutant general shall be the medium of (c) Advise~~
 4 ~~the governor on military issues and transmit military correspondence with to and~~
 5 ~~from the governor and perform all other duties pertaining to the office or prescribed~~
 6 ~~by law, including the preparation and submission to the governor of reports under~~
 7 ~~s. 15.04 (1) (d).~~

***NOTE: Is par. (b) in conflict with s. 21.21 (1) (b)?

8 **SECTION 15.** 21.19 (1m) of the statutes is renumbered 21.04 (1) (d) and amended
 9 to read:

10 21.04 (1) (d) ~~The adjutant general shall administer~~ Administer, with the
 11 approval of the governor, state-federal cooperative funding agreements related to
 12 military affairs.

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.

13 **SECTION 16.** 21.19 (4) of the statutes is renumbered 21.04 (1) (e) and amended
 14 to read:

15 21.04 (1) (e) ~~The adjutant general shall be the auditor of~~ Audit all military
 16 accounts, and all accounts or claims payable from the treasury of the state for
 17 military purposes ~~shall be regularly audited by the adjutant general before payment.~~
 18 ~~The adjutant general shall cause to be prepared and issued (f) Prepare and issue~~ all
 19 necessary books and forms required by the adjutant general's office for the national
 20 guard. All of the books and forms shall be made to conform as nearly as practicable
 21 to those in use in the United States army or air force.

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.

22 **SECTION 17.** 21.19 (7) (a) 1. of the statutes is renumbered 21.04 (1) (g) and
 23 amended to read:

1 21.04 (1) (g) Have charge of all the military property of the state and shall
2 carefully preserve, repair, and account for the property.

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.

3 **SECTION 18.** 21.19 (7) (a) 2. of the statutes is renumbered 21.04 (1) (h) and
4 amended to read:

5 21.04 (1) (h) ~~Keep in such manner as the governor directs, and subject to the~~
6 ~~governor's inspection,~~ an account of all moneys received and expended by the
7 department.

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.

8 **SECTION 19.** 21.19 (7) (a) 3. of the statutes is renumbered 21.04 (1) (i) and
9 amended to read:

10 21.04 (1) (i) Perform the customary duties of the his or her office, ~~and of the~~
11 ~~office of chief of all logistical services, and have (j) Maintain~~ the custody of all records,
12 returns, and papers pertaining to those offices.

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.

****NOTE: What are returns? Does "papers" include "returns"? Do we need par. (i)?

Is par. (j) needed in view of par. (a). If needed, whose offices?

13 **SECTION 20.** 21.19 (7) (b) of the statutes is renumbered 21.04 (1) (k) and
14 amended to read:

15 21.04 (1) (k) ~~The Provide for the~~ transportation of all national guard troops,
16 arms, accoutrements, stores supplies, and other property and ~~the preparation for~~
17 ~~encampments shall be contracted for by the adjutant general under direction of the~~
18 governor . (L) Prepare the training of national guard troops.

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.

****NOTE: Do we have to put "on state active duty" everywhere we mention national guard troops?

19 **SECTION 21.** 21.19 (8) of the statutes is renumbered 21.04 (1) (m) and amended
20 to read:

1 21.04 (1) (m) ~~The adjutant general or a designee shall issue~~ Issue all necessary
 2 supplies, lodging, and meals to members and units of the national guard on state
 3 active duty and may contract for the purchase and transportation of ~~such supplies~~
 4 ????, subject to s. 16.71 (1).

 ****NOTE: We need language specifying what contract for; including lodging and meals?

5 **SECTION 22.** 21.19 (11) of the statutes is renumbered 21.04 (1) (n) and amended
 6 to read:

7 21.04 (1) (n) ~~The adjutant general shall provide such~~ Provide necessary
 8 medical supplies and services ~~as are necessary~~ to the national guard during periods
 9 of state active duty not otherwise provided under ~~this chapter and ch. 102,~~ to be
 10 charged to the appropriation under s. 20.465 (1) (c).

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.

11 **SECTION 23.** 21.19 (12) of the statutes is renumbered 21.04 (1) (o) and amended
 12 to read:

13 21.04 (1) (o) ~~The adjutant general shall provide from~~ From the appropriation
 14 under s. 20.465 (1) (c), provide a United States flag or state flag to the next of kin of
 15 each deceased member of the national guard who dies ~~as a result of~~ during state
 16 service ~~under s. 21.11~~ active duty.

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.

17 **SECTION 24.** 21.19 (13) of the statutes is renumbered 21.04 (1) (p) and amended
 18 to read:

19 21.04 (1) (p) ~~The adjutant general shall cooperate~~ Cooperate with the federal
 20 government in the operation and maintenance of distance learning centers for the
 21 use of current and former members of the national guard and the U.S. armed forces.
 22 The adjutant general may charge rent for the use of a center by a nonmilitary or

1 nonfederal person. All moneys received under this subsection shall be credited to the
2 appropriation account under s. 20.465 (1) (i).

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.

3 **SECTION 25.** 21.19 (14) of the statutes is renumbered 21.04 (1) (q) and amended
4 to read:

5 21.04 (1) (q) ~~The adjutant general shall provide~~ Provide the department of
6 veterans affairs information on all necessary military points of contact and general
7 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.

8 **SECTION 26.** 21.04 (2) (intro.) of the statutes is created to read:

9 21.04 (2) (intro.) The adjutant general or his or her designee may do any of the
10 following:

11 **SECTION 27.** 21.19 (9) of the statutes is renumbered 21.04 (2) (a) and amended
12 to read:

13 21.04 (2) (a) When any military property belonging to the state as owner or
14 bailee is wrongfully held by another person, ~~the adjutant general may bring an action~~
15 in the name of the state to recover possession of the same property or the money value
16 thereof of the property.

17 **SECTION 28.** 21.19 (10) of the statutes is renumbered 21.04 (2) (b) and amended
18 to read:

19 21.04 (2) (b) ~~The adjutant general may, upon~~ Upon receipt of a meritorious
20 requests request for a state service flags for public use flag and within the limits of
21 the appropriation made under s. 20.465 (1) (e), furnish such flags a flag without
22 charge to the ~~persons or organizations requesting them~~ person who it.

1 **SECTION 32.** 21.18 (title), (1) (intro.) and (a) to (k) of the statutes are
2 renumbered 21.10 (title), (1) (intro.), (a) to (d), and (f) to (L).

3 **SECTION 33.** 21.10 (1) (e) of the statutes is created to read:

4 **21.10 (1) (e)** A joint chief of staff who may be a general officer.

 ****NOTE: These phrases “who may be..” are confusing. See old s.21.18 (1) (d) and
(e). “May” gives no direction. Perhaps it means who may not hold a rank higher than?

5 **SECTION 34.** 21.19 (5) of the statutes is renumbered 21.10 (2) and amended to
6 read:

7 **21.10 (2)** In the absence or incapacity of the adjutant general, the senior
8 ranking deputy adjutant general for army or air shall have all the powers and duties
9 of the adjutant general.

10 **SECTION 35.** 21.18 (1m) of the statutes is renumbered 21.10 (3).

11 **SECTION 36.** 21.18 (2) of the statutes is renumbered 21.10 (4) and amended to
12 read:

13 **21.10 (4)** No person may be appointed on the governor’s military staff who has
14 not had previous state or U.S. military experience.

15 **SECTION 37.** 21.18 (3) of the statutes is renumbered 21.10 (5).

16 **SECTION 38.** 21.18 (4) of the statutes is renumbered 21.10 (6).

17 **SECTION 39.** 21.18 (5) of the statutes is renumbered 21.10 (7) and amended to
18 read:

19 **21.10 (7)** The adjutant general shall appoint persons to fill vacancies in
20 positions in the military staff of the governor under sub. (1) (b) to (L). Vacancies on
21 the military staff of the governor shall be filled by appointment from officers actively
22 serving in the national guard, except as provided in s. 15.31. Interim vacancies shall

1 be filled by appointment by the adjutant general for the residue remainder of the
2 unexpired term.

3 **SECTION 40.** 21.28 of the statutes is renumbered 21.11 and amended to read:

4 **21.11 United States property and fiscal officer. (1)** The adjutant general
5 shall recommend a candidate for appointment as the United States property and
6 fiscal officer for the national guard, subject to the concurrence of the governor, from
7 federally commissioned officers actively serving in the national guard. The
8 candidate shall be nominated by the governor, subject to the concurrence of the U.S.
9 secretary of the army, if the nominee is serving in the army national guard, or the
10 U.S. secretary of the air force, if the nominee is serving in the air national guard.

11 **(2)** The officer nominated under sub. (1) shall assume the duties of a United
12 States property and fiscal officer under 32 USC 708, when properly ordered to active
13 duty by the appropriate U.S. secretary, on the date specified in the order. The officer
14 shall hold his or her position unless terminated earlier by resignation, disability or
15 for cause and unless federal recognition of the officer's commission under 32 USC 323
16 is refused or withdrawn.

17 **(3)** Any action by the governor to remove the officer appointed under sub. (1)
18 (2) for cause shall be governed by the federal laws and military regulations governing
19 removal of an officer for cause and shall be subject to review by the chief of the
20 national guard bureau and by the U.S. secretary of the army, if the officer is
21 commissioned by the army national guard, or by the U.S. secretary of the air force,
22 if the officer is commissioned by the air national guard.

History: 1987 a. 63; 2003 a. 69.

23 **SECTION 41.** 21.30 (title) of the statutes is renumbered 21.12 (title) and
24 amended to read:

1 **21.12 (title) Chief surgeons; powers and duties.**

2 **SECTION 42.** 21.30 of the statutes is renumbered 21.12 (1) and amended to read:

3 **21.12 (1)** The chief surgeons for the army and air national guard shall, under
4 direction of the adjutant general, have general supervision of the medical units of the
5 national guard and, if organized, the Wisconsin state defense force ~~when organized~~.
6 The chief surgeons shall make recommendations concerning procurement of medical
7 supplies for state active duty operations, ~~for~~ the procurement and training of medical
8 personnel, and ~~for~~ the publication of national guard directives on medical subjects.
9 ~~The chief surgeons shall submit an annual report of the affairs and expenses of their~~
10 ~~departments to the adjutant general.~~

11 **SECTION 43.** 21.32 of the statutes is renumbered 21.12 (2) and amended to read:

12 **21.12 (2)** The chief surgeons for the army and the air national guard shall
13 provide for such physical examinations and inoculations of officers, enlistees, and
14 applicants for enlistment in the national guard, as may be prescribed by department
15 of defense and national guard regulations.

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

17 **SECTION 44.** 21.51 of the statutes is renumbered 21.13 and amended to read:

18 **21.13 Discharge of officers.** Any officer may be discharged by the governor
19 pursuant to the Wisconsin code of military justice or upon resignation or disability
preventing full discharge of the duties of his or her office.

20 History: 1991 a. 316.

21 **SECTION 45.** 21.52 of the statutes is renumbered 21.14 and amended to read:

22 **21.14 Authority to administer oaths.** Any officer of the national guard ~~or~~
~~any officer of the U.S. armed forces~~ may administer oaths of enlistment?.

History: 1979 c. 221.

****NOTE: I made this change because I do not think we can tell U.S. officers what their powers are, unless this is meant to give them authority to administer national guard enlistment, in which case we can do that.

1 ~~acts of congress~~ federal laws providing for arming and equipping of the national
2 guard and the Wisconsin state defense force.

History: 1987 a. 63 s. 13.

****NOTE: Perhaps we could stop using the Wisconsin state defense force; maybe
by creating a definition in the front of the chapter?

3 **SECTION 57.** 21.50 (title) of the statutes is renumbered 21.21.

4 **SECTION 58.** 21.50 (1), (2), (3), and (4) of the statutes is renumbered 21.21 (1)
5 (a), (b), (c), and (d) and amended to read:

6 **21.21 (1)** (a) Each commanding officer ~~to whom~~ who is issued state or federal
7 military property ~~is issued~~ may be required to execute to the state a bond, with such
8 sureties and in such form and amount as the adjutant general shall approve,
9 conditioned for the faithful preservation and care of all such the arms, accoutrements
10 equipment, moneys, or ~~stores,~~supplies that the officer received, to indemnify the
11 state against loss by misuse or misapplication by the officer or any other person; to
12 account for ~~all of the same~~ them according to law, and to deliver ~~the same~~ them to any
13 officer lawfully entitled ~~thereto~~ to receive them, on demand, and to pay all sums
14 lawfully appraised for losses or damages.

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

22 (c) The adjutant general, ~~with the approval of the governor~~ may obtain and pay
23 for out of the annual military appropriation an adequate indemnity bond covering

1 all of the officers of the national guard responsible to the state for moneys and
2 military property.

3 (d) Each company commander, with the approval of the adjutant general, may
4 employ an armorer to assist in the proper care of for military property for which the
5 company commander is accountable.

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

****NOTE: Does the armorer take care of vehicles, clothes, etc., or just arms?

6 **SECTION 59.** 21.56 of the statutes is renumbered 21.21 (2) and amended to read:

7 **21.21 (2)** (a) All state-owned military property issued to any officer or armory
8 facility manager shall be audited annually as a part of the annual inspection of
9 federal property accounts. When damages other than fair reasonable wear and tear
10 or loss of state-owned property is discovered, the adjutant general shall appoint a
11 surveying officer to determine the cause and fix blame. Upon review, the adjutant
12 general may hold responsible individuals pecuniarily financially liable, ~~and may~~
13 ~~require a depreciated payment, as determined by the adjutant general, into the state~~
14 ~~treasury.~~ If it is determined that the property was damaged, destroyed or lost
15 without fault or neglect on the part of those responsible, all concerned may be
16 relieved of liability.

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

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

20 **SECTION 60.** 21.57 of the statutes is renumbered 21.21 (3) and amended to read:

21 **21.21 (3)** (a) Whenever any officer who is responsible for state property is
22 separated or reassigned, all property in the officer's possession or for which the
23 officer is responsible shall ~~be delivered to~~ become the responsibility of the person

1 ~~designated the adjutant general designates~~ to receive the property ~~by the adjutant~~
 2 ~~general~~. No separation shall be effective until all property accounts have been
 3 settled.

****NOTE: Can we use something different from “separation”, (cut or broken into separate pieces) such as “leaves the national guard”, or “is no longer a member of the national guard”. The last sentence does not include reassigned officers. Should it?

4 (b) In case of the death of any officer having custody of state or federal property,
 5 the next in command shall immediately take charge of such the property and deliver
 6 ~~the same~~ the property to the person the adjutant general appointed to receive the
 7 property ~~by the adjutant general~~.

History: 1975 c. 189, 421.

****NOTE: Can't the feds. take care of their own property?

8 **SECTION 61.** 21.15 of the statutes is renumbered 21.21 (4) (a) and amended to
 9 read:

10 **21.21 (4) (a)** No person may retain at any time any military arms, equipment
 11 ~~or military stores of any kind belonging to, clothing, or supplies owned by~~ the state
 12 or any federally owned property issued to the state, unless the property has been
 13 issued to the person pursuant to law and the proper authority permits the person to
 14 retain the property in the discharge of a public duty. No person may use ~~any public~~
 15 military arms, equipment, clothing, ~~or military stores~~ supplies ~~belonging to~~ owned
 16 by the state, either as owner or bailee, for the person's private use. Any person
 17 violating this ~~section~~ paragraph shall forfeit not less than \$50 nor more than \$200.

History: 1979 c. 221.

18 **SECTION 62.** 21.155 of the statutes is renumbered 21.21 (4) (b) and amended
 19 to read:

20 **21.21 (4) (b)** ~~No~~ A person who possesses under the laws of this state any
 21 military arms, equipment, ~~or other military property may willfully neglect or refuse,~~
 22 after lawful demand is made for the return of the property by order of the ~~governor~~

1 adjutant general, ~~to~~ shall return the property promptly. No person may knowingly
 2 resist any officer who is lawfully taking possession of such the military arms,
 3 equipment, or other ~~military~~ property. Any person violating this section paragraph
 4 shall forfeit not less than \$50 nor more than \$200.

History: 1979 c. 221.

5 **SECTION 63.** 21.04 of the statutes is renumbered 21.22 and amended to read:

6 **21.22 Camp Williams. (1)** The state ~~camp grounds~~ facility near Camp
 7 Douglas, Juneau County, shall be known as “Camp Williams”. The officer in charge
 8 of Camp Williams shall have ~~at said camp~~ the police powers of arrest possessed by
 9 officials at state hospitals, as provided in s. 46.058 (2).

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

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

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

18 **SECTION 64.** 21.23 (title) of the statutes is created to read:

19 **21.23(title) Facilities and lands.**

20 **SECTION 65.** 21.61 of the statutes is renumbered 21.23 (1) and amended to read:

21 **21.23 (1)** (a) The governing body of any city, village, town or county in which
 22 one or more companies of the national guard may be located may erect construct or
 23 purchase a suitable armory for the purpose of drill and for the safekeeping of the
 24 military arms, equipment, uniforms, and other military property furnished by the

1 state, and for public meetings and conventions, when such use will not interfere with
2 the use of such building by the national guard. ~~Plans~~ The adjutant general and state
3 building commission shall inspect and approve plans and specifications for such
4 armories ~~shall be inspected and approved by the governor and the adjutant general~~
5 ~~who~~ . The adjutant general shall file with the governing body of the city, village,
6 town, or county a certificate of such inspection and approval ~~prior to~~ before the
7 ~~erection thereof~~ construction of an armory.

****NOTE: We should try to standardize arms, equipment, supplies, clothes, uniforms.....in these sections with the other parts of this subchapter. I made minor active voice changes. Should federal property be allowed in an armory?

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

20 (c) ~~Such~~ The armory, when erected or purchased, shall be under the control and
21 charge of the governor, the adjutant general and commanding officer of the company
22 or companies of the national guard for which it has been provided. ~~The commanding~~
23 ~~officer~~ company shall ~~cause to be deposited therein,~~ deposit in the armory all arms,

1 uniforms, and equipment received from the governor and the adjutant general who
2 ~~. The governor and the adjutant general may make such rules as they deem proper~~
3 for the observance of all officers and persons having charge of such the armories or
4 occupying any part thereof the armories.

****NOTE: Do we need the governor in this paragraph?

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

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

13 **SECTION 66.** 21.612 of the statutes is renumbered 21.23 (2) and amended to
14 read:

15 **21.23 (2)** Any county, city, town, or village may transfer land or may acquire
16 land for the purpose of transferring the same land, by gift or otherwise, to the state
17 for state military purposes, ~~and any such transfers or acquisitions heretofore made~~
18 ~~for such purposes are validated.~~

History: 1973 c. 90.

****NOTE: Is this necessary?

19 **SECTION 67.** 21.616 of the statutes is renumbered 21.23 (3) and amended to
20 read:

21 **21.23 (3)** The department of military affairs is authorized and directed may,
22 when contributions ~~therefor~~ are made available by the federal government under the
23 ~~national defense facilities act of 1950 or any act or acts amendatory thereof or~~

1 supplementary thereto federal law, to expand, rehabilitate, equip, or convert
2 facilities owned by the state and to acquire, construct, expand, rehabilitate, equip,
3 or convert additional facilities. The department of ~~military affairs~~ may on the part
4 of the state accept such federal contributions in the manner prescribed by federal law
5 or regulation, and may accept on behalf of the state the lawful terms and conditions
6 thereof of a federal contribution. The department of ~~military affairs~~ shall take such
7 all steps and have all the functions and powers necessary, consistent with the federal
8 appropriation therefor, to acquire contributions under any such federal act law and
9 to undertake and complete any such a project in conformity with the applicable
10 federal act and this section subsection.

11 **SECTION 68.** 21.17 of the statutes is renumbered 21.24 and amended to read:

12 **21.24 Encroachment on military areas and interference with military**
13 **personnel.** (1) The officer in charge of any area used or to be used for military
14 purposes may cause the area to be marked in such a manner so as to warn against
15 encroachment by unauthorized persons, but not to unnecessarily obstruct travel on
16 any public highway. No person may encroach or enter upon the area without the
17 consent of the officer.

18 (2) No person may intercept, molest, abuse or otherwise interfere with any
19 member of the national guard or any other military force organized under the laws
20 of this state while the member is in the performance of military duty.

***NOTE: No intent required to be in violation?

21 (3) Any person who violates sub. (1) or (2) shall forfeit not less than \$50 nor
22 more than \$200. The officer in charge or a designee may arrest and detain the person

1 for such reasonable time as may be necessary to deliver the person to civil
2 authorities.

3 History: 1975 c. 94 s. 91 (1); 1975 c. 189, 199, 422; 1979 c. 221.

SECTION 69. 21.32 (title) of the statutes is repealed.

SECTION 70. 21.33 (title) of the statutes is repealed.

SECTION 71. 21.56 (title) of the statutes is repealed.

SECTION 72. 21.57 (title) of the statutes is repealed.

SECTION 73. 21.61 (title) of the statutes is repealed.

SECTION 74. 21.612 (title) of the statutes is repealed.

SECTION 75. 21.616 (title) of the statutes is repealed.

10 **SECTION 76.** Subchapter IV of chapter 21 [precedes 21.30] of the statutes is
11 created to read:

12 **CHAPTER 21**

13 **SUBCHAPTER IV**

14 **NATIONAL GUARD AND STATE DEFENSE FORCE**

15 **SECTION 77.** 21.01 of the statutes is renumbered 21.30 and amended to read:

16 **21.30 Composition of national guard.** (1) The organized militia of this
17 state shall be known as the “Wisconsin national guard” and shall consist of members
18 appointed or enlisted therein in accordance with federal law or regulations
19 governing or pertaining to the national guard.

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

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

SECTION 78. 21.025 of the statutes is renumbered 21.31 and amended to read:

1 **21.31 State defense force authorized. (1)** AUTHORITY AND NAME. The
2 adjutant general may establish a plan for organizing a military force to be known as
3 the Wisconsin state defense force. The adjutant general may organize the Wisconsin
4 state defense force under the plan if all or part of the national guard is called into the
5 service of the United States. It shall be distinct from the national guard, uniformed,
6 and composed of officers, commissioned or assigned, and of enlisted personnel who
7 volunteer for service. Membership in the Wisconsin state defense force may not
8 include any person who is in the active military forces, including the reserve
9 components. Persons in the retired reserve may serve in the Wisconsin state defense
10 force.

11 **(2)** ORGANIZATION; RULES AND REGULATIONS. (a) The governor may prescribe
12 rules and regulations not inconsistent with this section governing the enlistment,
13 organization, administration, equipment, maintenance, training, and discipline of
14 such forces, except that such rules and regulations, insofar as the governor deems
15 practicable and desirable, shall conform to existing law governing and pertaining to
16 the national guard and the rules and regulations promulgated thereunder and shall
17 prohibit the acceptance of gifts, donations, gratuities, or anything of value by such
18 forces or by any member of such forces from any person by reason of such
19 membership.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **(11m) RETENTION OF ITEMS OF UNIFORM.** (a) Officers and enlistees of the
21 “Wisconsin State Defense Force” who have served honorably therein for a period of
22 at least one year and are active members of their respective units at the time of its
23 demobilization shall, upon application to the unit commander, be permitted to retain
24 the items of uniform prescribed by the governor by rule.

1 (b) The uniform prescribed under par. (a) may be worn only on occasions of
2 ceremony. “Occasions of ceremony” means occasions essentially of a military
3 character at which the uniform is more appropriate than civilian clothing, such as
4 memorial services, military weddings, military funerals, military balls, military
5 parades, and meetings or functions of associations formed for military purposes, the
6 membership of which is composed largely or entirely of honorably discharged
7 veterans of the services.

8 **(11n)** LABOR DISPUTES. The state defense force shall not be used to interfere
9 with the orderly process of a labor dispute.

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

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

SECTION 79. 21.05 of the statutes is renumbered 21.32 and amended to read:

12 **21.32 Term of enlistment; requirements.** Every person who enlists or
13 receives a commission in the national guard shall serve for the term prescribed and
14 satisfy the physical, educational and training requirements prescribed by the
15 national guard bureau.

16 **SECTION 80.** 21.06 of the statutes is renumbered 21.33 and amended to read:

17 **21.33 Exemptions from certain county duties.** Every member of the state
18 military forces shall be exempt from service on any body of county residents
19 summoned by the sheriff to assist in preserving the peace.

20 History: 1977 c. 318; 1979 c. 110.

SECTION 81. 21.07 of the statutes is renumbered 21.34 and amended to read:

21 **21.34 Decorations and awards.** The adjutant general may prescribe
22 decorations and awards for the national guard and the state defense force, the form

1 and issue thereof made under rules adopted by the adjutant general and approved
2 by the governor.

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

3 **SECTION 82.** 21.09 of the statutes is renumbered 21.35 and amended to read:

4 **21.35 Training; special schools; pay and allowances.** The governor may
5 order the national guard to assemble for training at any military establishment
6 within or without the state specified and approved by the department of defense and
7 fix the dates and places thereof, and the governor may order members of the national
8 guard, at their option, to attend such special schools for military training as may be
9 authorized by the state or federal government. For such training and attendance at
10 special schools, members of the national guard shall receive such pay and allowances
11 as the federal government or the governor may authorize.

12 History: 1991 a. 316.

12 **SECTION 83.** 21.11 of the statutes is renumbered 21.36 and amended to read:

13 **21.36 Call to active service. (1)** In case of war, insurrection, rebellion, riot,
14 invasion or resistance to the execution of the laws of this state or of the United States;
15 in the event of public disaster resulting from flood, conflagration or tornado; in order
16 to assess damage or potential damage and to recommend responsive action as a
17 result of natural or man-made events; or upon application of any marshal of the
18 United States, the president of any village, the mayor of any city, the chairperson of
19 any town board, or any sheriff in this state, the governor may order into active service
20 all or any portion of the national guard. If the governor is absent, or cannot be
21 immediately communicated with, any such civil officer may, if the officer deems the
22 occasion so urgent, make such application, which shall be in writing, to the
23 commanding officers of any company, battalion or regiment, who may upon approval
24 of the adjutant general, if the danger is great and imminent, order out that officer's

1 command to the aid of such civil officer. Such order shall be delivered to the
2 commanding officer, who shall immediately communicate the order to each, and
3 every subordinate officer, and every company commander receiving the same shall
4 immediately communicate the substance thereof to each member of the company, or
5 if any such member cannot be found, a notice in writing containing the substance of
6 such order shall be left at the last and usual place of residence of such member with
7 some person of suitable age and discretion, to whom its contents shall be explained.

8 (2) Any commissioned officer or enlisted member of the national guard who
9 fails to carry out orders or fails to appear at the time or place ordered as provided in
10 sub. (1) shall be punished under the Wisconsin code of military justice. Any person
11 who advises or endeavors to persuade an officer or soldier to refuse or neglect to
12 appear at such place or obey such order shall forfeit not less than \$200 nor more than
13 \$1,000.

14 (3) The adjutant general may activate members of the national guard for the
15 purpose of serving on an honors detail of military funeral honors for a person
16 described under s. 45.60 (1).

History: 1979 c. 221; 1991 a. 316; 1993 a. 246; 1999 a. 62, 136; 2005 a. 22.

17 **SECTION 84.** 21.12 of the statutes is renumbered 21.37 and amended to read:

18 **21.37 Exemption from civil authority.** During the time the state military
19 forces are performing military duty pursuant to proper orders issued by the governor
20 or by the governor's authority, all members thereof while going to, remaining at or
21 returning from a place of duty shall be exempt from arrest or service of any process
22 issued by a civilian court. In any civil or criminal prosecution against any member
23 arising out of the member's performing military duty, it shall be a defense that the

1 member was acting in good faith or pursuant to any lawful military order. Any such
2 order shall be deemed prima facie lawful.

3 History: 1991 a. 316.

SECTION 85. 21.13 of the statutes is renumbered 21.38 and amended to read:

4 **21.38 Defense of members of guard; payment of judgments. (1)** If any

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

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

20 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.

SECTION 86. 21.38 of the statutes is renumbered 21.39 and amended to read:

21 **21.39 Uniform of Wisconsin national guard.** The uniform of the national
22 guard shall be that prescribed by regulations for the corresponding branch of the
23 United States armed forces.

24 **SECTION 87.** 21.42 of the statutes is renumbered 21.40 and amended to read:

1 **21.40 Status, powers and property of units. (1)** Every federally recognized
2 company sized unit, when such organization is perfected, shall without any further
3 proceeding constitute a corporate body to be known by the name by which such
4 company is officially designated under the military laws and regulations of the state,
5 and shall possess all the powers necessary and convenient to accomplish the objects
6 and perform the duties prescribed by law.

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

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

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

19 **SECTION 88.** 21.43 of the statutes is renumbered 21.41 and amended to read:

20 **21.41 Commissions and rank.** The governor shall issue commissions to all
21 officers whose appointments are approved by the governor. Every commission shall
22 be countersigned by the secretary of state and attested by the adjutant general and
23 continue as provided by law. Each officer so commissioned shall take and file with
24 the department of military affairs the oath of office prescribed by article IV, section
25 28, of the constitution. All commissioned officers shall take rank according to the

1 date assigned them by their commissions, and when 2 of the same grade rank from
2 the same date, their rank shall be determined by length of service in the national
3 guard creditable for pay, and if of equal service then by lot.

History: 1983 a. 27, 192.

4 **SECTION 89.** 21.47 of the statutes is renumbered 21.42 and amended to read:

5 **21.42 Examinations for promotion or appointments.** The governor may
6 order any subordinate officer or person nominated or recommended for promotion or
7 appointment in the national guard to be examined by any competent officer or board
8 of officers, designated in orders for that purpose, as to that person's qualifications for
9 the office to which that person may be recommended or appointed, and may take such
10 action on the report of such examining officer or board of officers as the governor
11 deems to be for the best interests of the service. The governor may also require the
12 physical examination provided for admission to the United States army or air force.

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

13 **SECTION 90.** 21.48 of the statutes is renumbered 21.43 and amended to read:

14 **21.43 Pay. (1)** Each officer and enlisted person of the national guard on active
15 duty in the state under orders of the governor on a state pay basis shall receive the
16 base pay and allowances of an officer or enlisted person of equal rank in the
17 corresponding branch of the U.S. armed forces except that the base pay so provided
18 shall not be less than \$50 per day.

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

22 **(3)** The governor may order, with their consent, to active duty in the
23 department of military affairs, any departmental officers of the governor's staff,
24 including the adjutant general and the deputy adjutants general, and while so

1 assigned the officers shall receive the pay, but not the allowances, of an officer of
2 equal grade in the armed forces of the United States.

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

3 **SECTION 91. 21.49** of the statutes is renumbered 21.44 and amended to read:

4 **21.44 Educational benefits. (1) DEFINITIONS.** In this section:

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

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

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

9 (b) “Qualifying school” means any of the following:

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

12 1g. A public institution of higher education under the Minnesota–Wisconsin
13 student reciprocity agreement under s. 39.47.

14 1m. A public institution of higher education under an interstate agreement
15 under s. 39.42.

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

18 3. Any technical college established under ch. 38.

19 (c) “Tuition grant” means any tuition cost reimbursement payment made by the
20 department under sub. (3).

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

23 (a) An officer.

24 (b) An individual with a baccalaureate degree or its equivalent.

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

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

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

11 **(2m)** INFORMATION REGARDING ATTENDANCE. The department shall promulgate
12 by rule the number of days after commencement of a course that a guard member
13 shall provide the department with the following information regarding his or her
14 intent to seek reimbursement for a course under this section:

15 (a) The guard member's name.

16 (b) The qualifying school that the guard member is attending.

17 (c) Whether the guard member is enrolled full time or part time at the
18 qualifying school.

19 (d) An estimate of the tuition grant that will be claimed after the completion
20 date of the course.

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

1 (b) Application for tuition grants shall:

2 1. Be submitted to the department for approval of payment no later than 60
3 days after the completion date of the course;

4 2. Contain such information and be in such form as the department requires
5 to establish that the applicant qualifies for the grant; and

6 3. Contain the signatures of both the guard member claiming the grant and a
7 representative of the school, certifying that the member has satisfactorily completed
8 the course and has achieved the minimum grade point average or grade, as required
9 under sub. (2) (f).

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

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

15 **(3m)** REPAYMENT OF GRANTS. The department shall require a guard member who
16 has received a grant under this section to repay the amount of the grant to the
17 department if the national guard member, on or after September 1, 2001, is
18 separated from the national guard for misconduct, as defined in the rules and
19 regulations of the national guard, including being absent without leave for more
20 than 9 unit training assemblies. The department may elect to collect the amount
21 owed under this subsection through the tax intercept program under s. 71.93.

22 **(4)** LIMITATIONS. (a) No guard member is eligible for benefits under this section
23 for more than 120 credits of part-time study or 8 full semesters of full-time study
24 or the equivalent thereof.

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

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

History: 1977 c. 29, 418; 1981 c. 20; 1985 a. 29; 1987 a. 27, 403; 1989 a. 31; 1991 a. 39, 269; 1993 a. 399; 1995 a. 19; 1995 a. 27, ss. 1219t to 1223, 9127 (1); 1995 a. 404; 1997 a. 27, 237; 1999 a. 9; 2001 a. 16; 2003 a. 33, 69, 83; 2005 a. 22, 25.

8 **SECTION 92.** 21.59 of the statutes is renumbered 21.45 and amended to read:

9 **21.45 Issue of subsistence.** The adjutant general, during state active duty
 10 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.

11 **SECTION 93.** 21.60 of the statutes is renumbered 21.46 and amended to read:

12 **21.46 Discharge of enlistees.** Enlistees shall be discharged as provided in
 13 the laws and regulations of the United States governing the national guard.

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

14 **SECTION 94.** 21.63 of the statutes is renumbered 21.47 and amended to read:

15 **21.47 Grounds for mustering out of units.** If any company sized unit or
 16 detachment falls below the minimum in membership, becomes insubordinate, lax in
 17 discipline or negligent in drill or other duties, if its members lose interest in their
 18 organization, if, upon inspection, it appears that the unit or detachment is not
 19 properly organized or conducted, or if the unit or detachment does not make musters
 20 and returns, the governor may muster out the unit or detachment and may direct all
 21 persons holding arms, equipment and military stores to return the property. Any
 22 person, not a member of the national guard in good standing, who retains arms or

1 other property belonging to the state, as owner or bailee, after the governor directs
2 the return of the property, shall forfeit not less than \$50 nor more than \$200.

3 History: 1979 c. 221.

3 **SECTION 95.** 21.35 of the statutes is renumbered 21.48 and amended to read:

4 **21.48 Federal laws and regulations; no No discrimination.** The
5 ~~organization, armament, equipment, and discipline of the national guard shall be~~
6 ~~that prescribed by federal laws or regulations; and the governor may by order perfect~~
7 ~~such organization, armament, equipment, and discipline, at any time, so as to~~
8 ~~comply with such laws and regulations insofar as they are consistent with the~~
9 ~~Wisconsin code of military justice. Notwithstanding any rule or regulation~~
10 ~~prescribed by the federal government or any officer or department thereof, no No~~
11 ~~person, otherwise qualified, may be denied membership in the national guard~~
12 ~~because of sex, color, race, creed, or sexual orientation and no member of the national~~
13 ~~guard may be segregated within the national guard on the basis of sex, color, race,~~
14 ~~creed, or sexual orientation. Nothing in this section prohibits separate facilities for~~
15 ~~persons of different sexes with regard to dormitory accommodations, public toilets,~~
16 ~~showers, saunas, and dressing rooms.~~

17 **SECTION 96.** 21.36 (1) of the statutes is renumbered 21.49 and amended to read:

18 **21.49 Rules of discipline** The applicable rules of discipline and the
19 regulations of the armed forces of the U.S. United States shall, ~~so far as the same are~~
20 ~~applicable,~~ constitute the rules of discipline and the regulations of the national
21 guard; ~~the .~~ The rules and uniform code of military justice established by congress
22 and the department of defense for the armed forces shall be adopted so far as they
23 are applicable and consistent with the Wisconsin code of military justice for the
24 government of the national guard, ~~and the .~~ The system of instruction and the drill

1 regulations prescribed for the different arms and corps of the armed forces of the U.S.
2 shall be followed in the military instruction and practice of the national guard, and
3 the use of any other system is forbidden.

4 **SECTION 97.** 21.62 of the statutes is repealed.

5 **SECTION 98.** Subchapter V of chapter 21 [precedes 21.50] of the statutes is
6 created to read:

7 **CHAPTER 21**

8 **SUBCHAPTER V**

9 **RIGHTS OF SERVICE PERSONNEL**

10 **SECTION 99.** 21.70 (title) of the statutes is repealed.

11 **SECTION 100.** 21.72 of the statutes is renumbered 21.50 and amended to read:

12 **21.50 Extension of licenses for service members. (1)** In this section:

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

15 1. A license issued under s. 13.63 or a registration issued under s. 13.64.

16 2. An approval specified in s. 29.024 (2g).

17 3. A license issued under s. 48.66 and 48.69.

18 4. A license, certificate of approval, provisional license, conditional license,
19 certification, certification card, registration, permit, training permit, or approval
20 specified in s. 49.45 (2) (a) 11., 51.42 (7) (b) 11., 51.421 (3) (a), 146.50 (5) (a) or (b), (6g)
21 (a), (7), or (8) (a) or (f), 252.23 (2), 252.24 (2), 254.176, 254.178 (2) (a), 254.20 (2), (3),
22 or (4), 254.64 (1) (a) or (b), 254.71 (2), 255.08 (2) (a), or 343.305 (6) (a) or a permit for
23 the operation of a campground specified in s. 254.47 (1).

24 5. A business tax registration certificate issued under s. 73.03 (50).

- 1 6. A license, registration, registration certificate, or certification specified in s.
2 93.135 (1).
- 3 7. A license, as defined in s. 101.02 (20) (a).
- 4 8. A license issued under s. 102.17 (1) (c), 104.07, or 105.05.
- 5 10. A certificate issued under s. 103.275, 103.91, or 103.92.
- 6 11. A license or permit granted by the department of public instruction.
- 7 12. A license or certificate of registration issued by the department of financial
8 institutions, or a division of it, under ss. 138.09, 138.12, 217.06, 218.0101 to
9 218.0163, 218.02, 218.04, 218.05, 224.72, or 224.93 or subch. III of ch. 551.
- 10 13. A permit issued under s. 170.12.
- 11 14. A certification under s. 165.85.
- 12 15. A license, permit, or registration issued under ss. 218.0101 to 218.0163,
13 218.11, 218.12, 218.22, 218.32, 218.41, 218.51, 341.51, 343.305 (6), 343.61, or 343.62.
- 14 16. A license, registration, or certification specified in s. 299.08 (1) (a).
- 15 18. A license, permit, certificate, or registration that is granted under chs. 440
16 to 480.
- 17 19. A license issued under ch. 562 or s. 563.24.
- 18 20. A license issued under s. 628.04, 632.68 (2) or (4), or 633.14 or a temporary
19 license issued under s. 628.09.
- 20 21. A license to practice law in this state.
- 21 22. A certificate granted by the technical college system board.
- 22 (b) “Licensing agency” means a board, examining board, affiliated
23 credentialing board, office, commissioner, department, or division within a
24 department that grants or issues a license.

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

3 (2) Any license that a service member holds, the expiration date of which is
4 after September 11, 2001, except a license to practice law, does not expire on the
5 expiration date of the license if, on the expiration date, the service member is on state
6 active duty under ch. 21 or on active duty in the U.S. armed forces. If the supreme
7 court agrees, a license to practice law that a service member holds, the expiration
8 date of which is after September 11, 2001, does not expire on the expiration date of
9 the license if, on the expiration date, the service member is on state active duty under
10 ch. 21 or on active duty in the U.S. armed forces. A license extended under this
11 subsection expires 90 days after the service member is discharged from active duty.

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

16 (a) The service member requests an extension or renewal of the license within
17 90 days after the service member is discharged from active duty.

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

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

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

3 (4) If a service member's license is renewed or extended under sub. (3) no more
4 than 180 days before the next date that the license would normally expire, the
5 licensing agency, or supreme court if it agrees, shall allow the service member to
6 renew or extend the license without complying with any continuing education or
7 training requirements if complying with such requirement in the period before the
8 license expires would cause the service member undue hardship. If a service
9 member's license is renewed or extended under this subsection, the licensing agency
10 or supreme court may require the service member to comply with any continuing
11 education or training requirements within a reasonable time after receipt of the
12 license.

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

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

History: 2001 a. 22; 2003 a. 69; 2005 a. 25.

18 **SECTION 101.** 21.74 of the statutes is renumbered 21.51 and amended to read:

19 **21.51 Soldiers and sailors civil relief act; federal service.** (1) In this
20 section, unless the context indicates otherwise:

21 (a) "Interest and penalties" means interest and penalties accruing on taxes
22 during the period of military service and 6 months thereafter. In case several owners
23 jointly own property, other than property held jointly or as marital property with the
24 spouse of the person in military service, interest and penalties means the

1 proportionate share of the total interest and penalties commensurate with the equity
2 in the property of the person in military service.

3 (b) “Person in military service” means any man or woman who is serving on
4 active duty in the U.S. armed forces, except service on active duty for training
5 purposes.

6 (c) “Property” means any real estate or personal property belonging to a person
7 in military service that was acquired prior to the commencement of military service
8 or that was acquired by descent.

9 (d) “Taxes” means any general taxes or special assessments or tax certificates
10 evidencing those taxes and assessments not belonging to private buyers.

11 **(2)** To supplement and complement the provisions of 50 App. USC 501, and to
12 afford and obtain greater peace and security for persons in military service, the
13 enforcement of certain tax obligations or liabilities that may prejudice the property
14 rights of persons in military service may be temporarily suspended as provided in
15 this section.

16 **(3)** Any person while in the military service of the United States or within 6
17 months after terminating service, or the person’s agent or attorney during that
18 period, may petition the circuit court of any county in which the person owns
19 property for relief under this section. Upon filing of the petition the court shall make
20 an order fixing the time of hearing and requiring the giving of notice of the hearing.
21 If after the hearing the court finds that the person is, or within 6 months next
22 preceding the filing of the petition was, in the military service of the United States
23 and owns property within the county on which taxes have fallen or will fall due, and
24 that the person’s ability to pay the taxes has been materially adversely affected by
25 reason of being in military service, the court shall enter an order determining that

1 the person is entitled to relief under this section. The court may suspend proceedings
2 for the collection of taxes on the property for a period not exceeding 6 months after
3 termination of the military service of the person, or for the time reasonably necessary
4 to complete the agreement provided in sub. (7). Thereafter, the property shall not
5 be included in tax certificates issued to enforce collection of taxes on property, and
6 all proceedings for that purpose shall be suspended, except under terms that the
7 court may order.

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

12 (5) The penalties and interest waived under this section are those for
13 nonpayment of all taxes or assessments, general or special, falling due during the
14 period of military service of any person against either real or personal property of
15 which the person is the bona fide owner or in which the person has an interest.

16 (6) The person owning or having an interest in any property in respect to which
17 the order under sub. (3) is made, or the person's agent or attorney, may file a certified
18 copy of the order of suspension with the county treasurer or with the city treasurer
19 of cities authorized by law to sell lands for the nonpayment of taxes as to the taxes
20 and assessments. The person shall file with the order an affidavit in triplicate, sworn
21 to by the person or agent or attorney, setting forth the name of the owner, the legal
22 description of the property, the type of property, when acquired, volume and page
23 number where the deed was recorded if acquired by deed, and the name of the estate
24 if acquired by descent, amount of delinquent taxes if any, and the names of the
25 holders of any outstanding mortgage, lien, or other encumbrance. Upon receipt of

1 the filing, the county treasurer or city treasurer shall record the order in the office
2 of the register of deeds of the county and file a copy in the office of the treasurer, who
3 shall make proper notation that a person in military service is the holder of the legal
4 title and has made application for special relief. The county treasurer or city
5 treasurer shall immediately forward an additional copy of the order and affidavit to
6 the office of the clerk of the town, city, or village where the property is located, or if
7 it is located in a city, authorized to sell lands for nonpayment of its taxes, to the
8 commissioner of assessments, who shall make an appropriate notation in the
9 records.

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

20 (8) In the event the applicant defaults in the performance of any of the
21 provisions of the agreement, the treasurer shall notify the applicant of the default
22 and the amount and date due, by written notice either served personally or by
23 registered mail, return receipt requested, to the address set forth in the application.
24 If the defaulted payment is not fully made within 10 days after service of the notice,
25 then the treasurer, without further notice, may declare that the entire amount of the

1 tax subject to the scheduled installments is immediately due and payable and that
2 the agreement is terminated. The county treasurer shall notify the register of deeds
3 and the town, city, or village treasurer of the termination, or if the city treasurer of
4 cities authorized by law to sell lands for the nonpayment of taxes, the latter shall
5 notify the register of deeds, the county treasurer, and the local officers and shall
6 make appropriate notations of the termination on their records. The county
7 treasurer, or city treasurer as to taxes of cities authorized by law to sell land for the
8 nonpayment of taxes, may without further order of the court enforce the collection
9 of such tax or assessment and sell such tax certificates together with the penalties
10 and interest as may have accrued on the property from the date of default of the
11 scheduled installment payment.

12 **(9)** (a) In this subsection:

13 1. “Commercial mobile service” has the meaning given in 47 USC 332 (d).

14 2. “Contract” means an agreement between a person in military service and a
15 mobile telephone service provider that requires the person in military service to pay
16 the mobile telephone service provider a monthly fee in exchange for the use of a
17 mobile telephone.

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

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

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

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

24 (c) A person in military service may suspend or terminate a contract to which
25 this subsection applies without any penalties or additional fees at any time after the

1 service member has been issued orders into active duty by giving written notice to
2 the mobile telephone service provider. The service member shall include a copy of
3 the orders into active duty as part of the notice. The notice may be given by 1st class
4 mail to the address provided in the agreement with the mobile telephone service
5 provider or provided in the mobile telephone service provider's billing statement or
6 by delivering the notice to the mobile telephone service provider's branch office.

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

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

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

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

1 **SECTION 102.** 21.75 of the statutes is renumbered 21.52 and amended to read:

2 **21.52 Soldiers' and sailors' relief act; state service. (1) DEFINITIONS.** In
3 this section:

4 (a) "Active state service" means active service for 30 days or more in the
5 national guard or the state defense force under an order of the governor issued under
6 this chapter or active service for 30 days or more in the national guard under 32 USC
7 502 (f) or 506 that is not considered to be "service in the uniformed services," as
8 defined in 38 USC 4303 (13). "Active state service" includes active service for 30 days
9 or more in the national guard of any state under the order of a governor of that state.

10 (b) "Court" means a court of record.

11 (c) "Department" means the department of military affairs.

12 (cm) "Period of active state service" means the period beginning on the date on
13 which the service member receives an order to enter active state service and ending
14 on the date of the service member's release from active state service or death while
15 in active state service.

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

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

23 (b) If a service member is the principal on a criminal bail bond and his or her
24 active state service causes the surety upon the bond to be prevented from enforcing
25 the attendance of the service member at court, the court shall not enforce the

1 provisions of the bond during the service member's period of active state service and
2 may either during or after the period of active service discharge the surety and
3 exonerate the bail.

4 (c) A surety, guarantor, endorser, or other person subject to the obligation,
5 liability, court action, order, writ, or judgment under par. (a) or (b) may waive in
6 writing the rights afforded by this subsection, except that the waiver is not valid
7 unless the waiver is executed as an instrument separate from the obligation, liability,
8 court action, order, writ, or judgment. The waiver under this paragraph is not valid
9 after the beginning of the period of active state service if executed by a service
10 member who subsequently is called into active state service. The waiver under this
11 paragraph is not valid if executed by a dependent of a service member unless the
12 waiver is executed during the period of active state service.

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

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

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

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

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

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

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

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

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

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

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

12 (d) Any person who shall make or use an affidavit required under this
13 subsection that he or she knows to be false shall be fined not more than \$10,000 or
14 imprisoned for not more than 9 months or both.

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

22 **(7) STAY OR VACATION OF EXECUTIONS OR ATTACHMENTS.** In any court action that
23 is commenced against a service member before or after entering active state service,
24 or within 60 days after the period of active state service ends, the court may on its
25 own motion, and shall, on application of the service member or some person acting

1 on behalf of the service member, stay the execution of any judgment or order entered
2 against the service member, or stay or vacate any attachment or garnishment
3 regarding the service member's property, unless the court determines that the
4 service member's ability to comply with the judgment or order is not materially
5 affected by reason of his or her active state service.

6 **(8) DURATION AND TERMS OF STAYS.** (a) Any stay of any action, attachment,
7 execution, or garnishment under this section may be ordered for the period of the
8 active state service and 3 months after that period has ended, or for any part of that
9 time.

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

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

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

22 **(10) MAXIMUM INTEREST RATE.** No obligation or liability bearing interest at a rate
23 in excess of 6% per year incurred by a service member in active state service before
24 his or her entry into that service may, during any part of the period of active state
25 service, bear interest in excess of 6% per year except by court order. If, upon

1 application by an obligee, a court determines that the ability of the service member
2 to pay interest upon the obligation or liability at a rate in excess of 6% per year is not
3 materially affected by reason of his or her active state service, the court may make
4 any order that is just. In this subsection, “interest” includes service charges, renewal
5 charges, fees, or other charges, other than insurance, in respect to the obligation or
6 liability.

7 **(11) EVICTION STAY.** (a) No eviction may be made during the period of active
8 state service in respect to any premises for which the agreed rent does not exceed
9 \$1,200 per month, occupied chiefly for dwelling purposes by the spouse, children, or
10 other dependents of a service member who is in active state service, except upon
11 order of a court in an action affecting the right of possession.

12 (b) In an action for eviction under par. (a), the court may on its own motion, and
13 shall, on application of the service member or some person acting on behalf of the
14 service member, stay the proceedings for not longer than 3 months unless the court
15 determines that the ability of the tenant to pay the agreed rent is not materially
16 affected by the active state service. The court may make any other order in the
17 eviction action as it considers necessary and just. If a stay or order is issued under
18 this paragraph, the court may, upon the request of the owner of the premises, make
19 any other order as may be applicable to conserve the interests of all of the parties.

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

23 **(12) ACTION TO ENFORCE OBLIGATION SECURED BY MORTGAGE.** (a) In this
24 subsection, “obligation” means an obligation of a service member in active state
25 service that was incurred before the service member’s period of active state service

1 began and that is secured by a mortgage, deed of trust, or other security in the nature
2 of a mortgage on real or personal property that is owned by the service member.

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

11 1. Stay the action as provided in this section.

12 2. Make such other disposition of the case as the court determines is equitable
13 to the interests of all parties.

14 (c) 1. Notwithstanding the times provided in ss. 846.10, 846.101, 846.102, and
15 846.103 for sales of real property, no foreclosure, sale, or seizure of property for
16 nonpayment of any sum due or for any other breach of terms is valid if it occurs
17 during or within 3 months after the service member's period of active state service,
18 unless the court ordered the foreclosure, sale, or seizure of property before the
19 beginning of the service member's period of active state service and approves the
20 foreclosure, sale, or seizure after it occurs.

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

24 **(13) PERSONAL PROPERTY CONTRACTS.** When an action to resume possession of
25 personal property, or to rescind or terminate a contract for the purchase of personal

1 property, has been stayed under this section, the court may appoint 3 disinterested
2 persons to appraise the property. Based upon the report of the appraisers, and unless
3 undue hardship would result to the dependents of the service member in active state
4 service, the court may order that a sum be paid to the service member as a condition
5 of resuming possession of the property or rescinding or terminating the contract.

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

8 1. The lease was executed by or on behalf of a service member who entered
9 active state service after the lease was executed.

10 2. The lease covers premises that are occupied for dwelling, professional,
11 business, agricultural, or similar purposes by the service member, or the service
12 member and his or her dependents.

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

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

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

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

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

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

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

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

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

21 (b) No person may exercise any right to foreclose or enforce a lien for the storage
22 of household goods, furniture, or personal effects of a service member during the
23 service member's period of active state service and for 3 months after that period
24 ends except upon an order of the court. In an action under this paragraph, the court,
25 after a hearing, may on its own motion, and shall, on application of the service

1 member or some person acting on behalf of the service member, stay the proceeding
2 or make such other order as may be equitable to conserve the interests of all parties,
3 unless the court determines that the ability of the service member to pay storage
4 charges due is not materially affected by his or her active state service.

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

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

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

17 **(18) CERTIFICATE OF SERVICE; PERSON REPORTED MISSING.** (a) In any action or
18 proceeding under this section, a certificate signed by the adjutant general or a person
19 designated by the adjutant general as to the period of active service of a service
20 member shall be prima facie evidence as to any of the following facts:

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

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

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

1 4. If the service member died while in active state service, the date and the
2 place where he or she died.

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

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

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

16 **(20) STAY OF ENFORCEMENT OF OBLIGATIONS OR LIABILITIES.** (a) A service member
17 may, at any time during his or her period of active state service, or within 6 months
18 after that service ends, apply to a court for relief with respect to any obligation or
19 liability incurred by the service member before his or her period of active state
20 service. The court, after appropriate notice and hearing, may grant the following
21 relief unless the court determines that the ability of the service member to comply
22 with the terms of the obligation or liability has not been materially affected by his
23 or her state active service:

24 1. In the case of an obligation payable in installments under a contract for the
25 purchase of real estate, or secured by a mortgage upon real estate, a stay of the

1 enforcement of the obligation during the period of active state service and, from the
2 date of the end of the period of active state service or from the date of requesting the
3 relief if made after the service is ended, for a period equal to the period of the
4 remaining life of the installment contract or instrument evidencing the obligation
5 plus a period of time equal to the period of active state service, or any part of that
6 combined period. The court may issue a stay under this paragraph if the service
7 member makes payments of the balance of the principal and accumulated interest
8 due and unpaid at the date of the end of the period of active state service or from the
9 date of requesting the relief, whichever is appropriate, in equal installments during
10 the combined period and at the rate of interest as is prescribed in the contract or
11 instrument evidencing the obligation for installments paid when due. The court may
12 order other terms under this paragraph as are just.

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

24 (b) When a court has granted a stay under this subsection, no penalty may
25 accrue during the period that the terms and conditions of the stay are complied with

1 by reason of the failure to comply with the terms or conditions of the obligation or
2 liability in respect to which the stay was granted.

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

9 (b) No power of attorney executed after December 14, 2001, by a service
10 member in active state service may be extended under par. (a) if the document
11 creating the power of attorney clearly indicates that the power granted expires on
12 the date specified even if the service member, after the date of execution of the
13 document, is reported missing to the department.

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

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

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

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

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

24 2. Upon receipt of the written request under subd. 1., the insurer shall notify
25 the service member of the due date for paying the premium for the insurance, and

1 the service member shall pay the premium within 30 days after receiving the notice.
2 For the minimum period of reinstatement required under subd. 1., the insurer may
3 not increase the amount of the premium over the amount that was chargeable before
4 the suspension of the coverage for that period, except to the extent of any general
5 increase in premiums charged by the insurer for the same professional liability
6 coverage for persons similarly covered by such insurance during the period of the
7 suspension.

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

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

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

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

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

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

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

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

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

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

History: 2001 a. 24, 105; 2003 a. 69; 2005 a. 149.

14 **SECTION 103.** 21.78 of the statutes is renumbered 21.53 and amended to read:

15 **21.53 Employees or officers in military service. (1)** The governing body
16 of any county, town, city, village, school district, or technical college district may
17 grant a leave of absence to any employee or officer who is inducted or who enlists in
18 the U.S. armed forces for a period of military service of not more than 4 years unless
19 the employee is involuntarily retained for a longer period. No salary or compensation
20 of the employee or officer shall be paid, nor claim for the salary or compensation exist,
21 during the leave of absence, except as provided in this section. If the employee’s or
22 officer’s salary or compensation is less in the U.S. armed forces than was paid by the
23 county, town, city, village, school district, or technical college district, that
24 governmental unit may pay the employee or officer the difference between the salary

1 or compensation paid by the U.S. armed forces and the salary or compensation that
2 the employee or officer was paid by the county, town, city, village, school district, or
3 technical college district at the time that he or she enlisted in or was inducted into
4 the U.S. armed forces.

5 (2) The governing body may provide for safeguarding the reinstatement and
6 pension rights, as limited in this section, of any employee or officer so inducted or
7 enlisted.

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

11 (4) If the leave of absence under sub. (1) is granted to an elected or appointed
12 official or employee and the official or employee has begun service in the U.S. armed
13 forces, a temporary vacancy exists and a successor may be appointed to fill the
14 unexpired term of the official or employee, or until the official or employee returns
15 and files an election to resume the office if the date of the filing is prior to the
16 expiration of the term. The appointment shall be made in the manner provided for
17 the filling of vacancies caused by death, resignation, or otherwise, except that no
18 election need be held to fill a temporary vacancy. The appointee has all the powers,
19 duties, liabilities, and responsibilities and shall be paid and receive the
20 compensation and other benefits of the office or position, unless otherwise provided
21 by the governing body. Within 40 days after the termination of service in the U.S.
22 armed forces, the elected or appointed official or employee, upon filing with the clerk
23 of the governmental unit, a statement under oath of termination and that the official
24 or employee elects to resume the office or position, may resume the office or position

1 for the remainder of the term for which elected or appointed. The person temporarily
2 filling the vacancy shall cease to hold the office on the date of the filing.

3 (5) In cities of the 3rd class with a commission plan of government, in case of
4 temporary or permanent vacancies in the office of mayor, the vice mayor shall
5 temporarily succeed to the office of mayor for the balance of the unexpired term for
6 which the mayor was elected unless sooner terminated as provided in s. 17.035 (3).

7 A temporary or permanent vacancy created in the office of council member may be
8 filled as provided in this section. The term of the person appointed temporarily to
9 the office of council member shall not extend beyond the expiration of the term of the
10 office vacated and the temporary term shall be vacated sooner as provided for in s.
11 17.035 (3).

12 History: 2005 a. 22, 253.

SECTION 104. 21.79 of the statutes is renumbered 21.54 and amended to read:

13 **21.54 Reemployment after completion of military service. (1)** (a) Any
14 person who has enlisted or enlists in or who has been or is inducted or ordered into
15 active service in the U.S. armed forces pursuant to 50 App. USC 301, 401, and 451,
16 or P.L. 87-117, and any person whose services are requested by the federal
17 government for national defense work as a civilian during a period officially
18 proclaimed to be a national emergency or a limited national emergency, who, to
19 perform the training or service, has left or leaves a position, other than a temporary
20 position, in the employ of any political subdivision of the state or in the employ of any
21 private or other employer, shall be restored to that position or to a position of like
22 seniority, status, pay, and salary advancement as though service toward seniority,
23 status, pay, or salary advancement had not been interrupted by the absence, if all of
24 the following conditions are met:

1 1. The person presents to the employer evidence of satisfactory completion of
2 the period of training or civilian service, or of discharge from the U.S. armed forces
3 under conditions other than dishonorable.

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

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

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

11 5. The military service was not for more than 4 years unless extended by law.

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

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

21 **(2)** The service of any person who is or was restored to a position in accordance
22 with sub. (1) shall be considered not to be interrupted by the absence, except for the
23 receipt of pay or other compensation for the period of the absence and he or she shall
24 be entitled to participate in insurance, pensions, retirement plans, or other benefits
25 offered by the employer under established rules and practices relating to employees

1 on furlough or leave of absence in effect with the employer at the time the person
2 entered or was enlisted, inducted, or ordered into the forces and service. The person
3 whose position was restored may not be discharged from the position without cause
4 within one year after restoration and the discharge is subject to all federal or state
5 laws affecting any private employment and to the provisions of contracts that may
6 exist between employer and employee. Each county, town, city, or village shall
7 contribute or pay all contributions of the employer to the applicable and existent
8 pension, annuity, or retirement system as though the service of the employee had not
9 been interrupted by military service.

10 **(3)** If an employer fails or refuses to comply with subs. (1) and (2), a person
11 entitled to the benefits under subs. (1) and (2) may petition the circuit court to require
12 the employer to comply with those subsections. Upon the filing of the petition and
13 on reasonable notice to the employer, the court may require the employer to comply
14 with those subsections and to compensate the person for any loss of wages or benefits
15 suffered by reason of the employer's action. The court shall order a speedy hearing
16 and shall advance the case on the calendar. No fees or court costs may be taxed
17 against a person petitioning the court under this subsection. The action commenced
18 under this subsection against a private employer, and the trial or hearing of the
19 action, shall be in any county in which the employment took place or in which the
20 private employer maintains a place of business, and in all other cases shall be as
21 provided in s. 801.50.

22 **(4)** No person who is appointed in the service of the state or of any county, city,
23 village, or town to fill the place of a person entering service in the U.S. armed forces
24 or federal government service under sub. (1) shall acquire permanent tenure during
25 the period of that replacement service.

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

4 **(6)** The restoration of classified employees of the state shall be governed by s.
5 230.32. The restoration of unclassified state employees shall be governed by this
6 section.

7 History: 2005 a. 22.

SECTION 105. 21.80 of the statutes is renumbered 21.55 and amended to read:

8 **21.55 Reemployment rights after national guard, state defense force,**
9 **or public health emergency service. (1) DEFINITIONS.** In this section:

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

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

14 2. Active service with the state laboratory of hygiene under s. 36.25 (11) (em)
15 for the purpose of assisting the department of health and family services under s.
16 250.042 during a state of emergency relating to public health declared by the
17 governor under s. 166.03 (1) (b) 1.

18 3. Active service in the national guard under an order of the governor of that
19 state.

20 (b) “Employer” means a person engaging in any activity, enterprise, or business
21 in this state employing one or more persons on a permanent basis. “Employer”
22 includes the state and any office, department, independent agency, authority,
23 institution, association, society, or other body in state government created or
24 authorized to be created by the constitution or any law, including the legislature and

1 the courts. “Employer” also includes a successor-in-interest of a person employing
2 an individual who has provided notice to that person under sub. (3) (a).

3 (c) “Health benefit plan” has the meaning given in s. 632.745 (11).

4 (d) “Qualified” means having the ability to perform the essential tasks of an
5 employment position.

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

9 (f) “Service in the uniformed services” has the meaning given in 38 USC 4303
10 (13).

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

14 1. The nature and cost of the action.

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

19 3. The overall financial resources of the employer, the number of persons
20 employed by the employer, and the number, type, and location of the employer’s
21 facilities.

22 4. The type of operation of the employer, including the composition, structure,
23 and functions of the employer’s workforce, the geographic separateness from the
24 employer of the facility involved in providing the action, and the administrative and
25 financial relationship of the facility to the employer.

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

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

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

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

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

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

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

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

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

6 2. Any period of active service, as defined in sub. (1) (a) 1., for which the person,
7 through no fault of the person’s own, was unable to obtain orders releasing the person
8 from a period of active service before the expiration of the 5–year period.

9 3. Any period of active service, as defined in sub. (1) (a) 1., that was performed
10 to fulfill any additional training requirements determined and certified in writing
11 by the federal secretary of the army, the federal secretary of the air force, or the
12 adjutant general to be necessary for professional development or for completion of
13 skill training or retraining.

14 4. Any period of active service that was performed by a person who was ordered
15 to, or retained in, active service, other than for training, because of a state emergency
16 declared by the governor, because of a war or national emergency declared by the
17 president of the United States or Congress, because of insurrection, rebellion, riot,
18 invasion, or resistance to the execution of the laws of this state or of the United
19 States, or in support of an operational mission, a critical mission, or any other
20 requirement of the uniformed services.

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

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

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

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

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

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

14 3. Subject to subds. 4. and 5., if a person who has been absent from a position
15 of employment because of active service that lasted for more than 180 days or who
16 has been absent from a position of employment because the person was hospitalized
17 for or was convalescing from an illness or injury that was incurred in or aggravated
18 during the performance of that active service wishes to receive the reemployment
19 rights and benefits specified in this section, the person must notify the person's
20 employer of the person's intent to return to the position of employment by submitting
21 to the employer an application for reemployment by no later than 90 days after the
22 completion of the active service, hospitalization, or convalescence or, if through no
23 fault of the person's own submitting the application within that time is impossible
24 or unreasonable, by submitting to the employer an application for reemployment by

1 no later than the first full calendar day on which submission of the application
2 becomes possible.

3 4. The period of hospitalization or convalescence specified in subds. 1., 2., and
4 3. may not exceed 2 years, except that if through no fault of the person's own it is
5 impossible or unreasonable for the person to report to the employer within the time
6 specified in subd. 1. or to apply for reemployment within the time specified in subd.
7 2. or 3., that 2-year period shall be extended by the minimum period of time required
8 to accommodate the circumstances that made it impossible or unreasonable for the
9 person to report or apply as so required.

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

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

24 2. An employer may not refuse to reemploy a person who fails to provide any
25 of the documentation specified in subd. 1. because that documentation does not exist

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

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

9 (g) *Veterans preferences.* The right of a person to reemployment under this
10 subsection does not entitle the person to retention, preference, or displacement
11 rights over any person who has a superior claim under s. 45.03 (4), 62.13 (4) (d), 63.08
12 (1) (f), 63.37, 63.39 (2m), 66.0509 (1), 230.15 (2m), 230.16 (7) or (7m), 230.21 (1m),
13 230.25, or 230.275.

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

19 **(4) REEMPLOYMENT POSITIONS.** (a) *Prompt reemployment required.* 1. Subject
20 to subds. 3. and 4. and par. (b), an employer shall reemploy a person who is entitled
21 to reemployment under sub. (3) and whose period of active service was for less than
22 91 days promptly on completion of that period of active service in the position of
23 employment in which the person would have been employed if the continuous
24 employment of the person with the employer had not been interrupted by that active
25 service so long as the person is qualified to perform the duties of that position or, if

1 after reasonable efforts by the employer to qualify the person to perform those duties
2 the person is not qualified to perform those duties, in the position of employment in
3 which the person was employed on the date on which the person's period of active
4 service began.

5 2. Subject to subds. 3. and 4. and par. (b), an employer shall reemploy a person
6 who is entitled to reemployment under sub. (3) and whose period of active service was
7 for more than 90 days promptly on completion of that period of active service in the
8 position of employment in which the person would have been employed if the
9 continuous employment of the person with the employer had not been interrupted
10 by that active service or in a position of employment of like seniority, status, and pay
11 so long as the person is qualified to perform the duties of that position or, if after
12 reasonable efforts by the employer to qualify the person to perform those duties the
13 person is not qualified to perform those duties, in the position of employment in
14 which the person was employed on the date on which the person's period of active
15 service began or in a position of employment of like seniority, status, and pay.

16 3. Subject to par. (b), in the case of a person who has a disability that was
17 incurred in or aggravated during a period of active service and who, after reasonable
18 efforts by the employer to accommodate the disability, is not qualified due to the
19 disability to perform the duties of the position of employment in which the person
20 would have been employed if the continuous employment of the person with the
21 employer had not been interrupted by the active service, the employer shall reemploy
22 the person promptly on completion of that period of active service in any other
23 position that is equivalent to that position in seniority, status, and pay, the duties of
24 which the person is qualified to perform or would become qualified to perform with
25 reasonable efforts by the employer, or, if there is no other position of employment

1 available that is equivalent to that position in seniority, status, and pay, in a position
2 that is the nearest approximation to that equivalent position in terms of seniority,
3 status, and pay, consistent with the person's circumstances.

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

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

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

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

13 (b) *Continuation of benefits.* 1. Subject to subds. 2. to 5., a person who is absent
14 from employment because of active service is considered to be on furlough or leave
15 of absence while performing the active service and is entitled to receive all rights and
16 benefits not determined by seniority that are generally provided by the employer to
17 employees having similar seniority, status, and pay who are on furlough or leave of
18 absence under a contract, agreement, policy, practice, or plan that is in effect on the
19 day on which the active service began or that is established while the person is
20 performing the active service.

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

1 the person is not entitled to the rights and benefits specified in subd. 1. while absent
2 from employment.

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

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

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

13 (c) *Protection from discharge.* An employer that reemploys under this section
14 a person whose period of active service lasted for more than 30 days, but less than
15 181 days, may not discharge the person within 180 days after the date of
16 reemployment except for cause. An employer that reemploys under this section a
17 person whose period of active service lasted for more than 180 days may not
18 discharge the person within one year after the date of reemployment except for
19 cause.

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

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

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

5 (b) *Payment of premiums.* A person who elects to continue coverage under par.
6 (a) and who is absent from a position of employment for 30 days or less may not be
7 required to pay more than the employee share, if any, of the cost of the coverage. A
8 person who elects to continue coverage under par. (a) and who is absent from a
9 position of employment for more than 30 days may be required to pay up to 102% of
10 the full premium for that coverage for the period of continued coverage that exceeds
11 30 days.

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

20 (7) ENFORCEMENT. (a) *Complaint.* Any person who believes that his or her
21 employer has failed or refused, or is about to fail or refuse, to provide to the person
22 any reemployment right or benefit to which the person is entitled under this section
23 may file a complaint with the adjutant general, in such form as the adjutant general
24 may prescribe by rule, summarizing the allegations that form the basis of the
25 complaint. The adjutant general shall investigate the complaint and, if the adjutant

1 general is reasonably satisfied that the person is entitled to the rights or benefits
2 sought, the adjutant general shall endeavor to resolve the complaint by conference,
3 conciliation, or persuasion. If the adjutant general is not reasonably satisfied that
4 the person is entitled to the rights or benefits sought, the adjutant general may
5 refuse to endeavor to resolve the complaint and shall notify the person who filed the
6 complaint that the person may proceed under par. (b) 2. to enforce the person's rights
7 under this section. If the adjutant general is not able to resolve the complaint, the
8 adjutant general shall notify the person who filed the complaint that the person may
9 proceed under par. (b) 1. or 2. to enforce the person's rights under this section.

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

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

22 3. The department of workforce development shall process a complaint filed
23 under subd. 1. or 2. in the same manner that employment discrimination complaints
24 are processed under s. 111.39.

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

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

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

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

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

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

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

