

1 February 8, 2007, draft

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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.

Under the draft, ch. 21 will be reorganized as follows:

Subchapter I

General Provisions

- 321.01 Definitions.
- 321.02 Powers and duties of the governor.
- 321.03 Powers and duties of the department
- 321.04 Powers and duties of the adjutant general.
- 321.05 Permission to forces of other states.

Subchapter II

Military Officers

- 321.10 Military staff of the governor.
- 321.11 United States property and fiscal officer.
- 321.12 Chief surgeons.
- 321.13 Discharge of officers.
- 321.14 Authority to administer oaths.
- 321.15 Resignation of officer.

Subchapter III

Property and Assets

- 321.20 Distribution of military property.
- 321.21 Military property accountability.
- 321.22 Camp Williams.
- 321.23 Facilities and lands.
- 321.24 Encroachment on military areas and interference with military personnel.

Subchapter IV

National Guard and State Defense Force

- 321.30 Composition of national guard.
- 321.31 Uniform of national guard.
- 321.32 Terms of enlistment and discharge.
- 321.33 Commission and rank.
- 321.34 Examinations for promotion or appointments.
- 321.35 Pay.
- 321.36 Rules of discipline.
- 321.37 No discrimination.
- 321.38 Decorations and awards.
- 321.39 Call to state active duty.
- 321.40 Educational benefits.

SUBCHAPTER I

GENERAL PROVISIONS

SECTION 4. 321.01 of the statutes is created to read:

321.01 Definitions. In this chapter:

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

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

(3) “Federal active duty” means full-time duty in the active military service of the United States, as defined in 10 USC 101 (d) or 32 USC 502 or 503.

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

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

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

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

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

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

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

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

3 **SECTION 5.** 321.02 (title) of the statutes is created to read:

4 **321.02 Powers and duties of the governor.**

5 **SECTION 6.** 21.70 (1) and (2) of the statutes are renumbered 321.02 (1) (a) and
6 (b) and amended to read:

7 321.02 **(1)** (a) The governor may request volunteers of from the national guard
8 to provide assistance to federal, state and local law enforcement officers, within or
9 outside the boundaries of this state, in drug interdiction and counter–drug activities
10 under 32 USC 112. These activities may include the operation and maintenance of
11 equipment and facilities. The governor may order, with their consent, any national
12 guard members who volunteer under this section to duty in federally funded status.
13 The governor may delegate his or her authority under this ~~section~~ subsection to the
14 adjutant general. The adjutant general shall follow all laws and regulations of the
15 U.S. department of defense when ordering national guard members to perform drug
16 interdiction and counter–drug activities under this ~~section~~ subsection.

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

21 **SECTION 7.** 21.015 (title) of the statutes is renumbered 321.03 (title) and
22 amended to read:

23 **321.03 (title) Department Powers and duties of the department.**

SECTION 8

1 **SECTION 8.** 21.015 (intro.) of the statutes is renumbered 321.03 (1) (intro.) and
2 amended to read:

3 321.03 **(1)** (intro.) The department of ~~military affairs~~ shall do all of the
4 following:

5 **SECTION 9.** 21.015 (1) of the statutes is renumbered 321.03 (1) (a) and amended
6 to read:

7 321.03 **(1)** (a) Administer the national guard.

History: 1983 a. 27.

8 **SECTION 10.** 21.015 (2) of the statutes is renumbered 321.03 (1) (b) and
9 amended to read:

10 321.03 **(1)** (b) Provide facilities and support for the national guard ~~and any~~
11 ~~other support available from the appropriations under s. 20.465.~~

History: 1983 a. 27.

12 **SECTION 11.** 21.26 (1) and (2) of the statutes are consolidated, renumbered
13 321.03 (1) (c) and amended to read:

14 321.03 **(1)** (c) ~~The department of military affairs shall administer~~ Administer
15 ~~the Youth Challenge Academy program~~ for disadvantaged youth under 32 USC 509.
16 The department shall determine eligibility criteria for the Challenge Academy
17 consistent with federal law. ~~(2)~~ Annually, the department of ~~military affairs~~ shall
18 do all of the following:

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

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

1 **SECTION 12.** 21.19 (2) of the statutes is renumbered 321.03 (2) and amended
2 to read:

3 321.03 **(2)** The department of military affairs on behalf of the state may rent
4 do 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 agreement is not
8 be effective unless in writing and approved in writing by the ~~governor and the~~
9 adjutant general or a his or her designee in writing.

10 **SECTION 13.** 21.19 (3) (a) of the statutes is renumbered 321.03 (2) (b) and
11 amended to read:

12 321.03 **(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 14.** 321.04 (title) and (1) (intro.) of the statutes are created to read:

19 **321.04 Powers and duties of the adjutant general.** **(1)** (intro.) The
20 adjutant general or his or her designee shall do all of the following:

21 **SECTION 15.** 21.19 (1) of the statutes is renumbered 321.04 (1) (a) and amended
22 to read:

23 321.04 **(1)** (a) ~~The adjutant general shall be~~ Be the military chief of staff to the
24 governor. ~~The adjutant general shall have the custody of all property, military~~
25 ~~records, correspondence, and other documents relating to the national guard and any~~

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

7 **SECTION 16.** 321.04 (1) (b) of the statutes is created to read:

8 321.04 (1) (b) Advise the governor on military issues and transmit military
9 correspondence to and from the governor

10 **SECTION 17.** 21.33 of the statutes is renumbered 321.04 (1) (c) and amended to
11 read:

12 321.04 (1) (c) ~~The quartermaster general acting as paymaster under~~ Under
13 ~~orders from the governor, may draw from the state treasury the money necessary for~~
14 ~~paying troops in camp or~~ national guard members on state active service duty and
15 ~~shall furnish such security for the same as the secretary of administration may~~
16 ~~direct. The amount due on account of the field, staff, or other officers,~~
17 ~~noncommissioned staff and band, company, or enlistees, not herein enumerated, if~~
18 ~~any, shall be paid to the person to whom the same shall be due, on the properly signed~~
19 ~~and certified payrolls.~~

20 **SECTION 18.** 21.19 (11) of the statutes is renumbered 321.04 (1) (d) and
21 amended to read:

22 321.04 (1) (d) ~~The adjutant general shall provide such~~ Provide necessary
23 ~~medical supplies and services as are necessary to the national guard during periods~~

1 of state active duty not otherwise provided under this chapter and ch. 102, to be
2 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.

3 **SECTION 19.** 21.19 (12) of the statutes is renumbered 321.04 (1) (e) and
4 amended to read:

5 321.04 (1) (e) ~~The adjutant general shall provide from the appropriation under~~
6 ~~s. 20.465 (1) (e) Provide a United States flag or state flag to the next of kin of each~~
7 ~~deceased member of the national guard who dies as a result of during state service~~
8 ~~under s. 21.11 active duty, to be 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.

9 **SECTION 20.** 21.19 (7) (a) 1. of the statutes is renumbered 321.04 (1) (f) and
10 amended to read:

11 321.04 (1) (f) ~~Have charge custody of all the military property of the state and~~
12 ~~shall military records and carefully preserve, repair, and account for the property~~
13 ~~and records.~~

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.

14 **SECTION 21.** 21.19 (4) of the statutes is renumbered 321.04 (1) (g) and amended
15 to read:

16 321.04 (1) (g) ~~The adjutant general shall be the auditor of Audit all military~~
17 ~~accounts, and all accounts or claims payable from the treasury of the state for~~
18 ~~military purposes shall be regularly audited by the adjutant general before payment.~~
19 ~~The adjutant general shall cause to be prepared and issued all necessary books and~~
20 ~~forms required by the adjutant general's office for the national guard. All of the books~~
21 ~~and forms shall be made to conform as nearly as practicable to those in use in the~~
22 ~~United States army.~~

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.

1 **SECTION 22.** 21.19 (7) (a) 2. of the statutes is renumbered 321.04 (1) (h) and
2 amended to read:

3 321.04 (1) (h) ~~Keep in such manner as the governor directs, and subject to the~~
4 ~~governor's inspection,~~ an account of all moneys received and expended by the
5 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.

6 **SECTION 23.** 21.19 (1m) of the statutes is renumbered 321.04 (1) (i) and
7 amended to read:

8 321.04 (1) (i) ~~The adjutant general shall administer~~ Administer, with the
9 approval of the governor, state–federal cooperative funding agreements related to
10 the 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.

11 **SECTION 24.** 321.04 (1) (j) of the statutes is created to read:

12 321.04 (1) (j) Prepare the training of national guard members.

13 **SECTION 25.** 21.19 (7) (b) of the statutes is renumbered 321.04 (1) (k) and
14 amended to read:

15 321.04 (1) (k) ~~The~~ Provide or contract for the transportation of ~~all~~ national
16 guard troops, arms, accoutrements, stores ~~members~~ and other military property and
17 ~~the preparation for encampments shall be contracted for by the adjutant general~~
18 ~~under direction of the governor.~~

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.

19 **SECTION 26.** 21.19 (8) of the statutes is renumbered 321.04 (1) (L) and amended
20 to read:

21 321.04 (1) (L) ~~The adjutant general or a designee shall issue~~ Provide or contract
22 for all necessary supplies to military property, lodging, and meals for members and

1 units of the national guard and may contract for the purchase and transportation of
2 such supplies, subject to s. 16.71 (1).

3 **SECTION 27.** 321.04 (1) (m) of the statutes is created to read:

4 321.04 (1) (m) Prepare and issue all necessary accounting books and forms
5 required by the adjutant general's office for the national guard. All of the accounting
6 books and forms shall be made to conform as nearly as practicable to those in use in
7 the United States army or air force.

8 **SECTION 28.** 21.19 (13) of the statutes is renumbered 321.04 (1) (n) and
9 amended to read:

10 321.04 (1) (n) ~~The adjutant general shall cooperate~~ Cooperate with the federal
11 government in the operation and maintenance of distance learning centers for the
12 use of current and former members of the national guard and the U.S. armed forces.
13 The adjutant general may charge rent for the use of a center by a nonmilitary or
14 nonfederal person. All moneys received under this subsection paragraph shall be
15 credited to the 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.

16 **SECTION 29.** 21.19 (14) of the statutes is renumbered 321.04 (1) (o) and
17 amended to read:

18 321.04 (1) (o) ~~The adjutant general shall provide~~ Provide the department of
19 veterans affairs information on all necessary military points of contact and general
20 deployment information for activated and deployed members of the national guard.

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

21 **SECTION 30.** 321.04 (1) (p) of the statutes is created to read:

22 321.04 (1) (p) Perform the duties under s. 321.51 (2) (e).

SECTION 31

1 **SECTION 31.** 21.19 (7) (a) 3. of the statutes is renumbered 321.04 (1) (q) and
2 amended to read:

3 321.04 (1) (q) Perform the customary duties of the his or her office, ~~and of the~~
4 ~~office of chief of all logistical services, and have the custody of all records, returns,~~
5 ~~and papers pertaining to those offices.~~

6 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

6 **SECTION 32.** 321.04 (2) (intro.) of the statutes is created to read:

7 321.04 (2) (intro.) The adjutant general or his or her designee may do any of
8 the following:

9 **SECTION 33.** 21.36 (2) of the statutes is renumbered 321.04 (2) (a) and amended
10 to read:

11 321.04 (2) (a) ~~The governor may make and~~ Make, publish, and have printed
12 rules, regulations, and orders for the government governance of the national guard,
13 ~~not inconsistent with the law, and cause the rules, regulations, or orders, together~~
14 ~~with any related laws, to be printed and distributed in book form, or another form,~~
15 ~~in any number that the governor considers necessary. The governor may provide (b)~~
16 Provide for all books and forms that may be necessary for the proper discharge of the
17 duty of all officers of the national guard. ~~The governor may delegate the authority~~
18 ~~under this subsection to the adjutant general by executive order.~~

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

19 **SECTION 34.** 21.19 (9) of the statutes is renumbered 321.04 (2) (c) and amended
20 to read:

21 321.04 (2) (c) ~~When any military property belonging to the state as owner or~~
22 ~~bailee is wrongfully held by another person, the adjutant general may bring an action~~
23 ~~in the name of the state to recover possession of the same~~ property or the money value
24 ~~thereof of the property.~~

1 **SECTION 35.** 21.19 (10) of the statutes is renumbered 321.04 (2) (d) and
2 amended to read:

3 321.04 (2) (d) ~~The adjutant general may, upon~~ Upon receipt of a meritorious
4 requests request for a state service flags for public use flag and within the limits of
5 the appropriation made under s. 20.465 (1) (e), furnish such flags a flag without
6 charge to the persons or organizations requesting them person who requested it.

7 **SECTION 36.** 21.11 (3) of the statutes is renumbered 321.04 (2) (e) and amended
8 to read:

9 321.04 (2) (e) ~~The adjutant general may activate~~ Activate members of the
10 national guard ~~for the purpose of serving~~ to serve on an honors detail of military
11 funeral honors for a person described under s. 45.60 (1).

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

12 **SECTION 37.** 321.04 (2) (f) of the statutes is created to read:

13 321.04 (2) (f) Perform the duties under 321.51 (2) (f).

14 **SECTION 38.** 21.025 (5) (a) and (b) of the statutes is renumbered 321.05 (1) and
15 (2) and amended to read:

16 **321.05 Permission to forces of other states. (1)** Any military forces or
17 organization, unit, or detachment thereof, of another state who are that is in fresh
18 pursuit of insurrectionists, saboteurs, enemies terrorists, or enemy forces may
19 continue such the pursuit into this state until ~~the~~ a military unit or police forces law
20 enforcement agency of this state or the forces of the United States have U.S. military
21 has had a reasonable opportunity to take up the pursuit or ~~to apprehend or capture~~
22 ~~such persons, and such~~ the persons. The military forces of such unit of the other state
23 may arrest or capture such those persons within in this state while in fresh pursuit.

1 ~~(e)~~ (f) An assistant adjutant general for air, ~~who may hold the~~ whose rank of may
2 not exceed brigadier general.

3 ~~(f)~~ (g) A chief surgeon for army, ~~who~~ whose rank may be a not exceed major
4 general officer.

5 ~~(g)~~ (h) A chief surgeon for air, ~~who~~ whose rank may be a not exceed major
6 general officer.

7 ~~(h)~~ (i) A staff judge advocate for army, ~~who~~ whose rank may be a not exceed
8 major general officer.

9 ~~(i)~~ (j) A staff judge advocate for air, ~~who~~ whose rank may be a not exceed major
10 general officer.

11 ~~(j)~~ (k) A state chaplain, either army or air, ~~who~~ whose rank may be a not exceed
12 major general officer.

13 ~~(k)~~ (L) Such other officers as the governor or adjutant general deems necessary.

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

14 **SECTION 43.** 21.18 (title) and (1) (intro.) of the statutes are renumbered 321.10
15 (title) and (1) (intro.).

16 **SECTION 44.** 321.10 (1) (e) of the statutes is created to read:

17 321.10 **(1)** (e) A joint chief of staff, whose rank may may not exceed major
18 general.

19 **SECTION 45.** 21.19 (5) of the statutes is renumbered 321.10 (2) and amended
20 to read:

21 321.10 **(2)** In the absence or incapacity of the adjutant general, the senior
22 ranking deputy adjutant general for army or air shall have all the powers and duties
23 of the adjutant general.

SECTION 46

1 **SECTION 46.** 21.18 (1m) of the statutes is renumbered 321.10 (3) and amended
2 to read:

3 **321.10 (3)** In the event ~~any of the a deputy adjutants~~ adjutant general, for army
4 or for air, ~~are~~ is appointed to a military position as a major general, the adjutant
5 general shall appoint, for any periods of absence of that deputy adjutant general due
6 to other military duties, an acting deputy adjutant general. The adjutant general
7 may appoint one of the assistant adjutants general as an acting deputy adjutant
8 general.

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

9 **SECTION 47.** 21.18 (2) of the statutes is renumbered 321.10 (4) and amended
10 to read:

11 **321.10 (4)** No person may be appointed ~~on~~ to the governor's military staff who
12 has not had previous state or U.S. military experience.

13 **SECTION 48.** 21.18 (3) of the statutes is renumbered 321.10 (5) and amended
14 to read:

15 **321.10 (5)** All staff officers appointed under sub. (1), except the adjutant
16 general whose tenure is governed by ss. 15.31 and 17.07 (5), shall hold their positions
17 unless terminated earlier by resignation, disability, or for cause or unless federal
18 recognition of the officer's commission under 32 USC 323 is refused or withdrawn.
19 The governor shall remove an officer whose federal recognition is refused or
20 withdrawn, effective on the date of the loss of federal recognition.

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

21 **SECTION 49.** 21.18 (4) of the statutes is renumbered 321.10 (6) and amended
22 to read:

1 **321.10 (6)** The terms of the deputy adjutants general for army and air shall be
2 5 years beginning on the first day of the 7th month of the term of the adjutant
3 general. The deputy adjutants general may be reappointed to successive terms.

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

4 **SECTION 50.** 21.18 (5) of the statutes is renumbered 321.10 (7) and amended
5 to read:

6 **321.10 (7)** The adjutant general shall appoint persons to fill vacancies in
7 positions ~~in~~ on the military staff of the governor under sub. (1). Vacancies on the
8 military staff of the governor shall be filled by appointment from officers actively
9 serving in the national guard, except as provided in s. 15.31. Interim vacancies shall
10 be filled by appointment by the adjutant general for the residue remainder of the
11 unexpired term.

12 **SECTION 51.** 21.28 of the statutes is renumbered 321.11 and amended to read:

13 **321.11 United States property and fiscal officer. (1)** The adjutant general
14 shall recommend a candidate for appointment as the ~~United States~~ U.S. property
15 and fiscal officer for the national guard, subject to the concurrence of the governor,
16 from federally commissioned officers actively serving in the national guard. The
17 candidate shall be nominated by the governor, subject to the concurrence of the U.S.
18 secretary of the army, if the nominee is serving in the army national guard, or the
19 U.S. secretary of the air force, if the nominee is serving in the air national guard.

20 **(2)** The officer nominated under sub. (1) shall assume the duties of a ~~United~~
21 States U.S. property and fiscal officer under 32 USC 708, when properly ordered to
22 active duty by the appropriate U.S. secretary, on the date specified in the order. The
23 officer shall hold his or her position unless terminated earlier by resignation,

1 disability or for cause and unless federal recognition of the officer's commission
2 under ~~32 USC 323~~ 10 USC 14902, 14903, or 14905 is refused or withdrawn.

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

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

9 **SECTION 52.** 21.30 (title) of the statutes is renumbered 321.12 (title) and
10 amended to read:

11 **321.12 (title) Chief surgeons; powers and duties.**

12 **SECTION 53.** 21.30 of the statutes is renumbered 321.12 (1) and amended to
13 read:

14 321.12 **(1)** The chief surgeons for the army and air national guard shall, under
15 direction of the adjutant general, have general supervision of the medical units of the
16 national guard and, if organized, the state defense force ~~when organized~~. The chief
17 surgeons shall make recommendations concerning procurement of medical supplies
18 and services for state active duty operations, ~~for~~ the procurement and training of
19 medical personnel, and ~~for~~ the publication of national guard directives on medical
20 subjects. ~~The chief surgeons shall submit an annual report of the affairs and~~
21 ~~expenses of their departments to the adjutant general.~~

22 **SECTION 54.** 21.32 of the statutes is renumbered 321.12 (2) and amended to
23 read:

1 321.12 (2) The chief surgeons for the army and the air national guard shall
2 provide for ~~such~~ any physical examinations and inoculations of officers, enlistees,
3 and applicants for enlistment in the national guard, as may be prescribed by
4 department of defense and national guard regulations.

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

5 **SECTION 55.** 21.51 of the statutes is renumbered 321.13 and amended to read:

6 **321.13 Discharge of officers.** Any officer may be discharged by the governor
7 pursuant to the Wisconsin code of military justice or upon resignation or disability
8 preventing full discharge of the duties of his or her office.

History: 1991 a. 316.

9 **SECTION 56.** 21.52 of the statutes is renumbered 321.14 and amended to read:

10 **321.14 Authority to administer oaths.** Any officer of the national guard or
11 any officer of the U.S. armed forces may administer oaths of enlistment in the
12 national guard.

History: 1979 c. 221.

13 **SECTION 57.** 21.54 of the statutes is renumbered 321.15 and amended to read:

14 **321.15 Resignation of officer.** A commissioned officer may resign ~~the~~
15 ~~officer's~~ his or her commission by submitting the written resignation to ~~the officer's~~
16 his or her immediate commanding officer, ~~in writing, who.~~ The commanding officer
17 shall promptly forward the same resignation through military channels to the
18 adjutant general. The governor shall, by order, accept or reject the ~~same~~ resignation,
19 and, if accepted, fix the effective date of its ~~taking effect.~~ No the resignation shall
20 ~~take effect except as so ordered.~~

21 **SECTION 58.** 21.15 (title) of the statutes is repealed.

22 **SECTION 59.** 21.155 (title) of the statutes is repealed.

23 **SECTION 60.** 21.19 (3) (b) of the statutes is repealed.

24 **SECTION 61.** 21.19 (6) of the statutes is repealed.

1 ~~misuse or misapplication by the officer or any other person; to or money shall~~ account
2 ~~for all of the same according to law, and to the property and money, deliver the same~~
3 ~~the property and money to any officer lawfully entitled thereto, on demand to receive~~
4 ~~them, and to pay all sums lawfully appraised for all losses or damages to that~~
5 ~~property or money.~~

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

14 **SECTION 69.** 21.56 of the statutes is renumbered 321.21 (2) and amended to
15 read:

16 **321.21 (2)** (a) All state-owned military property or money issued to any officer
17 or armory facility manager shall be audited annually as a part of the annual
18 inspection of federal property accounts. When damages damage, other than fair
19 reasonable wear and tear, or loss of state-owned property is discovered, the adjutant
20 general shall appoint a surveying officer to determine the cause and fix blame. Upon
21 review, the adjutant general may hold responsible individuals pecuniarily
22 financially liable, ~~and may require a depreciated payment, as determined by the~~
23 ~~adjutant general, into the state treasury.~~ If it is determined that the property or
24 money was damaged, destroyed or lost without fault or neglect on the part of those
25 responsible, all concerned may shall be relieved of liability.

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

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

4 **SECTION 70.** 21.57 of the statutes is renumbered 321.21 (3) and amended to
5 read:

6 **321.21 (3)** (a) ~~Whenever any~~ When an officer who is responsible for state
7 military property or money is separated or reassigned, all military property or money
8 in the officer's possession or for which the officer is responsible shall ~~be delivered to~~
9 become the responsibility of the person designated the adjutant general designates
10 to receive the property ~~by the adjutant general or money~~. No separation or
11 reassignment shall be effective until all property accounts have been settled.

12 (b) ~~In case of the death of any~~ If an officer having custody of state military
13 property or money dies, the next in command shall immediately take charge of such
14 the property or money and deliver ~~the same~~ the property or money to the person the
15 adjutant general appointed to receive the property ~~by the adjutant general or money~~.

History: 1975 c. 189, 421.

16 **SECTION 71.** 21.15 of the statutes is renumbered 321.21 (4) (a) and amended
17 to read:

18 **321.21 (4)** (a) No person may retain at any time any ~~arms, equipment or~~
19 ~~military stores of any kind belonging to the state or any federally owned property~~
20 ~~issued to the state~~ property or money, unless the property or money has been lawfully
21 issued to the person pursuant to law and the proper authority permits the person to
22 retain the property or money in the discharge of a public duty. No person may use
23 any ~~public arms, equipment, clothing or military stores belonging to the state, either~~
24 ~~as owner or bailee~~ property or money, for the person's unauthorized private use. Any

1 person violating this section paragraph shall forfeit not less than \$50 nor more than
2 \$200.

History: 1979 c. 221.

****NOTE: The drafting subcommittee wanted to highlight for the special committee's attention the level of penalties both in this provision and in current s. 21.155. Those penalty levels were established in 1980. Chapter 221, laws of 1979 (the 1980 Budget Review Act), changed the penalties for violating s. 21.15 from a fine of not more than \$200 to the current language. In addition, chapter 221 also changed the penalty for violating s. 21.115 from imprisonment for not more than 6 months or a fine of not more than \$100 to the current language.

3 **SECTION 72.** 21.155 of the statutes is renumbered 321.21 (4) (b) and amended
4 to read:

5 **321.21 (4) (b)** ~~No~~ A person who possesses under the laws of this state any arms,
6 equipment or other military property may willfully neglect or refuse or money, after
7 the adjutant general makes lawful demand is made for the return of the property by
8 order of the governor to or money shall return the property promptly. No person may
9 knowingly resist any officer who is lawfully taking possession of ~~such arms,~~
10 equipment, ~~or other~~ the military property or money. Any person violating this
11 section paragraph shall forfeit not less than \$50 nor more than \$200.

History: 1979 c. 221.

12 **SECTION 73.** 21.04 of the statutes is renumbered 321.22 and amended to read:

13 **321.22 Camp Williams.** (1) The state camp grounds facility near Camp
14 Douglas, Juneau County, shall be known as "Camp Williams". The officer in charge
15 of Camp Williams shall have at said camp the police arrest powers possessed by
16 officials at state hospitals, as provided in s. 46.058 (2) for a violation of state law, a
17 local ordinance, or a provision of the Wisconsin code of military justice.

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

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

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

6 **SECTION 74.** 321.23 (title) of the statutes is created to read:

7 **321.23(title) Facilities and lands.**

8 **SECTION 75.** 21.61 of the statutes is renumbered 321.23 (1) (a) and amended
9 to read:

10 **321.23 (1)** (a) ~~The governing body of any city, village, town or county political~~
11 ~~subdivision or the federally recognized Indian tribe or band in which one or more~~
12 ~~companies~~ units of the national guard ~~may be~~ is located may erect build or purchase
13 a suitable armory for the purpose of drill and for the safekeeping of the arms,
14 ~~equipment, uniforms, and other military property furnished by the state, and for~~
15 ~~public meetings and conventions, when such~~ that use will not interfere with the use
16 of such the building by the national guard. ~~Plans~~ The adjutant general shall inspect
17 and approve plans and specifications ~~and the state building commission shall~~
18 approve plans and specifications for such the armories ~~shall be inspected and~~
19 ~~approved by the governor and the adjutant general who.~~ The adjutant general and
20 the department of administration shall file with the governing body of the city,
21 village, town, or county political subdivision or the federally recognized Indian tribe
22 or band a certificate of such inspection and approval ~~prior to~~ before the erection
23 thereof construction of an armory.

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

18 (c) Such ~~The~~ armory, when erected built or purchased, shall be under the control
19 and charge of the governor, the adjutant general, and ~~the~~ commanding officer of the
20 ~~company or companies~~ unit of the national guard for which it has been provided. The
21 commanding officer shall ~~cause to be deposited therein,~~ deposit in the armory all
22 ~~arms, uniforms, and equipment~~ military property received from the governor and the
23 adjutant general ~~who .~~ The adjutant general may make such rules as ~~they deem~~
24 ~~proper~~ for the observance of all officers and persons having charge of such the
25 armories or occupying any part thereof of the armories.

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

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

10 **SECTION 76.** 21.616 of the statutes is renumbered 321.23 (3) and amended to
11 read:

12 **321.23 (3)** ~~The department of military affairs is authorized and directed may,~~
13 ~~when contributions therefor are made available by the federal government under the~~
14 ~~national defense facilities act of 1950 or any act or acts amendatory thereof or~~
15 ~~supplementary thereto~~ federal law, to expand, rehabilitate, equip, or convert
16 facilities owned by the state and to acquire, construct, expand, rehabilitate, equip,
17 or convert additional facilities. ~~The department of military affairs may on the part~~
18 ~~of the state accept such~~ the federal contributions in the manner prescribed by federal
19 law or regulation, and may accept ~~on behalf of the state~~ the lawful terms and
20 conditions ~~thereof~~ of a federal contribution. ~~The department of military affairs shall~~
21 ~~take such steps and have all the functions and~~ has the duties and powers necessary,
22 ~~consistent with the appropriation therefor,~~ to acquire contributions under ~~any such~~
23 federal act law and to undertake and complete ~~any such a~~ project in conformity with
24 the applicable federal act law and this section subsection.

SECTION 84

1 **SECTION 84.** 21.01 of the statutes is renumbered 321.30 and amended to read:

2 **321.30 Composition of national guard. (1)** The organized militia of this
3 state shall be known as the “Wisconsin national guard” and shall consist of members
4 appointed commissioned or enlisted therein in accordance with federal law or
5 regulations governing ~~or pertaining to~~ the national guard.

6 **(2)** The Wisconsin national guard shall ~~be organized into~~ consist of the army
7 national guard and air national guard units, and “national guard” when used in this
8 chapter, ~~unless the context otherwise requires,~~ means both the Wisconsin army
9 national guard and the Wisconsin air national guard.

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

10 **SECTION 85.** 21.38 of the statutes is renumbered 321.31 and amended to read:

11 **321.31 Uniform of Wisconsin national guard.** The uniform of the national
12 guard shall be that as prescribed by regulations for the corresponding branch of the
13 United States U.S. armed forces.

14 **SECTION 86.** 21.05 of the statutes is renumbered 321.32 and amended to read:

15 **321.32 Term of enlistment; requirements and discharge.** Every person
16 who enlists or receives a commission in the national guard shall serve for the term
17 prescribed and satisfy the physical, educational and training requirements
18 prescribed by the U.S. national guard bureau. Enlistees in the national guard shall
19 be discharged as provided in the laws and regulations of the U.S. national guard.

20 **SECTION 87.** 21.43 of the statutes is renumbered 321.33 and amended to read:

21 **321.33 Commissions and rank.** The governor shall appoint and issue
22 commissions to all officers whose appointments are approved by the governor. Every
23 commission shall be ~~countersigned~~ signed by the secretary of state and attested by
24 the adjutant general and A commission shall continue as ~~provided by law~~ unless

1 terminated earlier by resignation, disability, or for cause or unless federal
2 recognition of the officer's commission under 32 USC 323 is refused or withdrawn.
3 Each ~~officer so~~ commissioned officer shall take the oath of office prescribed by article
4 IV, section 28, of the constitution and file it with the department of ~~military affairs~~
5 ~~the oath of office prescribed by article IV, section 28, of the constitution.~~ All
6 commissioned officers shall take rank according to the date assigned them by their
7 commissions, and when 2 of the same grade rank from the same date, their rank shall
8 be determined by length of creditable service in the national guard ~~creditable for pay,~~
9 and if of equal creditable service then by lot.

History: 1983 a. 27, 192.

10 **SECTION 88.** 21.47 of the statutes is renumbered 321.34 and amended to read:

11 **321.34 Examinations for promotion or appointments.** The governor or or
12 adjutant general may order any ~~subordinate officer or~~ person nominated or
13 recommended for promotion or appointment in the national guard or state defense
14 force to be examined by any competent officer or board of officers, designated ~~in~~ on
15 orders for that purpose, as to that person's qualifications for the office to which that
16 person ~~may~~ is to be recommended or appointed, ~~and or~~ promoted. The governor or
17 adjutant general may take such action on the report of such the examining officer or
18 board of officers as ~~the governor deems~~ he or she considers to be for the best interests
19 of the ~~service~~ national guard or state defense force. The governor or adjutant general
20 may also require the person to take the physical examination provided for admission
21 to the ~~United States~~ U.S. army or air force.

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

22 **SECTION 89.** 21.48 of the statutes is renumbered 321.35 and amended to read:

23 **321.35 Pay. (1)** Each ~~Every~~ officer and enlisted person ~~of~~ on state active duty
24 in the national guard ~~on active duty in the state under orders of the governor on a~~

1 ~~state pay basis~~ shall receive the base pay and allowances of an officer or enlisted
2 person of equal rank in the corresponding branch of the U.S. armed forces except that
3 the base pay so provided shall not be less than \$50 per day.

****NOTE: The drafting committee wanted to highlight for the special committee
the \$50 minimum base pay, which perhaps should be raised to a more appropriate
amount?

4 (2) The governor may, ~~by orders, duplicates of which shall be filed with the~~
5 ~~secretary of state,~~ fix the pay of any member of the governor's staff military staff of
6 the governor, or other members of the national guard or state defense force for any
7 special service ~~under orders~~ state active duty.

8 (3) The governor may order, with their consent, to state active duty ~~in the~~
9 ~~department of military affairs, any departmental officers of the governor's staff,~~
10 ~~including the adjutant general and the deputy adjutants general, and while so a~~
11 member of his or her military staff who is a state employee. ~~The assigned the officers~~
12 officer shall receive the pay, but not the allowances, of an officer of equal grade in the
13 U.S. armed forces of the United States.

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

14 **SECTION 90. 21.36 (1)** of the statutes is renumbered 321.36 and amended to
15 read:

16 **321.36 Rules of discipline.** The applicable rules of discipline and the
17 regulations of the U.S. armed forces ~~of the U.S.~~ shall, ~~so far as the same are~~
18 ~~applicable,~~ constitute the rules of discipline and the regulations of the national
19 guard; ~~the .~~ The rules and uniform code of military justice established by congress
20 and the department of defense for the armed forces shall be adopted so far as they
21 are applicable and consistent with the Wisconsin code of military justice for the
22 government of the national guard, ~~and the .~~ The system of instruction and the drill
23 regulations prescribed for the different arms and corps of the armed forces of the U.S.

1 shall be followed in the military instruction and practice of the national guard, and
2 the use of any other system is forbidden.

3 **SECTION 91.** 21.35 of the statutes is renumbered 321.37 and amended to read:

4 **321.37 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 or
12 state defense force because of sex, color, race, creed, or sexual orientation and no
13 member of the national guard or state defense force may be segregated within the
14 national guard or state defense force on the basis of sex, color, race, creed, or sexual
15 orientation. Nothing in this section prohibits separate facilities for persons of
16 different sexes with regard to dormitory accommodations, public toilets, showers,
17 saunas, and dressing rooms.

18 **SECTION 92.** 21.07 of the statutes is renumbered 321.38 and amended to read:

19 **321.38 Decorations and awards.** The adjutant general may prescribe
20 decorations and awards for the national guard and the state defense force, ~~the.~~ The
21 adjutant general shall adopt rules establishing the form and issue thereof made
22 under rules adopted by the adjutant general and approved by the governor issuance
23 of those decorations and awards.

1 **SECTION 93.** 21.11 (title), (1), and (2) of the statutes are renumbered 321.39
2 (title), (1), and (2) and amended to read:

3 **321.39 Call to state active service duty. (1) ~~In (a) The governor may order~~
4 ~~into active duty members of the national guard under the following circumstances:~~**

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

7 2. ~~In the event of public disaster resulting from flood, conflagration or fire,~~
8 ~~tornado; in, or other natural disaster.~~

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

11 4. ~~In order to assess damage or potential damage and to recommend responsive~~
12 ~~action as a result of natural or man-made events; or upon an event listed in subd.~~
13 ~~1. to 3.~~

14 5. ~~Upon application of any marshal of the United States, the president of any~~
15 ~~village, the mayor of any city, the chairperson of any town board, or any sheriff in this~~
16 ~~state, the governor may order into active service all or any portion of the national~~
17 ~~guard.~~

18 (b) ~~If the governor is absent, or cannot be immediately communicated with, any~~
19 ~~such civil officer of the persons listed in par. (a) 5. may, if the officer deems the~~
20 ~~occasion so is urgent, make such application, which shall be in writing, to request~~
21 ~~assistance from the commanding officers of any company, battalion or regiment, who~~
22 ~~commander of any national guard unit. If the danger is great and imminent, the~~
23 ~~commander may, upon approval of the adjutant general, if the danger is great and~~
24 ~~imminent obtaining approval is feasible, order out that officer's command to the aid~~
25 ~~of such civil officer unit to provide assistance. Such The order shall be delivered to~~

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

8 (2) (a) 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.

11 ~~(b)~~ Any person who ~~advises or endeavors to persuade an officer or soldier to~~
12 ~~refuse or neglect to appear at such place or obey such order assists an officer or~~
13 ~~member of the national guard member in violating par. (a) shall forfeit be subject to~~
14 ~~a forfeiture of not less than \$200 nor more than \$1,000.~~

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

15 **SECTION 94. 21.49** of the statutes is renumbered 321.40 and amended to read:

16 **321.40 Educational benefits. (1) DEFINITIONS.** In this section:

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

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

20 ~~(ar)~~ (b) “Guard member” means any person who is a member of the national
21 guard.

22 ~~(b)~~ (c) “Qualifying school” means any of the following:

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

1 ~~1g. 2.~~ A public institution of higher education under the Minnesota–Wisconsin
2 student reciprocity agreement under s. 39.47.

3 ~~1m. 3.~~ A public institution of higher education under an interstate agreement
4 under s. 39.42.

5 ~~2. 4.~~ Except as provided in subds. ~~1g. 2.~~ and ~~1m. 3.~~, an accredited institution
6 of higher education located in this state, as defined in 20 USC 1002.

7 ~~3. 5.~~ Any technical college established under ch. 38.

8 ~~(e) (d)~~ “Tuition grant” means any tuition cost reimbursement payment made
9 by the department under sub. ~~(3)~~ (4).

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

12 (a) An officer.

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

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

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

22 ~~(f) (e)~~ Failing to achieve a minimum grade point average of 2.0 ~~or an average~~
23 ~~grade of “C”~~ for the semester for which reimbursement is requested.

24 ~~(2m) (3)~~ INFORMATION REGARDING ATTENDANCE. The department shall
25 promulgate by rule the number of days after commencement of a course that a guard

1 member shall provide the department with the following information regarding his
2 or her intent to ~~seek reimbursement for a course~~ apply for a tuition grant under this
3 section:

4 (a) The guard member's name.

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

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

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

10 ~~(3)~~ **(4)** TUITION GRANTS. (a) Any eligible guard member upon satisfactory
11 completion of a full-time or part-time course in a qualifying school is ~~eligible for~~ may
12 apply for a tuition grant equal to 100% of the actual tuition charged by the school or
13 100% of the maximum resident undergraduate tuition charged by the University of
14 Wisconsin-Madison for a comparable number of credits, whichever amount is less.

15 (b) Application for tuition grants shall:

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

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

20 3. Contain the signatures of both the guard member claiming the grant and a
21 representative of the school, certifying that the member has satisfactorily completed
22 the course and has achieved the minimum grade point average or grade, as required
23 under sub. (2) ~~(f)~~ (e).

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

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

6 ~~(3m)~~ **(5)** REPAYMENT OF GRANTS. The department shall require a guard member
7 who has received a tuition grant under this section to repay the amount of the tuition
8 grant to the department if the national guard member, ~~on or after September 1, 2001,~~
9 is separated from the national guard for misconduct, as defined in the rules and
10 regulations of the national guard, including being absent without leave for more
11 than 9 unit training assemblies. The department may elect to collect the amount
12 owed under this subsection through the tax intercept program under s. 71.93.

13 ~~(4)~~ **(6)** LIMITATIONS. (a) No guard member is eligible for ~~benefits~~ a tuition grant
14 under this section for more than 120 credits of part-time study or 8 full semesters
15 of full-time study or the equivalent thereof.

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

22 (c) No guard member may receive a tuition grant under sub. (3) for any
23 semester in 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.

24 **SECTION 95. 321.42 (6) (d) of the statutes is created to read:**

1 321.42 (6) (d) No guard member may receive a tuition grant unless he or she
2 is a member in good standing in the national guard at the time of completion of the
3 course.

4 **SECTION 96.** 21.09 of the statutes is renumbered 321.41 and amended to read:

5 **321.41 Training; special schools; pay and allowances.** The governor or
6 adjutant general may order the national guard or state defense force to assemble for
7 training at any military establishment ~~within or without the state specified and~~
8 ~~approved by the department of defense and fix the dates and places thereof, and the~~
9 ~~of that training.~~ The governor or adjutant general may order members of the
10 national guard or state defense force, at their option, to attend ~~such~~ federal or state
11 authorized special schools for military training as may be authorized by the state or
12 federal government. ~~For such training and attendance at special schools, members~~
13 ~~The governor or adjutant general shall determine the amount that the members of~~
14 ~~the national guard or state defense force shall receive such as~~ pay and allowances as
15 ~~the federal government or the governor may authorize~~ for the training.

16 History: 1991 a. 316.

17 **SECTION 97.** 21.13 of the statutes is renumbered 321.42 and amended to read:

18 **321.42 Defense of members of guard; payment of judgments.** (1) (a) ~~If~~
19 ~~any state resident who is a member of a national guard of any state or of the state~~
20 ~~defense force or any state resident who is a member of the national guard of any state~~
21 ~~is prosecuted by any civil or criminal action for any act performed by the member~~
22 ~~while in the performance of military duty and in pursuance of military duty~~ within
23 the scope of his or her employment as a member, the action against governor, upon
24 recommendation of the adjutant general, shall appoint counsel to defend the member
~~the member shall be defended by counsel, which may include the attorney general,~~

1 appointed for that purpose by the governor upon the recommendation of the adjutant
2 general. The governor may appoint the attorney general to defend the member. The
3 adjutant general shall ~~make the recommendation~~ recommend that counsel be
4 appointed if the act performed by the member was in the line of duty.

****NOTE: The drafting committee wanted to highlight for the special committee the change regarding legal defense of National Guard and State Defense Force members for actions taken in the line of duty. The current provision applies to state residents who are members of the National Guard of any state or of the Wisconsin State Defense Force. This draft also includes persons who are members of the Wisconsin National Guard or the Wisconsin State Defense Force who are not residents of Wisconsin.”

5 (b) The costs and expenses of ~~any such~~ the defense under par. (a) shall be
6 audited by the department of administration and ~~paid out of the state treasury and~~
7 charged to the appropriation under s. 20.455 (1) (b) ~~and if.~~ If the jury or court finds
8 that the member ~~of the national guard~~ against whom the action is brought acted
9 within the scope of his or her employment as a member, the judgment as to damages
10 entered against the member shall ~~also~~ be paid by the state.

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

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

13 SECTION 98. 21.12 of the statutes is renumbered 321.43 and amended to read:

14 **321.43 Exemption from civil authority.** During the time the national guard
15 or state military forces are defense force is performing military duty pursuant to
16 proper under orders issued by the governor or ~~by the governor's authority~~ adjutant
17 general, all of its members thereof, while going to, remaining at, or returning from
18 a place of duty shall ~~be~~ are exempt from arrest or service of any process issued by a
19 civilian court. In any civil or criminal prosecution against any member arising out
20 of the member's performing military duty, it shall be a defense that the member was

1 acting in good faith or ~~pursuant to any~~ under a lawful military order. ~~Any such~~ The
2 order shall be deemed ~~prima facie~~ considered lawful unless shown to be unlawful.

History: 1991 a. 316.

3 **SECTION 99.** 21.06 of the statutes is renumbered 321.44 and amended to read:

4 **321.44 Exemptions from certain county duties.** Every member of the
5 national guard or state military forces shall be defense force is exempt from service
6 on any body of county residents summoned by the sheriff to assist in preserving the
7 peace.

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

8 **SECTION 100.** 21.025 (1), (2) (a), (c) and (d), (3), (4), and (6) to (11n), of the
9 statutes are renumbered 321.51 (1), (2) (a), (c), and (d). and (3) to (10), and amended
10 to read:

11 **321.51 State defense force authorized. (1) AUTHORITY AND NAME.** The
12 adjutant general may establish a plan for organizing a military force to be known as
13 the ~~Wisconsin state defense force~~ “state defense force”. The ~~governor, or~~ adjutant
14 general if designated by the governor, may organize the ~~Wisconsin~~ state defense force
15 under the plan, which may include an aviation unit, if all or part of the national guard
16 is called into ~~the service of the United States~~ U.S. active duty. It ~~The state defense~~
17 force shall be a uniformed force distinct from the national guard, ~~uniformed, and~~
18 composed of ~~officers,~~ commissioned or assigned officers, and of enlisted personnel
19 who volunteer for service. ~~Membership in the Wisconsin state defense force may not~~
20 ~~include any~~ A person who is on active duty in the active military U.S. armed forces,
21 including the active reserve components, may not serve in the state defense force.
22 ~~Persons~~ A person in the retired or inactive reserve may serve in the ~~Wisconsin~~ state
23 defense force.

SECTION 100

1 **(2)** ORGANIZATION; RULES AND REGULATIONS. (a) The governor or adjutant
2 general, if designated by the governor, may prescribe rules and regulations ~~not~~
3 ~~inconsistent~~ consistent with this section governing the enlistment, organization,
4 administration, equipment, uniforms, maintenance, training, and discipline of such
5 ~~forces, except that such~~ the state defense force. ~~The~~ rules and regulations, ~~insofar~~
6 ~~as to the extent~~ the governor deems ~~practicable and desirable~~ considers necessary,
7 shall conform to existing law, and ~~rules and regulations governing and pertaining to~~
8 ~~the national guard and the .~~ The rules and regulations ~~promulgated thereunder and~~
9 shall prohibit the acceptance of a member of the state defense force from accepting
10 any gifts, donations, gratuities, or ~~anything~~ other thing of value by such forces or by
11 ~~any member of such forces from any person by reason of such membership given to~~
12 the member because he or she is a member of the state defense force.

13 (c) Officers and enlistees, while on state active duty ~~under orders of the~~
14 ~~governor,~~ in the state defense force shall receive the base pay and allowances of the
15 identical grade in the United States U.S. army.

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

22 (e) If the state defense force is organized under sub. (1), the adjutant general
23 shall perform the duties under s. 321.04 (1) for the state defense force.

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

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

20 **(4) USE WITHOUT OUTSIDE THIS STATE.** ~~Such forces shall~~ The state defense force
21 may not be required to serve outside the boundaries of this state except unless one
22 of the following applies:

23 (a) Upon the request of the governor of another state, the governor of this state
24 may order any portion or orders all or part of such forces the state defense force to
25 assist the military or ~~police forces of such~~ a law enforcement agency of the other state

1 who are actually engaged in defending such other state. Such forces may be recalled
2 by the. The governor at the governor's discretion may recall the state defense force
3 from the other state at any time.

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

20 ~~(6) (5) FEDERAL SERVICE ACTIVE DUTY. Nothing in this section shall be construed~~
21 ~~as authorizing such forces, or any part thereof to be called, ordered, or in any manner~~
22 No unit of the state defense force may be drafted, as such, into the U.S. military
23 ~~service of the United States, but no. No~~ person shall by reason of enlistment or
24 ~~commission in any such forces~~ membership in the state defense force be exempted
25 from ~~military service under any law of the United States~~ federal active duty.

1 ~~(8) (6)~~ DISQUALIFICATIONS. No person shall be commissioned or enlisted in such
2 forces who is not a citizen of the United States or who has been expelled or
3 dishonorably discharged from any military or naval organization, of this state, or of
4 another state, or of the United States may be a member of the state defense force.

****NOTE: The drafting committee wanted to highlight this change for the special committee. Under current law, only U.S. citizens may serve in the state defense force. This bill eliminates that restriction.

5 ~~(9) (7)~~ OATH OF OFFICERS. The oath to be taken by officers ~~commissioned or~~
6 enlistees in such forces the state defense force shall be substantially in the form
7 prescribed for officers of the national guard. The oath shall be filed in the same
8 manner as is done in the national guard.

9 ~~(10) (8)~~ ENLISTEES. No person shall may be enlisted in the state defense force
10 for more than one year, but such the enlistment may be renewed. ~~The oath to be~~
11 ~~taken upon enlistment in such forces shall be substantially in the form prescribed~~
12 ~~for enlistees of the national guard.~~

13 ~~(11m) (9)~~ RETENTION OF ITEMS OF UNIFORM. (a) Officers and enlistees of the
14 “~~Wisconsin State Defense Force~~” state defense force who have served honorably
15 therein for a period of at least one year and are active members of their respective
16 units at the time of its demobilization shall may, upon application to the unit
17 commander, be permitted to retain the items of their uniform ~~prescribed by the~~
18 ~~governor by rule.~~ (b) ~~The~~ If retained, the uniform prescribed under par. (a) may be
19 worn only on occasions of ceremony. “~~Occasions of ceremony~~” means occasions
20 essentially of a military character at which the uniform is more appropriate than
21 civilian clothing, such as including memorial services, military weddings, military
22 funerals, military balls, military parades, military reunions, and meetings or
23 functions of associations formed for military purposes, the membership of which is

1 composed largely or entirely of honorably discharged veterans of the services
2 members of the U.S. military, national guard, and state defense force.

3 ~~(11n)~~ **(10)** LABOR DISPUTES. The state defense force shall may not be used to
4 interfere with the orderly process of a labor dispute.

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

5 **SECTION 101.** 21.36 (title) and (2) of the statutes are repealed.

6 **SECTION 102.** 21.42 of the statutes is repealed.

7 **SECTION 103.** 21.50 (3) and (4) of the statutes are repealed.

8 **SECTION 104.** 21.56 (title) of the statutes is repealed.

9 **SECTION 105.** 21.57 (title) of the statutes is repealed.

10 **SECTION 106.** 21.59 of the statutes is repealed.

11 **SECTION 107.** 21.60 of the statutes is repealed.

12 **SECTION 108.** 21.61 (title) of the statutes is repealed.

13 **SECTION 109.** 21.612 of the statutes is repealed.

14 **SECTION 110.** 21.616 (title) of the statutes is repealed.

15 **SECTION 111.** 21.62 of the statutes is repealed.

16 **SECTION 112.** 21.63 of the statutes is repealed.

17 **SECTION 113.** Subchapter V (title) of chapter 321 [precedes 321.50] of the
18 statutes is created to read:

19 **CHAPTER 321**

20 **SUBCHAPTER V**

21 **RIGHTS OF SERVICE MEMBERS**

22 **SECTION 114.** 21.70 (title) of the statutes is repealed.

23 **SECTION 115.** 21.72 of the statutes is renumbered 321.60 and amended to read:

24 **321.60 Extension of licenses for service members. (1)** In this section:

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

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

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

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

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

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

13 6. A license, registration, registration certificate, or certification specified in s.
14 93.135 (1).

15 7. A license, as defined in s. 101.02 (20) (a).

16 8. A license issued under s. 102.17 (1) (c), 104.07, or 105.05.

17 10. A certificate issued under s. 103.275, 103.91, or 103.92.

18 11. A license or permit granted by the department of public instruction.

19 12. A license or certificate of registration issued by the department of financial
20 institutions, or a division of it, under ss. 138.09, 138.12, 217.06, 218.0101 to
21 218.0163, 218.02, 218.04, 218.05, 224.72, or 224.93 or subch. III of ch. 551.

22 13. A permit issued under s. 170.12.

23 14. A certification under s. 165.85.

24 15. A license, permit, or registration issued under ss. 218.0101 to 218.0163,
25 218.11, 218.12, 218.22, 218.32, 218.41, 218.51, 341.51, 343.305 (6), 343.61, or 343.62.

1 16. A license, registration, or certification specified in s. 299.08 (1) (a).

2 18. A license, permit, certificate, or registration that is granted under chs. 440
3 to 480.

4 19. A license issued under ch. 562 or s. 563.24.

5 20. A license issued under s. 628.04, 632.68 (2) or (4), or 633.14 or a temporary
6 license issued under s. 628.09.

7 21. A license to practice law in this state.

8 22. A certificate granted by the technical college system board.

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

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

15 **(2)** Any license that a service member holds, the expiration date of which is
16 after September 11, 2001, except a license to practice law, does not expire on the
17 expiration date of the license if, on the expiration date, the service member is on state
18 ~~active duty under ch. 21 or on active duty in the U.S. armed forces~~. If the supreme
19 court agrees, a license to practice law that a service member holds, the expiration
20 date of which is after September 11, 2001, does not expire on the expiration date of
21 the license if, on the expiration date, the service member is on state active duty ~~under~~
22 ~~ch. 21 or on active duty in the U.S. armed forces~~. A license extended under this
23 subsection expires 90 days after the service member is discharged from active duty.

24 **(3)** The licensing agency or the supreme court shall extend or renew a license
25 extended under sub. (2) until the next date that the license expires or for the period

1 that such license is normally issued, at no cost to the service member, if all of the
2 following conditions are met:

3 (a) The service member requests an extension or renewal of the license within
4 90 days after the service member is discharged from active duty.

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

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

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

14 **(4)** If a service member's license is renewed or extended under sub. (3) no more
15 than 180 days before the next date that the license would normally expire, the
16 licensing agency, or supreme court if it agrees, shall allow the service member to
17 renew or extend the license without complying with any continuing education or
18 training requirements if complying with such requirement in the period before the
19 license expires would cause the service member undue hardship. If a service
20 member's license is renewed or extended under this subsection, the licensing agency
21 or supreme court may require the service member to comply with any continuing
22 education or training requirements within a reasonable time after receipt of the
23 license.

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

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

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

4 **SECTION 116.** 21.74 of the statutes is renumbered 321.61 and amended to read:

5 **321.61 ~~Soldiers and sailors~~ Service members civil relief act for**
6 **property taxes and mobile telephone contracts; federal service active duty.**

7 **(1) (a)** In this section, unless the context indicates otherwise:

8 **(a) 1.** “Interest and penalties” means interest and penalties accruing on taxes
9 during the period of military service and 6 months thereafter. In case several owners
10 jointly own property, other than property held jointly or as marital property with the
11 spouse of the person in military service, interest and penalties means the
12 proportionate share of the total interest and penalties commensurate with the equity
13 in the property of the person in military service.

14 **(b) 2.** “Person in ~~military service~~ federal active duty” means any man or woman
15 who is serving on in federal active duty in the U.S. armed forces, ~~except service on~~
16 ~~active duty for training purposes~~ for a period of ninety days or more.

17 **(c) 3.** “Property” means any real estate or personal property belonging to a
18 person in ~~military service~~ federal active duty that was acquired prior to the
19 commencement of military service or that was acquired by descent.

20 **(d) 4.** “Taxes” means any ~~general~~ property taxes or special assessments or tax
21 certificates evidencing those taxes and assessments not belonging to private buyers.

22 **(2) (b)** To supplement and complement the provisions of 50 App. USC 501, and
23 to afford and obtain greater peace and security for persons in ~~military service~~ federal
24 active duty, the enforcement of certain tax obligations or liabilities that may

1 prejudice the property rights of persons in ~~military service~~ federal active duty may
2 be temporarily suspended as provided in this section.

3 ~~(3)~~ (c) Any person while in the ~~military service of the United States~~ federal
4 active duty or within 6 months after terminating service ~~that duty~~, or the person's
5 agent or attorney during that period, may petition the circuit court of any county in
6 which the person owns property for relief under this section. Upon filing of the
7 petition the court shall make an order fixing the time of hearing and requiring the
8 giving of notice of the hearing. If after the hearing the court finds that the person
9 is, or within 6 months next preceding the filing of the petition was, in the ~~military~~
10 ~~service of the United States~~ federal active duty and owns property within the county
11 on which taxes have fallen or will fall due, and that the person's ability to pay the
12 taxes has been materially adversely affected by reason of being in ~~military service~~
13 federal active duty, the court shall enter an order determining that the person is
14 entitled to relief under this section. The court may suspend proceedings for the
15 collection of taxes on the property for a period not exceeding 6 months after
16 termination of the ~~military service~~ federal active duty of the person, or for the time
17 reasonably necessary to complete the agreement provided in sub. ~~(7)~~ par. (g).
18 Thereafter, the property shall not be included in tax certificates issued to enforce
19 collection of taxes on property, and all proceedings for that purpose shall be
20 suspended, except under terms that the court may order.

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

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

6 ~~(6)~~ (f) The person owning or having an interest in any property in respect to
7 which the order under ~~sub. (3)~~ par. (c) is made, or the person's agent or attorney, may
8 file a certified copy of the order of suspension with the county treasurer or with the
9 city treasurer of cities authorized by law to sell lands for the nonpayment of taxes
10 as to the taxes and assessments. The person shall file with the order an affidavit in
11 triplicate, sworn to by the person or agent or attorney, setting forth the name of the
12 owner, the legal description of the property, the type of property, when acquired,
13 volume and page number where the deed was recorded if acquired by deed, and the
14 name of the estate if acquired by descent, amount of delinquent taxes if any, and the
15 names of the holders of any outstanding mortgage, lien, or other encumbrance. Upon
16 receipt of the filing, the county treasurer or city treasurer shall record the order in
17 the office of the register of deeds of the county and file a copy in the office of the
18 treasurer, who shall make proper notation that a person in ~~military service~~ federal
19 active duty is the holder of the legal title and has made application for special relief.
20 The county treasurer or city treasurer shall immediately forward an additional copy
21 of the order and affidavit to the office of the clerk of the town, city, or village where
22 the property is located, or if it is located in a city, authorized to sell lands for
23 nonpayment of its taxes, to the commissioner of assessments, who shall make an
24 appropriate notation in the records.

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

12 ~~(8)~~ (h) In the event the applicant defaults in the performance of any of the
13 provisions of the agreement, the treasurer shall notify the applicant of the default
14 and the amount and date due, by written notice either served personally or by
15 registered mail, return receipt requested, to the address set forth in the application.
16 If the defaulted payment is not fully made within 10 days after service of the notice,
17 then the treasurer, without further notice, may declare that the entire amount of the
18 tax subject to the scheduled installments is immediately due and payable and that
19 the agreement is terminated. The county treasurer shall notify the register of deeds
20 and the town, city, or village treasurer of the termination, or if the city treasurer of
21 cities authorized by law to sell lands for the nonpayment of taxes, the latter shall
22 notify the register of deeds, the county treasurer, and the local officers and shall
23 make appropriate notations of the termination on their records. The county
24 treasurer, or city treasurer as to taxes of cities authorized by law to sell land for the
25 nonpayment of taxes, may without further order of the court enforce the collection

1 of such tax or assessment and sell such tax certificates together with the penalties
2 and interest as may have accrued on the property from the date of default of the
3 scheduled installment payment.

4 **(9) (2)** (a) In this subsection:

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

6 2. “Contract” means an agreement between a person in ~~military service~~ federal
7 active duty and a mobile telephone service provider that requires the person in
8 ~~military service~~ federal active duty to pay the mobile telephone service provider a
9 monthly fee in exchange for the use of a mobile telephone.

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

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

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

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

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

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

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

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

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

History: 2005 a. 22, 473.

20 **SECTION 117.** 21.75 of the statutes is renumbered 321.62 and amended to read:

21 **321.62 Soldiers' and sailors' Service members civil relief act; state**
22 **service active duty.** (1) DEFINITIONS. In this section:

23 (a) "~~Active state service~~ " ~~means active service for 30 days or more in the~~
24 ~~national guard or the state defense force under an order of the governor issued under~~

1 ~~this chapter or active service for 30 days or more in the national guard under 32 USC~~
2 ~~502 (f) or 506 that is not considered to be “service in the uniformed services,” as~~
3 ~~defined in 38 USC 4303 (13). “Active state service ” includes active service for 30 days~~
4 ~~or more in the national guard of any state under the order of a governor of that state.~~

5 (b) (a) “Court” means a circuit court of record, court of appeals, or supreme
6 court.

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

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

12 (d) (c) “Service member” means a resident of this state member of the national
13 guard or state defense force who may be is called into active state service active duty
14 for 30 days or more.

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

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

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

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

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

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

24 (b) If the person is a creditor, denying or revoking any credit extended to the
25 service member, changing the terms of a credit agreement to which the service

1 member is a party, or refusing to grant credit to the service member in substantially
2 the amount or on substantially the terms requested by the service member.

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

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

7 **(5) DEFAULT JUDGMENTS, AFFIDAVITS, AND ATTORNEY REPRESENTATION.** (a) If, in any
8 court action, there is a default of any appearance of the defendant, the plaintiff, when
9 requesting a default judgment, shall file with the court an affidavit setting forth facts
10 showing that the defendant is not in active state service. If the plaintiff is unable to
11 file such an affidavit, the plaintiff shall, when requesting a default judgment, file an
12 affidavit setting forth that the defendant is in ~~active state service~~ active duty or that
13 the plaintiff is unable to determine if the defendant is in ~~active state service~~ active
14 duty. If an affidavit is not filed showing that the defendant is not in ~~active state~~
15 ~~service~~ active duty, a default judgment may not be entered without a court order. A
16 court may not order the entry of a default judgment if the defendant is in ~~active state~~
17 ~~service~~ active duty until the court has appointed an attorney to represent the
18 defendant and protect the defendant's interests. Unless the court determines that
19 the defendant is not in ~~active state service~~ active duty, the court may require, as a
20 condition of entering judgment, the plaintiff to file a bond to indemnify the
21 defendant, if he or she is in ~~active state service~~ active duty, against any loss or
22 damage resulting from the judgment if any part of the judgment is later set aside.
23 The court may make any other order as may be necessary to protect the interests of
24 the 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 active duty or within 30 days after the end of that
3 period of active state service active duty, and it appears that the service member was
4 prejudiced in making a defense by reason of his or her active state service active duty,
5 the court may reopen that 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 active duty 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 active duty is involved as a party, or within 60 days
17 after the end of the period of active state service active duty, the court in which the
18 action is pending may on its own motion, and shall, on application of the service
19 member or some person acting on behalf of the service member, stay the action unless
20 the court determines that the service member's ability to represent his or her interest
21 in the action is not materially affected by reason of his or her active state service
22 active duty.

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

1 the court may on its own motion, and shall, on application of the service member or
2 some person acting on behalf of the service member, stay the execution of any
3 judgment or order entered against the service member, or stay or vacate any
4 attachment or garnishment regarding the service member's property, unless the
5 court determines that the service member's ability to comply with the judgment or
6 order is not materially affected by reason of his or her active state service active duty.

7 **(8) DURATION AND TERMS OF STAYS.** (a) Any stay of any action, attachment,
8 execution, or garnishment under this section may be ordered for the period of the
9 active state service active duty and ~~3 months~~ 90 days after that period has ended, or
10 for any part of that time.

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

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

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

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

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

8 **(11) EVICTION STAY.** (a) No eviction may be made during the period of active
9 state service active duty in respect to any premises for which the agreed rent does
10 not exceed \$1,200 per month the amount specified in 50 USC App. 531, occupied
11 chiefly for dwelling purposes by the spouse, children, or other dependents of a service
12 member who is in active state service active duty, except upon order of a court in an
13 action affecting the right of possession.

****NOTE: The drafting subcommittee wanted to highlight this change for the special committee. Under current law, the spouse, children, or other dependents of a person who is on state active duty may not be evicted from premises for which the rent does not exceed \$1,200 per month, except by court order. The subcommittee recommends tying the amount of the rent to the amount of rent specified in a parallel federal law. Under the referenced federal law, the amount is \$2,400 per month, adjusted for inflation beginning in 2004.

14 (b) In an action for eviction under par. (a), the court may on its own motion, and
15 shall, on application of the service member or some person acting on behalf of the
16 service member, stay the proceedings for not longer than ~~3 months~~ 90 days unless
17 the court determines that the ability of the tenant to pay the agreed rent is not
18 materially affected by the active state service active duty. The court may make any
19 other order in the eviction action as it considers necessary and just. If a stay or order
20 is issued under this paragraph, the court may, upon the request of the owner of the

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

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

6 **(12)** ACTION TO ENFORCE OBLIGATION SECURED BY MORTGAGE. (a) In this
7 subsection, “obligation” means an obligation of a service member in active state
8 service active duty that was incurred before the service member’s period of active
9 state service active duty began and that is secured by a mortgage, deed of trust, or
10 other security in the nature of a mortgage on real or personal property that is owned
11 by the service member.

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

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

24 (c) 1. Notwithstanding the times provided in ss. 846.10, 846.101, 846.102, and
25 846.103 for sales of real property, no foreclosure, sale, or seizure of property for

1 nonpayment of any sum due or for any other breach of terms is valid if it occurs
2 during or within 3 months after the service member's period of active state service
3 active duty, unless the court ordered the foreclosure, sale, or seizure of property
4 before the beginning of the service member's period of active state service active duty
5 and approves the foreclosure, sale, or seizure after it occurs.

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

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

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

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

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

24 (b) A lease to which this subsection applies may be terminated by the service
25 member at any time after the beginning of the service member's period of active state

1 service active duty by giving notice in writing by personal delivery or first class mail
2 to the landlord or the person who has been receiving rent or managing the property
3 as the landlord's agent.

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

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

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

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

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

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

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

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

8 (b) No person may exercise any right to foreclose or enforce a lien for the storage
9 of household goods, furniture, or personal effects of a service member during the
10 service member's period of active state service active duty and for 3 months after that
11 period ends except upon an order of the court. In an action under this paragraph,
12 the court, after a hearing, may on its own motion, and shall, on application of the
13 service member or some person acting on behalf of the service member, stay the
14 proceeding or make such other order as may be equitable to conserve the interests
15 of all parties, unless the court determines that the ability of the service member to
16 pay storage charges due is not materially affected by his or her active state service
17 active duty.

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

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

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

6 **(18)** CERTIFICATE OF SERVICE; PERSON REPORTED MISSING. (a) In any action or
7 proceeding under this section, a certificate signed by the adjutant general or a person
8 designated by the adjutant general as to the period of active service of a service
9 member shall be ~~prima facie~~ evidence as to any of the following facts unless shown
10 to be incorrect:

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

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

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

16 4. If the service member died while in active state service active duty, the date
17 and the place where he or she died.

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

23 (c) When a service member in active state service active duty has been reported
24 missing to the department, the service member shall be presumed to continue in
25 active state service active duty until accounted for, and no period limited under this

1 section which begins or ends with the death of a service member shall begin or end
2 until the death of the service member is determined by the department or by a court.

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

6 **(20) STAY OF ENFORCEMENT OF OBLIGATIONS OR LIABILITIES.** (a) A service member
7 may, at any time during his or her period of active state service active duty, or within
8 6 months after that service ends, apply to a court for relief with respect to any
9 obligation or liability incurred by the service member before his or her period of
10 active state service active duty. The court, after appropriate notice and hearing, may
11 grant the following relief unless the court determines that the ability of the service
12 member to comply with the terms of the obligation or liability has not been materially
13 affected by his or her state active service:

14 1. In the case of an obligation payable in installments under a contract for the
15 purchase of real estate, or secured by a mortgage upon real estate, a stay of the
16 enforcement of the obligation during the period of active state service active duty
17 and, from the date of the end of the period of active state service active duty or from
18 the date of requesting the relief if made after the service is ended, for a period equal
19 to the period of the remaining life of the installment contract or instrument
20 evidencing the obligation plus a period of time equal to the period of active state
21 service active duty, or any part of that combined period. The court may issue a stay
22 under this paragraph if the service member makes payments of the balance of the
23 principal and accumulated interest due and unpaid at the date of the end of the
24 period of active state service active duty or from the date of requesting the relief,
25 whichever is appropriate, in equal installments during the combined period and at

1 the rate of interest as is prescribed in the contract or instrument evidencing the
2 obligation for installments paid when due. The court may order other terms under
3 this paragraph as are just.

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

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

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

1 (b) No power of attorney executed after ~~December 14, 2001~~, by a service
2 member in active state service active duty may be extended under par. (a) if the
3 document creating the power of attorney clearly indicates that the power granted
4 expires on the date specified even if the service member, after the date of execution
5 of the document, is reported missing to the department.

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

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

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

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

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

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

24 (d) 1. Any action or proceeding in any court or before any public agency, as
25 defined in s. 36.54 (2) (a) 2., based on the alleged professional negligence or other

1 professional liability of a service member whose professional liability insurance
2 coverage has been suspended under par. (a) shall be stayed until the end of the period
3 of suspension if all of the following apply:

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

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

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

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

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

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

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

22 2. The insurer that suspended the coverage is liable for any claim for damages
23 for the professional negligence or other professional liability of the deceased service
24 member in the same manner and to the same extent as the insurer would be liable

1 if the service member had died while covered by the insurance but before the claim
2 was filed.

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

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

7 **SECTION 118.** 21.78 (1) to (4) of the statutes is renumbered 321.63 (1) to (4) and
8 amended to read:

9 **321.63 Employees Local government employees or officers in military**
10 **service. (1)** ~~The governing body of any county, town, city, village, school district,~~
11 ~~or technical college district~~ A local governmental unit, as defined in s. 66.0135 (1) (c).
12 may grant a leave of absence to any employee or officer who is inducted or who enlists
13 in the U.S. armed forces for a period of ~~military service~~ federal active duty of not more
14 than 4 5 years unless the employee is involuntarily retained for a longer period. No
15 salary or compensation of the employee or officer shall be paid, nor claim for the
16 salary or compensation exist, during the leave of absence, except as provided in this
17 section. If the employee's or officer's salary or compensation is less in the U.S. armed
18 forces than was paid by the ~~governing body of any county, town, city, village, school~~
19 ~~district, or technical college district~~ local governmental unit, that governmental unit
20 may pay the employee or officer the difference between the salary or compensation
21 paid by the U.S. armed forces and the salary or compensation that the employee or
22 officer was paid by the ~~governing body of any county, town, city, village, school~~
23 ~~district, or technical college district~~ local governmental unit at the time that he or
she enlisted in or was inducted into the U.S. armed forces.

****NOTE: The drafting subcommittee wanted to highlight for the special committee
the change in the number of years for which a local governmental unit may grant a leave

of absence to an employee or officer who is serving in federal active duty. In order to follow federal law, the statute is being amended to allow a 5-year leave of absence; current law allows 4 years.

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

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

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

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

3 History: 2005 a. 22, 253.

3 **SECTION 119.** 21.79 of the statutes is renumbered 321.64 and amended to read:

4 **321.64 Reemployment after completion of ~~military service~~ federal**

5 **active duty. (1)** (a) Any person who has enlisted or enlists in or who has been or
6 is inducted or ordered into ~~active service in the U.S. armed forces pursuant to 50 App.~~
7 ~~USC 301, 401, and 451, or P.L. 87–117~~ federal active duty for 90 days or more, and
8 any person whose services are requested by the federal government for national
9 defense work as a civilian during a period officially proclaimed to be a national
10 emergency or a limited national emergency, who, to perform the training or service,
11 has left or leaves a position, other than a temporary position, in the employ of any
12 political subdivision of the state or in the employ of any private or other employer,
13 shall be restored to that position or to a position of like seniority, status, pay, and
14 salary advancement as though service toward seniority, status, pay, or salary
15 advancement had not been interrupted by the absence, if all of the following
16 conditions are met:

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

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

21 3. The person makes application for reemployment and resumes work within
22 90 days after completion of the training or service, military or civilian, or was so
23 discharged from the U.S. armed forces, or within 6 months after release from
24 hospitalization for service–connected injury or disease.

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

3 5. The ~~military service~~ federal active duty was not for more than 4 5 years
4 unless extended by law.

 ****NOTE: See the note following s. 321.63(1) regarding the change from 4 years to
5 years.

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

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

14 **(2)** The service of any person who is or was restored to a position in accordance
15 with sub. (1) shall be considered not to be interrupted by the absence, except for the
16 receipt of pay or other compensation for the period of the absence and he or she shall
17 be entitled to participate in insurance, pensions, retirement plans, or other benefits
18 offered by the employer under established rules and practices relating to employees
19 on furlough or leave of absence in effect with the employer at the time the person
20 entered or was enlisted, inducted, or ordered into the forces and service. The person
21 whose position was restored may not be discharged from the position without cause
22 within one year after restoration and the discharge is subject to all federal or state
23 laws affecting any private employment and to the provisions of contracts that may

1 exist between employer and employee. Each ~~county, town, city, village~~ political
2 subdivision shall contribute or pay all contributions of the employer to the applicable
3 and existent pension, annuity, or retirement system as though the service of the
4 employee had not been interrupted by military service.

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

17 (4) No person who is appointed in the service of the state or of any ~~county, city,~~
18 ~~village, or town~~ political subdivision to fill the place of a person entering service in
19 ~~the U.S. armed forces~~ federal active duty or federal government service under sub.
20 (1) shall acquire permanent tenure during the period of that replacement service.

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

1 **(6)** The restoration of classified employees of the state shall be governed by s.
2 230.32. The restoration of unclassified state employees shall be governed by this
3 section.

4 History: 2005 a. 22.

4 **SECTION 120.** 21.80 of the statutes is renumbered 321.65 and amended to read:

5 **321.65 Reemployment rights after national guard, state defense force,**
6 **or public health emergency service. (1) DEFINITIONS.** In this section:

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

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

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

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

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

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

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

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

7 ~~(f) “Service in the uniformed services” has the meaning given in 38 USC 4303~~
8 ~~(13).~~

****NOTE: I do not think we need this definition anymore.

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

12 1. The nature and cost of the action.

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

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

20 4. The type of operation of the employer, including the composition, structure,
21 and functions of the employer’s workforce, the geographic separateness from the
22 employer of the facility involved in providing the action, and the administrative and
23 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 state 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 state service is entitled to the reemployment rights and benefits specified in this
8 section 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 state 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 state service ~~or service in the uniform services~~
15 active duty 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 state service in the national guard in this or another state
19 or the state defense force, the active state service has not been terminated under
20 other than 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 uniform services~~
2 described in ~~38 USC 4312 (c) (1) to (4) federal active duty~~ and all of the following
3 periods of active state service are not included in calculating the 5-year period
4 specified in par. (a) 2.:

5 1. Any period of active state service, ~~as defined in sub. (1) (a) 1.,~~ beyond that
6 5-year period that is required to complete an initial period of obligated active state
7 service.

8 2. Any period of active state service, ~~as defined in sub. (1) (a) 1.,~~ for which the
9 person, through no fault of the person's own, was unable to obtain orders releasing
10 the person from a period of active state service before the expiration of the 5-year
11 period.

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

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

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

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

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

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

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

1 time is impossible or unreasonable, by reporting to the employer as soon as possible
2 after that 8-hour rest period.

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

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

1 within that time is impossible or unreasonable, by submitting to the employer an
2 application for reemployment by no later than the first full calendar day on which
3 submission of the application becomes possible.

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

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

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

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

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

11 (g) *Veterans preferences.* The right of a person to reemployment under this
12 subsection does not entitle the person to retention, preference, or displacement
13 rights over any person who has a superior claim under s. 45.03 (4), 62.13 (4) (d), 63.08
14 (1) (f), 63.37, 63.39 (2m), 66.0509 (1), 230.15 (2m), 230.16 (7) or (7m), 230.21 (1m),
15 230.25, or 230.275.

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

21 (4) REEMPLOYMENT POSITIONS. (a) *Prompt reemployment required.* 1. Subject
22 to subds. 3. and 4. and par. (b), an employer shall reemploy a person who is entitled
23 to reemployment under sub. (3) and whose period of active state service was for less
24 than 91 days promptly on completion of that period of active state service in the
25 position of employment in which the person would have been employed if the

1 continuous employment of the person with the employer had not been interrupted
2 by that active state service so long as the person is qualified to perform the duties
3 of that position or, if after reasonable efforts by the employer to qualify the person
4 to perform those duties the person is not qualified to perform those duties, in the
5 position of employment in which the person was employed on the date on which the
6 person's period of active state service began.

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

19 3. Subject to par. (b), in the case of a person who has a disability that was
20 incurred in or aggravated during a period of active state service and who, after
21 reasonable efforts by the employer to accommodate the disability, is not qualified due
22 to the disability to perform the duties of the position of employment in which the
23 person would have been employed if the continuous employment of the person with
24 the employer had not been interrupted by the active state service, the employer shall
25 reemploy the person promptly on completion of that period of active state service in

1 any other position that is equivalent to that position in seniority, status, and pay, the
2 duties of which the person is qualified to perform or would become qualified to
3 perform with reasonable efforts by the employer, or, if there is no other position of
4 employment available that is equivalent to that position in seniority, status, and pay,
5 in a position that is the nearest approximation to that equivalent position in terms
6 of seniority, status, and pay, consistent with the person's circumstances.

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

24 (b) *Multiple returning employees.* 1. If 2 or more persons who are entitled to
25 reemployment under sub. (3) in the same position of employment have reported to

1 the employer or applied for reemployment in that position, the person who left
2 employment first shall have the prior right to reemployment in that position.

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

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

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

23 2. If an employer shows that a person who is absent from a position of
24 employment because of active state service has knowingly provided written notice
25 of the person's intent not to return to a position of employment with the employer

1 after that active state service and, in doing so, was aware of the specific rights and
2 benefits under subd. 1. that the person would lose while absent from the position of
3 employment, the person is not entitled to the rights and benefits specified in subd.
4 1. while absent from employment.

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

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

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

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

23 (6) CONTINUATION OF HEALTH CARE COVERAGE. (a) *Option to continue coverage.*
24 Notwithstanding s. 632.897, if a person who has coverage under a health benefit plan
25 in connection with the person's employment is absent from a position of employment

1 because of active state service, the insurer that issued the health benefit plan shall
2 permit the person, and the person's dependents, to continue coverage under the
3 health benefit plan until the first to occur of the following:

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

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

8 (b) *Payment of premiums.* A person who elects to continue coverage under par.
9 (a) and who is absent from a position of employment for 30 days or less may not be
10 required to pay more than the employee share, if any, of the cost of the coverage. A
11 person who elects to continue coverage under par. (a) and who is absent from a
12 position of employment for more than 30 days may be required to pay up to 102% of
13 the full premium for that coverage for the period of continued coverage that exceeds
14 30 days.

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

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

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

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

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

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

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

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

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

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

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

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

