

Chapter 1 State Militia

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

- (1) All able-bodied citizens, and all able-bodied persons of foreign birth who have declared their intention to become citizens, who are 18 years of age or older and younger than 45 years of age, who are residents of this state, constitute the militia, subject to the following exemptions:
 - (a) persons exempted by laws of the United States;
 - (b) persons exempted by the laws of this state;
 - (c) all persons who have been honorably discharged from the army, air force, navy, or volunteer forces of the United States;
 - (d) active members of any regularly organized fire or police department in any city or town, but no member of the active militia is relieved from duty because of his joining any volunteer fire company or department;
 - (e) judges and clerks of courts of record, state and county civil officers holding office by election, state officers appointed by the governor for a specified term of office, ministers of the gospel, practicing physicians, superintendents, officers and assistants of hospitals, prisons and jails, conductors, brakemen, flagmen, engineers and firemen of railways, and all other employees of railways actually employed in train service; and
 - (f) idiots, lunatics, and persons convicted of infamous crime.
- (2) All exempted persons, except those enumerated in Subsections (1)(a) through (f), are liable to military duty in case of war, insurrection, invasion, tumult, riot, or public disaster, or imminent danger of any of these, or after they have voluntarily enlisted in the National Guard of this state.

Amended by Chapter 324, 2010 General Session

39-1-2 Militia divided into two parts.

- (1) The militia of this state shall be divided into two parts: the National Guard and the unorganized militia.
- (2) The National Guard shall consist of:
 - (a) a joint forces headquarters commanded by the adjutant general and authorized a general officer as deputy commander;
 - (b) a department for army commanded by a general officer; and
 - (c) a department for air commanded by a general officer.
- (3) The numerical strength, composition, distribution, organization, arms, uniforms, equipment, training and discipline of the National Guard shall be prescribed by the governor in conformity with the laws and regulations of the United States and the laws of this state.
- (4) The unorganized militia shall consist of all members of the militia not members of the National Guard.

Amended by Chapter 65, 2005 General Session

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

The governor by virtue of his office shall be commander in chief of the National Guard and of the unorganized militia, and of any portions of the unorganized militia which may hereafter be organized. He shall be empowered and authorized to issue all such orders, rules and regulations necessary to conform the Utah National Guard to Title 32 of the United States Code

in its organization, government, discipline, maintenance, training, equipment, and regulations. He shall appoint and commission all officers and select all warrant officers, subject to the provisions of Title 32 of the United State Code; provided, that any such appointee failing to receive federal recognition after having been so notified by the National Guard Bureau, shall revert to status occupied before such appointment. He shall determine and fix the home station and location of the various units of the Utah National Guard. He shall provide armories, warehouses, maintenance and repair shops, hangars, small arms, artillery and aircraft ranges, campsites, concentration areas, training facilities, military reservations and arsenals as required for organizations of the Utah National Guard; and shall furnish suitable offices, or office space for regular army personnel assigned to duties with the Utah National Guard; the expenses of which may be paid out of the state military appropriations.

Amended by Chapter 22, 1989 General Session

39-1-4 Staff of commander in chief.

- (1) The staff of the commander in chief shall consist of the adjutant general, the deputy commander of the joint forces headquarters, assistant adjutant general for army and the assistant adjutant general for air and any other members chosen from the officers of the Utah National Guard or active officers of the United States Armed Forces detailed on duty with the militia of the state.
- (2) The adjutant general and one other general officer shall serve with pay from the state.

Amended by Chapter 65, 2005 General Session

39-1-5 Governor may call guard into active service -- Authority.

- (1) The governor may order into active service the National Guard or the unorganized militia or portions of either as he finds necessary.
- (2) If it is necessary to order into active service any members of the unorganized militia, the governor may adopt methods he finds most expedient for that purpose, and may prescribe and enforce uniform rules for the conduct of drafts, appoint all officers necessary, and fix the amount of their pay, not to exceed the rate of pay prescribed for the National Guard.

Amended by Chapter 210, 1988 General Session

39-1-7 Muster of unorganized militia.

Members of the unorganized militia called into the service of this state shall be mustered into service for such a period, not to exceed the period of one enlistment in the National Guard, as the governor shall deem necessary. Militia so mustered into service shall be organized into units as provided by the rules and regulations governing the regular army of the United States, or as otherwise provided by law.

No Change Since 1953

39-1-8 Governor may proclaim martial law.

Whenever the militia or any portion thereof, is called into active service, the governor may, by proclamation, declare all or any part of any county, city or town in which the troops are serving to be under martial law, and when the militia shall be on active service as herein provided, the commanding officer thereof and his subordinates may cooperate with the civil authorities or take

entire charge of the situation as in the judgment of the commanding officer the exigencies of the case may require.

No Change Since 1953

39-1-9 National Guard subject to call by United States.

- (1) The National Guard of this state is at all times subject to the call of the President of the United States. When called into the service of the United States, it is governed by the applicable laws and military regulations of the United States.
- (2) The National Guard and its members shall attend drills, encampments, and maneuvers as the president directs.

Amended by Chapter 210, 1988 General Session

39-1-10 Unorganized militia in service, how governed.

All unorganized militia called into service shall be governed as herein provided for the National Guard, unless otherwise provided by law.

No Change Since 1953

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

- (1) There shall be one adjutant general appointed by the governor. The adjutant general is chief of staff and holds office for a term of six years, unless terminated by resignation, disability, or for cause as determined by a military court or court-martial.
- (2) The person appointed to the office shall be a citizen of Utah and meet the requirements provided in Title 32, United States Code. He shall be a federally recognized commissioned officer of the National Guard of the United States with no fewer than 10 years commissioned service in the Utah National Guard. Active service in the armed forces of the United States may be included in this requirement, if the officer was a member of the Utah National Guard when he entered that service. An officer is no longer eligible to hold the office of adjutant general after becoming 64 years of age.

Amended by Chapter 115, 2011 General Session

39-1-12.5 Convening authority for military court.

- (1) The governor or the adjutant general of the state is the convening authority for any military court in the state, and upon receipt of charges, as outlined in the Utah Manual for Military Courts, may:
 - (a) dismiss any charges;
 - (b) forward charges to a subordinate commander for disposition; or
 - (c) refer charges to a military court for trial.
- (2) The military court shall be convened under the Utah Manual for Military Courts.

Amended by Chapter 110, 1993 General Session

39-1-13 Adjutant general -- As disbursing and property officer.

The adjutant general shall be the disbursing and property officer for the state, expending state funds allocated to the National Guard through the Division of Finance according to established procedures.

Amended by Chapter 22, 1989 General Session

39-1-14 Adjutant general -- Drawing vouchers for property damage.

The adjutant general shall, with the approval of the governor, draw vouchers on the state appropriation for the National Guard, payable to the United States, to cover any damage to the United States property charged to the state, when such damage shall have been properly adjudged to be payable by the state.

No Change Since 1953

39-1-15 Adjutant general -- Disposition of unserviceable property.

(1) All military property of the state, which after proper inspection shall be found unserviceable, shall, under the direction of the governor, be disposed of by the adjutant general at public or private sale as he may consider advisable.

- (2)
- (a) If the inspecting officer decides that the value of the property described in Subsection (1) exceeds \$50 in value, the sale in accordance with Subsection (1) shall be made after notice is published:
 - (i) 10 days before the sale in a newspaper published in the county where the sale will occur; and
 - (ii) in accordance within Section 45-1-101 10 days before the sale.
 - (b) If such unserviceable property shall be found by the inspecting officer to be of no actual value, it shall be destroyed under the direction of the adjutant general.

Amended by Chapter 388, 2009 General Session

39-1-16 Adjutant general -- Rendering accounts.

The adjutant general shall from time to time, render a true account to the governor of the sales made by him, and, under the direction of the governor, expend the proceeds of the same for other military property.

No Change Since 1953

39-1-17 Adjutant general -- Custodian of military trophies.

The adjutant general shall have charge of, and shall carefully preserve, the colors, flags, guidons and military trophies of war belonging to the state, and shall not allow the same to be loaned out or removed from their proper places of deposit, and shall also be the custodian of and preserve all military documents and records of every nature, which may be placed in his charge, relating to the Indian wars within the state or wars in which the United States has participated.

No Change Since 1953

39-1-18 Director of joint staff -- Assistant adjutant general for the army -- Assistant adjutant general for air -- Commander, land component command -- Chief of staff for air -- Officer for permanent duty as personnel officer.

- (1) There is authorized a director of joint staff.
 - (a) The adjutant general, with the approval of the governor, may detail the joint forces headquarters director of joint staff.
 - (b) The director of joint staff shall be at least a field grade federally recognized commissioned officer of the Utah National Guard with not less than five years military service in the armed forces of a state or of the United States, at least three of which shall have been commissioned in the Utah National Guard. The officer shall:
 - (i) hold office at the pleasure of the adjutant general; and
 - (ii) devote all the time during office hours of the military department to the duties of the office.
- (2) There is authorized an assistant adjutant general for the army and an assistant adjutant general for air.
 - (a) The adjutant general with the approval of the governor may detail the assistant adjutant general for the army or the assistant adjutant general for air for permanent duty.
 - (b) The assistant adjutant general for the army and the assistant adjutant general for air shall be at least federally recognized field grade commissioned officers of the Utah National Guard with not less than five years military service in the armed forces of a state or of the United States, at least three of which shall have been commissioned in the Utah National Guard. The officer shall:
 - (i) hold office at the pleasure of the adjutant general; and
 - (ii) devote all the time during office hours of the military department to the duties of the office.
- (3) There is authorized a commander, land component command.
 - (a) The adjutant general, with the approval of the governor, may detail the commander, land component command.
 - (b) The commander, land component command shall be at least a field grade federally recognized commissioned officer of the Utah National Guard with not less than five years military service in the armed forces of a state or of the United States, at least three of which shall have been commissioned in the Utah National Guard. The officer shall:
 - (i) hold office at the pleasure of the adjutant general; and
 - (ii) devote all the time during office hours of the military department to the duties of the office.
- (4) There is authorized a chief of staff for air.
 - (a) The adjutant general, with the approval of the governor, may detail the chief of staff for air.
 - (b) The chief of staff for air shall be at least a field grade federally recognized commissioned officer of the Utah National Guard with not less than five years of military service in the armed forces of a state or of the United States, at least three of which shall have been commissioned in the Utah National Guard. The officer shall:
 - (i) hold office at the pleasure of the adjutant general; and
 - (ii) devote all the time during office hours of the military department to the duties of the office.
- (5) The adjutant general, with the approval of the governor, may detail one officer or retired officer of the Utah National Guard for permanent duty as the personnel officer.
 - (a) The officer shall be a federally recognized commissioned officer, or former federally recognized commissioned officer, of the Utah National Guard with not less than three years military service in the armed forces of a state or of the United States, at least one of which shall have been commissioned in the Utah National Guard.
 - (b) The officer shall hold office at the pleasure of the adjutant general.

- (c) The duties of the personnel officer shall be as the adjutant general may direct, to include the normal duty of the staff G-1.
 - (d) The officer shall devote all the time during office hours of the military department to the duties of the office.
 - (e) A former federally recognized retired officer may serve in this capacity while awaiting a finding of indispensability.
- (6) The adjutant general may detail an officer without the required commissioned service in the Utah National Guard to a position in this section only with written approval of the governor.

Amended by Chapter 83, 2015 General Session

39-1-19 Clerical assistance.

The adjutant general may employ such clerical assistance as shall be necessary to perform the duties of his office and such clerical assistance shall also be available for use in any state office held by the adjutant general.

No Change Since 1953

39-1-21 Adjutant general -- Salary.

The adjutant general shall:

- (1) receive a salary established by the governor within the salary range fixed in Title 67, Chapter 22, State Officer Compensation; and
- (2) devote all of the adjutant general's time during the office hours of the military department to the duties of the office.

Amended by Chapter 369, 2012 General Session

39-1-22 Caretakers.

The adjutant general may when necessary, with the approval of the governor, employ such custodians, assistants and common labor as may be necessary to maintain the property, both state and federal, under his care in a proper state of repair.

No Change Since 1953

39-1-23 Seal of adjutant general.

The seal of the adjutant general shall be circular in form, containing an inner circle; within the inner circle shall be a shield with "Utah" impressed thereon, and between the circles shall be impressed "National Guard, Adjutant General."

No Change Since 1953

39-1-24 Duties of assistant adjutants general.

- (1) The assistant adjutant general detailed for permanent duty shall serve in the office of the adjutant general, performing duties assigned him by the adjutant general. In the absence or disability of the adjutant general he shall perform the duties of the adjutant general, unless otherwise delegated by the adjutant general to another qualified officer. The assistant adjutant general detailed for permanent duty shall serve with pay from the state.

- (2) The assistant adjutant general not detailed for permanent duty in the office of the adjutant general shall serve without pay from the state and perform duties assigned him by the adjutant general.

Amended by Chapter 215, 2012 General Session

39-1-25 Property and fiscal officer of the United States for Utah.

- (1) The governor shall designate an officer of the National Guard, subject to the approval of the Department of the Army or the Department of the Air Force, as property and fiscal officer of the United States for Utah.
- (2) The officer shall:
 - (a) have had actual service in the forces of the United States or the National Guard and have knowledge of army or air administration;
 - (b) receive and account for all funds and property belonging to the United States in the possession of the National Guard;
 - (c) make the returns and reports concerning the funds as may be required by the National Guard Bureau; and
 - (d) render, through the National Guard Bureau, accounts of federal funds entrusted to the officer for disbursement as may be required by the Treasury Department.

Amended by Chapter 336, 2011 General Session

39-1-26 Assistant quartermaster-general.

The adjutant general may have an assistant quartermaster-general, of grade designated by the governor, who shall perform such duties as may be specified by the adjutant general.

No Change Since 1953

39-1-28 Loss of property -- Liability.

Whenever it shall have been finally determined in the manner provided by law or regulation by action of the departments of the army or the air force, that the loss, damage or destruction of federal property for which any officer shall be responsible or accountable shall have been occasioned by or through the failure of any officer to perform the duties required of him by law or regulation; or when it shall have been finally determined, in the case of state property, by the adjutant general that any state property for which any officer shall be accountable or responsible shall have been lost, damaged or destroyed by or through the failure of any officer to perform the duties required of him by law or regulation, such determination by the departments of the army or the air force or adjutant general, as the case may be, shall be prima facie evidence against such officer and his sureties of such failure, and the record of such determination, properly authenticated under the seal of the adjutant general, shall be admissible in evidence for the purpose of establishing such failure and such determination in any action against any officer and/or his sureties.

Amended by Chapter 61, 1963 General Session

39-1-29 Organization of National Guard controlled by federal law.

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. 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.

No Change Since 1953

39-1-30 Officers of National Guard -- Commissions.

- (1) All officers of the National Guard shall be appointed by the governor, subject to the approval of the National Guard Bureau, or subject to approval as prescribed by the laws of the United States or related rules or regulations governing the National Guard.
- (2) An officer may not be commissioned unless he successfully passes tests, both physical and mental, as prescribed by the National Guard Bureau, and unless he has taken the oath prescribed by the laws of the United States, is a citizen of the United States, and has been selected from one of the following classes:
 - (a) officers or enlisted members of the National Guard;
 - (b) officers on the reserve or unassigned list of the National Guard;
 - (c) officers active or retired;
 - (d) former officers of the United States Army, Air Force, Navy, Marine Corps, or National Guard;
 - (e) graduates from the service of the United States military, air, and naval academies, or graduates of schools, colleges, and universities where a course in military science, as prescribed by the National Guard Bureau, is taught under the supervision of an officer of the regular army or regular air force; and
 - (f) for the technical branches and staff corps or departments, other civilians as are especially qualified for that duty.
- (3) However, officers appointed to staff corps or departments, or other staff positions, including officers of the pay, inspection, subsistence, and medical departments, shall have had previous military experience, and hold their positions until they shall have reached 64 years of age, unless separated prior to that time by resignation, disability, or for other causes to be determined by a military court, court-martial, or other legally organized board convened for that purpose. Vacancies among these officers shall be filled by appointment as provided in this section.

Amended by Chapter 22, 1989 General Session

39-1-31 Commissions to officers -- Relative rank.

Commissions shall be issued under the seal of the adjutant general, signed by the governor and countersigned by the adjutant general. They may be vacated in such manner as is now or shall hereafter be provided by law in regard to commissions of the regular army or regular air force and the National Guard of the United States. The relative rank of officers of the same grade shall be determined by length of service in that grade, whether continuous or not, and if the length of service of two or more officers is the same, their rank shall be determined by lot.

Amended by Chapter 61, 1963 General Session

39-1-32 National Guard -- Enlistment -- Qualifications -- Discharge.

Any person between the ages of 18 and 45 years, who is a citizen of the United States or who has declared an intention to become a citizen, not prohibited by the laws of the state or of the United States, may be enlisted in the National Guard, subject to such physical and other examinations as may be prescribed by the National Guard Bureau. A person who enlists in the

National Guard shall take and subscribe the oath provided by the laws of the United States and upon so doing shall become a member of the National Guard for the period prescribed by the laws of the United States, unless sooner discharged. An enlisted person may be discharged as provided by the laws of the United States and regulations of the National Guard Bureau.

Amended by Chapter 83, 2015 General Session

39-1-33 Noncommissioned officers.

The appointment and reduction of noncommissioned officers shall be made in the same manner as in the regular army or the regular air force of the United States.

Amended by Chapter 61, 1963 General Session

39-1-34 Excuse from drill -- Furloughs and leaves of absence.

Unless otherwise provided by the laws of the United States or the regulations of the National Guard Bureau, the commanding officer of any troop, battery, group, squadron or other unit shall have power, for good and sufficient reason, to excuse members of his organization from attendance at drill; he shall also have power to grant furloughs and leaves of absence, by and with the consent of the adjutant general.

Amended by Chapter 61, 1963 General Session

39-1-35 State employees in National Guard -- Care of dependents when called into service.

If the National Guard of this state is called into the service of the state, the state shall provide for the dependents of state employees who are enlisted members of the National Guard so called into service. The Board of Examiners shall cause an examination to be made into the merits of all cases of alleged dependency, and upon finding that any mother, father, grandfather, grandmother, wife, sister, brother or child of such member of the National Guard, or any or either of them, are dependent upon such member for support, the Board of Examiners shall determine the amount to be paid by the state to any such dependent, and shall cause the state auditor to draw his warrant on the state treasurer for such sum in favor of such specific and determined dependents, payable out of any amounts available for military purposes or for the maintenance and support of the National Guard. If there are not sufficient funds available to pay for the necessary support of all the dependents determined and specified by the board of examiners, the funds available shall be prorated among the dependents specified by the Board of Examiners. The Board of Examiners in specifying the amounts to be paid to such dependents may provide for a payment on a weekly or monthly basis and on such conditions as it may deem best in each particular case.

Amended by Chapter 174, 1981 General Session

39-1-36 Reserve member of armed forces -- Leave of absence from employment -- Liability of employers.

- (1) Any member of a reserve component of the armed forces of the United States who pursuant to military orders enters active duty, active duty for training, inactive duty training, or state active duty shall upon request be granted a leave of absence from employment, but for no more than five years.
- (2) Upon satisfactory release from the training or from hospitalization incidental to the training, the member shall be permitted to return to the prior employment with the seniority, status, pay, and

vacation the member would have had as an employee if he had not been absent for military purposes.

- (3) Any employer who willfully deprives an employee who is absent as a member under Subsection (1) of any of the benefits under Subsection (2) or discriminates in hiring for any employment position, public or private, based on membership in any reserve component of the armed forces, is guilty of a class B misdemeanor.

Amended by Chapter 15, 1989 General Session

39-1-37 Military duties.

Participation in public ceremonies and parades and other duties in the service of the state shall be deemed military duties of the National Guard, and when participated in by the National Guard, or any portion thereof, under instructions of the commander in chief, the expenses and pay incident to the service of the state shall be allowed by the proper auditing officers from the state appropriation for the support of the militia.

No Change Since 1953

39-1-38 Regulations and forms.

The commander in chief may establish and prescribe regulations and forms not inconsistent with law, or regulations governing the National Guard promulgated by the President of the United States, as he considers proper for the use, government, and instruction of the National Guard, and to carry into full effect the provisions of related law. The regulations and forms shall be revised as necessary, and shall be promulgated in orders and compiled as advisable for the information of the National Guard.

Amended by Chapter 210, 1988 General Session

39-1-38.5 Utah Manual for Military Courts to be issued -- Military court jurisdiction.

- (1) The adjutant general shall issue a Utah Manual for Military Courts that includes the Utah Code of Military Justice, and shall set forth the procedures, authority, and organization for convening a military court in the state, conducting a pretrial investigation, and conducting post-conviction military court and appellate processes.
- (2) The military court shall have jurisdiction of misdemeanors and infractions. Each offense shall be punishable by incarceration in a county jail for no longer than one year, a fine of not more than \$2,500, forfeiture of pay of not more than \$2,500, detention of pay equivalent to three months' pay for a period not to exceed one year, arrest in quarters for officers, restriction to specified limits for enlisted members, extra duty for not more than 60 consecutive days, reprimands, reduction of enlisted members to the lowest enlisted grade, a bad conduct discharge for enlisted members or dismissal for officers, or any combination of these.
- (3)
 - (a) The military court may order any person adjudged guilty of a criminal activity to make restitution to any person or entity injured as a result of the criminal activity.
 - (b) "Criminal activity" means any offense under Title 39, Chapter 1, State Militia, or Chapter 6, Utah Code of Military Justice, of which the defendant is convicted or any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without admission of committing the criminal conduct.
- (4) The military court may:

- (a) suspend any portion of its sentence and impose conditions of probation;
 - (b) revoke suspension; or
 - (c) issue any orders necessary under Section 39-6-61 to execute any portion of the sentence that has been suspended.
- (5) The military court may not impose combined forms of punishment that exceed confinement for a period of one year or a fine of \$2,500. This sentencing limitation does not apply to restitution ordered by the military court.

Amended by Chapter 198, 1996 General Session

39-1-39 Orders for duty -- How served.

- (1) Orders for duty may be oral or written. Written orders shall be promulgated by the governor or the adjutant general.
- (2) Officers and enlisted members may be ordered for duty by:
- (a) stating the substance of the order;
 - (b) reading the order to the person ordered;
 - (c) delivering a copy of the order to the person;
 - (d) leaving a copy at his last-known place of abode or business; or
 - (e) mailing it to the nearest post office.
- (3) The order may be given by an officer or noncommissioned officer.
- (4) If any enlisted member ordered to duty fails to appear for duty, the officer or noncommissioned officer giving notice or order shall make a return containing the name of the person ordered and the time, place, and manner of the order, if required by the officer issuing the order. The return may be verified by his oath, which may be administered by any commanding officer. The verified returns are evidence of the facts stated in the return on the trial of any person.

Amended by Chapter 15, 1989 General Session

39-1-40.5 Utah Code of Military Justice -- Procedures -- Jurisdiction.

- (1) Title 39, Chapter 6, Utah Code of Military Justice, is adopted as the Utah Code of Military Justice, which may also be referred to as the UtCMJ.
- (2) The UtCMJ sets forth offenses which, if committed by personnel of the Utah National Guard serving under this title or Title 32, United States Code, are punishable as the Utah Military Court directs under regulations made and published under the UtCMJ.
- (3) The Utah Military Court is a court of the state, convened under orders issued by the governor or the adjutant general. Judges of the court may issue summons, executions, and other process. The process shall be served by county sheriffs, at the expense of the state.
- (4) Judgments for fines or forfeitures may be docketed in the same manner as district court judgments in each county, and without costs.
- (5) Appeals shall be taken to the Court of Appeals.
- (6) Sentences of the Utah Military Court shall be served in a county jail. Costs incurred by the county shall be paid out of the General Fund of the state.
- (7) Certification as counsel for prosecution or defense, or as a judge of the Utah Military Court, is under orders issued by the adjutant general, and is limited to attorneys who are members of the Utah State Bar and are serving as judge advocates in the Utah National Guard.
- (8) A defendant may retain, at no cost to the state or National Guard, civilian counsel to represent him before the Utah Military Court.

- (9) The Utah Military Court may impose fines not exceeding \$2,500, restitution to victims, statutory surcharges, and may issue all writs and judgments for the execution of any of them.
- (10) When consistent with the Utah Manual for Military Courts, the Utah Rules of Criminal Procedure apply in Utah Military Courts.

Amended by Chapter 70, 2015 General Session

39-1-41 Discharge or dismissal.

A sentence of dismissal from the service or discharge imposed by a military court may not be executed until reviewed by the state judge advocate and approved by the governor.

Amended by Chapter 287, 2008 General Session

39-1-41.5 Authority of military court judges -- Payment of witnesses.

- (1) Judges of military courts may:
- (a) issue a warrant to arrest an accused person and bring him before the court for trial, when the person has failed to obey a prior summons to appear before the court, and a copy of the charge or information has been delivered to the accused with the summons;
 - (b) issue subpoenas and subpoenas duces tecum, and enforce by attachment the attendance of witnesses and the production of books and papers;
 - (c) sentence for a refusal to be sworn or to answer as provided in actions before civil courts; and
 - (d) issue process in any county within the state.
- (2) Witnesses shall be paid in the same manner as in district courts.

Amended by Chapter 198, 1996 General Session

39-1-44 Members of military courts exempt from liability.

No action or proceeding shall be prosecuted or maintained against a member of a military court or officer, or person acting under its authority or reviewing its proceedings, on account of the imposition, approval or execution of any sentence, or the imposition or collection of a fine or penalty, or the execution of any warrant, writ, execution, process or mandate of a military court.

No Change Since 1953

39-1-45 Jurisdiction presumed.

The jurisdiction of the courts established by this chapter shall be presumed, and the burden of proof shall rest on any person attacking such jurisdiction in any action or proceeding.

No Change Since 1953

39-1-46 Arsenal -- Military supplies -- Loss.

The governor is hereby authorized to provide an arsenal for the storage of arms, equipment and military supplies. Military supplies shall be issued upon requisition of the officer requiring the same. Military supplies for the respective organizations shall be issued to and receipted for by the commanding officer thereof, who shall be responsible to the state for the care and preservation of the same. Commanding officers shall be responsible to this state for the money value of all property issued to them, which may be lost by reason of carelessness and negligence upon their part.

Amended by Chapter 63, 1953 Special Session C

39-1-47 Military property exempt from civil process.

All military property issued to or owned by members of the National Guard shall be exempt from all civil process.

No Change Since 1953

39-1-50 Military court -- Concurrent prosecutorial jurisdiction with county or district attorney.

- (1) The county attorney or district attorney, as appropriate under Sections 17-18a-202 and 17-18a-203, of the county where an offense under the Utah Code of Military Justice is committed has concurrent jurisdiction with the Utah Military Court to prosecute the accused person at the expense of the county.
- (2) Charges regarding the offense may not be filed in a military court until the appropriate county attorney or district attorney has reviewed and declined to prosecute the offense.

Amended by Chapter 237, 2013 General Session

39-1-51 Pay and benefits of National Guard members.

- (1) When called into the service of the state and not in the service of the United States, the members of the National Guard shall:
 - (a) receive the same pay and allowance as members of the regular army or regular air force of like rank and length of service;
 - (b) elect to:
 - (i) receive medical, dental, disability, or death benefits equal to those received by full-time, permanent state employees; or
 - (ii) maintain any medical, dental, disability, or death benefits already in place; and
 - (c) receive one ration per day.
- (2) The state may not make payments to members of the National Guard for service for which the United States government makes payment.

Amended by Chapter 85, 2008 General Session

39-1-52 Encampments.

Encampments of the National Guard shall be such as may be provided for by the National Guard Bureau under authority of Congress. The cost of maintenance, transportation and subsistence, and other expenses of such encampments and maneuvers, shall not be paid by the state, but as provided for by Congress.

Amended by Chapter 61, 1963 General Session

39-1-53 Military units not to leave state.

No military unit of the Army or Air National Guard, unless called into the service of the United States, shall leave the state with arms and equipment without the consent of the commander in chief, and any person causing any unit to so leave the state is guilty of a misdemeanor.

Amended by Chapter 61, 1963 General Session

39-1-54 Privilege from arrest or citation -- Exceptions.

- (1) A member of the National Guard is privileged from arrest or citation by civil authorities:
 - (a) during military formations, exercises, mobilizations, or other duty when exigent, perilous, emergency, or similar circumstances require the member's presence; and
 - (b) while traveling to and from military duty locations when exigent, perilous, emergency, or similar circumstances require the member's presence.
- (2) This privilege does not extend to arrest or citation for:
 - (a) treason;
 - (b) any class A misdemeanor or felony;
 - (c) breach of the peace; or
 - (d) operation of a vehicle in a reckless manner or while under the influence of any drug or alcohol.

Amended by Chapter 391, 2015 General Session

39-1-56 Execution of a judgment imposing a fine -- Disposition of fines.

- (1)
 - (a) When the sentence of a military court includes a fine and the sentence has been approved by the officer ordering the court, the adjutant general shall issue a warrant for the collection of the fine, directed to the sheriff or any constable of the county where the person against whom the fine is imposed resides.
 - (b) The officer executing the warrant shall collect the fine in the same manner as he is authorized to collect debts in civil suits. He shall make returns to the adjutant general within 20 days after receiving the warrant.
 - (c) Warrants for the collection of fines imposed by military courts shall be issued by the officer appointing the military court.
- (2) All fines collected under this chapter and the regulations governing the National Guard of the United States shall be paid to the state treasurer for the credit of the state General Fund, unless otherwise provided by law.

Amended by Chapter 15, 1989 General Session

39-1-58 Vacating officer commissions -- Placement of officers in reserves.

- (1) Commissions of officers of the National Guard may be vacated upon resignation or absence without leave for three months pursuant to the sentence of a military court.
- (2)
 - (a) Officers of the National Guard rendered excess by the disbandment of their organization shall be placed in the National Guard reserve.
 - (b) Officers may, upon their own application, be placed in the reserve.

Amended by Chapter 359, 2004 General Session

39-1-59 Compensation for injury or death.

Within 72 hours of the reported death of a member of the National Guard on state active duty, the state shall provide a death gratuity payment of \$100,000 to:

- (1) the person designated as the recipient of the member's unpaid pay and allowances in the member's service record; or
- (2) if no one is designated, the designated person cannot be found, or the designated person has predeceased the member, the member's heirs in accordance with Title 75, Chapter 2, Part 1, Intestate Succession.

Repealed and Re-enacted by Chapter 96, 2016 General Session

39-1-59.5 National Guard Death Benefit Restricted Account.

- (1) There is created within the General Fund a restricted account known as "National Guard Death Benefit Account."
- (2)
 - (a) The restricted account shall be funded from funds appropriated by the Legislature.
 - (b) Funds in the restricted account may only be used to pay the death benefit authorized in Section 39-1-59.
 - (c) The restricted account may accrue interest which shall be deposited into the restricted account.
 - (d) At the close of any fiscal year, any balance in the fund in excess of \$2,000,000 shall be transferred to the General Fund.

Enacted by Chapter 96, 2016 General Session

39-1-60 Laws and regulations of United States control.

- (1) The National Guard of this state, the Utah State Defense Force serving under Title 39, Chapter 4, Utah State Defense Force Act, and the unorganized militia are at all times subject to the laws and military regulations of the United States governing them, while serving under Title 32, United States Code and the laws and military rules of the state.
- (2) The governor may make rules as necessary to make the laws and military regulations of the United States effective within the state.

Amended by Chapter 9, 1988 Special Session 2

Amended by Chapter 9, 1988 Special Session 2

39-1-62 Group life insurance for members of National Guard.

The lives of a group comprised solely of members of the Utah National Guard may be insured under a policy of group life insurance issued to an association of such members formed for purposes other than obtaining insurance. This association is deemed the policyholder, to insure members of the Utah National Guard for the benefit of persons other than the association or any of its officials, subject to the following requirements:

- (1) The premium for the policy shall be paid by the policyholder, either from the association's own funds, or from charges collected from the insured members specifically for the insurance.
- (2) No policy may be placed in force unless at least 60% of the members of the association, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, have elected to be covered.
- (3) The amounts of insurance under the policy shall be based upon some plan precluding individual selection either by the members or by the association. Such amounts may not exceed \$100,000 in the case of any member.

- (4) Such insurance policy shall conform to the provisions of the Insurance Code in so far as such code is not inconsistent with the provisions of this section.

Amended by Chapter 179, 1983 General Session

39-1-63 Tuition and fees assistance for Utah National Guard members -- Use and allocation -- Appropriation.

- (1)
 - (a) As used in this section, "fees" means general course fees, in addition to tuition, that are:
 - (i) imposed by an institution of higher education; and
 - (ii) required to be paid by a student to engage in a course of study at the institution of higher education.
 - (b) "Fees" does not include a special course fee.
- (2) The Utah National Guard may provide tuition and fees assistance to a member of the Utah National Guard for study at an institution of higher education, subject to the following requirements:
 - (a) the individual must be, at the time the individual receives the assistance, an active member of the Utah National Guard; and
 - (b) the assistance is for tuition and fees only and may not be more than the resident tuition and fees for the actual course of postsecondary study engaged in by the individual.
- (3)
 - (a) Tuition and fees assistance shall be awarded for each academic year.
 - (b) An individual may apply to the adjutant general of the state for assistance for each year during which the individual is an active member of the Utah National Guard.
 - (c) In awarding assistance, the adjutant general shall consider the recruitment and retention needs of the Utah National Guard.
- (4) The adjutant general of the state shall pay the tuition and fees assistance directly to an institution of higher education from the funds appropriated.
- (5) The adjutant general of the state shall establish regulations, procedures, forms, and reports necessary to administer the allocation of assistance and payment of funds under this section.
- (6) The adjutant general of the state shall include a request each year for funds for this program in the annual budget for the Utah National Guard.
- (7) An individual who transfers from the Select Reserve to the Utah National Guard is not eligible for the tuition and fees assistance in this section for one year from the date of transfer.

Amended by Chapter 65, 2015 General Session

39-1-64 Extension of licenses for members of National Guard and reservists.

- (1) As used in this section, "license" means any license issued under:
 - (a) Title 58, Occupations and Professions; and
 - (b) Section 26-8a-302.
- (2) Any license held by a member of the National Guard or reserve component of the armed forces that expires while the member is on active duty shall be extended until 90 days after the member is discharged from active duty status.
- (3) The licensing agency shall renew a license extended under Subsection (2) until the next date that the license expires or for the period that the license is normally issued, at no cost to the member of the National Guard or reserve component of the armed forces if all of the following conditions are met:

- (a) the National Guard member or reservist requests renewal of the license within 90 days after being discharged;
 - (b) the National Guard member or reservist provides the licensing agency with a copy of the member's or reservist's official orders calling the member or reservist to active duty, and official orders discharging the member or reservist from active duty; and
 - (c) the National Guard member or reservist meets all the requirements necessary for the renewal of the license, except the member or reservist need not meet the requirements, if any, that relate to continuing education or training.
- (4) The provisions of this section do not apply to regularly scheduled annual training.

Enacted by Chapter 82, 2004 General Session