

1 AN ACT

2 RELATING TO MILITARY AFFAIRS; AMENDING THE POWERS OF THE
3 ADJUTANT GENERAL; AUTHORIZING ACTIVATION OF THE NATIONAL
4 GUARD AND THE STATE DEFENSE FORCE IN THE CASE OF CERTAIN
5 EVENTS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE
6 NEW MEXICO MILITARY CODE.

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

9 SECTION 1. Section 20-1-4 NMSA 1978 (being Laws 1987,
10 Chapter 318, Section 4) is amended to read:

11 "20-1-4. GOVERNOR TO BE COMMANDER-IN-CHIEF--ENFORCEMENT
12 OF NEW MEXICO MILITARY CODE.--

13 A. The governor shall be the commander-in-chief of
14 the military forces, except so much thereof as may be in the
15 actual service of the United States, and may employ the
16 military forces for the defense or relief of the state, the
17 enforcement of its law and the protection of life and
18 property therein.

19 B. The adjutant general shall be the commanding
20 general of New Mexico, and the deputy adjutant general shall
21 be the deputy commanding general of New Mexico.

22 C. Whenever the governor or acting governor is
23 unable to personally perform the duties of commander-in-chief
24 or whenever the governor so directs, the adjutant general or,
25 in the adjutant general's absence, the senior line officer of

1 the national guard present for duty with the troops shall
2 command the military forces.

3 D. The governor may appoint a staff consisting of
4 the adjutant general and aides-de-camp of field grade or
5 higher who shall be detailed from the national guard or the
6 state defense force. The governor may designate honorarily
7 other persons as colonels aide-de-camp.

8 E. The governor may, by executive orders,
9 proclamations or regulations not inconsistent with law,
10 enforce all the provisions of the New Mexico Military Code."

11 SECTION 2. Section 20-1-5 NMSA 1978 (being Laws 1987,
12 Chapter 318, Section 5, as amended) is amended to read:

13 "20-1-5. ADJUTANT GENERAL--APPOINTMENT, POWERS AND
14 DUTIES.--In case of a vacancy, the governor shall appoint as
15 the adjutant general of New Mexico for a term of five years
16 an officer who for three years immediately preceding the
17 appointment as the adjutant general of New Mexico has been
18 federally recognized as an officer in the national guard of
19 New Mexico and who during service in the national guard of
20 New Mexico has received federal recognition in the rank of
21 colonel or higher. The adjutant general shall not be removed
22 from office during the term for which appointed, except for
23 cause to be determined by a court-martial or efficiency board
24 legally convened for that purpose in the manner prescribed by
25 the national guard regulations of the United States

1 department of defense. The adjutant general shall have the
2 military grade of major general and shall receive the same
3 pay and allowances as is prescribed by federal law and
4 regulations for members of the active military in the grade
5 of major general, unless a different rate of pay and
6 allowances is specified in the annual appropriations bill.
7 The adjutant general may promulgate rules for the conduct of
8 courts-martial and punishments under the Code of Military
9 Justice. Such procedural rules shall be consistent with and
10 carry into effect the New Mexico Military Code and afford
11 reasonable due process to criminal defendants. The adjutant
12 general shall:

13 A. prepare and publish, by order of the governor,
14 such orders, rules and regulations, consistent with law, as
15 are necessary to maintain the military forces in a state of
16 efficiency in conformity with the needs of the state and the
17 federal defense requirements;

18 B. supervise the receipt, preservation, repair,
19 distribution, issue and collection of all arms and military
20 equipment of the state;

21 C. supervise all personnel, organizations,
22 facilities, equipment, supplies and funds of the military
23 forces;

24 D. maintain records of all members of the military
25 forces and keep on file in the adjutant general's offices

1 copies of all orders, reports, regulations and communications
2 received and issued by the adjutant general;

3 E. perform such other duties as may be required by
4 the commander-in-chief; and

5 F. have a seal of office."

6 SECTION 3. Section 20-2-3 NMSA 1978 (being Laws 1987,
7 Chapter 318, Section 10, as amended) is amended to read:

8 "20-2-3. GOVERNOR--POWER TO CALL OUT MILITIA.--

9 A. The governor may, in case of insurrection,
10 invasion, riot or breach of the peace or of imminent danger
11 thereof or in case of other emergency, order into active
12 service of the state the militia or any components or parts
13 thereof that have not been called into federal service. As
14 used in this section, "emergency" includes any man-made or
15 natural disaster causing or threatening widespread physical
16 or economic harm that is beyond local control and requiring
17 the resources of the state.

18 B. The governor may also order any member of the
19 national guard to active state service for a period not to
20 exceed a cumulative total of four months within a calendar
21 year for any individual member for the following reasons:

22 (1) to protect critical infrastructure in
23 the state from a cybersecurity threat or security
24 vulnerability;

25 (2) to protect an information system owned

1 or operated by the state from a cybersecurity threat or
2 security vulnerability;

3 (3) to protect information that is stored
4 on, processed by or transiting on an information system owned
5 or operated by the state from a cybersecurity threat or
6 security vulnerability;

7 (4) to identify the source of a
8 cybersecurity threat; or

9 (5) to assist in search and rescue missions
10 or counter-drug operations.

11 C. A member of the national guard called to active
12 service pursuant to the provisions of Subsection B of this
13 section shall not have any police powers or arrest authority.
14 "Subsection B of Section 20-2-3 NMSA 1978" shall be cited on
15 all orders, vouchers and payroll documents submitted for
16 reimbursement pursuant to Section 20-1-6 NMSA 1978 in support
17 of all actions authorized by Subsection B of this section.
18 In no case shall an activation ordered pursuant to Subsection
19 B of this section be used to incur a debt under Article 9,
20 Section 7 of the constitution of New Mexico.

21 D. In case of any breach of the peace, tumult,
22 riot or resistance to process of this state or imminent
23 danger thereof, the sheriff of a county may call for aid from
24 the governor as commander-in-chief of the national guard. If
25 it appears to the governor that the power of the county is

1 insufficient to enable the sheriff to preserve the peace and
2 protect the lives and property of the peaceful residents of
3 the county or to overcome the resistance to process of this
4 state, the governor shall, on application of the sheriff,
5 order out such military force as is necessary.

6 E. When any portion of the militia is called out
7 for the purpose of suppressing an unlawful or riotous
8 assembly, the commander of the troops shall cooperate with
9 the civil officers to the fullest extent consistent with the
10 accomplishment of the object for which the troops were
11 called. The civil officials may express to the commander of
12 the troops the general or specific objective that the civil
13 officials desire to accomplish, but the tactical direction of
14 the troops, the kind and extent of force to be used and the
15 particular means to be employed to accomplish the object
16 specified by the civil officers shall be left solely to the
17 commander of the troops present on duty.

18 F. When any portion of the militia is ordered into
19 active service pursuant to this section in case of an
20 emergency, the militia may provide those resources and
21 services necessary to avoid or minimize economic or physical
22 harm until a situation becomes stabilized and again under
23 local self-support and control, including the provision, on a
24 temporary, emergency basis, for lodging, sheltering, health
25 care, food and any transportation or shipping necessary to

1 protect lives or public property; or for any other action
2 necessary to protect the public health, safety and welfare.

3 G. In the event of the exercise by the governor of
4 the powers under this section, the governor shall first
5 utilize the personnel and assets of the national guard and
6 only in their absence or insufficiency utilize the personnel
7 and assets of the state defense force."

8 SECTION 4. Section 20-2-6 NMSA 1978 (being Laws 1987,
9 Chapter 318, Section 13) is amended to read:

10 "20-2-6. GOVERNOR--CALL FOR FEDERAL OR STATE SERVICE--
11 POWERS.--

12 A. When the national guard or a part thereof is
13 called or ordered into active federal service under the
14 constitution and laws of the United States and the numbers or
15 composition of the national guard forces are insufficient to
16 meet such call or order, the governor may order out and cause
17 through the adjutant general to be enrolled into the
18 organized militia such persons as may be required and
19 expected to reasonably meet the federal call or order.

20 B. The governor may order out the organized
21 militia when:

22 (1) the national guard or any significant
23 portion thereof is called or ordered into active federal
24 service and the remaining national guard forces are
25 insufficient for the needs of the state; or

1 (2) the governor deems it necessary to meet
2 a major disaster, experienced or anticipated. The governor
3 is authorized to call into active state service the state
4 defense force or any portion thereof as may be necessary for
5 the protection and well being of the state. If the numbers
6 or composition of the state defense force is inadequate to
7 meet the need, the governor may call out and cause through
8 the adjutant general to be enrolled from the unorganized
9 militia such persons as are required to bring the organized
10 militia up to strength."

11 SECTION 5. Section 20-3-2 NMSA 1978 (being Laws 1987,
12 Chapter 318, Section 17, as amended) is amended to read:

13 "20-3-2. DEPARTMENT STRUCTURE--AUTHORITY OF ADJUTANT
14 GENERAL.--

15 A. The department of military affairs is a cabinet
16 level department and consists of:

- 17 (1) the office of the adjutant general;
- 18 (2) three subordinate military divisions:
 - 19 (a) the army national guard division;
 - 20 (b) the air national guard division;
- 21 and
- 22 (c) the state defense force division;

23 and

- 24 (3) five subordinate civil divisions:
 - 25 (a) the selective service office;

1 (b) the state armory board;
2 (c) the civil air patrol division;
3 (d) the state programs division; and
4 (e) the United States property and
5 fiscal office and such other agencies, administrative staffs
6 and clerical staffs necessary for departmental operation that
7 the adjutant general may by regulation prescribe.

8 B. The adjutant general is the military chief of
9 staff to the governor and is the head of the department of
10 military affairs.

11 C. The adjutant general shall prescribe policies,
12 rules and procedures for the orderly functioning of the
13 department of military affairs, which may include subordinate
14 organizational structures and lines of authority.

15 D. The adjutant general may employ such
16 administrative, technical, clerical and other personnel as
17 the adjutant general deems necessary and may fix the
18 compensation of exempt personnel subject to the concurrence
19 of the department of finance and administration.

20 E. The adjutant general may make expenditures from
21 appropriations or from other funds available to the adjutant
22 general for all purposes within Chapter 20 NMSA 1978.

23 F. The adjutant general is authorized to accept
24 through the United States property and fiscal officer such
25 equipment, supplies, arms, facilities and personnel support

1 funding as may be authorized and appropriated by federal law.

2 G. The adjutant general shall be furnished
3 suitable buildings, facilities, supplies and equipment for
4 conducting the business of the department of military affairs
5 to include the proper storage, repair and issuance of
6 military property.

7 H. The adjutant general may appoint as assistant
8 adjutants general one officer from each of the three military
9 divisions in the department of military affairs. The
10 officers appointed shall hold the rank of brigadier general
11 during such appointment. The qualifications of each person
12 so appointed shall meet the specific standards required for
13 such appointment within Chapter 20 NMSA 1978 and any
14 applicable federal standards or requirements. Once
15 appointed, the assistant adjutants general shall serve at the
16 pleasure of the adjutant general; their performance will be
17 reviewed annually, in January, by the adjutant general; and
18 if relieved, an assistant adjutant general shall revert to
19 the rank previously held or to such higher rank to which
20 promoted and federally recognized while serving as assistant
21 adjutant general. The adjutant general may designate one
22 federally recognized assistant adjutant general as deputy
23 adjutant general. The deputy adjutant general shall serve on
24 full-time active status for the state. In the incapacity or
25 absence from the state of the adjutant general, the deputy

1 adjutant general shall act in the adjutant general's stead.
2 In the incapacity or absence from the state of both the
3 adjutant general and the deputy adjutant general, the
4 governor may call any assistant adjutant general to active
5 service for the state. The assistant adjutants general shall
6 perform all duties that may be required of them by the
7 adjutant general. The adjutant general may delegate in
8 writing to any of the assistant adjutants general such
9 authorities and responsibilities as the adjutant general
10 deems appropriate, consistent with the constitutions, laws
11 and regulations of the state and of the United States.
12 Assistant adjutants general, when on active status for the
13 state, shall receive the same pay and allowances as are
14 prescribed by federal law and regulations for members of the
15 active military in the grade of brigadier general, unless a
16 different rate of pay and allowances are specified in a
17 general appropriation act of the New Mexico legislature.

18 I. The adjutant general shall appoint individuals
19 to serve as directors of the five subordinate civil
20 divisions, except as stated in Section 20-9-1 NMSA 1978. The
21 qualifications of each person so appointed shall meet the
22 specific standards required for such appointment within
23 Chapter 20 NMSA 1978 and any applicable federal standards or
24 requirements.

25 J. There shall be allowed to the adjutant general

1 a contingent and entertainment fund of two thousand five
2 hundred dollars (\$2,500) annually, plus such additional
3 appropriations for carrying out the functions of the office
4 as the legislature shall deem proper."

5 SECTION 6. Section 20-5-1 NMSA 1978 (being Laws 1987,
6 Chapter 318, Section 32) is amended to read:

7 "20-5-1. NEW MEXICO STATE DEFENSE FORCE ESTABLISHED--
8 NOT IN FEDERAL SERVICE--DEFINITIONS.--

9 A. The "New Mexico state defense force" is
10 established as an element of the militia in the department of
11 military affairs. The members and organizations of the
12 former New Mexico state guard are transferred to the
13 New Mexico state defense force on April 10, 1987.

14 B. Nothing in Chapter 20 NMSA 1978 shall be
15 construed as authorizing the New Mexico state defense force
16 or any part thereof to be called, ordered or in any manner
17 drafted by federal authorities into the military service of
18 the United States, but no person by reason of the person's
19 enlistment or appointment in the state defense force shall be
20 exempted from military service under any law of the United
21 States.

22 C. The following definitions apply to the duty
23 statuses under which members of the state defense force
24 serve:

25 (1) "militia duty" means the performance of

1 actual military service for the state in time of need when
2 called by the governor or adjutant general following
3 mobilization of the national guard. It may be performed by
4 the standing cadre of the state defense force at any time so
5 ordered upon mobilization of the national guard. It may be
6 performed by the unorganized militia following its call by
7 the governor pursuant to Subsection B of Section 20-2-6 NMSA
8 1978, in which case it shall include the post-call training
9 of the New Mexico state defense force pursuant thereto; and

10 (2) "cadre duty" means the normal service
11 and training performed by the standing cadre of the state
12 defense force in anticipation and support of militia duty,
13 including organization, administration and other pre-call
14 matters."

15 SECTION 7. Section 20-5-3 NMSA 1978 (being Laws 1987,
16 Chapter 318, Section 34) is amended to read:

17 "20-5-3. COMPOSITION--ENLISTMENT--APPOINTMENT.--

18 A. The state defense force shall consist of
19 persons eighteen years or older voluntarily appointed or
20 voluntarily enlisted therein and such additional members of
21 the unorganized militia as therein may be appointed,
22 enlisted, enrolled or inducted as provided by law.

23 B. The officers of the state defense force shall
24 be appointed by the governor and serve at the governor's
25 pleasure. They shall be chosen from the public and private

1 leadership bases within local communities so as to best
2 enable the community to efficiently muster and lead its
3 people and protect its assets and well-being."

4 SECTION 8. Section 20-5-6 NMSA 1978 (being Laws 1987,
5 Chapter 318, Section 37) is amended to read:

6 "20-5-6. UNIFORM--RANK PRECEDENCE AND COMMAND.--

7 A. The state defense force shall be uniformed.
8 The adjutant general shall by regulation prescribe the
9 uniform and insignia of the state defense force, which
10 uniform and insignia shall include distinctive devices
11 identifying it as the uniform of the state defense force and
12 distinguishing it from the national guard. When in uniform,
13 members of the state defense force will reasonably conform to
14 the dress and appearance standards of the national guard.
15 The wearing of permanent military decorations earlier awarded
16 is authorized.

17 B. The grade structure of the state defense force
18 shall to the extent practicable be the same as that
19 prescribed for the army national guard.

20 C. The senior line officer without distinction as
21 to component present in any organization or formation of the
22 state defense force shall command, unless the adjutant
23 general shall designate otherwise."

24 SECTION 9. Section 20-5-16 NMSA 1978 (being Laws 2003,
25 Chapter 111, Section 1) is amended to read:

1 "20-5-16. STATE DEFENSE FORCE--CADRE DUTY WORKERS'
2 COMPENSATION.--

3 A. When a member of the state defense force is on
4 state-ordered militia duty, the member is a worker under the
5 Workers' Compensation Act and the department of military
6 affairs is the member's employer.

7 B. Members of the New Mexico state defense force,
8 while performing cadre duty, may be utilized by the adjutant
9 general to assist the national guard with training exercises
10 or other cadre duties.

11 C. The average weekly wage of a member of the
12 state defense force shall be computed at the pay earned in
13 the member's civilian capacity. Disability benefits to a
14 member of the state defense force shall be limited to medical
15 benefits and two-thirds of the member's civilian pay if the
16 member is unable to work.

17 D. A member of the state defense force shall not
18 be considered a worker under the Workers' Compensation Act
19 when performing cadre duty.

20 E. As used in this section:

21 (1) "cadre duty" means the normal service
22 and training of the standing cadre of the state defense force
23 in anticipation and support of militia duty, including
24 organization, administration and other pre-call matters; and

25 (2) "militia duty" means the performance of

1 actual military service for the state in time of need when
2 called by the governor or adjutant general following
3 mobilization of the national guard. If performed by the
4 unorganized militia following its call by the governor
5 pursuant to Section 20-2-6 NMSA 1978, it shall include the
6 post-call training of the New Mexico state defense force as
7 required by that call."

8 SECTION 10. Section 20-12-4 NMSA 1978 (being Laws 1987,
9 Chapter 318, Section 89, as amended) is amended to read:

10 "20-12-4. CONVENING AUTHORITIES--NONJUDICIAL PUNISHMENT
11 AUTHORITIES.--

12 A. A general, special or summary court-martial may
13 be convened by the governor or by the adjutant general.

14 B. A special or summary court-martial may be
15 convened by the assistant adjutant general of the army
16 national guard, as to all members of the army national guard;
17 by the land component commander, as to members of the land
18 component commander's command; by the commanding officer of
19 any brigade-level headquarters, as to members of the
20 commanding officer's command; by the assistant adjutant
21 general of the air national guard, as to all members of the
22 air national guard; by the assistant adjutant general of the
23 state defense force, as to all members of the state defense
24 force; and to the commanders of such equivalent level
25 commands as may be organized in the future.

1 C. A summary court-martial may be convened by a
2 battalion commander, group commander or equivalent, as to all
3 members of the commander's command.

4 D. Nonjudicial punishment authority is conferred
5 upon all general, special or summary court-martial convening
6 authorities and upon company, battery and squadron commanders
7 or equivalent, as to members of their command."

8 SECTION 11. A new section of the Code of Military
9 Justice is enacted to read:

10 "PROHIBITED ACTIVITIES WITH MILITARY RECRUIT OR TRAINEE
11 BY PERSON IN POSITION OF SPECIAL TRUST--CONSENT NOT A
12 DEFENSE.--

13 A. Any person subject to Chapter 20 NMSA 1978
14 shall be punished as a court-martial may direct if the
15 person:

16 (1) is an officer or noncommissioned
17 officer;

18 (2) is in a training leadership position
19 with respect to a specially protected junior member of the
20 armed forces; and

21 (3) knew, or reasonably should have known,
22 that the person was engaged in prohibited sexual activity
23 with a specially protected junior member of the armed forces.

24 B. Any person subject to Chapter 20 NMSA 1978
25 shall be punished as a court-martial may direct if the person

1 is a military recruiter and knew, or reasonably should have
2 known, that the person was engaged in prohibited sexual
3 activity with:

- 4 (1) an applicant for military service; or
- 5 (2) a specially protected junior member of
6 the armed forces who is enlisted under a delayed entry
7 program.

8 C. Any person subject to Chapter 20 NMSA 1978
9 shall be punished as a court-martial may direct if the
10 person:

- 11 (1) is a commissioned, warrant or
12 noncommissioned officer;
- 13 (2) is in a training leadership position
14 with respect to a specially protected member of the armed
15 forces; and
- 16 (3) engaged in prohibited sexual activity
17 with a person that the person knew, or reasonably should have
18 known, was a specially protected junior member of the armed
19 forces.

20 D. Any person subject to Chapter 20 NMSA 1978
21 shall be punished as a court-martial may direct if the
22 person:

- 23 (1) is a commissioned, warrant or
24 noncommissioned officer;
- 25 (2) is performing duties as a military

1 recruiter; and

2 (3) engaged in prohibited sexual activity
3 with a person that the person knew, or reasonably should have
4 known, was an applicant for military service; or

5 (4) engaged in prohibited sexual activity
6 with a person that the person knew, or reasonably should have
7 known, was a specially protected junior member of the armed
8 forces who is enlisted under a delayed entry program.

9 E. Consent is not a defense to prosecution
10 pursuant to this section.

11 F. The maximum punishment of prosecution pursuant
12 to this section shall be a dishonorable discharge, forfeiture
13 of all pay and allowances received on or after the effective
14 date of the sentence and confinement for less than one year.

15 G. As used in this section:

16 (1) "applicant for military service" means a
17 person who, under regulations prescribed by the secretary
18 concerned, is an applicant for original enlistment or
19 appointment in the armed forces;

20 (2) "military recruiter" means a person who,
21 under regulations prescribed by the secretary concerned, has
22 the primary duty to recruit persons for military service;

23 (3) "prohibited sexual activity" means, as
24 specified in regulations prescribed by the secretary
25 concerned, inappropriate physical intimacy under

1 circumstances described in such regulations;

2 (4) "regulations prescribed by the secretary
3 concerned" means rules, regulations, instructions and
4 procedures proscribed by the secretary of the army or
5 secretary of the air force with respect to soldiers or airmen
6 of the national guard;

7 (5) "specially protected junior member of
8 the armed forces" means a member of the armed forces who is:

9 (a) assigned to, or is awaiting
10 assignment to, basic training or other initial active duty
11 for training, including a member who is enlisted under a
12 delayed entry program;

13 (b) a cadet, an officer candidate or a
14 student in any other officer qualification program; or

15 (c) in any program that, by regulation
16 prescribed by the secretary concerned, is identified as a
17 training program for initial career qualification; and

18 (6) "training leadership position" means,
19 with respect to a specially protected junior member of the
20 armed forces, any drill instructor position or other
21 leadership position in a basic training program, an officer
22 candidate school, a reserve officers' training corps unit, a
23 training program for entry into the armed forces or any
24 program that, by regulation prescribed by the secretary
25 concerned, is identified as a training program for initial

1 career qualification."

2 SECTION 12. A new section of the Code of Military
3 Justice is enacted to read:

4 "WEARING UNAUTHORIZED INSIGNIA, DECORATION, BADGE,
5 RIBBON, DEVICE OR LAPEL BUTTON.--

6 A. Any person subject to Chapter 20 NMSA 1978
7 shall be punished as a court-martial may direct if the
8 person:

9 (1) is not authorized to wear an insignia,
10 decoration, badge, ribbon, device or lapel button; and

11 (2) wrongfully wears such insignia,
12 decoration, badge, ribbon, device or lapel button upon the
13 person's uniform or civilian clothing.

14 B. The maximum punishment of prosecution pursuant
15 to this section shall be:

16 (1) for the wrongful wearing of the medal of
17 honor, distinguished service cross, navy cross, air force
18 cross, silver star, purple heart or a valor device on any
19 personal award, a dishonorable discharge, forfeiture of all
20 pay and allowances received on or after the effective date of
21 the sentence and confinement for less than one year; or

22 (2) for all other violations of this
23 section, a bad conduct discharge, forfeiture of all pay and
24 allowances and confinement for no more than six months.

25 C. As used in this section, "wrongful" means that

1 the conduct is done without legal justification or excuse.
2 Actual knowledge that the person was or is not authorized to
3 wear the item in question is required. Knowledge may be
4 proved by circumstantial evidence."

5 SECTION 13. REPEAL.--Sections 20-4-12, 20-12-57 and
6 20-12-68 NMSA 1978 (being Laws 1987, Chapter 318, Section 29
7 and Laws 1989, Chapter 337, Sections 56 and 67) are repealed.

8 SECTION 14. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2020. _____

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