

**Effective 5/4/2022**

**Chapter 3  
Utah National Guard**

**Part 1  
National Guard**

**39A-3-101 Utah National Guard -- Creation.**

- (1) There is created the Department of the Utah National Guard.
- (2) The Utah National Guard is commanded by an adjutant general and consists of the following:
  - (a) the joint force headquarters;
  - (b) the Utah Army National Guard, commanded by an assistant adjutant general for the Army;
  - (c) the Utah Air National Guard, commanded by an assistant adjutant general for the Air Force; and
  - (d) the Utah State Defense Force as organized in Title 39A, Chapter 4, Utah State Defense Force.
- (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 location of units including headquarters, when not otherwise prescribed by federal law, shall be fixed by the governor on the recommendation of the adjutant general.

Enacted by Chapter 373, 2022 General Session

**39A-3-102 Governor commander in chief -- Powers and duties.**

- (1) The governor by virtue of the governor's office shall be commander in chief of the Utah National Guard.
- (2) The governor:
  - (a) is authorized to issue all 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;
  - (b) shall appoint and commission all officers and select all warrant officers, subject to the provisions of Title 32 of the United State Code;
  - (c) shall provide facilities, ranges, and training lands as required for the Utah National Guard; and
  - (d) may order the National Guard into active service as necessary.
- (3) Notwithstanding Subsection (2)(b), an appointee who fails to receive federal recognition after being notified by the National Guard of the appointment shall revert to the status occupied before the appointment.

Renumbered and Amended by Chapter 373, 2022 General Session

**39A-3-103 National Guard subject to call by United States.**

- (1) The National Guard is at all times subject to the call of the President of the United States.
- (2) When called into the service of the United States, the National Guard is governed by the applicable laws and military regulations of the United States.
- (3) The National Guard and its members shall attend military training as required.

Renumbered and Amended by Chapter 373, 2022 General Session

**39A-3-104 Service members -- Appointment and promotion.**

- (1) All officers of the National Guard shall be appointed by the governor and receive a state commission.
- (2) The power of appointment may be delegated to the adjutant general, and further delegated as the adjutant general considers necessary.
- (3) Appointments are subject to approval as prescribed by the laws of the United States or related rules or regulations governing the National Guard.
- (4) The appointment, promotion, and withdrawal of a federal commission shall be made in a manner consistent with all applicable federal policies, rules, instructions, or regulations.
- (5) The withdrawal of a state commission shall be made in accordance with National Guard regulations in effect at the time of consideration for the withdrawal.
- (6) The appointment, promotion, and reduction of enlisted personnel shall be made in a manner consistent with all applicable federal policies, rules, instructions, or regulations.

Enacted by Chapter 373, 2022 General Session

**39A-3-105 General officer salary and benefits.**

- (1) Full-time, state employed general officers or officers appointed to a general officer position shall receive a salary that makes the total federal and state compensation at least commensurate with the pay and allowances for their military grade or assigned position, time in grade, and time in service as established in the United States Department of Defense Finance and Accounting Services annual pay and allowances chart.
- (2) General officers or other officers appointed to a general officer position and appointed to state employment shall receive the benefits and protections in Section 71A-8-105 for the term of the appointment.

Amended by Chapter 334, 2024 General Session

**39A-3-106 State active duty orders.**

- (1) Orders for state duty may be oral or written.
- (2) Written orders shall be issued by the governor or the adjutant general.
- (3) An oral order may be delivered by an officer or noncommissioned officer.

Enacted by Chapter 373, 2022 General Session

**39A-3-107 Pay and benefits of National Guard members on state active duty.**

- (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 at least the same pay and allowance as members of the regular Army or regular Air Force of like pay grade and time in service; and
  - (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.
- (2) The state may not make payments to members of the National Guard for service for which the United States government makes payment.

Renumbered and Amended by Chapter 373, 2022 General Session

**39A-3-108 Military property exempt from civil process.**

Military property issued to or owned by members of the National Guard is exempt from all civil process.

Renumbered and Amended by Chapter 373, 2022 General Session

**39A-3-109 Loss of property -- Liability.**

- (1) When Utah National Guard federal property is destroyed, damaged, or lost due to the failure of a service member to perform the duties required by law or regulation, the adjutant general may assess financial liability to the service member.
- (2) Within established law and regulation, the adjutant general may require the service member to reimburse the federal government for all or part of the loss, whether the service member is in federal status, state status, or off duty.

Enacted by Chapter 373, 2022 General Session

**39A-3-110 Utah Code of Military Justice -- Procedures -- Jurisdiction.**

- (1) Title 39A, Chapter 5, is adopted as the Utah Code of Military Justice.
- (2) The Utah Code of Military Justice 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 a military court directs in accordance with Chapter 5, Part 2, Military Courts and Part 3, Military Punishments.
- (3) Judges of a military 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 a 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 a 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 service member may retain, at no cost to the state or National Guard, civilian counsel to represent the service member before a military court.
- (9) A 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 processes.
- (10) When consistent with the Utah Manual for Military Courts, the Utah Rules of Criminal Procedure apply.

Renumbered and Amended by Chapter 373, 2022 General Session

**39A-3-111 Military court -- Concurrent prosecutorial jurisdiction with county or district attorney.**

- (1) The county attorney or district attorney, as appropriate under Sections 17-68-302 and 17-68-303, of the county where an offense under the Utah Code of Military Justice is committed

has concurrent jurisdiction with a military court to prosecute the accused individual 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 16, 2025 Special Session 1

## **Part 2**

### **Service Member Benefits**

#### **39A-3-201 Tuition and fees assistance for 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" includes:
    - (i) a special course fee; and
    - (ii) expenses for required:
      - (A) text books; and
      - (B) course related materials.
- (2) The National Guard may provide tuition and fees assistance to a member of the National Guard for study at an institution of higher education, subject to the following requirements:
- (a) the individual shall be, at the time the individual receives the assistance, an active member of the 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 as the adjutant general considers necessary.
  - (b) An individual may apply to the adjutant general for assistance for each year during which the individual is an active member of the National Guard.
  - (c) The adjutant general may recoup funds if a recipient fails to meet the requirements of the program.
- (4) The adjutant general shall:
- (a) pay tuition and fees assistance directly to the institution of higher education from the funds appropriated; and
  - (b) establish regulations, procedures, forms, and reports necessary to administer the allocation of assistance and payment of funds under this section.
- (5) The adjutant general may not use more than 10% of the funds for administration of the program as the adjutant general considers necessary.
- (6)
- (a) Subject to Subsections (6)(b) and (c), the adjutant general may allocate funds for the repayment of student loans for members of the National Guard.

- (b) In addition to the requirements described in Subsection (6)(c), a member of the National Guard qualifies for the repayment of the member's student loans if the member is currently an active member of the National Guard.
- (c) The adjutant general shall administer the loan repayment option described in this Subsection (6) in accordance with policies and procedures established by the adjutant general, including:
  - (i) additional eligibility requirements;
  - (ii) repayment limits; and
  - (iii) any other condition the adjutant general determines is appropriate.

Amended by Chapter 257, 2025 General Session

**39A-3-202 Pay and care of soldiers and airmen disabled while on state active duty.**

- (1)
  - (a) Before a service member may be considered disabled in accordance with this section, the Adjutant General shall determine whether the service member's illness, injury, or disease was contracted or occurred through the fault or gross negligence of the service member. If the service member is determined to be at fault for an injury or developed a disability through his or her own grossly negligent actions, the service member is not entitled to any care, pension, or benefit in accordance with this section.
  - (b) Notwithstanding Subsection (1)(a) the service member may be eligible for benefits in accordance with Title 34A, Chapter 2, Workers' Compensation Act, and Chapter 3, Utah Occupational Disease Act.
- (2) A member of the Utah National Guard or Utah State Defense Force who is disabled through illness, injury, or disease contracted or incurred while on state active duty or while reasonably proceeding to or returning from duty is eligible to receive workers' compensation benefits in accordance with Title 34A, Chapter 2, Workers' Compensation Act.
- (3)
  - (a) If the disability temporarily incapacitates the service member from pursuing the service member's usual business or occupation, the service member is eligible to receive workers' compensation benefits in accordance with Title 34A, Chapter 2, Workers' Compensation Act, and Chapter 3, Utah Occupational Disease Act.
  - (b) For the duration of the service member's inability to pursue a business or occupation, the adjutant general shall provide compensation so that the total compensation, including the disability compensation received under Subsection (3)(a) is commensurate with the injured service member's lost pay. The adjutant general shall consider lost civilian and military pay in the compensation.
- (4) A service member who is permanently disabled, shall receive pensions and benefits from the state that individuals under like circumstances in the Armed Forces of the United States receive from the United States.
- (5) If a service member dies as a result of an injury, illness, or disease contracted or incurred while on state active duty or while reasonably proceeding to or returning from active duty, the surviving spouse, minor children, or dependent parents of the service member shall receive compensation as directed in Section 39A-3-203.
- (6) Costs incurred by reason of this section shall be paid out of the funds available to the Utah National Guard.
- (7) The adjutant general, with the approval of the governor, shall make and publish regulations to implement this section.

- (8) Nothing in this section shall in any way limit or condition any other payment to a service member that the law allows.

Amended by Chapter 334, 2024 General Session

**39A-3-203 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 individual 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 individual cannot be found, or the designated individual has predeceased the member, the member's heirs in accordance with Title 75, Chapter 2, Part 1, Intestate Succession.

Renumbered and Amended by Chapter 373, 2022 General Session

**39A-3-204 National Guard Death Benefit 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 39A-3-203.
  - (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.

Amended by Chapter 334, 2024 General Session

**39A-3-205 Recruitment and retention bonus assistance for Utah National Guard members -- Use and allocation -- Appropriation.**

- (1) The Utah National Guard may provide recruitment and retention bonus assistance to a member of the Utah National Guard for the purpose of recruitment and retention, if, at the time the individual receives the assistance, the individual is an active member in good standing with the Utah National Guard.
- (2) The adjutant general may award recruitment and retention bonus assistance as the adjutant general considers necessary to meet recruitment and retention needs.
- (3) The adjutant general of the state shall pay recruitment and retention bonus assistance directly to the individual.
- (4) The adjutant general may recoup recruitment and retention bonus assistance funds from a recipient if a recipient fails to meet the requirements of the program.
- (5) The adjutant general 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 may use no more than 10% of the funds for administration of the program as the adjutant general considers necessary.

Enacted by Chapter 334, 2024 General Session

