

UTAH NATIONAL GUARD AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Val L. Peterson

Senate Sponsor: Peter C. Knudson

LONG TITLE

General Description:

This bill makes changes to the Utah National Guard statutes.

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 39-1-1, as last amended by Laws of Utah 2010, Chapter 324
39-1-3, as last amended by Laws of Utah 1989, Chapter 22
39-1-12, as last amended by Laws of Utah 2011, Chapter 115
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

73

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~~ ~~17~~ 18 ~~18~~ ~~18~~ years of age
 78a ~~18~~ ~~18~~ with parental consent ~~18~~ ~~18~~ or older and younger than
 79 ~~18~~ 45 ~~18~~ years of age, who are residents of this state, constitute the militia, subject
 79a to the following
 80 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 ~~H~~→ [his] the governor's ←~~H~~ office shall be commander
 100a in chief of the Utah
 101 National Guard and of the unorganized militia, and of any portions of the unorganized militia
 102 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[;], 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.

Legislative Review Note
Office of Legislative Research and General Counsel