

1 **UTAH NATIONAL GUARD AMENDMENTS**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Val L. Peterson**

5 Senate Sponsor: Peter C. Knudson

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7 **LONG TITLE**

8 **General Description:**

9 This bill makes changes to the Utah National Guard statutes.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ updates references and language in the Utah National Guard statutes;
- 13 ▶ provides that the adjutant general of the Utah National Guard is the commanding
- 14 general of the Utah National Guard;
- 15 ▶ repeals the Utah Code of Military Justice and adopts the federal Uniform Code of
- 16 Military Justice; and
- 17 ▶ makes technical and conforming corrections.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

- 24 **39-1-1**, as last amended by Laws of Utah 2010, Chapter 324
- 25 **39-1-3**, as last amended by Laws of Utah 1989, Chapter 22
- 26 **39-1-12**, as last amended by Laws of Utah 2011, Chapter 115
- 27 **39-6-4**, as enacted by Laws of Utah 1988, Chapter 210
- 28 **39-6-113**, as last amended by Laws of Utah 2015, Chapter 70

29 REPEALS AND REENACTS:

30           **39-6-114**, as last amended by Laws of Utah 2015, Chapter 70

31 REPEALS:

32           **39-6-66**, as enacted by Laws of Utah 1988, Chapter 210

33           **39-6-67**, as last amended by Laws of Utah 1988, Second Special Session, Chapter 9

34           **39-6-68**, as enacted by Laws of Utah 1988, Chapter 210

35           **39-6-69**, as enacted by Laws of Utah 1988, Chapter 210

36           **39-6-70**, as enacted by Laws of Utah 1988, Chapter 210

37           **39-6-71**, as enacted by Laws of Utah 1988, Chapter 210

38           **39-6-72**, as enacted by Laws of Utah 1988, Chapter 210

39           **39-6-73**, as enacted by Laws of Utah 1988, Chapter 210

40           **39-6-74**, as enacted by Laws of Utah 1988, Chapter 210

41           **39-6-75**, as enacted by Laws of Utah 1988, Chapter 210

42           **39-6-76**, as enacted by Laws of Utah 1988, Chapter 210

43           **39-6-77**, as enacted by Laws of Utah 1988, Chapter 210

44           **39-6-78**, as enacted by Laws of Utah 1988, Chapter 210

45           **39-6-79**, as enacted by Laws of Utah 1988, Chapter 210

46           **39-6-80**, as enacted by Laws of Utah 1988, Chapter 210

47           **39-6-81**, as enacted by Laws of Utah 1988, Chapter 210

48           **39-6-82**, as enacted by Laws of Utah 1988, Chapter 210

49           **39-6-83**, as last amended by Laws of Utah 1988, Second Special Session, Chapter 9

50           **39-6-84**, as enacted by Laws of Utah 1988, Chapter 210

51           **39-6-85**, as enacted by Laws of Utah 1988, Chapter 210

52           **39-6-86**, as enacted by Laws of Utah 1988, Chapter 210

53           **39-6-87**, as enacted by Laws of Utah 1988, Chapter 210

54           **39-6-88**, as enacted by Laws of Utah 1988, Chapter 210

55           **39-6-89**, as enacted by Laws of Utah 1988, Chapter 210

56           **39-6-90**, as last amended by Laws of Utah 1988, Second Special Session, Chapter 9

57           **39-6-91**, as enacted by Laws of Utah 1988, Chapter 210

- 58           **39-6-92**, as enacted by Laws of Utah 1988, Chapter 210
- 59           **39-6-93**, as last amended by Laws of Utah 2005, Chapter 2
- 60           **39-6-94**, as enacted by Laws of Utah 1988, Chapter 210
- 61           **39-6-95**, as enacted by Laws of Utah 1988, Chapter 210
- 62           **39-6-96**, as enacted by Laws of Utah 1988, Chapter 210
- 63           **39-6-97**, as enacted by Laws of Utah 1988, Chapter 210
- 64           **39-6-98**, as enacted by Laws of Utah 1988, Chapter 210
- 65           **39-6-99**, as enacted by Laws of Utah 1988, Chapter 210
- 66           **39-6-100**, as enacted by Laws of Utah 1988, Chapter 210
- 67           **39-6-101**, as enacted by Laws of Utah 1988, Chapter 210
- 68           **39-6-102**, as enacted by Laws of Utah 1988, Chapter 210
- 69           **39-6-103**, as enacted by Laws of Utah 1988, Chapter 210
- 70           **39-6-104**, as enacted by Laws of Utah 1988, Chapter 210
- 71           **39-6-105**, as enacted by Laws of Utah 1988, Chapter 210
- 72           **39-6-106**, as enacted by Laws of Utah 1988, Chapter 210

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74 *Be it enacted by the Legislature of the state of Utah:*

75           Section 1. Section **39-1-1** is amended to read:

76           **39-1-1. Militia -- How constituted -- Persons exempted.**

77           (1) All able-bodied citizens, and all able-bodied persons of foreign birth who have  
78 declared their intention to become citizens, who are 18 years of age or older and younger than  
79 [45] 66 years of age, who are residents of this state, constitute the militia, subject to the  
80 following exemptions:

81           (a) persons exempted by laws of the United States;

82           (b) persons exempted by the laws of this state;

83           (c) all persons who have been honorably discharged from the army, air force, navy,  
84 marines, coast guard, or volunteer forces of the United States;

85           (d) active members of any regularly organized fire or police department in any city or

86 town, but no member of the active militia is relieved from duty because of his joining any  
87 volunteer fire company or department; and

88 (e) judges and clerks of courts of record, state and county civil officers holding office  
89 by election, state officers appointed by the governor for a specified term of office, ministers of  
90 the gospel, practicing physicians, superintendents, and officers and assistants of hospitals[;] and  
91 prisons and jails[; ~~conductors, brakemen, flagmen, engineers and firemen of railways, and all~~  
92 ~~other employees of railways actually employed in train service; and~~].

93 [~~(f) idiots, lunatics, and persons convicted of infamous crime.~~]

94 (2) All exempted persons, except those enumerated in Subsections (1)(a) through [(f)]  
95 (e), are liable to military duty in case of war, insurrection, invasion, tumult, riot, or public  
96 disaster, or imminent danger of any of these, or after they have voluntarily enlisted in the  
97 National Guard of this state.

98 Section 2. Section **39-1-3** is amended to read:

99 **39-1-3. Governor commander in chief -- Powers and duties.**

100 (1) The governor by virtue of [~~his~~] the governor's office shall be commander in chief of  
101 the Utah National Guard and of the unorganized militia, and of any portions of the unorganized  
102 militia which may [~~hereafter~~] be organized. [~~He shall be empowered and~~]

103 (2) The governor:

104 (a) is authorized to issue all [~~such~~] orders, rules and regulations necessary to conform  
105 the Utah National Guard to Title 32 of the United States Code in its organization, government,  
106 discipline, maintenance, training, equipment, and regulations[~~:-He~~];

107 (b) shall appoint and commission all officers and select all warrant officers, subject to  
108 the provisions of Title 32 of the United State Code; provided, that any [~~such~~] appointee failing  
109 to receive federal recognition after having been [~~so~~] notified by the National Guard Bureau,  
110 shall revert to status occupied before [~~such~~] the appointment[~~:-He~~];

111 (c) shall determine and fix the home station and location of the various units of the  
112 Utah National Guard[~~:-He~~];

113 (d) shall provide armories, warehouses, maintenance and repair shops, hangars, small

114 arms, artillery and aircraft ranges, campsites, concentration areas, training facilities, military  
115 reservations and arsenals as required for organizations of the Utah National Guard; and

116 (e) shall furnish suitable offices, or office space for regular army personnel assigned to  
117 duties with the Utah National Guard<sup>[;]</sup>, the expenses of which may be paid out of the state  
118 military appropriations.

119 Section 3. Section **39-1-12** is amended to read:

120 **39-1-12. Adjutant general -- Appointment -- Term.**

121 (1) There shall be one adjutant general appointed by the governor. The adjutant general  
122 is ~~chief of staff~~ the commanding general and holds office for a term of six years, unless  
123 terminated by resignation, disability, or for cause as determined by a military court or  
124 court-martial.

125 (2) The person appointed to the office shall:

126 (a) be a citizen of Utah and meet the requirements provided in Title 32, United States  
127 Code~~[-. He shall]~~;

128 (b) be a federally recognized commissioned officer of the National Guard of the United  
129 States with no fewer than ~~[+0]~~ five years commissioned service in the Utah National Guard~~[-]~~;  
130 and

131 (c) as determined by the governor, have sufficient knowledge and experience to  
132 command the Utah National Guard.

133 (3) Active service in the armed forces of the United States may be included in ~~[this]~~ the  
134 requirement in Subsection (2)(b), if the officer was a member of the Utah National Guard when  
135 ~~[he]~~ the officer entered that service.

136 (4) An officer is no longer eligible to hold the office of adjutant general after  
137 ~~[becoming 64]~~ attaining 66 years of age.

138 Section 4. Section **39-6-4** is amended to read:

139 **39-6-4. Fraudulently obtained discharge -- Desertion.**

140 (1) A person discharged from the Utah National Guard who is later charged with  
141 having fraudulently obtained the discharge is~~[-, subject to Section 39-6-72,]~~ subject to trial by a

142 military court on that charge.

143 (2) After apprehension, [he] the person is subject to this chapter while in military  
144 custody for trial. Upon conviction of that charge [he] the person is subject to trial for all  
145 offenses under this chapter committed prior to the fraudulent discharge.

146 (3) A person who has deserted from a military unit, which act would subject [him] the  
147 person to the jurisdiction of this chapter, is not relieved from the jurisdiction of this chapter due  
148 to a separation from any later period of service.

149 Section 5. Section 39-6-113 is amended to read:

150 **39-6-113. Jurisdiction over offenses.**

151 (1) A member may not be tried or punished by court-martial or non-judicial  
152 punishment respectively for any offense [~~under Sections 39-6-66 through 39-6-106;~~] unless the  
153 offense was committed while the member was in a military duty status under Title 32, United  
154 States Code, or while on state active duty orders.

155 (2) Nothing in this section shall limit a commander's authority to use adverse  
156 administrative action to address misconduct by a member, regardless of the member's status at  
157 the time of the misconduct.

158 Section 6. Section 39-6-114 is repealed and reenacted to read:

159 **39-6-114. Chapter interpretation -- Federal law governs.**

160 (1) Federal laws and regulations, forms, precedents, and usages relating to and  
161 governing the armed forces of the United States and the National Guard not inconsistent with  
162 the constitution and laws of this state or with a rule or regulation adopted pursuant to Section  
163 39-1-3, apply to and govern the National Guard of this state, including all members on active  
164 duty within the state as active duty guard/reserve personnel under U.S.C.A. Title 32, National  
165 Guard.

166 (2) The Uniform Code of Military Justice, 10 U.S.C.A. 47, including regulations,  
167 manuals, forms, precedents, and usages implementing, interpreting and complementing the  
168 code, is adopted for use by the National Guard of this state and applies as long as it is not  
169 inconsistent with:

170 (a) the constitution and laws of this state, including the regulations, manuals, forms,  
171 precedents, and usages implementing, interpreting, and complementing the constitution and  
172 laws of this state; or

173 (b) a rule or regulation adopted pursuant to Section 39-1-3, to govern the National  
174 Guard of this state, including all members on active duty within the state as active duty  
175 guard/reserve personnel under U.S.C.A. Title 32, National Guard, when the members are  
176 serving other than in a federal capacity under U.S.C.A. Title 10.

177 Section 7. **Repealer.**

178 This bill repeals:

179 Section 39-6-66, **Principal defined.**

180 Section 39-6-67, **Accessory after the fact.**

181 Section 39-6-68, **Conviction of lesser included offense or attempt.**

182 Section 39-6-69, **Attempt.**

183 Section 39-6-70, **Conspiracy.**

184 Section 39-6-71, **Solicitation of desertion, mutiny, or other act of misconduct.**

185 Section 39-6-72, **Fraudulent enlistment, appointment, or separation.**

186 Section 39-6-73, **Unlawful enlistment, appointment, or separation of another.**

187 Section 39-6-74, **Desertion.**

188 Section 39-6-75, **Absence without leave.**

189 Section 39-6-76, **Missing movement.**

190 Section 39-6-77, **Contempt toward officials.**

191 Section 39-6-78, **Disrespect toward superior officer.**

192 Section 39-6-79, **Assault or willful disobedience of an officer.**

193 Section 39-6-80, **Assault or willful disobedience of subordinate officer.**

194 Section 39-6-81, **Failure to obey order or regulation.**

195 Section 39-6-82, **Cruelty -- Maltreatment.**

196 Section 39-6-83, **Mutiny -- Sedition.**

197 Section 39-6-84, **Breaking arrest or confinement.**

- 198           Section **39-6-85**, **Releasing prisoner without proper authority -- Allowing escape.**
- 199           Section **39-6-86**, **Unlawful detention.**
- 200           Section **39-6-87**, **Delay in disposition of case or noncompliance with chapter.**
- 201           Section **39-6-88**, **Forcing a safeguard.**
- 202           Section **39-6-89**, **Signing a false record.**
- 203           Section **39-6-90**, **Sale, waste, or destruction of military property.**
- 204           Section **39-6-91**, **Waste or destruction of nonmilitary property.**
- 205           Section **39-6-92**, **Improper hazarding of vessel.**
- 206           Section **39-6-93**, **Intoxicated or reckless driving.**
- 207           Section **39-6-94**, **Intoxicated on duty -- Sentinel or lookout.**
- 208           Section **39-6-95**, **Malingering.**
- 209           Section **39-6-96**, **Riot -- Breach of peace.**
- 210           Section **39-6-97**, **Provoking speeches or gestures.**
- 211           Section **39-6-98**, **Theft -- Wrongful conversion.**
- 212           Section **39-6-99**, **Aggravated arson -- Arson.**
- 213           Section **39-6-100**, **Extortion.**
- 214           Section **39-6-101**, **Assault -- Aggravated assault.**
- 215           Section **39-6-102**, **Housebreaking.**
- 216           Section **39-6-103**, **Perjury.**
- 217           Section **39-6-104**, **Fraudulent claim against government.**
- 218           Section **39-6-105**, **Conduct unbecoming an officer.**
- 219           Section **39-6-106**, **Acts discrediting National Guard.**