

1 December 21, 2006, draft

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

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

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

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

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

Subchapter I

General Provisions

- 21.01 Definitions.
- 21.02 Powers and duties of the governor.
- 21.03 Powers and duties of the department
- 21.04 Powers and duties of the adjutant general.
- 21.05 Permission to forces of other states.

Subchapter II

Military Officers

- 21.10 Military staff of the governor.
- 21.11 United States property and fiscal officer.
- 21.12 Chief surgeons.
- 21.13 Discharge of officers.
- 21.14 Authority to administer oaths.
- 21.15 Resignation of officer.

Subchapter III

Property and Assets

- 21.20 Distribution of military property.
- 21.21 Military property accountability.
- 21.22 Camp Williams.
- 21.23 Facilities and lands.
- 21.24 Encroachment on military areas and interference with military personnel.

Subchapter IV

National Guard and State Defense Force

- 21.30 Composition of national guard.
- 21.31 Uniform of national guard.
- 21.32 Terms of enlistment and discharge.
- 21.33 Commission and rank.
- 21.34 Examinations for promotion or appointments.
- 21.35 Pay.
- 21.36 Rules of discipline.
- 21.37 No discrimination.
- 21.38 Decorations and awards.
- 21.39 Call to state active duty.
- 21.40 Educational benefits.

- 21.41 Training;special schools;pay and allowances.
- 21.42 Defense of members of guard;payment of judgments.
- 21.43 Exemptions from civil authority.
- 21.44 Exemptions from certain county duties.
- 21.48 State defense force authorized.

***NOTE: I made changes in the sequence of these section based on my idea of what should follow what. OK?

Should we leave more space between the NG and SDF subsections?

Are ss. 21.13 and 21.31 OK as is?

Subchapter V

Rights of Service Members

- 21.50 Extension of licenses for service members.
- 21.51 Soldiers and sailors civil relief act; federal service.
- 21.52 Soldiers' and sailors' civil relief act; state service.
- 21.53 Employees or officers in military service.
- 21.54 Reemployment after completion of military service.
- 21.55 Reemployment rights after national guard, state defense force, or public health emergency service.

Subchapter VI

Wisconsin Code of Military Justice

- 21.70 The Wisconsin code of military justice.

1 **SECTION 1.** 20.465 (1) (i) of the statutes is amended to read:
 2 20.465 (1) (i) *Distance learning centers.* All moneys received from renting the
 3 distance learning centers, for the operation and maintenance of the centers under
 4 s. ~~21.19 (13)~~ 21.04 (1) (n).

History: 1971 c. 125; 1975 c. 39, 224; 1977 c. 29; 1977 c. 418 s. 929 (55); 1981 c. 20, 207; 1983 a. 27; 1983 a. 333 s. 6; 1987 a. 27; 1987 a. 63 s. 13; 1989 a. 31 ss. 486 to 491i, 504 to 514, 521, 522; 1989 a. 115; 1991 a. 39, 104; 1993 a. 16, 253, 490; 1995 a. 13, 27, 247; 1997 a. 27, 237; 1999 a. 9; 2001 a. 16, 109; 2003 a. 33, 186; 2005 a. 25, 269.

****NOTE: There are a number of other cross references in other chapters that will have to be amended once we finalize the revisions of ch. 21.

5 **SECTION 2.** Subchapter I of chapter 21 [precedes 21.01] of the statutes is created
 6 to read:

CHAPTER 21**SUBCHAPTER I****GENERAL PROVISIONS**

SECTION 3. 21.01 of the statutes is created to read:

21.01 Definitions. In this chapter:

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

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

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

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

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

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

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

(8) “State active duty”

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

***NOTE: Are there any other words or phrases that we should define for the whole chapter?

1 **SECTION 4.** 21.02 (title) of the statutes is created to read:

2 **21.02 Powers and duties of the governor.**

3 **SECTION 5.** 21.70 (1) and (2) of the statutes are renumbered 21.02 (1) (a) and
4 (b) and amended to read:

5 21.02 **(1)** (a) The governor may request volunteers of from the national guard
6 to provide assistance to federal, state and local law enforcement officers, within or
7 outside the boundaries of this state, in drug interdiction and counter-drug activities
8 under 32 USC 112. These activities may include the operation and maintenance of
9 equipment and facilities. The governor may order, with their consent, any national
10 guard members who volunteer under this section to duty in federally funded status.
11 The governor may delegate his or her authority under this section subsection to the
12 adjutant general. The adjutant general shall follow all laws and regulations of the
13 U.S. department of defense when ordering national guard members to perform drug
14 interdiction and counter-drug activities under this section subsection.

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

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

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

22 History: 1983 a. 27.

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

24 21.03 **(1)** (intro.) The department of military affairs shall do all of the following:

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

3 **21.03 (1) (a)** Administer the national guard.

History: 1983 a. 27.

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

6 **21.03 (1) (b)** Provide facilities and support for the national guard ~~and any other~~
7 ~~support available from the appropriations under s. 20.465.~~

History: 1983 a. 27.

8 **SECTION 10.** 21.26 (1) and (2) of the statutes are consolidated, renumbered
9 21.03 (1) (c) and amended to read:

10 **21.03 (1) (c)** ~~The department of military affairs shall administer~~ Administer
11 ~~the Youth Challenge~~ Academy program for disadvantaged youth under 32 USC 509.
12 The department shall determine eligibility criteria for the Challenge Academy
13 consistent with federal law. ~~(2)~~ Annually, the department ~~of military affairs~~ shall
14 do all of the following:

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

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

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

23 **21.03 (2)** The department ~~of military affairs on behalf of the state~~ may rent do
24 any of the following:

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

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

8 21.03 (2) (b) ~~The department of military affairs on behalf of the state, upon~~
9 Upon appraisal by the state chief engineer submitted to the governor in writing, ~~may~~
10 ~~sell and convey upon such terms as the department of military affairs may determine~~
11 and with the written approval of the governor, ~~in writing~~ sell and convey any
12 state-owned property acquired or erected for state military purposes, ~~which if the~~
13 property is no longer useful to the national guard.

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

15 **21.04 Powers and duties of the adjutant general.** (1) (intro.) The adjutant
16 general or his or her designee shall do all of the following:

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

19 21.04 (1) (a) ~~The adjutant general shall be~~ Be the military chief of staff to the
20 governor. ~~The adjutant general shall have the custody of all property, military~~
21 ~~records, correspondence, and other documents relating to the national guard and any~~
22 ~~other military forces organized under the laws of this state. The adjutant general~~
23 ~~may appoint an assistant quartermaster general to issue and account for state~~
24 ~~property. The adjutant general shall be the medium of military correspondence with~~
25 ~~the governor and perform all other duties pertaining to the office or prescribed by~~

1 ~~law, including the preparation and submission to the governor of reports under s.~~
2 ~~15.04 (1) (d).~~

3 **SECTION 15.** 21.04 (1) (b) of the statutes is created to read:

4 21.04 (1) (b) Advise the governor on military issues and transmit military
5 correspondence to and from the governor

6 **SECTION 16.** 21.33 of the statutes is renumbered 21.04 (1) (c) and amended to
7 read:

8 21.04 (1) (c) ~~The quartermaster general acting as paymaster under~~ Under
9 orders from the governor, may draw from the state treasury the money necessary for
10 paying ~~troops in camp or~~ national guard members on state active service duty and
11 ~~shall furnish such security for the same as the secretary of administration may~~
12 ~~direct. The amount due on account of the field, staff, or other officers,~~
13 ~~noncommissioned staff and band, company, or enlistees, not herein enumerated, if~~
14 ~~any, shall be paid to the person to whom the same shall be due, on the properly signed~~
15 ~~and certified payrolls.~~

16 **SECTION 17.** 21.19 (11) of the statutes is renumbered 21.04 (1) (d) and amended
17 to read:

18 21.04 (1) (d) ~~The adjutant general shall provide such~~ Provide necessary
19 medical supplies and services ~~as are necessary~~ to the national guard during periods
20 of state active duty not otherwise provided under this chapter and ch. 102, to be
21 charged to the appropriation under s. 20.465 (1) (c).

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

22 **SECTION 18.** 21.19 (12) of the statutes is renumbered 21.04 (1) (e) and amended
23 to read:

1 21.04 (1) (e) ~~The adjutant general shall provide from the appropriation under~~
2 ~~s. 20.465 (1) (e) Provide a United States flag or state flag to the next of kin of each~~
3 ~~deceased member of the national guard who dies as a result of during state service~~
4 ~~under s. 21.11 active duty. to be charged to the appropriation under s. 20.465 (1) (c).~~

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

5 **SECTION 19.** 21.19 (7) (a) 1. of the statutes is renumbered 21.04 (1) (f) and
6 amended to read:

7 21.04 (1) (f) Have charge custody of all the military property ~~of the state and~~
8 ~~shall military records and~~ carefully preserve, repair, and account for the property
9 and records.

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

10 **SECTION 20.** 21.19 (4) of the statutes is renumbered 21.04 (1) (g) and amended
11 to read:

12 21.04 (1) (g) ~~The adjutant general shall be the auditor of Audit all~~ military
13 accounts, and all accounts or claims payable from the treasury of the state for
14 military purposes ~~shall be regularly audited by the adjutant general before payment.~~
15 ~~The adjutant general shall cause to be prepared and issued all necessary books and~~
16 ~~forms required by the adjutant general's office for the national guard. All of the books~~
17 ~~and forms shall be made to conform as nearly as practicable to those in use in the~~
18 United States army.

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

19 **SECTION 21.** 21.19 (7) (a) 2. of the statutes is renumbered 21.04 (1) (h) and
20 amended to read:

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

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

4 **SECTION 22.** 21.19 (1m) of the statutes is renumbered 21.04 (1) (i) and amended
5 to read:

6 21.04 (1) (i) ~~The adjutant general shall administer~~ Administer, with the
7 approval of the governor, state–federal cooperative funding agreements related to
8 the department.

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

9 **SECTION 23.** 21.04 (1) (j) of the statutes is created to read:

10 21.04 (1) (j) Prepare the training of national guard members.

11 **SECTION 24.** 21.19 (7) (b) of the statutes is renumbered 21.04 (1) (k) and
12 amended to read:

13 21.04 (1) (k) ~~The~~ Provide or contract for the transportation of all national guard
14 troops, arms, accoutrements, stores members and other military property and the
15 preparation for encampments shall be contracted for by the adjutant general under
16 direction of the governor.

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

17 **SECTION 25.** 21.19 (8) of the statutes is renumbered 21.04 (1) (L) and amended
18 to read:

19 21.04 (1) (L) ~~The adjutant general or a designee shall issue~~ Provide or contract
20 for all necessary supplies to military property, lodging, and meals for members and
21 units of the national guard and may contract for the purchase and transportation of
22 such supplies, subject to s. 16.71 (1).

23 **SECTION 26.** 21.04 (1) (m) of the statutes is created to read:

1 21.04 (1) (m) Prepare and issue all necessary accounting books and forms
2 required by the adjutant general's office for the national guard. All of the accounting
3 books and forms shall be made to conform as nearly as practicable to those in use in
4 the United States army or air force.

5 **SECTION 27.** 21.19 (13) of the statutes is renumbered 21.04 (1) (n) and amended
6 to read:

7 21.04 (1) (n) ~~The adjutant general shall cooperate~~ Cooperate with the federal
8 government in the operation and maintenance of distance learning centers for the
9 use of current and former members of the national guard and the U.S. armed forces.
10 The adjutant general may charge rent for the use of a center by a nonmilitary or
11 nonfederal person. All moneys received under this subsection paragraph shall be
12 credited to the appropriation account under s. 20.465 (1) (i).

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

13 **SECTION 28.** 21.19 (14) of the statutes is renumbered 21.04 (1) (o) and amended
14 to read:

15 21.04 (1) (o) ~~The adjutant general shall provide~~ Provide the department of
16 veterans affairs information on all necessary military points of contact and general
17 deployment information for activated and deployed members of the national guard.

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

18 **SECTION 29.** 21.04 (1) (p) of the statutes is created to read:

19 21.04 (1) (p) Perform the duties under s. 21.45 (2) (e).

20 **SECTION 30.** 21.19 (7) (a) 3. of the statutes is renumbered 21.04 (1) (q) and
21 amended to read:

1 21.04 (1) (q) Perform the customary duties of the his or her office, ~~and of the~~
2 ~~office of chief of all logistical services, and have the custody of all records, returns,~~
3 ~~and papers pertaining to those offices.~~

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

4 **SECTION 31.** 21.04 (2) (intro.) of the statutes is created to read:

5 21.04 (2) (intro.) The adjutant general or his or her designee may do any of the
6 following:

7 **SECTION 32.** 21.36 (2) of the statutes is renumbered 21.04 (2) (a) and amended
8 to read:

9 21.04 (2) (a) ~~The governor may make and~~ Make, publish, and have printed
10 rules, regulations, and orders for the government governance of the national guard,
11 ~~not inconsistent with the law, and cause the rules, regulations, or orders, together~~
12 ~~with any related laws, to be printed and distributed in book form, or another form,~~
13 ~~in any number that the governor considers necessary. The governor may provide (b)~~
14 Provide for all books and forms that may be necessary for the proper discharge of the
15 duty of all officers of the national guard. ~~The governor may delegate the authority~~
16 ~~under this subsection to the adjutant general by executive order.~~

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

17 **SECTION 33.** 21.19 (9) of the statutes is renumbered 21.04 (2) (c) and amended
18 to read:

19 21.04 (2) (c) When any military property ~~belonging to the state as owner or~~
20 ~~bailee is wrongfully held by another person, the adjutant general may bring an action~~
21 in the name of the state to recover possession of the same property or the money value
22 thereof of the property.

23 **SECTION 34.** 21.19 (10) of the statutes is renumbered 21.04 (2) (d) and amended
24 to read:

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

5 **SECTION 35.** 21.11 (3) of the statutes is renumbered 21.04 (2) (e) and amended
6 to read:

7 21.04 (2) (e) ~~The adjutant general may activate~~ Activate members of the
8 national guard ~~for the purpose of serving~~ to serve on an honors detail of military
9 funeral honors for a person described under s. 45.60 (1).

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

10 **SECTION 36.** 21.04 (2) (f) of the statutes is created to read:

11 21.04 (2) (f) Perform the duties under 21.45 (2) (f).

12 **SECTION 37.** 21.025 (5) (a) and (b) of the statutes is renumbered 21.05 (1) and
13 (2) and amended to read:

14 **21.05 Permission to forces of other states. (1)** Any military ~~forces or~~
15 ~~organization, unit, or detachment thereof,~~ of another state who are that is in fresh
16 pursuit of insurrectionists, ~~saboteurs, enemies~~ terrorists, or enemy forces may
17 continue ~~such the~~ pursuit into this state until ~~the~~ a military unit or ~~police forces~~ law
18 enforcement agency of this state or the forces of the United States have U.S. military
19 has had a reasonable opportunity to take up the pursuit or ~~to apprehend or capture~~
20 ~~such persons, and such the persons.~~ The military forces of such unit of the other state
21 may arrest or capture ~~such~~ those persons within in this state while in fresh pursuit.

22 **(2)** Any such person who shall be is captured or arrested by the military ~~forces~~
23 ~~of such other~~ unit of another state while in this state shall without unnecessary delay

1 be surrendered to the a military unit or ~~police forces~~ law enforcement agency of this
2 state to be dealt with according to law.

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

3 **SECTION 38.** 21.025 (2) (b), (5) (c), (7), and (13) of the statutes are repealed.

4 **SECTION 39.** Subchapter II of chapter 21 [precedes 21.10] of the statutes is
5 created to read:

6 **CHAPTER 21**

7 **SUBCHAPTER II**

8 **MILITARY OFFICERS**

9 **SECTION 40.** 21.18 (title) of the statutes is renumbered 21.10 (title) and (1) and
10 amended to read:

11 **21.10 (1) (title) Military staff of governor.**

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

12 **SECTION 41.** 21.18 (1) of the statutes is renumbered 21.10 (title) and (1) and
13 amended to read:

14 **21.10 (1)** The military staff of the governor shall consist of the following:

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

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

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

21 (d) Two assistant adjutants general for army, ~~who may hold the~~ whose rank of
22 may not exceed brigadier general.

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

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

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

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

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

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

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

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

13 **SECTION 42.** 21.18 (title) and (1) (intro.) of the statutes are renumbered 21.10
14 (title) and (1) (intro.).

15 **SECTION 43.** 21.10 (1) (e) of the statutes is created to read:

16 21.10 **(1)** (e) A joint chief of staff, whose rank may may not exceed major
17 general.

18 **SECTION 44.** 21.19 (5) of the statutes is renumbered 21.10 (2) and amended to
19 read:

20 21.10 **(2)** In the absence or incapacity of the adjutant general, the senior
21 ranking deputy adjutant general for army or air shall have all the powers and duties
22 of the adjutant general.

23 **SECTION 45.** 21.18 (1m) of the statutes is renumbered 21.10 (3) and amended
to read:

1 21.10 (3) In the event any of the ~~a deputy adjutants~~ adjutant general, for army
2 or for air, ~~are~~ is appointed to a military position as a major general, the adjutant
3 general shall appoint, for any periods of absence of that deputy adjutant general due
4 to other military duties, an acting deputy adjutant general. The adjutant general
5 may appoint one of the assistant adjutants general as an acting deputy adjutant
6 general.

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

7 **SECTION 46.** 21.18 (2) of the statutes is renumbered 21.10 (4) and amended to
8 read:

9 21.10 (4) No person may be appointed ~~on~~ to the governor's military staff who
10 has not had previous state or U.S. military experience.

11 **SECTION 47.** 21.18 (3) of the statutes is renumbered 21.10 (5) and amended to
12 read:

13 21.10 (5) All staff officers appointed under sub. (1), except the adjutant general
14 whose tenure is governed by ss. 15.31 and 17.07 (5), shall hold their positions unless
15 terminated earlier by resignation, disability, or for cause or unless federal
16 recognition of the officer's commission under 32 USC 323 is refused or withdrawn.
17 The governor shall remove an officer whose federal recognition is refused or
18 withdrawn, effective on the date of the loss of federal recognition.

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

19 **SECTION 48.** 21.18 (4) of the statutes is renumbered 21.10 (6) and amended to
20 read:

21 21.10 (6) The terms of the deputy adjutants general for army and air shall be
22 5 years beginning on the first day of the 7th month of the term of the adjutant
23 general. The deputy adjutants general may be reappointed to successive terms.

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

1 **SECTION 49.** 21.18 (5) of the statutes is renumbered 21.10 (7) and amended to
2 read:

3 **21.10 (7)** The adjutant general shall appoint persons to fill vacancies in
4 positions ~~in~~ on the military staff of the governor under sub. (1). Vacancies on the
5 military staff of the governor shall be filled by appointment from officers actively
6 serving in the national guard, except as provided in s. 15.31. Interim vacancies shall
7 be filled by appointment by the adjutant general for the ~~residue~~ remainder of the
8 unexpired term.

9 **SECTION 50.** 21.28 of the statutes is renumbered 21.11 and amended to read:

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

17 **(2)** The officer nominated under sub. (1) shall assume the duties of a ~~United~~
18 ~~States~~ U.S. property and fiscal officer under 32 USC 708, when properly ordered to
19 active duty by the appropriate U.S. secretary, on the date specified in the order. The
20 officer shall hold his or her position unless terminated earlier by resignation,
21 disability or for cause and unless federal recognition of the officer's commission
22 under ~~32 USC 323~~ 10 USC 14902, 14903, or 14905 is refused or withdrawn.

23 **(3)** Any action by the governor to remove the officer appointed under sub. (1)
24 (2) for cause shall be governed by the federal laws and military regulations governing
25 removal of an officer for cause and shall be subject to review by the chief of the

1 national guard bureau and by the U.S. secretary of the army, if the officer is
2 commissioned by the army national guard, or by the U.S. secretary of the air force,
3 if the officer is commissioned by the air national guard.

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

4 **SECTION 51.** 21.30 (title) of the statutes is renumbered 21.12 (title) and
5 amended to read:

6 **21.12 (title) Chief surgeons; powers and duties.**

7 **SECTION 52.** 21.30 of the statutes is renumbered 21.12 (1) and amended to read:

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

16 **SECTION 53.** 21.32 of the statutes is renumbered 21.12 (2) and amended to read:

17 21.12 (2) The chief surgeons for the army and the air national guard shall
18 provide for such any physical examinations and inoculations of officers, enlistees,
19 and applicants for enlistment in the national guard, as may be prescribed by
20 department of defense and national guard regulations.

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

21 **SECTION 54.** 21.51 of the statutes is renumbered 21.13 and amended to read:

1 **21.13 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 History: 1991 a. 316.

4 **SECTION 55.** 21.52 of the statutes is renumbered 21.14 and amended to read:

5 **21.14 Authority to administer oaths.** Any officer of the national guard or
6 any officer of the U.S. armed forces may administer oaths of enlistment in the
7 national guard.

8 History: 1979 c. 221.

8 **SECTION 56.** 21.54 of the statutes is renumbered 21.15 and amended to read:

9 **21.15 Resignation of officer.** A commissioned officer may resign ~~the officer's~~
10 his or her commission by submitting the written resignation to the officer's his or her
11 immediate commanding officer, ~~in writing, who.~~ The commanding officer shall
12 promptly forward the same resignation through military channels to the adjutant
13 general. The governor shall, by order, accept or reject the same resignation, and, if
14 accepted, fix the effective date of ~~its taking effect.~~ ~~No the resignation shall take effect~~
15 except as so ordered.

16 **SECTION 57.** 21.15 (title) of the statutes is repealed.

17 **SECTION 58.** 21.155 (title) of the statutes is repealed.

18 **SECTION 59.** 21.19 (3) (b) of the statutes is repealed.

19 **SECTION 60.** 21.19 (6) of the statutes is repealed.

20 **SECTION 61.** 21.19 (7) (a) (intro.) of the statutes is repealed.

21 **SECTION 62.** 21.20 of the statutes is repealed.

22 **SECTION 63.** Subchapter III of chapter 21 [precedes 21.20] of the statutes is
23 created to read:

24

CHAPTER 21

SUBCHAPTER III

MILITARY PROPERTY

SECTION 64. 21.03 of the statutes is renumbered 21.20 and amended to read:

21.20 Distribution of arms military property. The governor may receive and distribute, ~~according to law, the quota of arms and military equipment which property that the state may receive receives from the U.S. government of the United States under the provisions of any acts of congress federal laws providing for arming and equipping of the national guard and the state defense force.~~

History: 1987 a. 63 s. 13.

SECTION 65. 21.50 (title) of the statutes is renumbered 21.21 (title).

SECTION 66. 21.21 (1) of the statutes is created to read:

21.21 (1) In this section, “money” means funds in the custody and under the control of the department.

SECTION 67. 21.50 (1), and (2) of the statutes is renumbered 21.21 (1) (a) and (b), and amended to read:

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

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

9 **SECTION 68.** 21.56 of the statutes is renumbered 21.21 (2) and amended to read:

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

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

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

23 **SECTION 69.** 21.57 of the statutes is renumbered 21.21 (3) and amended to read:

1 **21.21 (3)** ~~(a) Whenever any~~ When an officer who is responsible for state military
2 property or money is separated or reassigned, all military property or money in the
3 officer's possession or for which the officer is responsible shall ~~be delivered to~~ become
4 the responsibility of the person designated the adjutant general designates to receive
5 the property ~~by the adjutant general~~ or money. No separation or reassignment shall
6 be effective until all ~~property~~ accounts have been settled.

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

History: 1975 c. 189, 421.

11 **SECTION 70.** 21.15 of the statutes is renumbered 21.21 (4) (a) and amended to
12 read:

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

History: 1979 c. 221.

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

1 **SECTION 71.** 21.155 of the statutes is renumbered 21.21 (4) (b) and amended
2 to read:

3 **21.21 (4) (b)** ~~No A person who possesses under the laws of this state any arms,~~
4 ~~equipment or other military property may willfully neglect or refuse or money, after~~
5 ~~the adjutant general makes lawful demand is made for the return of the property by~~
6 ~~order of the governor to or money shall return the property promptly. No person may~~
7 knowingly resist any officer who is lawfully taking possession of ~~such arms,~~
8 ~~equipment, or other the military property or money.~~ Any person violating this
9 ~~section paragraph~~ shall forfeit not less than \$50 nor more than \$200.

History: 1979 c. 221.

10 **SECTION 72.** 21.04 of the statutes is renumbered 21.22 and amended to read:

11 **21.22 Camp Williams. (1)** The state ~~camp grounds~~ facility near Camp
12 Douglas, Juneau County, shall be known as “Camp Williams”. The officer in charge
13 of Camp Williams shall have ~~at said camp the police~~ arrest powers ~~possessed by~~
14 ~~officials at state hospitals, as provided in s. 46.058 (2) for a violation of state law, a~~
15 ~~local ordinance, or a 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 such conditions as 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 of the United States.~~

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

24 **SECTION 73.** 21.23 (title) of the statutes is created to read:

1 **21.23**(title) **Facilities and lands.**

2 **SECTION 74.** 21.61 of the statutes is renumbered 21.23 (1) (a) and amended to
3 read:

4 **21.23 (1)** (a) ~~The governing body of any city, village, town or county political~~
5 ~~subdivision or the federally recognized Indian tribe or band in which one or more~~
6 ~~companies~~ units of the national guard ~~may be~~ is located may erect build or purchase
7 a suitable armory for the purpose of drill and for the safekeeping of the arms,
8 equipment, uniforms, and other military property furnished by the state, and for
9 public meetings and conventions, when such that use will not interfere with the use
10 of such the building by the national guard. ~~Plans~~ The adjutant general shall inspect
11 and approve plans and specifications and the state building commission shall
12 approve plans and specifications for such the armories ~~shall be inspected and~~
13 ~~approved by the governor and the adjutant general who.~~ The adjutant general and
14 the department of administration shall file with the ~~governing body of the city,~~
15 ~~village, town, or county~~ political subdivision or the federally recognized Indian tribe
16 or band a certificate of such inspection and approval ~~prior to~~ before the erection
17 thereof construction of an armory.

18 (b) ~~The governing body of any city, village, town or county political subdivision~~
19 ~~or the federally recognized Indian tribe or band in which any such company unit~~ of
20 the national guard may be located may purchase land and build armories in the same
21 manner as the ~~governing body~~ political subdivision or the federally recognized
22 Indian tribe or band is now authorized by law to build other city, village, town or
23 county buildings, and when . When unable to agree upon the price of land with its
24 owner, the political subdivision or the federally recognized Indian tribe or band may,
25 ~~if in its opinion necessary,~~ appropriate land for the purpose of building armories in

1 the same manner as the ~~governing body~~ political subdivision or the federally
2 recognized Indian tribe or band is now authorized by law to appropriate real estate
3 for other ~~city, village, town or county~~ buildings. ~~In case however~~ If a city, village, town
4 or county shall have political subdivision or the federally recognized Indian tribe or
5 band aided in the erection building of an armory and the company or companies of
6 the national guard for which the armory was erected ~~shall at any time be~~ built is
7 disbanded, then the armory shall become the property of the city, village, town or
8 county in which political subdivision or the federally recognized Indian tribe or band
9 that aided in the building of the armory is erected.

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

18 (d) Whenever any ~~county, city, town or village~~ erects political subdivision or a
19 federally recognized Indian tribe or band constructs a building as a memorial to the
20 ~~soldiers, sailors and marines~~ members of the U.S. armed forces or national guard
21 who served in any war or armed conflict of the United States and makes provision
22 ~~therein~~ in the memorial for the accommodation of one or more companies of the
23 national guard having no regularly established armory, the ~~governor,~~ adjutant
24 ~~general or other state officers having control of armory accommodations and~~

1 regulations shall, whenever practicable, rent the armory provided in such the
2 memorial building for the use of those companies of the national guard.

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

3 **SECTION 75.** 21.616 of the statutes is renumbered 21.23 (3) and amended to
4 read:

5 **21.23 (3)** ~~The department of military affairs is authorized and directed may,~~
6 ~~when contributions therefor are made available by the federal government under the~~
7 ~~national defense facilities act of 1950 or any act or acts amendatory thereof or~~
8 ~~supplementary thereto federal law, to expand, rehabilitate, equip, or convert~~
9 ~~facilities owned by the state and to acquire, construct, expand, rehabilitate, equip,~~
10 ~~or convert additional facilities. The department of military affairs may on the part~~
11 ~~of the state accept such the federal contributions in the manner prescribed by federal~~
12 ~~law or regulation, and may accept on behalf of the state the lawful terms and~~
13 ~~conditions thereof of a federal contribution.~~ The department of military affairs shall
14 ~~take such steps and have all the functions and has the duties and powers necessary,~~
15 ~~consistent with the appropriation therefor, to acquire contributions under any such~~
16 ~~federal act law and to undertake and complete any such a project in conformity with~~
17 ~~the applicable federal act law and this section subsection.~~

18 **SECTION 76.** 21.17 of the statutes is renumbered 21.24 and amended to read:

19 **21.24 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 cause the area to be marked in such a manner so as mark the area to
22 warn against encroachment by unauthorized persons, but may not to unnecessarily
23 obstruct travel on any public highway. No person may encroach upon or enter upon
24 the area without the consent of the officer.

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

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

3 **SECTION 84.** 21.38 of the statutes is renumbered 21.31 and amended to read:

4 **21.31 Uniform of Wisconsin national guard.** The uniform of the national
5 guard shall be that as prescribed by regulations for the corresponding branch of the
6 United States U.S. armed forces.

7 **SECTION 85.** 21.05 of the statutes is renumbered 21.32 and amended to read:

8 **21.32 Term of enlistment; requirements and discharge.** Every person
9 who enlists or receives a commission in the national guard shall serve for the term
10 prescribed and satisfy the physical, educational and training requirements
11 prescribed by the U.S. national guard bureau. Enlistees in the national guard shall
12 be discharged as provided in the laws and regulations of the U.S. national guard.

13 **SECTION 86.** 21.43 of the statutes is renumbered 21.33 and amended to read:

14 **21.33 Commissions and rank.** The governor shall appoint and issue
15 commissions to all officers whose appointments are approved by the governor. Every
16 commission shall be countersigned signed by the secretary of state and attested by
17 the adjutant general and A commission shall continue as provided by law unless
18 terminated earlier by resignation, disability, or for cause or unless federal
19 recognition of the officer's commission under 32 USC 323 is refused or withdrawn.
20 Each officer so commissioned officer shall take the oath of office prescribed by article
21 IV, section 28, of the constitution and file it with the department of military affairs
22 ~~the oath of office prescribed by article IV, section 28, of the constitution.~~ All
23 commissioned officers shall take rank according to the date assigned them by their
24 commissions, and when 2 of the same grade rank from the same date, their rank shall

1 be determined by length of creditable service in the national guard ~~creditable for pay,~~
2 and if of equal creditable service then by lot.

3 History: 1983 a. 27, 192.

SECTION 87. 21.47 of the statutes is renumbered 21.34 and amended to read:

4 **21.34 Examinations for promotion or appointments.** The governor or or
5 adjutant general may order any ~~subordinate officer or~~ person nominated or
6 recommended for promotion or appointment in the national guard or state defense
7 force to be examined by any competent officer or board of officers, designated in on
8 orders for that purpose, as to that person's qualifications for the office to which that
9 person may is to be recommended or appointed, and or promoted. The governor or
10 adjutant general may take such action on the report of such the examining officer or
11 board of officers as ~~the governor deems~~ he or she considers to be for the best interests
12 of the ~~service~~ national guard or state defense force. The governor or adjutant general
13 may also require the person to take the physical examination provided for admission
14 to the ~~United States~~ U.S. army or air force.

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

SECTION 88. 21.48 of the statutes is renumbered 21.35 and amended to read:

16 **21.35 Pay. (1)** ~~Each~~ Every officer and enlisted person ~~of~~ on state active duty
17 in the national guard ~~on active duty in the state under orders of the governor on a~~
18 ~~state pay basis~~ 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.

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

21 **(2)** The governor may, ~~by orders, duplicates of which shall be filed with the~~
22 ~~secretary of state,~~ fix the pay of any member of the governor's staff military staff of

1 ~~the governor, or other members of the national guard or state defense force for any~~
2 ~~special service under orders~~ state active duty.

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

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

9 SECTION 89. 21.36 (1) of the statutes is renumbered 21.36 and amended to read:

10 **21.36 Rules of discipline.** The applicable rules of discipline and the
11 regulations of the U.S. armed forces of the U.S. shall, ~~so far as the same are~~
12 ~~applicable,~~ constitute the rules of discipline and the regulations of the national
13 guard; ~~the .~~ The rules and uniform code of military justice established by congress
14 and the department of defense for the armed forces shall be adopted so far as they
15 are applicable and consistent with the Wisconsin code of military justice for the
16 government of the national guard, ~~and the .~~ The system of instruction and the drill
17 regulations prescribed for the different arms and corps of the armed forces of the U.S.
18 shall be followed in the military instruction and practice of the national guard, and
19 the use of any other system is forbidden.

20 SECTION 90. 21.35 of the statutes is renumbered 21.37 and amended to read:

21 **21.37 Federal laws and regulations; no No discrimination.** The
22 ~~organization, armament, equipment, and discipline of the national guard shall be~~
23 ~~that prescribed by federal laws or regulations; and the governor may by order perfect~~
24 ~~such organization, armament, equipment, and discipline, at any time, so as to~~

1 ~~comply with such laws and regulations insofar as they are consistent with the~~
2 ~~Wisconsin code of military justice. Notwithstanding any rule or regulation~~
3 ~~prescribed by the federal government or any officer or department thereof, no~~ No
4 person, otherwise qualified, may be denied membership in the national guard or
5 state defense force because of sex, color, race, creed, or sexual orientation and no
6 member of the national guard or state defense force may be segregated within the
7 national guard or state defense force on the basis of sex, color, race, creed, or sexual
8 orientation. Nothing in this section prohibits separate facilities for persons of
9 different sexes with regard to dormitory accommodations, ~~public~~ toilets, showers,
10 saunas, and dressing rooms.

11 **SECTION 91.** 21.07 of the statutes is renumbered 21.38 and amended to read:

12 **21.38 Decorations and awards.** The adjutant general may prescribe
13 decorations and awards for the national guard and the state defense force, ~~the.~~ The
14 adjutant general shall adopt rules establishing the form and issue thereof made
15 under rules adopted by the adjutant general and approved by the governor issuance
16 of those decorations and awards.

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

17 **SECTION 92.** 21.11 (title), (1), and (2) of the statutes are renumbered 21.39
18 (title), (1), and (2) and amended to read:

19 **21.39 Call to state active service duty. (1)** In (a) The governor may order
20 into active duty members of the national guard under the following circumstances:

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

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

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

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

6 5. Upon application of any marshal of the United States, the president of any
7 village, the mayor of any city, the chairperson of any town board, or any sheriff in this
8 state, the governor may order into active service all or any portion of the national
9 guard.

10 (b) If the governor is absent, or cannot be immediately communicated with, any
11 such civil officer of the persons listed in par. (a) 5. may, if the officer deems the
12 occasion so is urgent, make such application, which shall be in writing, to request
13 assistance from the commanding officers of any company, battalion or regiment, who
14 commander of any national guard unit. If the danger is great and imminent, the
15 commander may, upon approval of the adjutant general, if the danger is great and
16 imminent obtaining approval is feasible, order out that officer's command to the aid
17 of such civil officer unit to provide assistance. Such The order shall be delivered to
18 the commanding officer, who shall immediately communicate the order to each, and
19 every subordinate officer, and every company commander receiving the same who
20 shall immediately communicate the substance thereof to each member of the order
21 to members of the company, or if any such unit. If a member cannot be found, a notice
22 in writing containing the substance of such the order, in writing, shall be left at the
23 last and usual member's place of residence of such member with some person of
24 suitable age and discretion, to whom its the order's contents shall be explained.

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

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

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

8 **SECTION 93. 21.49** of the statutes is renumbered 21.40 and amended to read:

9 **21.40 Educational benefits. (1) DEFINITIONS.** In this section:

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

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

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

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

16 1. The extension division and any campus of the University of Wisconsin
17 System.

18 ~~1g.~~ **2.** A public institution of higher education under the Minnesota-Wisconsin
19 student reciprocity agreement under s. 39.47.

20 ~~1m.~~ **3.** A public institution of higher education under an interstate agreement
21 under s. 39.42.

22 ~~2.~~ **4.** Except as provided in subds. 1g. and 1m., an accredited institution of
23 higher education located in this state, as defined in 20 USC 1002.

24 ~~3.~~ **5.** Any technical college established under ch. 38.

1 (e) (d) “Tuition grant” means any tuition cost reimbursement payment made
2 by the department under sub. (3).

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

5 (a) An officer.

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

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

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

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

17 ~~(2m)~~ **(3)** INFORMATION REGARDING ATTENDANCE. The department shall
18 promulgate by rule the number of days after commencement of a course that a guard
19 member shall provide the department with the following information regarding his
20 or her intent to ~~seek reimbursement for a course~~ apply for a tuition grant under this
21 section:

22 (a) The guard member’s name.

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

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

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

3 ~~(3)~~ **(4)** TUITION GRANTS. (a) Any eligible guard member upon satisfactory
4 completion of a full-time or part-time course in a qualifying school ~~is eligible for~~ may
5 apply for a tuition grant equal to 100% of the actual tuition charged by the school or
6 100% of the maximum resident undergraduate tuition charged by the University of
7 Wisconsin-Madison for a comparable number of credits, whichever amount is less.

8 (b) Application for tuition grants shall:

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

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

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

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

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

22 ~~(3m)~~ **(5)** REPAYMENT OF GRANTS. The department shall require a guard member
23 who has received a tuition grant under this section to repay the amount of the tuition
24 grant to the department if the national guard member, ~~on or after September 1, 2001,~~
25 is separated from the national guard for misconduct, as defined in the rules and

1 regulations of the national guard, including being absent without leave for more
2 than 9 unit training assemblies. The department may elect to collect the amount
3 owed under this subsection through the tax intercept program under s. 71.93.

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

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

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

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

15 **SECTION 94.** 21.42 (6) (d) of the statutes is created to read:

16 21.42 (6) (d) No guard member may receive a tuition grant unless he or she is
17 a member in good standing in the national guard at the time of completion of the
18 course.

19 **SECTION 95.** 21.09 of the statutes is renumbered 21.41 and amended to read:

20 **21.41 Training; special schools; pay and allowances.** The governor or
21 adjutant general may order the national guard or state defense force to assemble for
22 training at any military establishment ~~within or without the state specified and~~
23 ~~approved by the department of defense and fix the dates and places thereof, and the~~
24 of that training. The governor or adjutant general may order members of the

1 national guard or state defense force, at their option, to attend ~~such~~ federal or state
2 authorized special schools for military training as may be authorized by the state or
3 federal government. ~~For such training and attendance at special schools, members~~
4 The governor or adjutant general shall determine the amount that the members of
5 the national guard or state defense force shall receive such as pay and allowances as
6 the federal government or the governor may authorize for the training.

History: 1991 a. 316.

7 **SECTION 96.** 21.13 of the statutes is renumbered 21.42 and amended to read:
8 **21.42 Defense of members of guard; payment of judgments. (1) (a)** If
9 any ~~state resident who is a member of a national guard of any state or of the state~~
10 ~~defense force or any state resident who is a member of the national guard of any state~~
11 ~~is prosecuted by any civil or criminal action for any act performed by the member~~
12 ~~while in the performance of military duty and in pursuance of military duty within~~
13 ~~the scope of his or her employment as a member, the action against governor, upon~~
14 ~~recommendation of the adjutant general, shall appoint counsel to defend the member~~
15 ~~the member shall be defended by counsel, which may include the attorney general,~~
16 ~~appointed for that purpose by the governor upon the recommendation of the adjutant~~
17 ~~general. The governor may appoint the attorney general to defend the member. The~~
18 ~~adjutant general shall make the recommendation recommend that counsel be~~
19 appointed if the act performed by the member was in the line of duty.

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

20 (b) The costs and expenses of any ~~such~~ the defense under par. (a) shall be
21 audited by the department of administration and ~~paid out of the state treasury and~~

1 charged to the appropriation under s. 20.455 (1) (b) ~~and if.~~ If the jury or court finds
2 that the member ~~of the national guard~~ against whom the action is brought acted
3 within the scope of his or her employment as a member, the judgment as to damages
4 entered against the member shall also be paid by the state.

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

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

7 **SECTION 97.** 21.12 of the statutes is renumbered 21.43 and amended to read:

8 **21.43 Exemption from civil authority.** During the time the national guard
9 or state military forces are defense force is performing military duty pursuant to
10 proper under orders issued by the governor or ~~by the governor's authority~~ adjutant
11 general, all of its members thereof, while going to, remaining at, or returning from
12 a place of duty shall be are exempt from arrest or service of any process issued by a
13 civilian court. In any civil or criminal prosecution against any member arising out
14 of the member's performing military duty, it shall be a defense that the member was
15 acting in good faith or pursuant to any under a lawful military order. ~~Any such~~ The
16 order shall be deemed ~~prima facie~~ considered lawful unless shown to be unlawful.

History: 1991 a. 316.

17 **SECTION 98.** 21.06 of the statutes is renumbered 21.44 and amended to read:

18 **21.44 Exemptions from certain county duties.** Every member of the
19 national guard or state military forces shall be defense force is exempt from service
20 on any body of county residents summoned by the sheriff to assist in preserving the
21 peace.

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

22 **SECTION 99.** 21.025 (1), (2) (a), (c) and (d), (3), (4), and (6) to (11n), of the statutes
23 are renumbered 21.48 (1), (2) (a), (c), and (d). and (3) to (10), and amended to read:

1 **21.48 State defense force authorized. (1)** AUTHORITY AND NAME. The
2 adjutant general may establish a plan for organizing a military force to be known as
3 the ~~Wisconsin state defense force~~ “state defense force”. The ~~governor, or adjutant~~
4 ~~general~~ if designated by the governor, may organize the ~~Wisconsin~~ state defense force
5 ~~under the plan, which may include an aviation unit~~, if all or part of the national guard
6 is called into the ~~service of the United States~~ U.S. active duty. It ~~The state defense~~
7 ~~force~~ shall be a uniformed force distinct from the national guard, ~~uniformed, and~~
8 composed of ~~officers, commissioned or assigned~~ officers, and of enlisted personnel
9 who volunteer for service. ~~Membership in the Wisconsin state defense force may not~~
10 ~~include any~~ A person who is on active duty in the active military U.S. armed forces,
11 including the active reserve components, may not serve in the state defense force.
12 ~~Persons~~ A person in the retired or inactive reserve may serve in the ~~Wisconsin~~ state
13 defense force.

14 **(2)** ORGANIZATION; RULES AND REGULATIONS. (a) The ~~governor or adjutant~~
15 ~~general, if designated by the governor~~, may prescribe rules and regulations ~~not~~
16 ~~inconsistent~~ consistent with this section governing the enlistment, organization,
17 administration, equipment, uniforms, maintenance, training, and discipline of such
18 forces, ~~except that such~~ the state defense force. ~~The~~ rules and regulations, insofar
19 as to the extent the governor ~~deems practicable and desirable~~ considers necessary,
20 shall conform to existing law, and rules and regulations governing and pertaining to
21 the national guard and the ~~.~~ The rules and regulations promulgated thereunder and
22 shall prohibit the acceptance of a member of the state defense force from accepting
23 any gifts, donations, gratuities, or anything other thing of value by such forces or by
24 any member of such forces from any person by reason of such membership given to
25 the member because he or she is a member of the state defense force.

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

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

10 (e) If the state defense force is organized under sub. (1), the adjutant general
11 shall perform the duties under s. 21.04 (1) for the state defense force.

12 (f) If the state defense force is organized under sub. (1), the adjutant general
13 may perform the duties under s. 21.04 (2) (a), (b), (c), and (d) for the state defense
14 force.

15 (3) REQUISITIONS; ARMORIES; OTHER BUILDINGS. ~~For the use of such forces, the~~ The
16 governor or adjutant general, if designated by the governor, may requisition military
17 property from the federal government ~~such arms and equipment as may be available,~~
18 ~~and the .~~ The governor or adjutant general, if designated by the governor, may make
19 available to the state defense force the facilities of state armories and ~~their~~
20 ~~equipment and such~~ military property and other state premises and property as may
21 ~~be available and may, through the~~ The department of military affairs, may rent or
22 lease buildings or parts of buildings and grounds for armory purposes or continue in
23 possession of such ~~those~~ premises leased by the department of military affairs for the
24 use of the national guard, paying rental ~~therefor out of funds appropriated~~ rent from
25 the appropriation under s. 20.465 (1) (a). All ~~the~~ leases so made shall terminate upon

1 dissolution of the Wisconsin state defense force regardless of the term provided
2 therein in the lease, unless the premises shall be are needed for national guard
3 purposes, ~~in which case the~~ . The lease may be assigned by the department of
4 military affairs to the national guard organization intending that intends to occupy
5 the premises.

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

9 (a) Upon the request of the governor of another state, the governor of this state
10 ~~may order any portion or~~ orders all or part of such forces the state defense force to
11 assist the military or ~~police forces of such~~ a law enforcement agency of the other state
12 who are actually engaged in defending such other state. ~~Such forces may be recalled~~
13 ~~by the.~~ The governor at the governor's discretion may recall the state defense force
14 from the other state at any time.

15 (b) ~~Any organization, unit, or detachment of such forces, upon~~ Upon order of
16 the officer in immediate command thereof, the state defense force may continue in
17 fresh pursuit of insurrectionists, saboteurs, ~~enemies~~ terrorists, or enemy forces
18 beyond the borders of this state into another state until they are apprehended or
19 captured ~~by such organization, unit, or detachment~~ or until the military or police
20 forces a law enforcement agency of the other state or the forces of the United States
21 have had a reasonable opportunity to take up the pursuit or to ~~apprehend or capture~~
22 ~~such those~~ persons, provided such . The pursuit may only take place if the other state
23 ~~shall have given~~ gives authority by law for such that pursuit by such forces of this
24 state. Any such person who shall be apprehended or is captured in such the other
25 state by an organization, unit, or detachment of the forces of this the state defense

SECTION 99

1 force shall without unnecessary delay be surrendered to the military or ~~police forces~~
2 law enforcement agency of the state in which the person is taken or to the United
3 States, ~~but such~~ . The surrender of the person captured shall not constitute a this
4 state's waiver by ~~this state~~ of its the right to extradite or prosecute such the person
5 for any crime committed in this state.

6 ~~(6) (5)~~ FEDERAL SERVICE. ~~Nothing in this section shall be construed as~~
7 ~~authorizing such forces, or any part thereof to be called, ordered, or in any manner~~
8 No unit of the state defense force may be drafted, as such, into the U.S. military
9 ~~service of the United States, but no~~ No person shall by reason of enlistment or
10 ~~commission in any such forces~~ membership in the state defense force be exempted
11 from U.S. military service under any law of the United States.

12 ~~(8) (6)~~ DISQUALIFICATIONS. ~~No person shall be commissioned or enlisted in such~~
13 ~~forces who is not a citizen of the United States or who has been expelled or~~
14 ~~dishonorably discharged from any military or naval organization, of this state, or of~~
15 ~~another state, or of the United States~~ may be a member of the state defense force.

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

16 ~~(9) (7)~~ OATH OF OFFICERS. ~~The oath to be taken by officers commissioned or~~
17 enlistees in such forces the state defense force shall be substantially in the form
18 prescribed for officers of the national guard. The oath shall be filed in the same
19 manner as is done in the national guard.

20 ~~(10) (8)~~ ENLISTEES. ~~No person shall~~ may be enlisted in the state defense force
21 for more than one year, but such the enlistment may be renewed. ~~The oath to be~~
22 ~~taken upon enlistment in such forces shall be substantially in the form prescribed~~
23 ~~for enlistees of the national guard.~~

1 ~~(11m) (9)~~ RETENTION OF ITEMS OF UNIFORM. ~~(a)~~ Officers and enlistees of the
2 “~~Wisconsin State Defense Force~~” state defense force who have served honorably
3 therein for a period of at least one year and are active members of their respective
4 units at the time of its demobilization shall may, upon application to the unit
5 commander, be permitted to retain the items of their uniform prescribed by the
6 governor by rule. ~~(b)~~ If retained, the uniform prescribed under par. (a) may be
7 worn only on occasions of ceremony. ~~“Occasions of ceremony” means occasions~~
8 essentially of a military character at which the uniform is more appropriate than
9 civilian clothing, ~~such as~~ including memorial services, military weddings, military
10 funerals, military balls, military parades, military reunions, and meetings or
11 functions of associations formed for military purposes, the membership of which is
12 composed largely or entirely of honorably discharged veterans of the services
13 members of the U.S. military, national guard, and state defense force.

14 ~~(11n) (10)~~ LABOR DISPUTES. The state defense force shall may not be used to
15 interfere with the orderly process of a labor dispute.

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

16 **SECTION 100.** 21.36 (title) and (2) of the statutes are repealed.

17 **SECTION 101.** 21.42 of the statutes is repealed.

18 **SECTION 102.** 21.50 (3) and (4) of the statutes are repealed.

19 **SECTION 103.** 21.56 (title) of the statutes is repealed.

20 **SECTION 104.** 21.57 (title) of the statutes is repealed.

21 **SECTION 105.** 21.59 of the statutes is repealed.

22 **SECTION 106.** 21.60 of the statutes is repealed.

23 **SECTION 107.** 21.61 (title) of the statutes is repealed.

24 **SECTION 108.** 21.612 of the statutes is repealed.

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

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

***NOTE: Are these changes OK?

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

14 (a) The service member requests an extension or renewal of the license within
15 90 days after the service member is discharged from active duty.

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

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

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

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

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

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

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

16 **SECTION 115.** 21.74 of the statutes is renumbered 21.51 and amended to read:

17 **21.51 Soldiers and sailors civil relief act; federal service. (1)** In this
18 section, unless the context indicates otherwise:

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

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

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

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

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

14 **(3)** Any person while in the military service of the United States or within 6
15 months after terminating service, or the person’s agent or attorney during that
16 period, may petition the circuit court of any county in which the person owns
17 property for relief under this section. Upon filing of the petition the court shall make
18 an order fixing the time of hearing and requiring the giving of notice of the hearing.
19 If after the hearing the court finds that the person is, or within 6 months next
20 preceding the filing of the petition was, in the military service of the United States
21 and owns property within the county on which taxes have fallen or will fall due, and
22 that the person’s ability to pay the taxes has been materially adversely affected by
23 reason of being in military service, the court shall enter an order determining that
24 the person is entitled to relief under this section. The court may suspend proceedings
25 for the collection of taxes on the property for a period not exceeding 6 months after

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (c) A person in military service may suspend or terminate a contract to which
23 this subsection applies without any penalties or additional fees at any time after the
24 service member has been issued orders into active duty by giving written notice to
25 the mobile telephone service provider. The service member shall include a copy of

1 the orders into active duty as part of the notice. The notice may be given by 1st class
2 mail to the address provided in the agreement with the mobile telephone service
3 provider or provided in the mobile telephone service provider's billing statement or
4 by delivering the notice to the mobile telephone service provider's branch office.

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

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

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

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

23 History: 2005 a. 22, 473.

SECTION 116. 21.75 of the statutes is renumbered 21.52 and amended to read:

1 **21.52 Soldiers' and sailors' civil relief act; state service. (1) DEFINITIONS.**

2 In this section:

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

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

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

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

16 (d) “Service member” means a resident of this state who ~~may be~~ is called into
17 active ~~state service~~ duty.

 ***NOTE: Do we want to include nonresidents who are members of the NG or SDF?

 ***NOTE: I stopped changing “active state service” to “active duty” until we hear
 from Terry M.

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

1 (b) If a service member is the principal on a criminal bail bond and his or her
2 active state service causes the surety upon the bond to be prevented from enforcing
3 the attendance of the service member at court, the court shall not enforce the
4 provisions of the bond during the service member's period of active state service and
5 may either during or after the period of active service discharge the surety and
6 exonerate the bail.

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

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

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

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

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

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

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

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

1 resulting from the judgment if any part of the judgment is later set aside. The court
2 may make any other order as may be necessary to protect the interests of the
3 defendant under this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (c) 1. Notwithstanding the times provided in ss. 846.10, 846.101, 846.102, and
21 846.103 for sales of real property, no foreclosure, sale, or seizure of property for
22 nonpayment of any sum due or for any other breach of terms is valid if it occurs
23 during or within 3 months after the service member’s period of active state service,
24 unless the court ordered the foreclosure, sale, or seizure of property before the

1 beginning of the service member's period of active state service and approves the
2 foreclosure, sale, or seizure after it occurs.

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

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

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

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

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

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

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

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

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

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

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

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

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

24 **(15) STORAGE LIENS.** (a) Notwithstanding ss. 704.05 (5) and 704.90, no person
25 may enforce a lien for storage of any household goods, furniture, or personal effects

1 of a service member during the period in which the service member is in military
2 service and for 90 days after the member's completion of military service, except as
3 permitted by a court order under par. (b).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 2. In the case of any other obligation or liability, a stay of the enforcement of
24 that obligation or liability during the service member's period of active state service
25 and, from the date of the end of the period of active state service or from the date of

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

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

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

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

24 **(22) PROFESSIONAL LIABILITY PROTECTION.** (a) 1. If a service member who is
25 called into active state service has coverage under a professional liability insurance

1 policy that does not cover claims filed with respect to the service member during the
2 period of active state service unless the premiums are paid for the coverage for that
3 period, the insurer that provides the coverage shall suspend the service member's
4 coverage under the policy upon receipt of a written request from the service member
5 to do so. The insurer may not require that premiums be paid for the suspended
6 coverage. The insurer shall refund any premium amount already paid for coverage
7 of the service member for the period after the coverage is suspended or shall, at the
8 option of the service member, apply such amount to payment of any premium that
9 becomes due upon reinstatement of the coverage.

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

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

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

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

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

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

- 23 a. The action or proceeding was commenced during the period of suspension.
24 b. The action or proceeding is based on an act or omission that occurred before
25 the date on which the period of suspension began.

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

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

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

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

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

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

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

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

****NOTE: We use "active state service" throughout this section but "active state
duty" in most of the other sections of this chapter. Are they the same? If so, we should

use the same term. If not, what is the difference and we have to define them so people know they are different. Would “active duty” work better?

1 **SECTION 117.** 21.78 (1) to (4) of the statutes is renumbered 21.53 (1) to (4) and
2 amended to read:

3 **21.53 Employees or officers in military service. (1)** ~~The governing body~~
4 ~~of any county, town, city, village, school district, or technical college district~~ A local
5 governmental unit, as defined in s. 66.0135 (1) (c), may grant a leave of absence to
6 any employee or officer who is inducted or who enlists in the U.S. armed forces for
7 a period of military service of not more than 4 years unless the employee is
8 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 ~~governing body of any county, town, city, village, school district, or technical college~~
13 ~~district~~ local governmental unit, that governmental unit may pay the employee or
14 officer the difference between the salary or compensation paid by the U.S. armed
15 forces and the salary or compensation that the employee or officer was paid by the
16 ~~governing body of any county, town, city, village, school district, or technical college~~
17 ~~district~~ local governmental unit at the time that he or she enlisted in or was inducted
18 into the U.S. armed forces.

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

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

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

History: 2005 a. 22, 253.

21 **SECTION 118.** 21.79 of the statutes is renumbered 21.54 and amended to read:

22 **21.54 Reemployment after completion of military service. (1)** (a) Any
23 person who has enlisted or enlists in or who has been or is inducted or ordered into
24 active service in the U.S. armed forces pursuant to 50 App. USC 301, 401, and 451,

1 or P.L. 87-117, and any person whose services are requested by the federal
2 government for national defense work as a civilian during a period officially
3 proclaimed to be a national emergency or a limited national emergency, who, to
4 perform the training or service, has left or leaves a position, other than a temporary
5 position, in the employ of any political subdivision of the state or in the employ of any
6 private or other employer, shall be restored to that position or to a position of like
7 seniority, status, pay, and salary advancement as though service toward seniority,
8 status, pay, or salary advancement had not been interrupted by the absence, if all of
9 the following conditions are met:

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

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

14 3. The person makes application for reemployment and resumes work within
15 90 days after completion of the training or service, military or civilian, or was so
16 discharged from the U.S. armed forces, or within 6 months after release from
17 hospitalization for service-connected injury or disease.

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

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

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

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

5 (2) The service of any person who is or was restored to a position in accordance
6 with sub. (1) shall be considered not to be interrupted by the absence, except for the
7 receipt of pay or other compensation for the period of the absence and he or she shall
8 be entitled to participate in insurance, pensions, retirement plans, or other benefits
9 offered by the employer under established rules and practices relating to employees
10 on furlough or leave of absence in effect with the employer at the time the person
11 entered or was enlisted, inducted, or ordered into the forces and service. The person
12 whose position was restored may not be discharged from the position without cause
13 within one year after restoration and the discharge is subject to all federal or state
14 laws affecting any private employment and to the provisions of contracts that may
15 exist between employer and employee. Each county, town, city, village political
16 subdivision shall contribute or pay all contributions of the employer to the applicable
17 and existent pension, annuity, or retirement system as though the service of the
18 employee had not been interrupted by military service.

19 (3) If an employer fails or refuses to comply with subs. (1) and (2), a person
20 entitled to the benefits under subs. (1) and (2) may petition the circuit court to require
21 the employer to comply with those subsections. Upon the filing of the petition and
22 on reasonable notice to the employer, the court may require the employer to comply
23 with those subsections and to compensate the person for any loss of wages or benefits
24 suffered by reason of the employer's action. The court shall order a speedy hearing
25 and shall advance the case on the calendar. No fees or court costs may be taxed

1 against a person petitioning the court under this subsection. The action commenced
2 under this subsection against a private employer, and the trial or hearing of the
3 action, shall be in any county in which the employment took place or in which the
4 private employer maintains a place of business, and in all other cases shall be as
5 provided in s. 801.50.

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

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

13 (6) The restoration of classified employees of the state shall be governed by s.
14 230.32. The restoration of unclassified state employees shall be governed by this
15 section.

16 History: 2005 a. 22.

SECTION 119. 21.80 of the statutes is renumbered 21.55 and amended to read:

17 **21.55 Reemployment rights after national guard, state defense force,**
18 **or public health emergency service. (1) DEFINITIONS.** In this section:

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

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

23 2. Active service with the state laboratory of hygiene under s. 36.25 (11) (em)
24 for the purpose of assisting the department of health and family services under s.

1 250.042 during a state of emergency relating to public health declared by the
2 governor under s. 166.03 (1) (b) 1.

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

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

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

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

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

18 (f) “Service in the uniformed services” has the meaning given in 38 USC 4303
19 (13).

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

23 1. The nature and cost of the action.

24 2. The overall financial resources of the facility involved in providing the action,
25 the number of persons employed at the facility, the effect of providing the action on

1 the resources and finances of the facility, and any other impact of the action on the
2 operation of the facility.

3 3. The overall financial resources of the employer, the number of persons
4 employed by the employer, and the number, type, and location of the employer's
5 facilities.

6 4. The type of operation of the employer, including the composition, structure,
7 and functions of the employer's workforce, the geographic separateness from the
8 employer of the facility involved in providing the action, and the administrative and
9 financial relationship of the facility to the employer.

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

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

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

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

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

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

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

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

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

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

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

24 4. Any period of active service that was performed by a person who was ordered
25 to, or retained in, active service, other than for training, because of a state emergency

1 declared by the governor, because of a war or national emergency declared by the
2 president of the United States or Congress, because of insurrection, rebellion, riot,
3 invasion, or resistance to the execution of the laws of this state or of the United
4 States, or in support of an operational mission, a critical mission, or any other
5 requirement of the uniformed services.

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

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

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

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

16 (e) *Return procedures.* 1. Subject to subds. 4. and 5., if a person who has been
17 absent from a position of employment because of active service that lasted for less
18 than 31 days, who has been absent from a position of employment for any period of
19 time for the purpose of an examination to determine the person's fitness to perform
20 active service, or who has been absent from a position of employment because the
21 person was hospitalized for or was convalescing from an illness or injury that was
22 incurred in or aggravated during the performance of that active service wishes to
23 receive the reemployment rights and benefits specified in this section, the person
24 must notify the person's employer of the person's intent to return to the position of
25 employment by reporting to the employer by no later than the beginning of the first

1 full regularly-scheduled work period on the first full calendar day following the
2 completion of the active service, examination, or period of hospitalization or
3 convalescence, a period of time that allows for the safe transportation of the person
4 from the place of active service, examination, hospitalization, or convalescence to the
5 person's residence, and a rest period of 8 hours following that transportation period
6 or, if through no fault of the person's own reporting to the employer within that time
7 is impossible or unreasonable, by reporting to the employer as soon as possible after
8 that 8-hour rest period.

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

22 3. Subject to subds. 4. and 5., if a person who has been absent from a position
23 of employment because of active service that lasted for more than 180 days or who
24 has been absent from a position of employment because the person was hospitalized
25 for or was convalescing from an illness or injury that was incurred in or aggravated

1 during the performance of that active service wishes to receive the reemployment
2 rights and benefits specified in this section, the person must notify the person's
3 employer of the person's intent to return to the position of employment by submitting
4 to the employer an application for reemployment by no later than 90 days after the
5 completion of the active service, hospitalization, or convalescence or, if through no
6 fault of the person's own submitting the application within that time is impossible
7 or unreasonable, by submitting to the employer an application for reemployment by
8 no later than the first full calendar day on which submission of the application
9 becomes possible.

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

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

23 (f) *Documentation.* 1. A person who submits an application for reemployment
24 under par. (e) 2. or 3. must, on the request of the person's employer, provide to the
25 employer documentation to establish that the application was submitted within the

1 time limits specified in par. (e) 2. or 3., that the person's cumulative length of all
2 absences from employment with the employer because of active service or service in
3 the uniformed services does not, except as permitted under par. (c), exceed 5 years,
4 and, in the case of active service in the national guard or the state defense force, that
5 the person's service was not terminated under other than honorable conditions.

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

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

16 (g) *Veterans preferences.* The right of a person to reemployment under this
17 subsection does not entitle the person to retention, preference, or displacement
18 rights over any person who has a superior claim under s. 45.03 (4), 62.13 (4) (d), 63.08
19 (1) (f), 63.37, 63.39 (2m), 66.0509 (1), 230.15 (2m), 230.16 (7) or (7m), 230.21 (1m),
20 230.25, or 230.275.

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

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

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

23 3. Subject to par. (b), in the case of a person who has a disability that was
24 incurred in or aggravated during a period of active service and who, after reasonable
25 efforts by the employer to accommodate the disability, is not qualified due to the

1 disability to perform the duties of the position of employment in which the person
2 would have been employed if the continuous employment of the person with the
3 employer had not been interrupted by the active service, the employer shall reemploy
4 the person promptly on completion of that period of active service in any other
5 position that is equivalent to that position in seniority, status, and pay, the duties of
6 which the person is qualified to perform or would become qualified to perform with
7 reasonable efforts by the employer, or, if there is no other position of employment
8 available that is equivalent to that position in seniority, status, and pay, in a position
9 that is the nearest approximation to that equivalent position in terms of seniority,
10 status, and pay, consistent with the person's circumstances.

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

1 which the person was employed on the date on which the person's period of active
2 service began, with full seniority.

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

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

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

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

1 day on which the active service began or that is established while the person is
2 performing the active service.

3 2. If an employer shows that a person who is absent from a position of
4 employment because of active service has knowingly provided written notice of the
5 person's intent not to return to a position of employment with the employer after that
6 active service and, in doing so, was aware of the specific rights and benefits under
7 subd. 1. that the person would lose while absent from the position of employment,
8 the person is not entitled to the rights and benefits specified in subd. 1. while absent
9 from employment.

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

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

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

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

1 discharge the person within one year after the date of reemployment except for
2 cause.

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

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

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

13 (b) *Payment of premiums.* A person who elects to continue coverage under par.
14 (a) and who is absent from a position of employment for 30 days or less may not be
15 required to pay more than the employee share, if any, of the cost of the coverage. A
16 person who elects to continue coverage under par. (a) and who is absent from a
17 position of employment for more than 30 days may be required to pay up to 102% of
18 the full premium for that coverage for the period of continued coverage that exceeds
19 30 days.

20 (c) *Reinstatement on reemployment.* If a person's coverage under a health
21 benefit plan in connection with his or her employment was terminated because of the
22 person's active service and if after returning from that active service the person is
23 reemployed under sub. (3), coverage under the health benefit plan shall be reinstated
24 for the person and the person's dependents immediately upon reemployment. With
25 respect to the reinstated coverage, no exclusion or waiting period may be imposed

1 that would not have been imposed had the coverage not been terminated because of
2 the active service.

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

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

24 2. Subdivision 1. does not preclude a person who has chosen not to file a
25 complaint with the adjutant general under par. (a), whose complaint the adjutant

1 general has refused to endeavor to resolve under par. (a), or who has chosen not to
2 request the adjutant general to refer his or her complaint to counsel under subd. 1.
3 from filing a complaint for appropriate relief with the department of workforce
4 development.

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

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

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

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

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

23 3. Pay the person, as liquidated damages, an amount that is equal to the
24 amount ordered under subd. 2. if the department of workforce development finds

1 that the failure or refusal to provide reemployment rights or benefits under this
2 section or the discharge or other discrimination was willful.

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

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

History: 2001 a. 26, 109; 2003 a. 33, 69; 2005 a. 22, 253.

7 **SECTION 120.** 21.78 (5) of the statutes is repealed.

8 **SECTION 121.** Subchapter VI of chapter 21 [precedes 21.70] of the statutes is
9 created to read:

10 **CHAPTER 21**

11 **SUBCHAPTER VI**

12 **WISCONSIN CODE OF MILITARY JUSTICE**

13 **SECTION 122.** 21.37 of the statutes is renumbered 21.70 and amended to read:

14 **21.70 The Wisconsin code of military justice.** The Wisconsin code of
15 military justice as created by chapter 20, laws of 1969, ~~shall govern~~ governs the
16 conduct of all members of the national guard and ~~any other military force organized~~
17 ~~under the laws of this~~ the state defense force. The revisor of statutes ~~shall~~ may not
18 print the Wisconsin code of military justice in the statutes.

19 **(END)**