

## CHAPTER 192

## NATIONAL GUARD

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## ORGANIZATION

## 192.01 MINNESOTA NATIONAL GUARD.

The Minnesota national guard consists of the regularly enlisted militia within the ages prescribed by federal law and regulations, organized, armed, and equipped as hereinafter provided, and of commissioned officers and warrant officers within the ages and having the qualifications prescribed by federal law and regulations. "National guard" applies only to militia organized as provided for in the military code and authorized by federal law and regulations relating to the national guard. The number of officers and enlisted members of the national guard shall be fixed from time to time and organized so as to meet the requirements of the federal laws.

**History:** (2409) 1921 c 506 s 15; 1943 c 108 s 10; 1947 c 125 s 3; 1986 c 444

## 192.02 INACTIVE NATIONAL GUARD.

The inactive national guard shall be organized and maintained under such rules and regulations as may be prescribed in accordance with the federal law.

**History:** (2412) 1921 c 506 s 18; 1939 c 175 s 4

**192.03 ORGANIZATION.**

The organization of the national guard, including the composition of all units thereof, shall be such as is or may hereafter be prescribed for this state by federal law.

**History:** (2410) 1921 c 506 s 16

**192.04 LOCATION OF UNITS.**

The location of units, including headquarters shall, when not otherwise prescribed by federal law, be fixed by the governor on the recommendation of the adjutant general.

**History:** (2411) 1921 c 506 s 17; 1927 c 339 s 3

**192.05 STATUS OF INDIVIDUALS AND UNITS OF NATIONAL GUARD IN NATIONAL EMERGENCY AND AFTERWARDS.**

When Congress shall have declared a national emergency or shall have authorized the use of armed land forces of the United States for any purpose requiring the use of troops in excess of those of the regular army, and the president has ordered into the active military service of the United States, to serve therein for the period of the war or emergency, any or all units and members of the national guard of this state, all forces so ordered into the active military service of the United States shall from the date thereof stand relieved from duty in the national guard of this state so long as they shall remain in the active military service of the United States, when so provided by the federal law. Upon being relieved from such duty in the military service of the United States, all such individuals and units shall revert to their national guard status.

**History:** (2418) 1921 c 506 s 24; 1939 c 175 s 7

**192.06 OFFICERS AND ENLISTED PERSONS OF STATE STAFF AND DETACHMENT; NUMBER AND GRADES.**

The number and grades of officers and enlisted persons in the state staff and detachment shall be as prescribed by federal law, but in case of war, invasion, insurrection, civil disturbance or imminent danger of any of the foregoing, the governor may temporarily increase the force to meet the emergency, and retired officers who are physically qualified may be assigned to emergency duty. All officers appointed to the state staff and detachment shall have had previous military service and shall be selected and appointed by the adjutant general and commissioned by the governor. The enlisted persons shall be recruited and administered by the detachment commander.

**History:** (2413) 1921 c 506 s 19; 1939 c 175 s 5; 1943 c 108 s 11; 1963 c 658 s 5; 1978 c 478 s 1

**192.07** [Repealed, 1963 c 658 s 20]

**192.08 QUALIFICATIONS OF OFFICERS.**

Officers of the national guard shall not be commissioned as such unless they shall have been selected from the classes of persons having the qualifications prescribed by federal law and shall have taken and subscribed to the oath of office prescribed by Congress.

**History:** (2416) 1921 c 506 s 22

**192.09** [Repealed, 1978 c 478 s 9]

**192.10** [Repealed, 1978 c 478 s 9]

**192.105 OFFICERS; SELECTION, ASSIGNMENT, PROMOTION.**

Officers for the Minnesota national guard shall be selected, commissioned, or appointed by the governor upon the recommendation of the adjutant general provided

the persons have met all qualifications prescribed by federal law. Commissions shall designate the arm, branch, or staff corps to which an officer is appointed.

**History:** 1978 c 478 s 2

#### **192.11 OFFICERS TO HAVE POWERS AND DUTIES OF UNITED STATES OFFICERS.**

In addition to the powers and duties prescribed in the Military Code, all officers of the Minnesota national guard shall have the same powers, including the power to administer oaths, and perform the same duties as officers of similar rank and position in the armed forces of the United States that are authorized by federal law.

**History:** (2444) 1921 c 506 s 50; 1978 c 478 s 3

#### **192.12 IN COMPUTING COMMISSIONED SERVICE, THAT IN THE UNITED STATES ARMED FORCES SHALL BE CONSIDERED.**

Service by any person in the armed forces of the United States in the time of war, insurrection, or rebellion, shall be considered as continuous service in the national guard for any and all purposes regarding privileges and exemptions provided by law for members of the national guard by enlistment or commission. The continuous service for an officer shall include only the time the person was commissioned as an officer.

**History:** (2432) 1921 c 506 s 38; 1978 c 478 s 4; 1986 c 444

#### **192.13 SUPPLIES, HOW ISSUED; BOND.**

Arms, accoutrements, ammunition and stores shall be issued to the proper officers of each organization, upon requisition as prescribed by federal law. The governor may require of the accountable officers, such bonds as the governor deems necessary, not to exceed \$5,000, for securing the care and safety of property so issued and shall allow them sufficient money to insure such property against fire when so required by the federal government. The governor may also allow them sufficient money to establish and maintain regimental depots, approved by the governor and to pay for the transportation, handling and care of such property which allowance shall be paid out of the money appropriated for the purchase of supplies for the guard. The adjutant general, with the approval of the governor, may obtain and pay for, out of the annual military appropriation, an adequate indemnity bond covering officers of the national guard responsible for money and military property.

**History:** (2437) 1921 c 506 s 43; 1963 c 658 s 6; 1986 c 444

#### **192.14 OFFICERS MAY RESIGN.**

Commissioned officers may resign in such manner and under such circumstances as may be prescribed by federal regulations.

**History:** (2420) 1921 c 506 s 26

#### **192.15 COMMISSIONS MAY BE VACATED; FEDERAL REGULATIONS.**

At any time the moral character, capacity, and general fitness for the service of any national guard officer may be determined by an efficiency board as provided by federal law. Commissions of officers of the national guard may be vacated, upon resignation, absence without leave for three months, upon the recommendation of an efficiency board, or pursuant to sentence of a court martial.

**History:** (2419) 1921 c 506 s 25

#### **192.16 SURPLUS OFFICERS.**

Officers of the guard rendered surplus by the disbandment of their organizations shall be disposed of as provided by federal law.

**History:** (2419) 1921 c 506 s 25

**192.17 OFFICERS MAY BE PLACED IN INACTIVE NATIONAL GUARD.**

Officers may, upon their own application, be placed in the inactive national guard as may be authorized by federal law.

**History:** (2419) 1921 c 506 s 25

**192.18 RETIREMENT.**

Subdivision 1. **Officers and warrant officers.** Whenever the federal recognition of an officer or warrant officer of the national guard is withdrawn, that officer's commission in the Minnesota national guard shall be terminated, except that any officer or warrant officer who shall have served in the Minnesota national guard for a period of not less than 20 years and any officer or warrant officer who becomes disabled in line of duty while in the service of the state or of the United States and is thereby made incapable of performing military duties may, upon application therefor, be placed in a retired status and that officer's name shall be placed on a roll in the office of the adjutant general to be known as the "roll of retired officers."

Subd. 2. **Enlisted members.** Any enlisted member who completes not less than 20 years of service in the national guard and is honorably discharged and any enlisted member of the Minnesota national guard who becomes disabled in the line of duty while in the service of the state or of the United States and is thereby made incapable of performing military duties may, upon application therefor, be placed in retired status and that enlisted member's name shall be placed on a roll in the office of the adjutant general to be known as the "roll of retired enlisted members."

Subd. 3. **Wearing uniform.** Officers, warrant officers, or enlisted personnel in retired status shall be entitled to wear, when not in conflict with federal law, on state and other occasions of ceremony, the uniform of the rank last held by those personnel.

**History:** (2423) 1921 c 506 s 29; 1943 c 108 s 15; 1945 c 13 s 1; 1947 c 125 s 5; 1963 c 658 s 7; 1984 c 442 s 6; 1986 c 444

**192.19 RETIRED MEMBERS MAY BE ORDERED TO ACTIVE DUTY.**

The commander-in-chief or the adjutant general may assign officers, warrant officers, and enlisted personnel on the retired list, with their consent, to temporary active service in recruiting, upon courts-martial, courts of inquiry and boards, to staff duty not involving service with troops, or in charge of a military reservation left temporarily without officers. Such personnel while so assigned shall receive the full pay and allowances of their grades at time of retirement.

**History:** (2418) 1921 c 506 s 24; 1939 c 175 s 7; 1997 c 24 s 7; 1999 c 46 s 2

**192.20 BREVET RANK.**

Officers, warrant officers, and enlisted persons of the national guard who have, after ten years active service, resigned or retired for physical disability or otherwise, may in the discretion of the commander-in-chief, on the recommendation of the adjutant general, be commissioned by brevet, in the next higher grade than that held by them at the time of their resignation or retirement. Brevet rank shall be considered strictly honorary and shall confer no privilege of precedence or command, nor pay any emoluments. Brevet officers, warrant officers, and enlisted persons may wear the uniform of their brevet grade on occasions of ceremony.

**History:** (2418) 1921 c 506 s 24; 1939 c 175 s 7; 1963 c 658 s 8; 1997 c 24 s 8

**192.205 ENLISTMENTS.**

Subdivision 1. **Period of enlistments.** Except as otherwise provided by federal law or regulation for the national guard, original enlistments in the military forces shall be for a period of three years and subsequent enlistments for periods of one or three years. The governor may by order fix shorter period of enlistment or reenlistment for any of the military forces so far as not inconsistent with federal law. In the event of an emergency wherein the governor has called out any of the military forces, the governor

may by order extend for not exceeding the duration of the emergency and 60 days thereafter the period of any enlistment in the forces called out which would otherwise expire.

**Subd. 2. Form of enlistment contract.** Except as otherwise provided by federal law or regulation for the national guard, every person enlisting in the military forces shall sign an enlistment contract in the form prescribed by the adjutant general, and shall subscribe to the following oath or affirmation: "I hereby acknowledge to have voluntarily enlisted this ..... day of ..... .., as a soldier in the ..... for the period of three (or one) year .... under the conditions prescribed by law, unless sooner discharged by proper authority. And I do solemnly swear that I will bear true faith and allegiance to the United States of America and the state of Minnesota; that I will serve them honestly and faithfully against all their enemies whomsoever; and that I will obey the orders of the President of the United States and of the governor of the state of Minnesota and the officers appointed over me, according to law and the Uniform Code of Military Justice"; provided, that the words "the President of the United States and of" shall be omitted in the case of persons enlisting in forces not subject to federal service.

**Subd. 3. Organization not to be enlisted as unit.** No civil association, society, club, post, order, fraternity, fraternal organization, union, league, or other organized body shall be enlisted in the military forces as a unit.

**Subd. 4. Administration of oath.** Any officer of the Minnesota national guard or any commissioned officer of a regular or reserve component of the armed forces of the United States may administer the oath or affirmation of enlistment to a person enlisting in the Minnesota national guard.

**History:** 1943 c 108 s 13; 1963 c 658 s 9,10; 1982 c 481 s 1; 1986 c 444; 1998 c 254 art 1 s 107

#### **192.21 DISCHARGES FOR ENLISTED MEMBERS.**

An enlisted member discharged from service in the national guard shall receive a discharge in writing in such form and with such classification as is or shall be prescribed by federal law and in time of peace discharges may be given prior to the expiration of terms of enlistment under such regulations as the federal authorities may prescribe.

**History:** (2421) 1921 c 506 s 27; 1986 c 444

#### **192.22 DISHONORABLE DISCHARGES.**

A dishonorable discharge from service in the national guard shall operate as a complete expulsion from the guard, a forfeiture of all exemptions and privileges acquired through membership therein and disqualification for any military office under the state. The names of all persons dishonorably discharged shall be published in orders by the adjutant general.

**History:** (2422) 1921 c 506 s 28; 1943 c 108 s 14; 1963 c 658 s 11

#### **192.23 SERVICE MEDALS.**

The commander-in-chief may, by general order, provide a suitable mark of distinction for all officers and enlisted members who have served in the military forces of the state for an aggregate period of three, five, ten, 15, and 20 years, respectively, and for like service thereafter; and medals to be awarded for valor, for distinguished service, and for good conduct. The commander-in-chief may authorize and prescribe regulations for the issuance of suitable marks of distinction to be awarded to officers and enlisted members who have served in the military forces of the state during periods of war or other declared emergencies, provided that these shall not be awarded for service for which service medals or bars are authorized by federal authority.

**History:** (2423) 1921 c 506 s 29; 1943 c 108 s 15; 1947 c 125 s 6; 1986 c 444; 1997 c 24 s 9

#### **192.24 [Repealed, 1977 c 286 s 21]**

**192.25 EXEMPTION FROM PROCESS.**

No member of the guard shall be arrested, or served with any summons, order, warrant or other civil process after having been ordered to any duty or while going to, attending or returning from any place to which the member is required to go for military duty; but nothing herein shall prevent an arrest by order of a military officer or for a felony or breach of the peace committed while not in the actual performance of assigned duties. The articles of equipment personally owned by such members shall be exempt from seizure or sale for debt.

**History:** (2424) 1921 c.506 s 30; 1986 c 444

**192.26 STATE AND MUNICIPAL OFFICERS AND EMPLOYEES NOT TO LOSE PAY WHILE ON MILITARY DUTY.**

Subdivision 1. Subject to the conditions hereinafter prescribed, any officer or employee of the state or of any political subdivision, municipal corporation, or other public agency of the state who shall be a member of the national guard, or any other component of the militia of the state now or hereafter organized or constituted under state or federal law, or who shall be a member of the officers' reserve corps, the enlisted reserve corps, the naval reserve, the marine corps reserve, or any other reserve component of the military or naval forces of the United States now or hereafter organized or constituted under federal law, shall be entitled to leave of absence from the public office or employment without loss of pay, seniority status, efficiency rating, vacation, sick leave, or other benefits for all the time when engaged with such organization or component in training or active service ordered or authorized by proper authority pursuant to law, whether for state or federal purposes, but not exceeding a total of 15 days in any calendar year. Such leave shall be allowed only in case the required military or naval service is satisfactorily performed, which shall be presumed unless the contrary is established. Such leave shall not be allowed unless the officer or employee (1) returns to the public position immediately on being relieved from such military or naval service and not later than the expiration of the time herein limited for such leave, or (2) is prevented from so returning by physical or mental disability or other cause not due to the officer's or employee's own fault, or (3) is required by proper authority to continue in such military or naval service beyond the time herein limited for such leave.

Subd. 2. [Repealed, 1963 c 658 s 20]

**History:** (2425) 1921 c.506 s 31; 1939 c 175 s 8; 1941 c 120 s 1; 1977 c 11 s 4; 1986 c 444

**192.261 LEAVE OF ABSENCE.**

Subdivision 1. **Leave of absence without pay.** Subject to the conditions hereinafter prescribed, any officer or employee of the state or of any political subdivision, municipal corporation, or other public agency of the state who engages in active service in time of war or other emergency declared by proper authority in any of the military or naval forces of the state or of the United States for which leave is not otherwise allowed by law shall be entitled to leave of absence from the officer's or employee's public office or employment without pay during such service, with right of reinstatement as hereinafter provided. Such leave of absence without pay, whether heretofore or hereafter, shall not extend beyond four years plus such additional time in each case as such an officer or employee may be required to serve pursuant to law. This shall not be construed to preclude the allowance of leave with pay for such service to any person entitled thereto under section 192.26. Nothing in this section contained shall affect any of the provisions or application of section 352.27 nor of section 192.26 to 192.264, or any laws amendatory thereof, insofar as such sections pertain to the state employees retirement association or its members.

Subd. 2. **Reinstatement.** Except as otherwise hereinafter provided, upon the completion of such service such officer or employee shall be reinstated in the public position, which was held at the time of entry into such service, or a public position of

like seniority, status, and pay if such is available at the same salary which the officer or employee would have received if the leave had not been taken, upon the following conditions: (1) that the position has not been abolished or that the term thereof, if limited, has not expired; (2) that the officer or employee is not physically or mentally disabled from performing the duties of such position; (3) that the officer or employee makes written application for reinstatement to the appointing authority within 90 days after termination of such service, or 90 days after discharge from hospitalization or medical treatment which immediately follows the termination of, and results from, such service; provided such application shall be made within one year and 90 days after termination of such service notwithstanding such hospitalization or medical treatment; (4) that the officer or employee submits an honorable discharge or other form of release by proper authority indicating that the officer's or employee's military or naval service was satisfactory. Upon such reinstatement the officer or employee shall have the same rights with respect to accrued and future seniority status, efficiency rating, vacation, sick leave, and other benefits as if that officer or employee had been actually employed during the time of such leave. No officer or employee so reinstated shall be removed or discharged within one year thereafter except for cause, after notice and hearing; but this shall not operate to extend a term of service limited by law.

**Subd. 3. Shall file certificate.** Any public officer elected or appointed for a definite term who, before the expiration of such term, returns from military or naval service under leave of absence without pay under chapters 190 to 193, in lieu of making written application for reinstatement as hereinbefore provided, shall file in the same office where the public officer's oath is filed within 45 days after termination of such military or naval service a verified certificate that the public officer has complied with the conditions for reinstatement hereinbefore prescribed, and that public officer shall thereupon be deemed to have resumed that office, with all the rights and privileges granted by chapters 190 to 193; provided, that any false statement in such certificate shall be ground for removal.

**Subd. 4. Persons engaged in active service not disqualified for being candidate for public office.** No person who is engaged in active service in any of the military or naval forces of the state or of the United States within or without the state shall thereby be disqualified from being a candidate for or from being elected or appointed to any public office within the state if that person is otherwise eligible therefor. A person who is elected or appointed to any such office who at the commencement of the term thereof is engaged in any such active military or naval service shall not thereby be disqualified from assuming and holding such office if otherwise eligible therefor and if that person's military or naval service is not constitutionally or legally incompatible therewith. Such person, if prevented by military or naval duties from taking office in person, may file an oath of office, and a bond, if required, by mail or other means of transmittal, and shall thereupon be deemed to have assumed office, subject to all the provisions of sections 192.26 to 192.264, so far as applicable.

**Subd. 5. Active duty for training, inactive duty training; reemployment rights:** (a) Any public officer or employee who is a member of the military forces who is ordered to an initial period of active duty for training of not less than three consecutive months shall, upon application for reemployment within 31 days after that member's (1) release from that active duty for training after satisfactory service, or (2) discharge from hospitalization incident to that active duty for training, or one year after a scheduled release from that training, whichever is earlier, be entitled to all reemployment rights and benefits provided by this section. Any person restored to a position in accordance with the provisions of this clause shall not be discharged from the position without cause within six months after that restoration.

(b) Any public officer or employee not covered by section 192.26, or by clause (a) shall, upon request, be granted a leave of absence from public employment for the period required to perform active duty for training or inactive duty training in the military forces. Upon release from a period of active duty for training or inactive duty training, or upon discharge from hospitalization incident to that training, the officer or employee shall be permitted to return to the previously held position with the same

seniority, status, rate of pay, and vacation as if the officer or employee had not been absent for those purposes. The officer or employee shall report for work at the beginning of the next regularly scheduled working period after expiration of the last calendar day necessary to travel from the place of training to the place of employment following release from active duty, or within a reasonable time thereafter if delayed return is due to factors beyond the employee's control. Failure to report for work at the next regularly scheduled working period shall make the employee subject to the conduct rules of the employer pertaining to explanations and discipline with respect to absence from scheduled work. If that employee is hospitalized incident to active duty for training or inactive duty training, that employee shall be required to report for work (1) at the beginning of the next regularly scheduled work period after expiration of the time necessary to travel from the place of discharge from hospitalization to the place of employment, (2) within a reasonable time thereafter if delayed return is due to factors beyond the employee's control, or (3) within one year after the release from active duty for training or inactive duty training, whichever is earlier. If an employee covered by this clause is not qualified to perform the position's duties by reason of disability sustained during active duty for training or inactive duty training, but is qualified to perform the duties of any other position in the employ of the employer or a successor in interest, that employee shall be restored by that employer or a successor in interest to another position, the duties of which that employee is qualified to perform and which will provide like seniority, status, and pay, or the nearest approximation thereof consistent with the circumstances in the particular case. For the purpose of this paragraph, the terms "active duty for training" and "inactive duty for training" shall have the meanings subscribed to them by the United States Code Annotated, title 38, part III, chapter 43, sections 2021 to 2026.

(c) Any employee not covered by clause (a) shall be considered as having been on leave of absence during the period required to report for the purpose of being inducted into, entering or determining by a preinduction or other examination the employee's physical fitness to enter the military forces. If rejected, upon completion of the preinduction or other examination, or upon discharge from hospitalization incident to that rejection or examination, the employee shall be permitted to return to the employee's position in accordance with the provisions of clause (b).

Subd. 6. **State emergencies; reemployment rights of nonpublic employees.** A person who engages in active service in the military forces in time of emergency declared by the proper authority of the state who is not an officer or employee of the state or of any political subdivision, municipal corporation, or other public agency of the state is entitled to leave and reinstatement in the same manner and to the same extent as granted to officers and employees of the state or of any political subdivision, municipal corporation, or other public agency of the state by subdivisions 1 to 4. The provisions of this subdivision shall not entitle a person given leave and reinstatement rights by this subdivision to any pay during such service as provided by section 192.26. The provisions of this subdivision do not apply to situations in which the person's reemployment rights are protected by United States Code Annotated, appendix 50, section 459(g) of the Selective Service Act of 1967.

**History:** 1941 c 120 s 2; 1945 c 489 s 1; 1963 c 658 s 12-14; 1971 c 202 s 4,5; 1978 c 478 s 5; 1986 c 444; 1995 c 186 s 47

#### **192.262 OFFICERS AND EMPLOYEES TO PRESERVE PENSION AND RETIREMENT RIGHTS.**

Any public officer or employee receiving leave of absence under sections 192.26 to 192.264 and having rights in any state, municipal, or other public pension, retirement, or relief system shall retain all such rights accrued up to the time of taking such leave, and shall have all rights subsequently accruing under such system as if actually employed during the time of such leave; provided, that so far as any increase in the amount of money benefits accruing with respect to the time of such leave is dependent upon the payment of any contributions or assessments, the right to such increase shall be conditioned upon the payment of such contributions or assessments within such



reasonable time after the termination of such leave and upon such terms as the authorities in charge of such system may prescribe.

**History:** 1941 c 120 s 3; 1986 c 444

#### **192.263 VACANCIES TO BE FILLED TEMPORARILY.**

In any case where a public officer or employee is absent with leave under the provisions of sections 192.26 to 192.264 and where it is necessary in the public interest to provide for the performance of the duties of the position during the absence, the authority having power to fill a vacancy in the position may appoint a substitute, to be known as acting incumbent, who shall qualify as required for the regular incumbent, shall receive the same compensation as fixed by law, or as may be fixed by proper authority, and shall have all the powers and perform all the duties of the position until the return of the regular incumbent or, if the position is for a fixed term, the period of the unexpired term, whichever occurs earlier. This section does not preclude the making of any other provision for the discharge of the duties of the position which may be otherwise authorized by law.

**History:** 1941 c 120 s 4; 1986 c 444; 1991 c 80 s 1

#### **192.264 SUPPLEMENTARY.**

The rights and privileges granted by sections 192.26 to 192.264 shall be supplementary to and not exclusive of any other rights or privileges conferred by law on public officers or employees, but shall not obtain in any case where the military or naval service is constitutionally or legally incompatible with the public office or employment.

**History:** 1941 c 120 s 5

#### **192.265 [Repealed, 1963 c 658 s 20]**

#### **192.27 NOT LIABLE FOR ACTS PERFORMED UNDER ORDERS.**

The commanding officer of any of the military forces engaged in the suppression of an insurrection, the dispersion of a mob or the enforcement of the laws shall exercise discretion as to the propriety of firing upon or otherwise attacking any mob or other unlawful assembly; and, if that officer exercises honest judgment thereon, the officer shall not be liable in either a civil or criminal action for any act done while on such duty. No officer or enlisted member shall be held liable in either a civil or a criminal action, for any act done under lawful orders and in the performance of duty.

**History:** (2426) 1921 c 506 s 32; 1986 c 444

#### **192.28 PROHIBITING THE FIRING OF BLANK CARTRIDGES UPON ANY UNLAWFUL ASSEMBLAGE.**

No officer in charge of personnel, under any pretense or in compliance with any order, shall direct or permit them to fire blank cartridges upon any mob or unlawful assemblage, under penalty of dishonorable dismissal from the service.

**History:** (2426) 1921 c 506 s 32; 1986 c 444

#### **192.29 GOVERNOR TO APPOINT COUNSEL.**

If a suit or proceeding shall be commenced in any court by any person against any officer of the military forces for any act done by such officer in an official capacity in the discharge of any duty under the Military Code, or against any soldier acting under the authority or order of any such officer, or by virtue of any warrant, issued by that officer pursuant to law, it shall be the duty of the governor, upon the recommendation of the attorney general, to appoint counsel to defend such person. The costs and expenses of any such defense shall be paid out of the appropriation for the maintenance of the national guard.

**History:** (2427) 1921 c 506 s 33; 1986 c 444

**192.30 SECURITY FOR COSTS.**

Any person bringing an action or proceeding against a military officer of the state for any act done in the course of official duty, or against any person acting under the order or authority of such officer, shall give security for the costs, disbursements and reasonable attorney's fees incurred by the state or defendant in defending the same, in the same manner and subject to the same rules, so far as applicable, as in the case of a nonresident plaintiff. And if the plaintiff fails to recover, such attorney's fees may be taxed with the costs and disbursements and judgment therefor be entered against the plaintiff and the sureties on the bond.

**History:** (2428) 1921 c 506 s 34; 1985 c 248 s 70; 1986 c 444

**192.31 MILITARY FORCES NOT TO BE RESTRICTED BY TRAFFIC REGULATIONS.**

The military forces of the United States and of the state, while on any authorized duty, shall not be restricted by state or municipal traffic regulations when under military or civil traffic control personnel, and shall have the right-of-way on any street or highway through which they may pass against all except carriers of the United States mail, fire engines, police vehicles, and emergency service vehicles.

**History:** (2452) 1921 c 506 s 58; 1927 c 339 s 10; 1943 c 108 s 22; 1971 c 202 s 6

**192.32 DISCRIMINATION IN PUBLIC ACCOMMODATIONS OR PUBLIC SERVICES.**

It shall be unlawful for any person to discriminate against any member of the military forces of the United States, of this state or of any other state because of membership therein or the wearing of a military uniform with respect to access or admission to, full utilization of or benefit from any public accommodation or public service as said terms are defined in chapter 363. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor.

**History:** (4390) 1911 c 261 s 1; 1978 c 478 s 6

**192.33 ACTION FOR DAMAGES.**

Any person injured as a result of a violation of section 192.32 may bring an action to recover actual damages, costs, and, in addition thereto, exemplary damages.

**History:** (4391, 4392) 1911 c 261 s 2,3; 1978 c 478 s 7; 1986 c 444

**192.34 DISCRIMINATION WITH RESPECT TO EMPLOYMENT.**

It shall be unlawful for any employer to discharge any person from employment because of membership in the military or naval forces of the United States, of this state, or any other state, or to hinder or prevent any person from performing any military service that person may be called upon to perform by proper authority, or to dissuade any person from enlistment in the military service by threat or injury, in case that person shall so enlist, in respect to that person's employment, trade or business. Any person violating any of the provisions of this section shall be deemed guilty of a gross misdemeanor.

**History:** (2429) 1921 c 506 s 35; 1978 c 478 s 8; 1986 c 444

**192.35 INTERFERENCE WITH PERFORMANCE OF MILITARY DUTIES.**

Any person who interrupts, molests, or insults by abusive words or behavior, or obstructs any officer or soldier of the national guard while on duty, either parade, drill meeting for military improvement or other military duty may be immediately put and kept under guard until the duty is concluded, by the officer in command. Such officer may turn the person over to any peace officer of the city or place where such drill parade or meeting is being held and such peace officer shall thereupon deliver such

offender for examination and trial before any court having jurisdiction. Any person violating the provisions of this section shall be guilty of a misdemeanor.

**History:** (2451) 1921 c 506 s 57; 1986 c 444

### **192.351 INTERFERENCE WITH PERFORMANCE OF MILITARY DUTIES WHILE IN ACTIVE SERVICE.**

Any person who intentionally obstructs, hinders, or prevents any officer or soldier of the national guard from performing duties while on active service may be arrested by an officer or soldier present. Such officer or soldier shall turn the person over to any peace officer of the city or place in which such active service is taking place and such peace officer may thereupon deliver such offender for examination and trial before any court having jurisdiction. Any person violating the provisions of this section shall be guilty of a gross misdemeanor.

**History:** 1971 c 202 s 7; 1986 c 444

**192.36** [Repealed, 1997 c 24 s 27]

### **192.37 WRONGFUL DISPOSITION OF PROPERTY.**

Every person, whether a member of the military forces or not, who sells, buys, damages, destroys, disposes of, or retains any military property of the United States or of the state without proper authority shall be guilty of a misdemeanor.

**History:** (2470) 1921 c 506 s 76; 1997 c 24 s 10

### **192.38 ILLNESS, INJURY, OR DEATH OF MEMBER OF MILITARY FORCES; COMPENSATION.**

Subdivision 1. **Temporary emergency relief.** If any officer or enlisted member of the military forces is wounded or otherwise disabled, dies from disease contracted or injuries received, or is killed while in state active service as defined in section 190.05, subdivision 5a, the officer or member, or in the case of death the officer's or member's dependent spouse, child, or parent, may be provided with immediate temporary relief as necessary in cases of severe hardship, in an amount to be determined by the adjutant general and approved by the governor. All payments under this subdivision shall be made from appropriations for the maintenance of the state military forces. The adjutant general shall notify the department of employee relations of any payments made pursuant to this subdivision and the amount of it shall be subtracted from any award made by the department of employee relations.

Subd. 2. **Assistance to claimants.** To the extent information is available, the adjutant general shall provide information to a person seeking a benefit from the state or federal government or instituting a claim before a legislative commission on claims or federal claims commission arising from loss, damage, or destruction of property or for injury or death incurred or sustained by a member of the military forces.

**History:** (2430) 1921 c 506 s 36; 1927 c 339 s 6; 1965 c 140 s 2; 1975 c 271 s 6; 1976 c 331 s 39; 1983 c 193 s 7; 1986 c 444; 1997 c 24 s 11

### **192.381 ADJUTANT GENERAL TO FURNISH AN AMERICAN FLAG.**

Upon the death of any person who has honorably served six or more years or is in active service in the Minnesota national guard and upon request of the person designated to direct disposition of the remains, the adjutant general shall furnish an American flag if a flag is not furnished by the United States government.

**History:** 1981 c 336 s 1; 1989 c 53 s 1

**192.39** [Repealed, 1965 c 140 s 3]

**192.40 GOVERNOR TO APPOINT UNITED STATES PROPERTY AND FISCAL OFFICER.**

The governor, upon the recommendation of the adjutant general and pursuant to federal authority, shall appoint, designate, or detail subject to the approval of the secretary of the army and secretary of the air force, a qualified commissioned officer of the Minnesota national guard to be the United States property and fiscal officer for Minnesota. The officer appointed shall receipt and account for all funds and property belonging to the United States in possession of the national guard of this state and shall make such returns and reports concerning the same as may be required by the chief, national guard bureau, and the appropriate service secretary.

**History:** (2442) 1921 c 506 s 48; 1976 c 2 s 133; 1986 c 444; 1997 c 24 s 12

**192.41 STATE QUARTERMASTER AND PROPERTY OFFICER.**

The state quartermaster shall be the property officer of the state and as such shall have charge of and be accountable for, under the adjutant general, all the state military property and shall make such property returns and reports on the same as the governor may direct. The quartermaster shall be under bond to the state to such amount as the governor may deem necessary.

**History:** (2443) 1921 c 506 s 49; 1927 c 339 s 8; 1963 c 658 s 15; 1986 c 444

**192.42 ARMS AND UNIFORMS.**

The national guard shall be uniformed, armed and equipped as provided by federal law. Such uniforms, arms and equipment shall be procured and issued by the proper officers as the needs of the service may require and shall be accounted for as the regulations may prescribe.

**History:** (2436) 1921 c 506 s 42

**192.43 DISTRIBUTION OF EQUIPMENT.**

Subdivision 1. **Procedure.** The commanding officer of a company receiving clothing or equipment for the use of the command shall distribute the same to the members of the command, taking receipts and requiring the return of each article at such time and place as the commanding officer shall direct.

Subd. 2. **Payment for lost items.** Legal fines or forfeitures and the value of any articles of uniform, arms or equipment, whether state or federal, issued to any officer or enlisted member which is not returned on demand by proper authority and for the loss of or damage to which the officer or member has been held responsible by a report of survey or other proper proceeding, shall be deducted from such officer's or enlisted member's pay in the manner provided for in federal or state orders or regulations. Deduction from federal pay and allowances may only be made in the manner prescribed by federal law or regulation.

**History:** (2438) 1921 c 506 s 44; 1947 c 125 s 9; 1986 c 444

**192.435** [Repealed, 1997 c 24 s 27]

**192.44** [Repealed, 1997 c 24 s 27]

**192.45** [Repealed, 1997 c 24 s 27]

**192.46** [Repealed, 1997 c 24 s 27]

**192.47** [Repealed, 1997 c 24 s 27]

**192.48** [Repealed, 1971 c 202 s 11]

**192.49 PAY AND ALLOWANCES OF OFFICERS AND ORGANIZATIONS.**

Subdivision 1. **Officers.** Every commissioned officer of the military forces shall receive from the state, while engaged in any service ordered by the governor, pay and

allowances at the rate now or hereafter paid or allowed by law to officers of the same grade and length of service in the armed forces of the United States, but not less than \$130 a day.

Subd. 2. **Enlisted persons.** When called into active service by the governor, other than for encampment or maneuvers, including the time necessarily consumed in travel, each enlisted person of the military forces shall be paid by the state the pay and the allowances, when not furnished in kind, provided by law for enlisted persons of similar grade, rating, and length of service in the armed forces of the United States, or \$130 a day, whichever is more.

Subd. 3. **Allowances for military expense.** (a) Allowances for the necessary military expenses of all organizations, units, or detachments of the military forces, including clerk hire, office supplies, postage, and other actual outlay, may be paid by the adjutant general out of the funds appropriated for the maintenance of the military forces. These allowances annually may not exceed:

(1) for the state headquarters and for the division headquarters when located in this state \$2,500 each;

(2) \$3,000 for the commanding general of troops;

(3) for any other organization commanded by a general officer \$2,200;

(4) for any brigade, group, battalion, squadron, or equivalent organization \$500 plus \$100 for each immediately and directly subordinate organization or unit; and

(5) \$600 for incidental expenses of each company, battery, or detachment.

(b) Allowances authorized under this section shall be expended and accounted for as prescribed by the adjutant general.

**History:** (2454) 1921 c 506 s 60; 1939 c 175 s 10; 1943 c 108 s 24; 1947 c 125 s 7; 1963 c 658 s 17,18; 1965 c 114 s 1; 1985 c 248 s 70; 1986 c 444; 1997 c 24 s 13,14; 1999 c 250 art 1 s 82

192.50 [Repealed, 1947 c 125 s 22]

### 192.501 FINANCIAL INCENTIVES FOR NATIONAL GUARD MEMBERS.

Subdivision 1. [Repealed by amendment, 1996 c 390 s 32]

Subd. 1a. **Enlistment bonus program.** (a) The adjutant general may establish within the limitations of this subdivision a program to provide enlistment bonuses to eligible prospects who become members of the Minnesota national guard.

(b) Eligibility for the bonus is limited to a candidate who:

(1) has expertise, qualifications, or potential for military service deemed by the adjutant general as sufficiently important to the readiness of the national guard or a unit of the national guard to warrant the payment of a bonus in an amount to generally encourage the candidate's enlistment in the national guard;

(2) joins the national guard as an enlisted member, as defined in section 190.05, subdivision 6; and

(3) serves satisfactorily during the period of, and completes, the person's initial entry training, if applicable.

The adjutant general may, within the limitations of this paragraph and other applicable laws, determine additional eligibility criteria for the bonus, and must specify all of the criteria in regulations and publish changes as necessary.

(c) The enlistment bonus payments must be made on a schedule that is determined and published in department regulations by the adjutant general.

(d) If a member fails to complete a term of enlistment for which a bonus was paid, the adjutant general may seek to recoup a prorated amount of the bonus as determined by the adjutant general.

Subd. 1b. **Reenlistment bonus program.** (a) The adjutant general may establish a program to provide a reenlistment bonus to eligible members of the Minnesota

national guard who extend their enlistment in the national guard within the limitations of this subdivision.

(b) Eligibility for the bonus is limited to an enlisted member of the national guard, as defined in section 190.05, subdivision 6, who:

- (1) is serving satisfactorily as determined by the adjutant general;
- (2) has 12 or fewer years of service creditable for retirement; and
- (3) has military training and expertise deemed by the adjutant general as sufficiently important to the readiness of the national guard or a unit of the national guard to warrant the payment of a bonus in an amount to generally encourage the member's reenlistment in the national guard.

The adjutant general may, within the limitations of this paragraph and other applicable laws, determine additional eligibility criteria for the bonus, and must specify all of the criteria in regulations and publish changes as necessary.

(c) The reenlistment bonus payments must be made on a schedule that is determined and published in department regulations by the adjutant general.

(d) If a member fails to complete a term of reenlistment for which a bonus was paid, the adjutant general may seek to recoup a prorated amount of the bonus as determined by the adjutant general.

**Subd. 2. Tuition and textbook reimbursement grant program.** (a) The adjutant general shall establish a program to provide tuition and textbook reimbursement grants to eligible members of the Minnesota national guard within the limitations of this subdivision.

(b) Eligibility is limited to a member of the national guard who:

- (1) is serving satisfactorily as defined by the adjutant general;
- (2) is attending a post-secondary educational institution, as defined by section 136A.15, subdivision 6, including a vocational or technical school operated or regulated by this state or another state or province; and
- (3) provides proof of satisfactory completion of coursework, as defined by the adjutant general.

In addition, if a member of the Minnesota national guard is killed in the line of state active service or federally funded state active service, as defined in section 190.05, subdivisions 5a and 5b, the member's surviving spouse, and any surviving dependent who has not yet reached 24 years of age, is eligible for a tuition and textbook reimbursement grant.

The adjutant general may, within the limitations of this paragraph and other applicable laws, determine additional eligibility criteria for the grant, and must specify the criteria in department regulations and publish changes as necessary.

(c) The amount of a tuition and textbook reimbursement grant must be specified on a schedule as determined and published in department regulations by the adjutant general, but is limited to a maximum of an amount equal to the greater of:

(1) 80 percent of the cost of tuition for lower division programs in the college of liberal arts at the twin cities campus of the University of Minnesota in the most recent academic year; or

(2) 80 percent of the cost of tuition for the program in which the person is enrolled at that Minnesota public institution, or if that public institution is outside the state of Minnesota, for the cost of a comparable program at the University of Minnesota, except that in the case of a survivor as defined in paragraph (b), the amount of the tuition and textbook reimbursement grant for coursework satisfactorily completed by the person is limited to 100 percent of the cost of tuition for post-secondary courses at a Minnesota public educational institution.

Paragraph (b) notwithstanding, a person is no longer eligible for a grant under this subdivision once the person has received grants under this subdivision for the equivalent of 208 quarter credits or 144 semester credits of coursework.

(d) Tuition and textbook reimbursement grants received under this subdivision may not be considered by the Minnesota higher education services office or by any other state board, commission, or entity in determining a person's eligibility for a scholarship or grant-in-aid under sections 136A.095 to 136A.1311.

(e) If a member fails to complete a term of enlistment during which a tuition and textbook reimbursement grant was paid, the adjutant general may seek to recoup a prorated amount as determined by the adjutant general.

(f) The adjutant general shall maintain records and report any findings to the legislature by March 1, 2003, on the impact of increasing the reimbursement amounts under paragraph (c) during the period July 1, 2001, through December 31, 2002.

(g) This paragraph, paragraph (f), and the amendments made by Laws 2001, First Special Session chapter 10 to paragraph (c) expire June 30, 2003.

**Subd. 3. Record keeping and reporting.** The adjutant general must keep an accurate record of the recipients and benefits paid under this section, and must report this information in the agency performance report, including information regarding the rank, unit location, race, and gender.

By January 16 of each year, the adjutant general must provide copies of the regulations developed under this section to the chairs of the house and senate policy committees responsible for the national guard.

The department of military affairs shall make a specific effort to recruit and reenlist women and members of minority groups into the national guard through the use of the financial incentives authorized by the programs in this section.

**History:** 1989 c 335 art 1 s 182; 1991 c 199 art 2 s 1; 1993 c 192 s 76; 1995 c 186 s 48; 1995 c 212 art 3 s 59; 1996 c 390 s 32; 1997 c 160 s 1; 1Sp2001 c 10 art 2 s 64

## 192.502 PROTECTIONS.

(a) A member of the Minnesota national guard or any other military reserve component who is a student at a post-secondary education institution and who is called or ordered to state active service in the Minnesota national guard, as defined in section 190.05, subdivision 5, or who is called or ordered to federal active military service has the following rights:

(1) with regard to courses in which the person is enrolled, the person may:

(i) withdraw from one or more courses for which tuition and fees have been paid that are attributable to the courses. The tuition and fees must be credited to the person's account at the post-secondary institution. Any refunds are subject to the requirements of the state or federal financial aid programs of origination. In such a case, the student must not receive credit for the courses and must not receive a failing grade, an incomplete, or other negative annotation on the student's record, and the student's grade point average must not be altered or affected in any manner because of action under this item;

(ii) be given a grade of incomplete and be allowed to complete the course upon release from active duty under the post-secondary institution's standard practice for completion of incompletes; or

(iii) continue and complete the course for full credit. Class sessions the student misses due to performance of state or federal active military service must be counted as excused absences and must not be used in any way to adversely impact the student's grade or standing in the class. Any student who selects this option is not, however, automatically excused from completing assignments due during the period the student is performing state or federal active military service. A letter grade or a grade of pass must only be awarded if, in the opinion of the faculty member teaching the course, the student has completed sufficient work and has demonstrated sufficient progress toward meeting course requirements to justify the grade;

(2) to receive a refund of amounts paid for room, board, and fees attributable to the time period during which the student was serving in state or federal active military service and did not use the facilities or services for which the amounts were paid. Any

refund of room, board, and fees is subject to the requirements of the state or federal financial aid programs of origination; and

(3) if the student chooses to withdraw, the student has the right to be readmitted and reenrolled as a student at the post-secondary education institution, without penalty or redetermination of admission eligibility, within one year following release from the state or federal active military service.

(b) The protections in this section may be invoked as follows:

(1) the person, or an appropriate officer from the military organization in which the person will be serving, must give advance verbal or written notice that the person is being called or ordered to qualifying service;

(2) advance notice is not required if the giving of notice is precluded by military necessity or, under all the relevant circumstances, the giving of notice is impossible or unreasonable; and

(3) upon written request from the post-secondary institution, the person must provide written verification of service.

(c) This section provides minimum protections for students. Nothing in this section prevents post-secondary institutions from providing additional options or protections to students who are called or ordered to state or federal active military service.

**History:** 2002 c 284 s 2

192.51 Subdivision 1. [Repealed, 1978 c 532 s 2]

Subd. 2. [Repealed, 1997 c 24 s 27]

## 192.52 EXPENSES OF MILITARY FORCES ORDERED TO ACTIVE DUTY.

In all cases where any of the military forces are called into active service by the governor and where no funds otherwise appropriated are available therefor, or where the appropriated funds, if any, are insufficient, the adjutant general shall pay the necessary amounts out of the general fund, and the necessary sums are hereby appropriated. No payment shall be made pursuant to this section until the adjutant general has given the commissioner of finance an estimate of the cost of the active service, the commissioner of finance has reported the estimate to the committee on finance of the senate and the committee on ways and means of the house of representatives, and the commissioner of finance has approved the payment. When the active service has been completed, the commissioner of finance shall report the actual cost to the committee on finance of the senate and the committee on ways and means of the house of representatives.

**History:** (2453) 1921 c 506 s 59; 1943 c 108 s 23; 1969 c 399 s 49; 1973 c 492 s 14; 1977 c 403 s 7; 1986 c 444; 1994 c 525 s 1

192.53 [Repealed, 1947 c 125 s 22]

## 192.54 TRANSPORTATION HIRE AND EXPENSE.

The hire and expense of means of transportation required for the military forces when in active service, including camps of instruction, practice marches, parades, maneuvers, and other authorized purposes, when ordered by the governor as commander-in-chief, shall be paid by the adjutant general out of the funds appropriated for the maintenance of the military forces.

**History:** (2458) 1921 c 506 s 64; 1943 c 108 s 27; 1971 c 202 s 8

## 192.55 PAYMENTS TO BE MADE THROUGH ADJUTANT GENERAL.

All pay and allowances and necessary expenses for any of the military forces shall, when approved by the adjutant general, be paid by commissioner of finance's warrants issued to the several officers and enlisted members entitled thereto; provided, that upon the request of the adjutant general, approved by the governor, the sum required for any such pay or allowances and necessary expenses shall be paid by commissioner of



finance's warrant to the adjutant general, who shall immediately pay and distribute the same to the several officers or enlisted members entitled thereto or to their commanding officers or to a finance officer designated by the adjutant general. The receipt of any such commanding officer or finance officer for any such payment shall discharge the adjutant general from liability therefor. Every commanding officer or finance officer receiving any such payment shall, as soon as practicable, pay and distribute the same to the several officers or enlisted members entitled thereto. The officer making final payment shall, as evidence thereof, secure the signature of the person receiving the same upon a payroll or other proper voucher.

**History:** (2459) 1921 c 506 s 65; 1943 c 108 s 28; 1949 c 459 s 5; 1973 c 492 s 14; 1986 c 444

#### **192.551 ARMY REGULATIONS TO APPLY.**

All money and property received from any source for the military forces must be kept, disbursed, and accounted for as prescribed by army regulations, where applicable, otherwise as prescribed by state rules. All such accounts must be examined and audited at least once annually by officers of the military forces detailed by the adjutant general as military auditors. The legislative auditor may also audit those activities of the accounts that are subject to state law or rule.

**History:** 1943 c 108 s 29; 1973 c 492 s 14; 1977 c 347 s 32; 1985 c 248 s 70; 1997 c 7 art 2 s 25; 1999 c 99 s 14

**192.56** [Repealed, 1971 c 202 s 11]

**192.57** [Repealed, 1971 c 202 s 11]

**192.58** [Repealed, 1971 c 202 s 11]

### **MILITARY COURTS**

**192.59** [Repealed, 1963 c 661 s 192A.67]

**192.60** [Repealed, 1963 c 661 s 192A.67]

#### **192.61 FORMS, PRACTICE, PROCEDURE.**

The forms, practice, and procedure of courts of inquiry and courts-martial shall conform to the procedure of similar courts in the armed forces of the United States except when it is expressly provided otherwise by chapter 192A.

**History:** (2464) 1921 c 506 s 70; 1963 c 550 s 2; 1971 c 202 s 9

**192.62** [Repealed, 1963 c 661 s 192A.67]

**192.63** [Repealed, 1963 c 661 s 192A.67]

**192.64** [Repealed, 1963 c 661 s 192A.67]

**192.65** [Repealed, 1963 c 661 s 192A.67]

#### **192.66 DESERTION.**

Desertion in the military forces shall be as defined in the Minnesota Code of Military Justice. But if any enlisted member is known to have removed from the state, and, through ignorance or neglect, has failed to apply for discharge, a discharge may be requested by that enlisted member's immediate commanding officer.

**History:** (2469) 1921 c 506 s 75; 1963 c 550 s 3; 1986 c 444

#### **192.67 OFFENDERS; TRANSFER TO CIVIL AUTHORITIES.**

When any felony is committed by any officer or enlisted member of the military forces while on duty status other than active state duty, the officer or enlisted member

shall be turned over by superior officers to the proper civil authorities of the county or municipality in which the offense occurred for punishment for such crime, but such trial and punishment by the civil authorities shall not preclude trial and additional punishment or dismissal from the service by court-martial for any military offense resulting from the commission of said crime.

**History:** (2471) 1921 c 506 s 77; 1963 c 550 s 4; 1986 c 444

#### **192.68 COURTS, COMPENSATION; DISPOSITION OF FINES.**

Subdivision 1. Members of general and special courts-martial and courts of inquiry shall be allowed transportation in kind, and per diem pay as per military grade for time actually employed in the duties assigned them. Transportation in kind shall be furnished to all prosecutors, prisoners, witnesses, sheriffs, and constables, to and from the place or places designated for meetings of these courts. The per diem pay of military and civilian witnesses shall be the same as in civil courts of law, and be paid by the adjutant general out of the appropriation for the maintenance of the national guard.

Subd. 2. The proceeds of all fines in summary, general, and special court-martial cases shall be paid to the adjutant general and paid into the maintenance fund of the national guard, and all costs of prosecution shall be paid out of the same fund.

Subd. 3. Civil officers and national guard members executing the warrants or process of a military court shall receive as compensation therefor the fees allowed by law for like service in the civil courts, which fees are to be taxed by such court and, in summary cases, paid out of the military fund of the company of which the accused is a member. All fees and expenses of trial in general and special courts-martial cases and the fees of jailors in all cases for the keep of prisoners shall be paid by the adjutant general out of the funds appropriated for the maintenance of the national guard. No fees shall be allowed or paid to such officers unless an itemized statement thereof is endorsed on and forthwith returned with such warrant or process to the court issuing the same.

**History:** (2472) 1921 c 506 s 78; 1963 c 550 s 5; 1986 c 444

**192.69** [Repealed, 1963 c 661 s 192A.67]

**192.70** [Repealed, 1963 c 661 s 192A.67]

**192.71** [Repealed, 1963 c 661 s 192A.67]

**192.72** [Repealed, 1963 c 550 s 6]

**192.73** [Repealed, 1963 c 661 s 192A.67]

**192.74** [Repealed, 1963 c 661 s 192A.67]

**192.75** [Repealed, 1963 c 661 s 192A.67]

**192.76** [Repealed, 1963 c 661 s 192A.67]

**192.77** [Repealed, 1963 c 661 s 192A.67]

**192.78** [Repealed, 1963 c 661 s 192A.67]

**192.79** [Repealed, 1963 c 661 s 192A.67]

**192.80** [Repealed, 1963 c 661 s 192A.67]

**192.81** [Repealed, 1963 c 661 s 192A.67]

**192.82 OFFENDERS MAY BE COMMITTED TO JAIL.**

In default of payments of any fine, forfeiture, or costs, imposed by any military court after approval of sentence by the reviewing authority, the offender shall be committed to any county jail designated by the court for a period equal to one day for each dollar of fine imposed and unpaid.

**History:** (2487) 1921 c 506 s 93

**192.83** [Repealed, 1963 c 661 s 192A.67]

**192.84** [Repealed, 1963 c 661 s 192A.67]

**192.85 CIVIL OFFICERS SHALL BE GUILTY OF MISDEMEANORS FOR REFUSAL TO ACT.**

Any sheriff, constable, jailer, marshal or other civil officer named in the Military Code, who shall neglect or refuse to obey, execute or return the lawful warrant or other process of a military court, or make a false return thereon, shall be guilty of a misdemeanor and in addition to the penalties attaching thereto, shall forfeit \$50 for each offense or neglect of duty, the same to be recovered in civil action against such officer and the official sureties by the adjutant general for the benefit of the maintenance fund of the national guard.

**History:** (2490) 1921 c 506 s 96; 1986 c 444

**192.86** [Repealed, 1963 c 550 s 6]

**192.87** [Repealed, 1963 c 661 s 192A.67]

**NATIONAL GUARD MUTUAL ASSISTANCE COUNTERDRUG  
ACTIVITIES COMPACT**

**192.88 NATIONAL GUARD MUTUAL ASSISTANCE COUNTERDRUG ACTIVITIES COMPACT.**

The National Guard Mutual Assistance Counterdrug Activities Compact is ratified, enacted into law, and entered into by this state as a party with any other state or province which, pursuant to Article 2 of the compact has legally joined in it in the form substantially as follows:

The party states solemnly agree:

**ARTICLE 1  
PURPOSE**

The purposes of this compact are to:

A. provide for mutual assistance and support among the party states in the utilization of the National Guard in drug interdiction, counterdrug, and demand reduction activities;

B. permit the National Guard of this state to enter into mutual assistance and support agreements, on the basis of need, with one or more law enforcement agencies operating within this state, for activities within this state, or with a National Guard of one or more other states, whether said activities are within or without this state, in order to facilitate and coordinate efficient, cooperative enforcement efforts directed toward drug interdiction, counterdrug activities, and demand reduction;

C. permit the National Guard of this state to act as a receiving and a responding state as defined within this compact and to ensure the prompt and effective delivery of National Guard personnel, assets, and services to agencies or areas that are in need of increased support and presence;

D. permit and encourage a high degree of flexibility in the deployment of National Guard forces in the interest of efficiency;

E. maximize the effectiveness of the National Guard in those situations which call for its utilization under this compact;

F. provide protection for the rights of National Guard personnel when performing duty in other states in counterdrug activities; and

G. ensure uniformity of state laws in the area of National Guard involvement in interstate counterdrug activities by incorporating said uniform laws within the compact.

## ARTICLE 2

### ENTRY INTO FORCE AND WITHDRAWAL

A. This compact shall enter into force when enacted into law by any two states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

B. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states.

## ARTICLE 3

### MUTUAL ASSISTANCE AND SUPPORT

A. As used in this article:

1. "Drug interdiction and counterdrug activities" means the use of National Guard personnel, while not in federal service, in any law enforcement support activities that are intended to reduce the supply or use of illegal drugs in the United States. The activities include, but are not limited to:

(a) providing information obtained during either the normal course of military training or operations or during counterdrug activities to federal, state, and local law enforcement officials that may be relevant to a violation of any federal or state law within the jurisdiction of such officials;

(b) making available any equipment (including associated supplies or spare parts), base facilities, or research facilities of the National Guard to any federal, state, or local civilian law enforcement official for law enforcement purposes, in accordance with other applicable law or regulation;

(c) providing available National Guard personnel to train federal, state, or local civilian law enforcement in the operation and maintenance of equipment, including equipment made available above, in accordance with other applicable law;

(d) providing available National Guard personnel to operate and maintain equipment provided to federal, state, or local law enforcement officials pursuant to activities defined and referred to in this compact;

(e) operation and maintenance of equipment and facilities of the National Guard or law enforcement agencies used for the purposes of drug interdiction and counterdrug activities;

(f) providing available National Guard personnel to operate equipment for the detection, monitoring, and communication of the movement of air, land, and sea traffic, to facilitate communications in connection with law enforcement programs, to provide transportation for civilian law enforcement personnel, and to operate bases of operations for civilian law enforcement personnel;

(g) providing available National Guard personnel, equipment, and support for administrative, interpretive, analytic, or other purposes;

(h) providing available National Guard personnel and equipment to aid federal, state, and local officials and agencies otherwise involved in the prosecution or incarceration of individuals processed within the criminal justice system who have been arrested for criminal acts involving the use, distribution, or transportation of controlled substances as defined in United States Code, title 21, section 801 et seq. or otherwise by law, in accordance with applicable law.

2. "Demand reduction" means providing available National Guard personnel, equipment, support, and coordination to federal, state, local, and civic organizations, institutions, and agencies for the purposes of the prevention of drug abuse and the reduction in the demand for illegal drugs.

3. "Requesting state" means that state whose governor requested assistance in the area of counterdrug activities.

4. "Responding state" means the state furnishing assistance, or requested to furnish assistance, in the area of counterdrug activities.

5. "Law enforcement agency" means a lawfully established federal, state, or local public agency that is responsible for the prevention and detection of crime and the enforcement of penal, traffic, regulatory, game, immigration, postal, customs, or controlled substances laws.

6. "Official" means the appointed, elected, designated, or otherwise duly selected representative of an agency, institution, or organization authorized to conduct those activities for which support is requested.

7. "Mutual assistance and support agreement" or "agreement" means an agreement between the National Guard of this state and one or more law enforcement agencies or between the National Guard of this state and the National Guard of one or more other states, consistent with the purposes of this compact.

8. "Party state" refers to a state that has lawfully enacted this compact.

9. "State" means each of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

B. Upon the request of a governor of a party state for assistance in the area of drug interdiction and counterdrug activities and demand reduction, the governor of a responding state shall have authority under this compact to send without the borders of his or her state and place under the temporary operational control of the appropriate National Guard or other military authorities of the requesting state, for the purposes of providing such requested assistance, all or any part of the National Guard forces of his or her state as he or she may deem necessary, and the exercise of his or her discretion in this regard shall be conclusive.

C. The governor of a party state may, within his or her discretion, withhold the National Guard forces of his or her state from such use and recall any forces or part or member thereof previously deployed in a requesting state.

D. The National Guard of this state is hereby authorized to engage in counterdrug activities and demand reduction.

E. The adjutant general of this state, in order to further the purposes of this compact, may enter into a mutual assistance and support agreement with one or more law enforcement agencies of this state, including federal law enforcement agencies operating within this state, or with the National Guard of one or more other party states to provide personnel, assets, and services in the area of counterdrug activities, and demand reduction provided that all parties to the agreement are not specifically prohibited by law to perform said activities.

F. The agreement must set forth the powers, rights, and obligations of the parties to the agreement, where applicable, as follows:

1. its duration;
2. the organization, composition, and nature of any separate legal entity created thereby;
3. the purpose of the agreement;
4. the manner of financing the agreement and establishing and maintaining its budget;
5. the method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;

6. provision for administering the agreement, which may include creation of a joint board responsible for such administration;

7. the manner of acquiring, holding, and disposing of real and personal property used in this agreement, if necessary;

8. the minimum standards for National Guard personnel implementing the provisions of this agreement;

9. the minimum insurance required of each party to the agreement, if necessary;

10. the chain of command or delegation of authority to be followed by National Guard personnel acting under the provisions of the agreement;

11. the duties and authority that the National Guard personnel of each party state may exercise; and

12. any other necessary and proper matters.

Agreements prepared under the provisions of this statute are exempt from any general law pertaining to intergovernmental agreements.

G. As a condition precedent to an agreement becoming effective under this article, the agreement must be submitted to and receive approval of the office of the attorney general of Minnesota. The attorney general of Minnesota may delegate his or her approval authority to the appropriate attorney for the Minnesota National Guard subject to those conditions which he or she decides are appropriate. The delegation must be in writing.

1. The attorney general, or his or her agent in the Minnesota National Guard as stated above, shall approve an agreement submitted to him or her under this article unless he or she finds that it is not in proper form, does not meet the requirements set forth in this article, or otherwise does not conform to the laws of Minnesota. If the attorney general disapproves an agreement, he or she shall provide a written explanation to the adjutant general of the Minnesota National Guard.

2. If the attorney general, or his or her authorized agent as stated above, does not disapprove an agreement within 30 days after its submission to him or her, it is considered approved by him or her.

H. Whenever National Guard forces of any party state are engaged in the performance of duties, in the area of drug interdiction and counterdrug activities and demand reduction, pursuant to orders, they shall not be held personally liable for any acts or omissions which occur during the performance of their duty.

#### ARTICLE 4 RESPONSIBILITIES

A. Nothing in this compact shall be construed as a waiver of any benefits, privileges, immunities, or rights otherwise provided for National Guard personnel performing duty pursuant to United States Code, title 32, nor shall anything in this compact be construed as a waiver of coverage provided for under the Federal Tort Claims Act. In the event that National Guard personnel performing counterdrug activities do not receive rights, benefits, privileges, and immunities otherwise provided for National Guard personnel as stated above, the following provisions shall apply:

1. Whenever National Guard forces of any responding state are engaged in another state in carrying out the purposes of this compact, the members thereof so engaged shall have the same powers, duties, rights, privileges, and immunities as members of National Guard forces of the requesting state. The requesting state shall save and hold members of the National Guard forces of responding states harmless from civil liability, except as otherwise provided herein, for acts or omissions which occurred in the performance of their duty while engaged in carrying out the purposes of this compact, whether responding forces are serving the requesting state within the borders of the responding state or are attached to the requesting state for purposes of operational control.

2. Subject to the provisions of paragraphs 3, 4, and 5 of this article, all liability that may arise under the laws of the requesting state or the responding states, on account of

or in connection with a request for assistance or support, shall be assumed and borne by the requesting state.

3. Any responding state rendering aid or assistance pursuant to this compact shall be reimbursed by the requesting state for any loss or damage to, or expense incurred in the operation of, any equipment answering a request for aid, and for the cost of the materials, transportation, and maintenance of National Guard personnel and equipment incurred in connection with such request, provided that nothing herein contained shall prevent any responding state from assuming such loss, damage, expense, or other cost.

4. Unless there is a written agreement to the contrary, each party shall provide, in the same amounts and manner as if they were on duty within their state, for pay and allowances of the personnel of its National Guard units while engaged without the state pursuant to this compact and while going to and returning from such duty pursuant to this compact.

5. Each party state providing for the payment of compensation and death benefits to injured members and the representatives of deceased members of its National Guard forces in case such members sustain injuries or are killed within their own state shall provide for the payment of compensation and death benefits in the same manner and on the same terms in the event such members sustain injury or are killed while rendering assistance or support pursuant to this compact. Such benefits and compensation shall be deemed items of expense reimbursable pursuant to paragraph 3 of this article.

B. Officers and enlisted personnel of the National Guard performing duties subject to proper orders pursuant to this compact shall be subject to and governed by the provisions of their home state Code of Military Justice whether they are performing duties within or without their home state. In the event that any National Guard member commits, or is suspected of committing, a criminal offense while performing duties pursuant to this compact without his or her home state, he or she may be returned immediately to his or her home state and said home state shall be responsible for any disciplinary action to be taken. However, nothing in this paragraph shall abrogate the general criminal jurisdiction of the state in which the offense occurred.

#### ARTICLE 5 DELEGATION

Nothing in this compact shall be construed to prevent the governor of a party state from delegating any of his or her responsibilities or authority respecting the National Guard, provided that such delegation is otherwise in accordance with law. For purposes of this compact, however, the governor shall not delegate the power to request assistance from another state.

#### ARTICLE 6 LIMITATIONS

Nothing in this compact shall:

1. authorize or permit National Guard units or personnel to be placed under the operational control of any person not having the National Guard rank or status required by law for the command in question; or
2. deprive a properly convened court of jurisdiction over an offense or a defendant merely because of the fact that the National Guard, while performing duties pursuant to this compact, was utilized in achieving an arrest or indictment.

#### ARTICLE 7 CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the Constitution of the United States or of any state or the applicability thereof to any government, agency, person, or

circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

**History:** 1993 c 237 s 1

## INTERSTATE EMERGENCY MANAGEMENT ASSISTANCE COMPACT

### 192.89 INTERSTATE EMERGENCY MANAGEMENT ASSISTANCE COMPACT.

Subdivision 1. **Article I - purpose and authorities.** This compact is made and entered into by and between the participating member states which enact this compact, hereinafter called party states. For the purposes of this agreement, the term "states" is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all United States territorial possessions.

The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the governor of an affected state, whether arising from natural disaster, technological hazard, artificially created disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' national guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

Subd. 2. **Article II - general implementation.** Each party state entering into this compact recognizes many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the federal government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be understood.

On behalf of the governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

Subd. 3. **Article III - party state responsibilities.** (a) It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this subdivision. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:

(1) review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, artificially created disaster, emergency aspects of resource shortages, civil disorders, insurgency, or enemy attack;



(2) review party states' individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency;

(3) develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans;

(4) assist in warning communities adjacent or crossing the state boundaries;

(5) protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material;

(6) inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness; and

(7) provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.

(b) The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this agreement shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within 30 days of the verbal request. Requests shall provide the following information:

(1) a description of the emergency service function for which assistance is needed, such as, but not limited to, fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue;

(2) the amount and type of personnel equipment, materials, and supplies needed, and a reasonable estimate of the length of time they will be needed; and

(3) the specific place and time for staging of the assisting party's response and a point of contact at that location.

(c) There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States government, with free exchange of information, plans, and resource records relating to emergency capabilities.

Subd. 4. **Article IV - limitations.** Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state.

Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of the party state that is to receive assistance or commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect, or loaned resources remain in the receiving state, whichever is longer.

Subd. 5. **Article V - licenses and permits.** Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed

licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.

Subd. 6. **Article VI - liability.** Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. "Good faith" in this subdivision does not include willful misconduct, gross negligence, or recklessness.

Subd. 7. **Article VII - supplementary agreements.** Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party hereto, this instrument contains elements of a broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

Subd. 8. **Article VIII - compensation.** Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

Subd. 9. **Article IX - reimbursement.** Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests; provided, that any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses shall not be reimbursable under this provision.

Subd. 10. **Article X - evacuation.** Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees; the number of evacuees to be received in different areas; the manner in which food, clothing, housing, and medical care will be provided; the registration of the evacuees; the providing of facilities for the notification of relatives or friends; and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees; for expenditures for transportation, food, clothing, medicine, and medical care; and like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

Subd. 11. **Article XI - implementation.** (a) This compact shall become operative immediately upon its enactment into law by any two states; thereafter, this compact shall become effective as to any other state upon its enactment by such state.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 30 days after the governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

(c) Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the Federal Emergency Management Agency and other appropriate agencies of the United States government.

Subd. 12. **Article XII - validity.** This section shall be construed to effectuate the purposes stated in Article I hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances shall not be affected thereby.

Subd. 13. **Article XIII - additional provisions.** Nothing in this compact shall authorize or permit the use of military force by the national guard of a state at any place outside that state in any emergency for which the president of the United States is authorized by law to call into federal service the militia, or for any purpose for which the use of the army or the air force would, in the absence of express statutory authorization, be prohibited under United States Code, title 18, section 1385.

**History:** 1998 c 298 s 1