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Department of Military Affairs

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CHAPTER 321

DEPARTMENT OF MILITARY AFFAIRS

SUBCHAPTER I

GENERAL PROVISIONS

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) “Facility” includes armory, base, installation, and airfield.

(4) “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, 503, or 904.

(5) “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,

1 whose purpose is the detection and prevention of crime and enforcement of laws or
2 ordinances.

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

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

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

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

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

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

16 (12) “Unit” means a formally organized division or subset of the national guard
17 or state defense force.

18 (13) “Wisconsin code of military justice” means the Wisconsin Code of Military
19 Justice under ch. 322.

20 **321.02 Powers and duties of the governor.** (1) The governor may request
21 volunteers from the national guard to provide assistance to federal, state and local
22 law enforcement officers, within or outside the boundaries of this state, in drug
23 interdiction and counter-drug activities under 32 USC 112. These activities may
24 include the operation and maintenance of equipment and facilities. The governor
25 may order, with their consent, any national guard members who volunteer under this

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

6 (2) A national guard member assisting in drug interdiction and counter-drug
7 activities under this subsection shall obey the instructions of a law enforcement
8 officer from the assisted agency involved in these activities that are given to the
9 national guard member through the military chain of command.

10 **321.03 Powers and duties of the department.** (1) The department shall
11 do all of the following:

12 (a) Administer the national guard.

13 (b) Provide facilities and support for the national guard.

14 (c) Administer the Challenge Academy program for disadvantaged youth
15 under 32 USC 509. The department shall determine eligibility criteria for the
16 Challenge Academy consistent with federal law. Annually, the department shall do
17 all of the following:

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

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

24 (2) The department may do any of the following:

1 (a) Enter into an agreement to rent to appropriate organizations or individuals
2 state-owned lands, buildings, and facilities used by, acquired for, or erected for the
3 national guard when not required for use by the national guard. A rental agreement
4 under this paragraph is not effective unless in writing and approved in writing by
5 the adjutant general or his or her designee.

6 (b) Upon appraisal by the state chief engineer submitted to the governor in
7 writing and with written approval of the governor sell and convey, any state-owned
8 property acquired or erected for state military purposes, if the property is no longer
9 useful to the national guard.

10 **321.04 Powers and duties of the adjutant general. (1)** The adjutant
11 general or his or her designee shall do all of the following:

12 (a) Be the military chief of staff to the governor.

13 (b) Advise the governor on military issues and transmit military
14 correspondence to and from the governor.

15 (c) Under orders from the governor, draw from the state treasury the money
16 necessary for paying national guard members on state active duty.

17 (d) Provide necessary medical supplies and services to the national guard
18 during periods of state active duty not otherwise provided under this chapter and ch.
19 102, to be charged to the appropriation under s. 20.465 (1) (c).

20 (e) Provide a United States flag or state flag to the next of kin of each deceased
21 member of the national guard who dies during state active duty, to be charged to the
22 appropriation under s. 20.465 (1) (c).

23 (f) Have control over all military property and military records and carefully
24 preserve, repair, and account for the military property and records.

1 (g) Audit all military accounts and all accounts or claims payable from the
2 treasury of the state for military purposes before payment.

3 (h) Keep an account of all moneys received and expended by the department.

4 (i) Administer, with the approval of the governor, state–federal cooperative
5 funding agreements related to the department.

6 (j) Prepare the training of national guard members.

7 (k) Transport or contract for the transportation of national guard members and
8 military property.

9 (L) Provide or contract for the provision of all necessary military property,
10 lodging, and meals for members and units of the national guard, subject to s. 16.71
11 (1).

12 (m) Prepare and issue all necessary accounting books and forms for the
13 national guard. All of the accounting books and forms shall conform as nearly as
14 practicable to those in use in the U.S. army or air force.

15 (n) Cooperate with the federal government in the operation and maintenance
16 of distance learning centers for the use of current and former members of the
17 national guard and the U.S. armed forces. The adjutant general may charge rent for
18 the use of a center by a nonmilitary or nonfederal person. All moneys received under
19 this paragraph shall be credited to the appropriation account under s. 20.465 (1) (i).

20 (o) Provide the department of veterans affairs information on all necessary
21 military points of contact and general deployment information for activated and
22 deployed members of the national guard.

23 (p) Perform the duties under s. 321.51 (2) (e).

24 (q) Perform the customary duties of his or her office.

25 **(2)** The adjutant general or his or her designee may do any of the following:

1 (a) Make, publish, and have printed policies, regulations, and instructions for
2 the governance of the national guard.

3 (b) Provide for all books and forms necessary for the proper discharge of the
4 duty of all officers of the national guard.

5 (c) When any military property is wrongfully held by another person, bring an
6 action in the name of the state to recover possession of the property or the money
7 value of the property.

8 (d) Upon receipt of a meritorious request for a state flag and within the limits
9 of the appropriation under s. 20.465 (1) (e), furnish a flag without charge to the
10 person who requested it.

11 (e) Activate members of the national guard to serve on an honors detail of
12 military funeral honors for a person described under s. 45.60 (1).

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

14 **321.05 Permission to forces of other states. (1)** Any military unit of
15 another state that is in fresh pursuit of insurrectionists, terrorists, or enemy forces
16 may continue the pursuit into this state until a military unit or law enforcement
17 agency of this state or the U.S. military has had a reasonable opportunity to take up
18 the pursuit or capture the persons. The military unit of the other state may arrest
19 or capture those persons in this state while in fresh pursuit.

20 **(2)** Any person who is captured or arrested by the military unit of another state
21 while in this state shall without unnecessary delay be surrendered to a military unit
22 or law enforcement agency of this state.

23 SUBCHAPTER II

24 MILITARY OFFICERS

1 **321.10 Military staff of governor. (1)** The military staff of the governor
2 shall consist of the following:

3 (a) An adjutant general, with a minimum rank of brigadier general and a
4 maximum rank of lieutenant general.

5 (b) A deputy adjutant general for army, with a rank of brigadier general, unless
6 selected for a military position requiring federal recognition as a major general.

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

9 (d) Two assistant adjutants general for army, whose rank may not exceed
10 brigadier general.

11 (e) A joint chief of staff, whose rank may may not exceed major general.

12 (f) An assistant adjutant general for air, whose rank may not exceed brigadier
13 general.

14 (g) A chief surgeon for army, whose rank may not exceed major general.

15 (h) A chief surgeon for air, whose rank may not exceed major general.

16 (i) A staff judge advocate for army, whose rank may not exceed major general.

17 (j) A staff judge advocate for air, whose rank may not exceed major general.

18 (k) A state chaplain, either army or air, whose rank may not exceed major
19 general.

20 (L) Such other officers as the governor deems necessary.

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

24 **(3)** In the event a deputy adjutant general for army or for air is appointed to
25 a military position as a major general, the adjutant general shall appoint, for any

1 periods of absence of that deputy adjutant general due to other military duties, an
2 acting deputy adjutant general. The adjutant general may appoint one of the
3 assistant adjutants general as an acting deputy adjutant general.

4 (4) No person may be appointed to the governor's military staff who has not had
5 previous state or U.S. military experience.

6 (5) All staff officers appointed under sub. (1), except the adjutant general
7 whose tenure is governed by ss. 15.31 and 17.07 (5), shall hold their positions until
8 terminated by resignation, disability or death, or for cause or unless federal
9 recognition of the officer's commission under 32 USC 323 is refused or withdrawn.
10 The governor shall remove an officer whose federal recognition is refused or
11 withdrawn, effective on the date of the loss of federal recognition.

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

15 (7) The adjutant general shall appoint persons to fill vacancies in positions on
16 the military staff of the governor under sub. (1). Vacancies on the military staff of
17 the governor shall be filled by appointment from officers actively serving in the
18 national guard, except as provided in s. 15.31. Interim vacancies shall be filled by
19 appointment by the adjutant general for the remainder of the unexpired term.

20 **321.11 United States property and fiscal officer. (1)** The adjutant general
21 shall recommend a candidate for appointment as the U.S. property and fiscal officer
22 for the national guard, subject to the concurrence of the governor, from federally
23 commissioned officers actively serving in the national guard. The candidate shall be
24 nominated by the governor, subject to the concurrence of the U.S. secretary of the

1 army, if the nominee is serving in the army national guard, or the U.S. secretary of
2 the air force, if the nominee is serving in the air national guard.

3 (2) The officer nominated under sub. (1) shall assume the duties of a U.S.
4 property and fiscal officer under 32 USC 708, when properly ordered to active duty
5 by the appropriate U.S. secretary, on the date specified in the order. The officer shall
6 hold his or her position unless terminated earlier by resignation, disability or for
7 cause and unless federal recognition of the officer's commission under 10 USC 14902,
8 14903, or 14905 is refused or withdrawn.

9 (3) Any action by the governor to remove the officer appointed under sub. (2)
10 for cause shall be governed by the federal laws and military regulations governing
11 removal of an officer for cause and shall be subject to review by the chief of the
12 national guard bureau and by the U.S. secretary of the army, if the officer is
13 commissioned by the army national guard, or by the U.S. secretary of the air force,
14 if the officer is commissioned by the air national guard.

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

22 (2) The chief surgeons for the army and the air national guard shall provide
23 for any physical examinations and inoculations of officers, enlistees, and applicants
24 for enlistment in the national guard that are prescribed by U.S. department of
25 defense and national guard regulations.

1 **321.13 Discharge of officers.** Any officer may be discharged by the governor
2 pursuant to the Wisconsin code of military justice or upon resignation or disability
3 preventing full discharge of the duties of his or her office.

4 **321.14 Authority to administer oaths.** Any officer of the national guard or
5 any officer of the U.S. armed forces may administer oaths of enlistment in the
6 national guard.

7 **321.15 Resignation of officer.** A commissioned officer may resign his or her
8 commission by submitting the written resignation to his or her immediate
9 commanding officer. The commanding officer shall promptly forward the resignation
10 through military channels to the adjutant general. The governor shall, by order,
11 accept or reject the resignation, and, if accepted, fix the effective date of the
12 resignation.

13 SUBCHAPTER III

14 MILITARY PROPERTY

15 **321.20 Distribution of military property.** The governor may receive and
16 distribute military property that the state receives from the U.S. government under
17 federal laws providing for arming and equipping of the national guard and the state
18 defense force.

19 **321.21 Military property accountability. (1)** In this section, “money”
20 means funds in the custody of the department.

21 **(2)** (a) Each commanding officer who is issued military property or money shall
22 account for the property and money, deliver the property and money to any officer
23 entitled to receive them, and pay for all losses or damages to that property or money.

24 (b) The unit commander has control of the money and military property of any
25 unit of the national guard, whether the money or property is assigned to the unit or

1 its members collectively, or has been issued to it or any of its officers, for its use, by
2 the state or the United States. The unit commander may sue for and recover
3 possession of the money or military property, whenever it is wrongfully withheld
4 from the control of the unit.

5 **(3)** (a) All state-owned military property or money issued to any officer or
6 armory facility manager shall be audited annually as a part of the annual inspection
7 of federal property accounts. When damage, other than reasonable wear and tear,
8 or loss of state-owned property is discovered, the adjutant general shall appoint a
9 surveying officer to determine the cause and fix blame. Upon review, the adjutant
10 general may hold responsible individuals financially liable. If it is determined that
11 the property or money was damaged, destroyed or lost without fault or neglect on the
12 part of those responsible, all concerned shall be relieved of liability.

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

16 **(4)** (a) When an officer who is responsible for military property or money is
17 separated or reassigned, all military property or money in the officer's possession or
18 for which the officer is responsible shall become the responsibility of the person the
19 adjutant general designates to receive the property or money. No separation or
20 reassignment shall be effective until all accounts have been settled.

21 (b) If an officer having control of military property or money dies, the next in
22 command shall immediately take charge of the property or money and deliver the
23 property or money to the person the adjutant general appointed to control the
24 property or money.

1 **(5)** (a) No person may retain at any time any military property or money, unless
2 the property or money has been lawfully issued to the person and the proper
3 authority permits the person to retain the property or money in the discharge of a
4 public duty. No person may use military property or money for the person's
5 unauthorized private use. Any person violating this paragraph shall forfeit not less
6 than \$50 nor more than \$200.

7 (b) A person who possesses military property or money, after the adjutant
8 general makes lawful demand for the return of the property or money shall return
9 the property or money promptly. No person may knowingly resist any officer who is
10 lawfully taking possession of the military property or money. Any person violating
11 this paragraph shall forfeit not less than \$50 nor more than \$200.

12 **321.22 Camp Williams.** **(1)** The state facility near Camp Douglas, Juneau
13 County, shall be known as "Camp Williams". The officer in charge of Camp Williams
14 may arrest a person for a violation that occurs at Camp Williams of a state law, local
15 ordinance, or provision of the Wisconsin code of military justice.

16 **(2)** The adjutant general may grant to the federal government the right to use
17 any area of Camp Williams upon conditions that the adjutant general deems
18 advisable.

19 **(3)** In memory of 1st lieutenant Jerome A. Volk, the first Wisconsin air national
20 guard pilot killed in combat during the Korean conflict, so much of Camp Williams
21 as is under lease to the federal government for use of the air national guard shall be
22 known as "Volk Field" during the time the property remains under lease to the U.S.
23 government.

24 **321.23 Facilities and lands.** **(1)** (a) A political subdivision or federally
25 recognized Indian tribe or band in which one or more units of the national guard is

1 located may build or purchase a suitable armory for the purpose of drill and for the
2 safekeeping of military property, and for public meetings and conventions, when that
3 use will not interfere with the use of the building by the national guard. The adjutant
4 general and the building commission may review and approve or reject plans and
5 specifications for the armories. The adjutant general and the department of
6 administration shall file with the political subdivision or the federally recognized
7 Indian tribe or band a certificate of inspection and approval before the construction
8 of an armory.

9 (b) A political subdivision or federally recognized Indian tribe or band in which
10 any unit of the national guard is located may purchase land and build armories in
11 the same manner as the political subdivision or tribe or band is now authorized by
12 law to build other buildings. When unable to agree upon the price of land with its
13 owner, the political subdivision or federally recognized Indian tribe or band may
14 appropriate land for the purpose of building armories in the same manner as the
15 political subdivision or tribe or band is now authorized by law to appropriate real
16 estate for other buildings. If a political subdivision or federally recognized Indian
17 tribe or band aided in the building of an armory and the company or companies of
18 the national guard for which the armory was built is disbanded, the armory shall
19 become the property of the political subdivision or tribe or band that aided in the
20 building of the armory.

21 (c) The armory, when built or purchased, shall be under the control and charge
22 of the governor, the adjutant general, and the commanding officer of the unit of the
23 national guard for which it has been provided. The commanding officer shall deposit
24 in the armory all military property received from the governor and the adjutant
25 general. The adjutant general may issue regulations, instructions, or policies to be

1 followed by all officers and persons having charge of the armories or occupying any
2 part of the armories.

3 (d) Whenever any political subdivision or federally recognized Indian tribe or
4 band constructs a building as a memorial to the members of the U.S. armed forces
5 or national guard who served in any war or armed conflict of the United States and
6 makes provision in the memorial building for the accommodation of one or more
7 companies of the national guard having no regularly established armory, the
8 adjutant general shall, whenever practicable, rent the armory provided in the
9 memorial building for the use of those companies of the national guard.

10 (2) The department may, when contributions are made available by the federal
11 government under federal law, expand, rehabilitate, equip, or convert facilities
12 owned by the state and acquire, construct, expand, rehabilitate, equip, or convert
13 additional facilities. The department may accept the federal contributions in the
14 manner prescribed by federal law or regulation, and may accept the lawful terms and
15 conditions of a federal contribution. The department has the duties and powers
16 necessary, to acquire contributions under federal law and to undertake and complete
17 a project described in this subsection in conformity with the applicable federal law
18 and this subsection.

19 **321.24 Encroachment on military areas and interference with military**
20 **personnel. (1)** The officer in charge of any area used or to be used for military
21 purposes may mark the area to warn against encroachment by unauthorized
22 persons, but may not unnecessarily obstruct travel on any public highway. No person
23 may encroach upon or enter the area without the consent of the officer.

24 (2) No person may interfere with any member of the national guard or state
25 defense force while the member is in the performance of military duty.

1 **(3)** Any person who violates sub. (1) or (2) shall forfeit not less than \$50 nor
2 more than \$200. The officer in charge or a designee may arrest and detain the person
3 for such reasonable time as may be necessary to deliver the person to civil
4 authorities.

5 SUBCHAPTER IV

6 NATIONAL GUARD AND

7 STATE DEFENSE FORCE

8 **321.30 Composition of national guard.** **(1)** The organized militia of this
9 state shall be known as the “Wisconsin national guard” and shall consist of members
10 commissioned or enlisted in accordance with federal law or regulations governing
11 the national guard.

12 **(2)** The Wisconsin national guard shall consist of the army national guard and
13 the air national guard.

14 **321.31 Uniform of national guard.** The uniform of the national guard shall
15 be as prescribed by regulations for the corresponding branch of the U.S. armed
16 forces.

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

22 **321.33 Commissions and rank.** The governor shall appoint and issue
23 commissions to officers. Every commission shall be signed by the secretary of state
24 and the adjutant general. A commission shall continue unless terminated earlier by
25 resignation, disability, or for cause or unless federal recognition of the officer’s

1 commission under 32 USC 323 is refused or withdrawn. Each commissioned officer
2 shall take the oath of office prescribed by article IV, section 28, of the constitution and
3 file it with the department. All commissioned officers shall take rank according to
4 the date assigned them by their commissions, and when 2 of the same grade rank
5 from the same date, their rank shall be determined by length of creditable service
6 in the national guard, and if of equal creditable service then by lot.

7 **321.34 Examinations for promotion or appointments.** The governor or
8 adjutant general may order any person nominated or recommended for promotion
9 or appointment in the national guard or state defense force to be examined by any
10 competent officer or board of officers, designated in orders for that purpose, as to that
11 person's qualifications for the office to which that person is to be appointed or
12 promoted. The governor or adjutant general may take action on the report of the
13 examining officer or board of officers as he or she considers to be for the best interests
14 of the national guard or state defense force. The governor or adjutant general may
15 also require the person to take the physical examination provided for admission to
16 the U.S. army or air force.

17 **321.35 Pay. (1)** Every officer and enlisted person on state active duty in the
18 national guard shall receive the base pay and allowances of an officer or enlisted
19 person of equal rank in the corresponding branch of the U.S. armed forces except that
20 the base pay so provided shall not be less than \$50 per day.

21 **(2)** The governor may fix the pay of any member of the military staff of the
22 governor, or other members of the national guard or state defense force for any
23 special state active duty.

24 **(3)** The governor may order, with the member's consent, to state active duty a
25 member of his or her military staff who is a state employee. The assigned staff

1 member shall receive the pay, but not the allowances, of an officer of equal grade in
2 the U.S. armed forces.

3 **321.36 Rules of discipline.** The applicable rules of discipline and regulations
4 of the U.S. armed forces shall constitute the rules of discipline and the regulations
5 of the national guard. The rules and uniform code of military justice established by
6 Congress and the U.S. department of defense for the armed forces shall be adopted
7 so far as they are applicable and consistent with the Wisconsin code of military
8 justice for the government of the national guard. The system of instruction and the
9 drill regulations prescribed for the different arms and corps of the armed forces of
10 the U.S. shall be followed in the military instruction and practice of the national
11 guard, and the use of any other system is forbidden.

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

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
21 adjutant general shall adopt policies establishing the form and issuance of those
22 decorations and awards.

23 **321.39 Call to state active duty. (1)** (a) The governor may order into state
24 active duty members of the national guard under the following circumstances:

1 1. In case of war, insurrection, rebellion, riot, invasion, terrorism, or resistance
2 to the execution of the laws of this state or of the United States.

3 2. In the event of public disaster resulting from flood, fire, tornado, or other
4 natural disaster.

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

7 4. In order to assess damage or potential damage and to recommend responsive
8 action as a result of an event listed in subds. 1. to 3.

9 5. Upon application of any marshal of the United States, the president of any
10 village, the mayor of any city, the chairperson of any town board, or any sheriff in this
11 state.

12 (b) If the governor is absent, or cannot be immediately communicated with, any
13 of the persons listed in par. (a) 5. may, if the occasion is urgent, request assistance
14 from the commander of any national guard unit. The commander shall obtain
15 approval of the adjutant general before ordering the unit to provide assistance. If
16 it is not feasible to obtain approval of the adjutant general, and the danger is great
17 and imminent, the commander may order the unit to provide assistance without
18 adjutant general approval. The order shall be delivered to every subordinate officer,
19 who shall immediately communicate the substance of the order to the members of
20 the unit. If a member cannot be found, the substance of the order, in writing, shall
21 be left at the member's place of residence with some person of suitable age and
22 discretion, to whom the order's contents shall be explained.

23 **(2)** (a) Any commissioned officer or enlisted member of the national guard who
24 fails to carry out orders or fails to appear at the time or place ordered as provided in
25 sub. (1) shall be punished under the Wisconsin code of military justice.

1 (b) Any person who assists an officer or member of the national guard in
2 violating par. (a) shall be subject to a forfeiture of not less than \$200 nor more than
3 \$1,000.

4 **321.40 Educational benefits. (1) DEFINITIONS.** In this section:

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

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

8 (c) “Qualifying school” means any of the following:

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

11 2. A public institution of higher education under the Minnesota–Wisconsin
12 student reciprocity agreement under s. 39.47.

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

14 4. Except as provided in subds. 2. and 3., an accredited institution of higher
15 education located in this state, as defined in 20 USC 1002.

16 5. A public institution of higher education under an interstate agreement
17 under s. 39.42.

18 (d) “Tuition grant” means any tuition cost reimbursement payment made by
19 the department under sub. (4).

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

22 (a) An officer.

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

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

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

7 (e) Failing to achieve a minimum grade point average of 2.0 for the semester
8 for which a tuition grant is applied for.

9 (f) Failing to be an actively drilling guard member upon the date of the
10 satisfactory completion of a full-time or part-time course in a qualifying school.

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

15 (a) The guard member's name.

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

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

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

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

1 (b) Application for tuition grants shall:

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

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

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

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

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

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

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

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

7 (c) No guard member may receive a tuition grant under sub. (4) for any
8 semester in which he or she received a payment under s. 45.20 (2).

9 (d) No guard member may receive a tuition grant under this section unless he
10 or she is a member in good standing in the national guard at the time of completion
11 of the course.

12 **321.41 Training; special schools; pay and allowances.** The governor or
13 adjutant general may order the national guard or state defense force to assemble for
14 training at any military establishment and fix the dates and places of that training.
15 The governor or adjutant general may order members of the national guard or state
16 defense force, at their option, to attend special schools for military training that are
17 authorized by the state or federal government. The governor or adjutant general
18 shall determine the amount that the members of the national guard or state defense
19 force shall receive as pay and allowances for the training.

20 **321.42 Defense of members of guard; payment of judgments.** (1) (a) If
21 any member of the national guard or of the state defense force or any resident of this
22 state who is a member of the national guard of another state is prosecuted by any civil
23 or criminal action for any act performed within the scope of his or her employment
24 as a member, the governor, upon request of the adjutant general, shall appoint
25 counsel to defend the member. The adjutant general shall make the request to

1 appoint defense counsel if the act performed by the member was in the line of duty.

2 The governor may appoint the attorney general to defend the member.

3 (b) The costs and expenses of the defense under par. (a) shall be audited by the
4 department of administration and charged to the appropriation under s. 20.455 (1)

5 (b). If the jury or court finds that the member against whom the action is brought
6 acted within the scope of his or her employment as a member, the judgment as to
7 damages entered against the member shall be paid by the state.

8 (2) Any civil action or proceeding brought against a member under sub. (1) (a)
9 is subject to ss. 893.82 and 895.46.

10 **321.43 Exemption from civil authority.** During the time the national guard
11 or state defense force is performing military duty under orders issued by the
12 governor or adjutant general, all of its members, while going to, remaining at, or
13 returning from a place of duty are exempt from arrest or service of any process issued
14 by a civilian court. In any civil or criminal prosecution against any member arising
15 out of the member's performing military duty, it shall be a defense that the member
16 was acting in good faith or under a lawful military order. The order shall be
17 considered lawful unless shown to be unlawful.

18 **321.44 Exemptions from certain county duties.** Every member of the
19 national guard or state defense force is exempt from service on any body of county
20 residents summoned by the sheriff to assist in preserving the peace.

21 **321.51 State defense force authorized. (1) AUTHORITY AND NAME.** The
22 adjutant general may establish a plan for organizing a military force to be known as
23 the "state defense force." The governor, or adjutant general if designated by the
24 governor, may organize the state defense force, which may include an aviation unit,
25 if all or part of the national guard is called into federal active duty. The state defense

1 force shall be a uniformed force distinct from the national guard, composed of
2 commissioned or assigned officers and enlisted personnel who volunteer for service.
3 A person who is on active duty in the U.S. armed forces, including the active reserve
4 components, may not serve in the state defense force. A person in the retired or
5 inactive reserve may serve in the state defense force.

6 **(2) ORGANIZATION; RULES AND REGULATIONS.** (a) The governor or adjutant
7 general, if designated by the governor, may prescribe regulations, instructions, and
8 policies consistent with this section governing the enlistment, organization,
9 administration, equipment, uniforms, maintenance, training, and discipline of the
10 state defense force. The regulations, instructions, and policies, to the extent the
11 governor considers necessary, shall conform to existing law governing the national
12 guard. The regulations, instructions, and policies shall prohibit a member of the
13 state defense force from accepting any gifts, donations, gratuities, or other things of
14 value given to the member because he or she is a member of the state defense force
15 other than wages and benefits paid by the state.

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

19 (c) Officers and enlistees, while on state active duty, in the state defense force
20 shall receive the base pay and allowances of the identical grade in the U.S. army.

21 (d) The adjutant general may organize a recruitment and training unit of not
22 more than 12 persons at each state armory. The unit shall establish recruitment lists
23 of persons interested in becoming members of the state defense force, recruit full
24 units for the state defense force, and train the persons recruited.

1 (e) If the state defense force is organized under sub. (1), the adjutant general
2 shall perform the duties under s. 321.04 (1) (a) to (n) and (q) for the state defense
3 force.

4 **(3) REQUISITIONS; ARMORIES; OTHER BUILDINGS.** The governor or adjutant general,
5 if designated by the governor, may requisition military property from the federal
6 government for the use of the state defense force. The governor or adjutant general,
7 if designated by the governor, may make available to the state defense force the
8 facilities of state armories and military property and other state premises and
9 property. The department may rent or lease buildings or parts of buildings and
10 grounds for armory purposes or continue in possession of those premises leased by
11 the department for the use of the national guard, paying rent from the appropriation
12 under s. 20.465 (1) (a). All leases made under this subsection terminate upon
13 dissolution of the state defense force regardless of the term provided in the lease,
14 unless the premises are needed for national guard purposes. The lease for the
15 premises needed for the national guard may be assigned by the department to the
16 national guard organization that intends to occupy the premises.

17 **(4) USE OUTSIDE THIS STATE.** The state defense force may not serve outside the
18 boundaries of this state unless one of the following applies:

19 (a) Upon the request of the governor of another state, the governor of this state
20 orders all or part of the state defense force to assist a military unit or law enforcement
21 agency of the other state. The governor may recall the state defense force from the
22 other state at any time.

23 (b) Upon order of the officer in command, the state defense force continues in
24 fresh pursuit of insurrectionists, terrorists, or enemy forces into another state until
25 they are apprehended or captured or until a military unit or law enforcement agency

1 of the other state or the forces of the United States have had a reasonable opportunity
2 to take up the pursuit or to capture those persons. Any pursuit under this subsection
3 may only take place if the other state gives authority for the pursuit. Any person who
4 is captured in the other state by the state defense force shall without unnecessary
5 delay be surrendered to a military unit or law enforcement agency of the state in
6 which the person is captured or to the United States. The surrender of the person
7 captured shall not constitute a waiver by this state of the right to extradite or
8 prosecute the person for any crime committed in this state.

9 **(5) FEDERAL ACTIVE DUTY.** No unit of the state defense force may be drafted, as
10 such, into the U.S. military. No person shall by reason of membership in the state
11 defense force be exempted from federal active duty.

12 **(6) DISQUALIFICATIONS.** No person who has been expelled or dishonorably
13 discharged from any military or naval organization of this state, of another state, or
14 of the United States may be a member of the state defense force.

15 **(7) OATH.** The oath to be taken by officers or enlistees in the state defense force
16 shall be substantially in the form prescribed for officers of the national guard. The
17 oath shall be filed in the same manner as in the national guard.

18 **(8) ENLISTEES.** No person may be enlisted in the state defense force for more
19 than one year, but enlistment may be renewed.

20 **(9) RETENTION OF ITEMS OF UNIFORM.** Officers and enlistees of the state defense
21 force who have served honorably may, upon application to the unit commander, be
22 permitted to retain items of their uniform. If retained, the uniform may be worn only
23 on occasions essentially of a military character at which the uniform is more
24 appropriate than civilian clothing, such as memorial services, military weddings,
25 military funerals, military balls, military parades, military reunions, and meetings

1 or functions of associations formed for military purposes, the membership of which
2 is composed largely or entirely of honorably discharged members of the U.S. military,
3 national guard, and state defense force.

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

6 SUBCHAPTER V

7 RIGHTS OF SERVICE MEMBERS

8 **321.60 Extension of licenses for service members. (1)** In this section:

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

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

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

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

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

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

21 6. A license, registration, registration certificate, or certification specified in s.
22 93.135 (1).

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

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

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

- 1 11. A license or permit granted by the department of public instruction.
- 2 12. A license or certificate of registration issued by the department of financial
3 institutions, or a division of it, under ss. 138.09, 138.12, 217.06, 218.0101 to
4 218.0163, 218.02, 218.04, 218.05, 224.72, or 224.93 or subch. III of ch. 551.
- 5 13. A permit issued under s. 170.12.
- 6 14. A certification under s. 165.85.
- 7 15. A license, permit, or registration issued under ss. 218.0101 to 218.0163,
8 218.11, 218.12, 218.22, 218.32, 218.41, 218.51, 341.51, 343.305 (6), 343.61, or 343.62.
- 9 16. A license, registration, or certification specified in s. 299.08 (1) (a).
- 10 18. A license, permit, certificate, or registration that is granted under chs. 440
11 to 480.
- 12 19. A license issued under ch. 562 or s. 563.24.
- 13 20. A license issued under s. 628.04, 632.68 (2) or (4), or 633.14 or a temporary
14 license issued under s. 628.09.
- 15 21. A license to practice law in this state.
- 16 22. A certificate granted by the technical college system board.
- 17 (b) “Licensing agency” means a board, examining board, affiliated
18 credentialing board, office, commissioner, department, or division within a
19 department that grants or issues a license.
- 20 (c) “Service member” means a member of a reserve unit of the U.S. armed
21 forces, a member of the state defense force, or a member of a national guard unit of
22 any state who is a resident of Wisconsin.
- 23 **(2)** Any license that a service member holds, the expiration date of which is
24 after September 11, 2001, except a license to practice law, does not expire on the
25 expiration date of the license if, on the expiration date, the service member is on

1 active duty. If the supreme court agrees, a license to practice law that a service
2 member holds, the expiration date of which is after September 11, 2001, does not
3 expire on the expiration date of the license if, on the expiration date, the service
4 member is on active duty. A license extended under this subsection expires 90 days
5 after the service member is discharged from active duty.

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

10 (a) The service member requests an extension or renewal of the license within
11 90 days after the service member is discharged from active duty.

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

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

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

21 **(4)** If a service member's license is renewed or extended under sub. (3) no more
22 than 180 days before the next date that the license would normally expire, the
23 licensing agency, or supreme court if it agrees, shall allow the service member to
24 renew or extend the license without complying with any continuing education or
25 training requirements if complying with such requirement in the period before the

1 license expires would cause the service member undue hardship. If a service
2 member's license is renewed or extended under this subsection, the licensing agency
3 or supreme court may require the service member to comply with any continuing
4 education or training requirements within a reasonable time after receipt of the
5 license.

6 (5) The department shall assist any service member who needs assistance to
7 renew or extend a license under this section.

8 (6) The department shall prepare and distribute to appropriate agencies and
9 persons, at no cost to those agencies or persons, a brochure explaining the provisions
10 of this section.

11 **321.61 Service members civil relief for property taxes and mobile**
12 **telephone contracts; federal active duty. (1) (a)** In this subsection, unless the
13 context indicates otherwise:

14 1. "Interest and penalties" means interest and penalties accruing on taxes
15 during the period of federal active duty and 6 months thereafter. In case several
16 owners jointly own property, other than property held jointly or as marital property
17 with the spouse of the person in federal active duty, interest and penalties means the
18 proportionate share of the total interest and penalties commensurate with the equity
19 in the property of the person in federal active duty.

20 2. "Person in federal active duty" means any man or woman who is serving in
21 federal active duty for a period of 90 days or more.

22 3. "Property" means any real estate or personal property belonging to a person
23 in federal active duty that was acquired prior to the commencement of the federal
24 active duty or that was acquired by descent.

1 4. “Taxes” means any property taxes or special assessments or tax certificates
2 evidencing those taxes and assessments not belonging to private buyers.

3 (b) To supplement and complement the provisions of 50 App. USC 501, and to
4 afford and obtain greater peace and security for persons in federal active duty, the
5 enforcement of certain tax obligations or liabilities that may prejudice the property
6 rights of persons in federal active duty may be temporarily suspended as provided
7 in this subsection.

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

24 (d) Whenever any tax or assessment on real property, including all special
25 assessments, is not paid when due, any interest or penalty under s. 74.47 and the

1 maximum limitation of 6 percent per year under 50 App. USC 501 shall be waived
2 for the purpose and under the conditions specified in this subsection.

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

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

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

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

1 and interest as may have accrued on the property from the date of default of the
2 scheduled installment payment.

3 **(2)** (a) In this subsection:

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

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

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

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

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

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

15 (c) A person in federal active duty may suspend or terminate a contract to which
16 this subsection applies without any penalties or additional fees at any time after the
17 person in federal active duty has been issued orders into federal active duty by giving
18 written notice to the mobile telephone service provider. The person in federal active
19 duty shall include a copy of the orders into federal active duty as part of the notice.
20 The notice may be given by 1st class mail to the address provided in the agreement
21 with the mobile telephone service provider or provided in the mobile telephone
22 service provider’s billing statement or by delivering the notice to the mobile
23 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 federal active
14 duty any penalty or fee after the person has suspended or terminated the contract
15 under par. (c) or fails to make any refund required under par. (e), the person in federal
16 active duty may bring an action for damages. If the person in federal active duty
17 prevails in an action brought under this paragraph, the court shall order the mobile
18 telephone service provider to pay the service member exemplary damages of \$2,000.

19 **321.62 Service members civil relief; state active duty. (1) DEFINITIONS.**

20 In this section:

21 (a) “Court” means a Wisconsin circuit court, a Wisconsin court of appeals, or
22 the Wisconsin supreme court.

23 (b) “Period of state active duty” means the period beginning on the date on
24 which the service member receives an order to enter state active duty and ending on

1 the date of the service member's release from state active duty or death while on state
2 active duty.

3 (c) "Service member" means a member of the national guard or state defense
4 force who is ordered into state active duty for 30 days or more.

5 **(2) PROTECTIONS OF PERSONS SECONDARILY LIABLE.** (a) If this section results in
6 the stay or suspension of any obligation, liability, court action, order, writ, or
7 judgment, the court that issued the stay or suspension may grant the same remedy
8 to sureties, guarantors, endorsers, and others subject to the obligation, liability,
9 court action, order, writ, or judgment.

10 (b) If a service member is the principal on a criminal bail bond and his or her
11 state active duty causes the surety upon the bond to be prevented from enforcing the
12 attendance of the service member at court, the court shall not enforce the provisions
13 of the bond during the service member's period of state active duty and may either
14 during or after the period of state active duty discharge the surety and exonerate the
15 bail.

16 (c) A surety, guarantor, endorser, or other person subject to the obligation,
17 liability, court action, order, writ, or judgment under par. (a) or (b) may waive in
18 writing the rights afforded by this subsection, except that the waiver is not valid
19 unless the waiver is executed as an instrument separate from the obligation, liability,
20 court action, order, writ, or judgment. The waiver under this paragraph is not valid
21 after the beginning of the period of state active duty if executed by a service member
22 who subsequently is ordered into state active duty. The waiver under this paragraph
23 is not valid if executed by a dependent of a service member unless the waiver is
24 executed during the period of state active duty.

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

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

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

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

18 (c) If the person is in the business of assembling or evaluating consumer credit
19 information, making an adverse report on the creditworthiness of the service
20 member.

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

22 **(5) DEFAULT JUDGMENTS, AFFIDAVITS, AND ATTORNEY REPRESENTATION.** (a) If, in any
23 court action, there is a default of any appearance of the defendant, the plaintiff, when
24 requesting a default judgment, shall file with the court an affidavit setting forth facts
25 showing that the defendant is not in state active duty. If the plaintiff is unable to file

1 such an affidavit, the plaintiff shall, when requesting a default judgment, file an
2 affidavit setting forth that the defendant is in state active duty or that the plaintiff
3 is unable to determine if the defendant is in state active duty. If an affidavit is not
4 filed showing that the defendant is not in state active duty, a default judgment may
5 not be entered without a court order. A court may not order the entry of a default
6 judgment if the defendant is in state active duty until the court has appointed an
7 attorney to represent the defendant and protect the defendant's interests. Unless
8 the court determines that the defendant is not in state active duty, the court may
9 require, as a condition of entering judgment, the plaintiff to file a bond to indemnify
10 the defendant, if he or she is in state active duty, against any loss or damage resulting
11 from the judgment if any part of the judgment is later set aside. The court may make
12 any other order as may be necessary to protect the interests of the defendant under
13 this section.

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

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

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

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

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

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

11 **(7) STAY OR VACATION OF EXECUTIONS OR ATTACHMENTS.** In any court action that
12 is commenced against a service member before or after entering state active duty, or
13 within 60 days after the period of state active duty ends, the court may on its own
14 motion, and shall, on application of the service member or some person acting on
15 behalf of the service member, stay the execution of any judgment or order entered
16 against the service member, or stay or vacate any attachment or garnishment
17 regarding the service member's property, unless the court determines that the
18 service member's ability to comply with the judgment or order is not materially
19 affected by reason of his or her state active duty.

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

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

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

3 **(9) STATUTES OF LIMITATIONS.** The period of state active duty may not be included
4 in computing any period for the bringing of any action or proceeding in any court or
5 before any public agency, as defined in s. 36.54 (2) (a) 2., by or against a person in
6 state active duty or by or against his or her heirs, personal representatives, or
7 assigns, whether the cause of action or proceeding or the right to bring the action or
8 proceeding accrued before or during the period of state active duty.

9 **(10) MAXIMUM INTEREST RATE.** No obligation or liability bearing interest at a rate
10 in excess of 6 percent per year incurred by a service member in state active duty
11 before his or her entry into that duty may, during any part of the period of state active
12 duty, bear interest in excess of 6 percent per year except by court order. If, upon
13 application by an obligee, a court determines that the ability of the service member
14 to pay interest upon the obligation or liability at a rate in excess of 6 percent per year
15 is not materially affected by reason of his or her state active duty, the court may make
16 any order that is just. In this subsection, “interest” includes service charges, renewal
17 charges, fees, or other charges, other than insurance, in respect to the obligation or
18 liability.

19 **(11) EVICTION STAY.** (a) No eviction may be made during the period of state
20 active duty in respect to any premises for which the agreed rent does not exceed the
21 amount specified in 50 USC App. 531, occupied chiefly for dwelling purposes by the
22 spouse, children, or other dependents of a service member who is in state active duty,
23 except upon order of a court in an action affecting the right of possession.

24 (b) In an action for eviction under par. (a), the court may on its own motion, and
25 shall, on application of the service member or some person acting on behalf of the

1 service member, stay the proceedings for not longer than 90 days unless the court
2 determines that the ability of the tenant to pay the agreed rent is not materially
3 affected by the state active duty. The court may make any other order in the eviction
4 action as it considers necessary and just. If a stay or order is issued under this
5 paragraph, the court may, upon the request of the owner of the premises, make any
6 other order as may be applicable to conserve the interests of all of the parties.

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

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

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

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

1 (c) 1. Notwithstanding the times provided in ss. 846.10, 846.101, 846.102, and
2 846.103 for sales of real property, no foreclosure, sale, or seizure of property for
3 nonpayment of any sum due or for any other breach of terms is valid if it occurs
4 during or within 90 days after the service member's period of state active duty, unless
5 the court ordered the foreclosure, sale, or seizure of property before the beginning of
6 the service member's period of state active duty and approves the foreclosure, sale,
7 or seizure after it occurs.

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

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

18 **(14) TERMINATION OF LEASES BY LESSEES.** (a) 1. The lease was executed by or on
19 behalf of a service member who entered state active duty after the lease was
20 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 state active

1 duty by giving notice in writing by personal delivery or first class mail to the landlord
2 or the person who has been receiving rent or managing the property as the landlord's
3 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 state active
6 duty and for 90 days after the member's completion of state active duty, 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 state active duty and for 90 days after that period ends
11 except upon an order of the court. In an action under this paragraph, the court, after
12 a hearing, may on its own motion, and shall, on application of the service member
13 or some person acting on behalf of the service member, stay the proceeding or make
14 such other order as may be equitable to conserve the interests of all parties, unless
15 the court determines that the ability of the service member to pay storage charges
16 due is not materially affected by his or her state active duty.

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

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

24 **(17) TRANSFERS OR ACQUISITIONS.** If a court determines that any interest,
25 property, or contract has been transferred or acquired with the intent to delay the

1 enforcement of a civil right by taking advantage of this section, the court shall enter
2 any judgment or make any order that is just, notwithstanding the provisions of this
3 section.

4 **(18) CERTIFICATE OF STATE ACTIVE DUTY; PERSON REPORTED MISSING.** (a) In any
5 action or proceeding under this section, a certificate signed by the adjutant general
6 or a person designated by the adjutant general as to the period of state active duty
7 of a service member shall be evidence as to any of the following facts unless shown
8 to be incorrect:

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

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

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

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

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

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

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

4 **(20)** STAY OF ENFORCEMENT OF OBLIGATIONS OR LIABILITIES. (a) A service member
5 may, at any time during his or her period of state active duty, or within 180 days after
6 that duty ends, apply to a court for relief with respect to any obligation or liability
7 incurred by the service member before his or her period of state active duty. The
8 court, after appropriate notice and hearing, may grant the following relief unless the
9 court determines that the ability of the service member to comply with the terms of
10 the obligation or liability has not been materially affected by his or her state active
11 duty:

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

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

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

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

22 (b) No power of attorney executed by a service member in state active duty may
23 be extended under par. (a) if the document creating the power of attorney clearly
24 indicates that the power granted expires on the date specified even if the service

1 member, after the date of execution of the document, is reported missing to the
2 department.

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

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

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

23 2. For purposes of subd. 1., a claim that is based on the failure of a professional
24 to make adequate provision for the care of patients during the professional's period
25 of state active duty shall be considered to be based on an action or the failure to take

1 action before the beginning of the period during which coverage is suspended under
2 this subsection, unless professional services were provided after the date on which
3 the suspension of coverage began.

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

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

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

- 1 a. The action or proceeding was commenced during the period of suspension.
- 2 b. The action or proceeding is based on an act or omission that occurred before
3 the date on which the period of suspension began.
- 4 c. The professional liability insurance policy would, except for the suspension,
5 on its face cover the alleged professional negligence or other professional liability of
6 the service member.
- 7 2. Whenever an action or proceeding is stayed under subd. 1., the action or
8 proceeding shall be considered to have been filed on the date on which the service
9 member's coverage is reinstated under par. (c) 1.
- 10 3. In any action or proceeding in which a stay may be granted under subd. 1.,
11 the period during which the professional liability insurance coverage is suspended
12 may not be included in computing any limitations period for commencing the action
13 or proceeding.
- 14 (e) If a service member whose professional liability insurance coverage is
15 suspended under par. (a) dies during the period of suspension, all of the following
16 apply:
- 17 1. The requirement to stay any action or proceeding under par. (d) 1. terminates
18 on the date of the service member's death.
- 19 2. The insurer that suspended the coverage is liable for any claim for damages
20 for the professional negligence or other professional liability of the deceased service
21 member in the same manner and to the same extent as the insurer would be liable
22 if the service member had died while covered by the insurance but before the claim
23 was filed.

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

4 **321.63 Local government employees or officers in federal active duty.**

5 **(1)** A local governmental unit, as defined in s. 66.0135 (1) (c), may grant a leave of
6 absence to any employee or officer who is inducted or who enlists in the U.S. armed
7 forces for a period of federal active duty of not more than 5 years unless the employee
8 is involuntarily retained for a longer period. No salary or compensation of the
9 employee or officer shall be paid, nor claim for the salary or compensation exist,
10 during the leave of absence, except as provided in this section. If the employee's or
11 officer's salary or compensation is less in the U.S. armed forces than was paid by the
12 local governmental unit, that governmental unit may pay the employee or officer the
13 difference between the salary or compensation paid by the U.S. armed forces and the
14 salary or compensation that the employee or officer was paid by the local
15 governmental unit at the time that he or she enlisted in or was inducted into the U.S.
16 armed forces.

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

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

23 **(4)** If the leave of absence under sub. (1) is granted to an elected or appointed
24 official or employee and the official or employee has begun federal active duty, a
25 temporary vacancy exists and a successor may be appointed to fill the unexpired

1 term of the official or employee, or until the official or employee returns and files an
2 election to resume the office if the date of the filing is prior to the expiration of the
3 term. The appointment shall be made in the manner provided for the filling of
4 vacancies caused by death, resignation, or otherwise, except that no election need be
5 held to fill a temporary vacancy. The appointee has all the powers, duties, liabilities,
6 and responsibilities and shall be paid and receive the compensation and other
7 benefits of the office or position, unless otherwise provided by the local governmental
8 unit. Within 40 days after the termination of federal active duty, the elected or
9 appointed official or employee, upon filing with the clerk of the local governmental
10 unit, a statement under oath of termination and that the official or employee elects
11 to resume the office or position, may resume the office or position for the remainder
12 of the term for which elected or appointed. The person temporarily filling the
13 vacancy shall cease to hold the office on the date of the filing.

14 **321.64 Reemployment after completion of federal active duty or**
15 **service. (1)** (a) Any person who has enlisted or enlists in or who has been or is
16 inducted or ordered into federal active duty for 90 days or more, and any person
17 whose services are requested by the federal government for national defense work
18 as a civilian during a period officially proclaimed to be a national emergency or a
19 limited national emergency, who, to perform the duty or service, has left or leaves a
20 position, other than a temporary position, in the employ of any political subdivision
21 of the state or in the employ of any private or other employer, shall be restored to that
22 position or to a position of like seniority, status, pay, and salary advancement as
23 though service toward seniority, status, pay, or salary advancement had not been
24 interrupted by the absence, if all of the following conditions are met:

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

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

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

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

12 5. The federal active duty or federal government service was not for more than
13 5 years unless extended by law.

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 federal active duty or federal
21 government service. The person whose position was restored may not be discharged
22 from the position without cause within one year after restoration and the discharge
23 is subject to all federal or state laws affecting any private employment and to the
24 provisions of contracts that may exist between employer and employee. Each
25 political subdivision shall contribute or pay all contributions of the employer to the

1 applicable and existent pension, annuity, or retirement system as though the service
2 of the employee had not been interrupted by federal active duty or federal
3 government service.

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

16 **(4)** No person who is appointed in the service of the state or of any political
17 subdivision to fill the place of a person entering federal active duty or federal
18 government service under sub. (1) shall acquire permanent tenure during the period
19 of that replacement service.

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

23 **(6)** The restoration of classified employees of the state shall be governed by s.
24 230.32. The restoration of unclassified state employees shall be governed by this
25 section.

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

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

4 1. State active duty or active duty in the national guard under 32 USC 502 (f).

5 2. Active service with the state laboratory of hygiene under s. 36.25 (11) (em)
6 for the purpose of assisting the department of health and family services under s.
7 250.042 during a state of emergency relating to public health declared by the
8 governor under s. 166.03 (1) (b) 1.

9 3. Active duty in the national guard of any state under an order of the governor
10 of that state.

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

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

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

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

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

4 1. The nature and cost of the action.

5 2. The overall financial resources of the facility involved in providing the action,
6 the number of persons employed at the facility, the effect of providing the action on
7 the resources and finances of the facility, and any other impact of the action on the
8 operation of the facility.

9 3. The overall financial resources of the employer, the number of persons
10 employed by the employer, and the number, type, and location of the employer’s
11 facilities.

12 4. The type of operation of the employer, including the composition, structure,
13 and functions of the employer’s workforce, the geographic separateness from the
14 employer of the facility involved in providing the action, and the administrative and
15 financial relationship of the facility to the employer.

16 **(2) MORE GENEROUS RIGHTS PERMITTED.** Nothing in this section prohibits an
17 employer from providing employees who are ordered into active state service with
18 reemployment rights and benefits that are more generous to the employee than the
19 rights and benefits provided under this section.

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

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

4 2. Except as provided in par. (c), the cumulative length of the absence from the
5 position of employment and of all previous absences from a position of employment
6 with the employer by reason of active state service or federal active duty does not
7 exceed 5 years.

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

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

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

18 (c) *Length of absence limit.* The periods of federal active duty described in 38
19 USC 4312 (c) (1) to (4) and all of the following periods of active state service are not
20 included in calculating the 5-year period specified in par. (a) 2.:

21 1. Any period of active state service beyond that 5-year period that is required
22 to complete an initial period of obligated active state service.

23 2. Any period of active state service for which the person, through no fault of
24 the person's own, was unable to obtain orders releasing the person from a period of
25 active state service before the expiration of the 5-year period.

1 3. Any period of active state service that was performed to fulfill any additional
2 training requirements determined and certified in writing by the federal secretary
3 of the army, the federal secretary of the air force, or the adjutant general to be
4 necessary for professional development or for completion of skill training or
5 retraining.

6 4. Any period of active state service that was performed by a person who was
7 ordered to, or retained in, active state service, other than for training, because of a
8 state emergency declared by the governor, because of a war or national emergency
9 declared by the president of the United States or Congress, because of insurrection,
10 rebellion, riot, invasion, or resistance to the execution of the laws of this state or of
11 the United States, or in support of an operational mission, a critical mission, or any
12 other requirement of the U.S. armed forces.

13 (d) 1. The employer's circumstances have so changed as to make reemployment
14 of the person impossible or unreasonable.

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

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

22 (e) 1. Subject to subds. 4. and 5., if a person who has been absent from a position
23 of employment because of active state service that lasted for less than 31 days, who
24 has been absent from a position of employment for any period of time for the purpose
25 of an examination to determine the person's fitness to perform active state service,

1 or who has been absent from a position of employment because the person was
2 hospitalized for or was convalescing from an illness or injury that was incurred in
3 or aggravated during the performance of that active state service wishes to receive
4 the reemployment rights and benefits specified in this section, the person must
5 notify the person's employer of the person's intent to return to the position of
6 employment by reporting to the employer by no later than the beginning of the first
7 full regularly-scheduled work period on the first full calendar day following the
8 completion of the active state service, examination, or period of hospitalization or
9 convalescence, a period of time that allows for the safe transportation of the person
10 from the place of active state service, examination, hospitalization, or convalescence
11 to the person's residence, and a rest period of 8 hours following that transportation
12 period or, if through no fault of the person's own reporting to the employer within that
13 time is impossible or unreasonable, by reporting to the employer as soon as possible
14 after that 8-hour rest period.

15 2. Subject to subs. 4. and 5., if a person who has been absent from a position
16 of employment because of active state service that lasted for more than 30 days, but
17 less than 181 days, or who has been absent from a position of employment because
18 the person was hospitalized for or was convalescing from an illness or injury that was
19 incurred in or aggravated during the performance of that active state service wishes
20 to receive the reemployment rights and benefits specified in this section, the person
21 must notify the person's employer of the person's intent to return to the position of
22 employment by submitting to the employer an application for reemployment by no
23 later than 14 days after the completion of the active state service, hospitalization, or
24 convalescence or, if through no fault of the person's own submitting the application
25 within that time is impossible or unreasonable, by submitting to the employer an

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

3 3. 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 180 days or
5 who has been absent from a position of employment because the person was
6 hospitalized for or was convalescing from an illness or injury that was incurred in
7 or aggravated during the performance of that active state service wishes to receive
8 the reemployment rights and benefits specified in this section, the person must
9 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 90 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 4. The period of hospitalization or convalescence specified in subds. 1., 2., and
17 3. may not exceed 2 years, except that if through no fault of the person's own it is
18 impossible or unreasonable for the person to report to the employer within the time
19 specified in subd. 1. or to apply for reemployment within the time specified in subd.
20 2. or 3., that 2-year period shall be extended by the minimum period of time required
21 to accommodate the circumstances that made it impossible or unreasonable for the
22 person to report or apply as so required.

23 5. A person who fails to report to the person's employer within the time specified
24 in subd. 1. or who fails to apply for reemployment within the time specified in subd.
25 2. or 3. does not automatically forfeit the reemployment rights and benefits specified

1 in this section. Instead, the person shall be subject to the rules, policies, and
2 practices of the person's employer pertaining to discipline for unexcused absences
3 from work.

4 (f) 1. A person who submits an application for reemployment under par. (e) 2.
5 or 3. must, on the request of the person's employer, provide to the employer
6 documentation to establish that the application was submitted within the time
7 limits specified in par. (e) 2. or 3., that the person's cumulative length of all absences
8 from employment with the employer because of active state service and federal active
9 duty does not, except as permitted under par. (c), exceed 5 years, and, in the case of
10 active state service in the national guard in this or another state or the state defense
11 force, that the person's service was not terminated under other than honorable
12 conditions.

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

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

23 (g) *Veterans preferences.* The right of a person to reemployment under this
24 subsection does not entitle the person to retention, preference, or displacement
25 rights over any person who has a superior claim under s. 45.03 (4), 62.13 (4) (d), 63.08

1 (1) (f), 63.37, 63.39 (2m), 66.0509 (1), 230.15 (2m), 230.16 (7) or (7m), 230.21 (1m),
2 230.25, or 230.275.

3 (h) *Prohibited bases for denial of reemployment.* In determining a person's
4 right to reemployment and other benefits under this section, an employer may not
5 deny reemployment or any other benefits based on the timing, frequency, duration,
6 or nature of the person's active state service or federal active duty so long as the
7 requirements under par. (a) are met.

8 **(4) REEMPLOYMENT POSITIONS.** (a) *Prompt reemployment required.* 1. Subject
9 to subds. 3. and 4. and par. (b), an employer shall reemploy a person who is entitled
10 to reemployment under sub. (3) and whose period of active state service was for less
11 than 91 days promptly on completion of that period of active state service in the
12 position of employment in which the person would have been employed if the
13 continuous employment of the person with the employer had not been interrupted
14 by that active state service so long as the person is qualified to perform the duties
15 of that position or, if after reasonable efforts by the employer to qualify the person
16 to perform those duties the person is not qualified to perform those duties, in the
17 position of employment in which the person was employed on the date on which the
18 person's period of active state service began.

19 2. Subject to subds. 3. and 4. and par. (b), an employer shall reemploy a person
20 who is entitled to reemployment under sub. (3) and whose period of active state
21 service was for more than 90 days promptly on completion of that period of active
22 state service in the position of employment in which the person would have been
23 employed if the continuous employment of the person with the employer had not been
24 interrupted by that active state service or in a position of employment of like
25 seniority, status, and pay so long as the person is qualified to perform the duties of

1 that position or, if after reasonable efforts by the employer to qualify the person to
2 perform those duties the person is not qualified to perform those duties, in the
3 position of employment in which the person was employed on the date on which the
4 person's period of active state service began or in a position of employment of like
5 seniority, status, and pay.

6 3. Subject to par. (b), in the case of a person who has a disability that was
7 incurred in or aggravated during a period of active state service and who, after
8 reasonable efforts by the employer to accommodate the disability, is not qualified due
9 to the disability to perform the duties of the position of employment in which the
10 person would have been employed if the continuous employment of the person with
11 the employer had not been interrupted by the active state service, the employer shall
12 reemploy the person promptly on completion of that period of active state service in
13 any other position that is equivalent to that position in seniority, status, and pay, the
14 duties of which the person is qualified to perform or would become qualified to
15 perform with reasonable efforts by the employer, or, if there is no other position of
16 employment available that is equivalent to that position in seniority, status, and pay,
17 in a position that is the nearest approximation to that equivalent position in terms
18 of seniority, status, and pay, consistent with the person's circumstances.

19 4. Subject to par. (b), in the case of a person who is not qualified to be employed
20 in the position of employment in which the person would have been employed if the
21 continuous employment of the person with the employer had not been interrupted
22 by the person's active state service or in the position of employment in which the
23 person was employed on the date on which the person's period of active state service
24 began for any reason other than disability incurred in or aggravated during a period
25 of active state service and who cannot become qualified to be so employed with

1 reasonable efforts by the employer, the employer shall reemploy the person promptly
2 on completion of that period of active state service in any other position that the
3 person is qualified to perform and that is the nearest approximation to the position
4 of employment in which the person would have been employed if the continuous
5 employment of the person with the employer had not been interrupted by that active
6 state service, with full seniority, or if no position of employment that is the nearest
7 approximation to that position is available, in a position of employment that the
8 person is qualified to perform and that is the nearest approximation to the position
9 of employment in which the person was employed on the date on which the person's
10 period of active state service began, with full seniority.

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

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

20 **(5) RIGHTS, BENEFITS, AND OBLIGATIONS.** (a) *Seniority.* A person who is
21 reemployed under this section is entitled to the seniority and other rights and
22 benefits determined by seniority that the person had on the last day of employment
23 before the person's active state service began, plus all seniority and other rights and
24 benefits determined by seniority that the person would have had if the continuous

1 employment of the person with the employer had not been interrupted by that active
2 state service.

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

11 2. If an employer shows that a person who is absent from a position of
12 employment because of active state service has knowingly provided written notice
13 of the person's intent not to return to a position of employment with the employer
14 after that active state service and, in doing so, was aware of the specific rights and
15 benefits under subd. 1. that the person would lose while absent from the position of
16 employment, the person is not entitled to the rights and benefits specified in subd.
17 1. while absent from employment.

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

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

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

4 (c) *Protection from discharge.* An employer that reemploys under this section
5 a person whose period of active state service lasted for more than 30 days, but less
6 than 181 days, may not discharge the person within 180 days after the date of
7 reemployment except for cause. An employer that reemploys under this section a
8 person whose period of active state service lasted for more than 180 days may not
9 discharge the person within one year after the date of reemployment except for
10 cause.

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

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

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

21 (b) *Payment of premiums.* A person who elects to continue coverage under par.
22 (a) and who is absent from a position of employment for 30 days or less may not be
23 required to pay more than the employee share, if any, of the cost of the coverage. A
24 person who elects to continue coverage under par. (a) and who is absent from a
25 position of employment for more than 30 days may be required to pay up to 102

1 percent of the full premium for that coverage for the period of continued coverage
2 that exceeds 30 days.

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

11 (7) ENFORCEMENT. (a) *Complaint.* Any person who believes that his or her
12 employer has failed or refused, or is about to fail or refuse, to provide to the person
13 any reemployment right or benefit to which the person is entitled under this section
14 may file a complaint with the adjutant general, in such form as the adjutant general
15 may prescribe by rule, summarizing the allegations that form the basis of the
16 complaint. The adjutant general shall investigate the complaint and, if the adjutant
17 general is reasonably satisfied that the person is entitled to the rights or benefits
18 sought, the adjutant general shall endeavor to resolve the complaint by conference,
19 conciliation, or persuasion. If the adjutant general is not reasonably satisfied that
20 the person is entitled to the rights or benefits sought, the adjutant general may
21 refuse to endeavor to resolve the complaint and shall notify the person who filed the
22 complaint that the person may proceed under par. (b) 2. to enforce the person's rights
23 under this section. If the adjutant general is not able to resolve the complaint, the
24 adjutant general shall notify the person who filed the complaint that the person may
25 proceed under par. (b) 1. or 2. to enforce the person's rights under this section.

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

7 2. Subdivision 1. does not preclude a person who has chosen not to file a
8 complaint with the adjutant general under par. (a), whose complaint the adjutant
9 general has refused to endeavor to resolve under par. (a), or who has chosen not to
10 request the adjutant general to refer his or her complaint to counsel under subd. 1.
11 from filing a complaint for appropriate relief with the department of workforce
12 development.

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

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

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

