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AN ACT

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

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

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

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

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

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

C. Whenever the governor or acting governor is  
unable to personally perform the duties of commander-in-chief  
or whenever the governor so directs, the adjutant general or,

1 in the adjutant general's absence, the senior line officer of  
2 the national guard present for duty with the troops shall  
3 command the military forces.

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

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

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

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

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

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

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

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

25           D. maintain records of all members of the military

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1 forces and keep on file in the adjutant general's offices  
2 copies of all orders, reports, regulations and communications  
3 received and issued by the adjutant general;

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

6 F. have a seal of office."

7 SECTION 3. Section 20-2-6 NMSA 1978 (being Laws 1987,  
8 Chapter 318, Section 13) is amended to read:

9 "20-2-6. GOVERNOR--CALL FOR FEDERAL OR STATE SERVICE--  
10 POWERS.--

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

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

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

25 (2) the governor deems it necessary to meet

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

10 SECTION 4. Section 20-3-2 NMSA 1978 (being Laws 1987,  
11 Chapter 318, Section 17, as amended) is amended to read:

12 "20-3-2. DEPARTMENT STRUCTURE--AUTHORITY OF ADJUTANT  
13 GENERAL.--

14 A. The department of military affairs consists of:

15 (1) the office of the adjutant general;

16 (2) three subordinate military divisions:

17 (a) the army national guard division;

18 (b) the air national guard division;

19 and

20 (c) the state defense force division;

21 and

22 (3) five subordinate civil divisions:

23 (a) the selective service office;

24 (b) the state armory board;

25 (c) the civil air patrol division;

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

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

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

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

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

21 F. The adjutant general is authorized to accept  
22 through the United States property and fiscal officer such  
23 equipment, supplies, arms, facilities and personnel support  
24 funding as may be authorized and appropriated by federal law.

25 G. The adjutant general shall be furnished

1 suitable buildings, facilities, supplies and equipment for  
2 conducting the business of the department of military affairs  
3 to include the proper storage, repair and issuance of  
4 military property.

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

25 In the incapacity or absence from the state of both the

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

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

23 J. There shall be allowed to the adjutant general  
24 a contingent and entertainment fund of two thousand five  
25 hundred dollars (\$2,500) annually, plus such additional

1 appropriations for carrying out the functions of the office  
2 as the legislature shall deem proper."

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

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

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

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

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

23 (1) "militia duty" means the performance of  
24 actual military service for the state in time of need when  
25 called by the governor or adjutant general following

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

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

14 SECTION 6. Section 20-5-3 NMSA 1978 (being Laws 1987,  
15 Chapter 318, Section 34) is amended to read:

16 "20-5-3. COMPOSITION--ENLISTMENT--APPOINTMENT.--

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

22 B. The officers of the state defense force shall  
23 be appointed by the governor and serve at the governor's  
24 pleasure. They shall be chosen from the public and private  
25 leadership bases within local communities so as to best

1 enable the community to efficiently muster and lead its  
2 people and protect its assets and well-being."

3 SECTION 7. Section 20-5-6 NMSA 1978 (being Laws 1987,  
4 Chapter 318, Section 37) is amended to read:

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

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

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

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

23 SECTION 8. Section 20-5-16 NMSA 1978 (being Laws 2003,  
24 Chapter 111, Section 1) is amended to read:

25 "20-5-16. STATE DEFENSE FORCE--WORKERS' COMPENSATION--

1 CADRE DUTY.--

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

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

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

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

19 E. As used in this section:

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

24 (2) "militia duty" means the performance of  
25 actual military service for the state in time of need when

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

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

9 "20-12-4. CONVENING AUTHORITIES--NONJUDICIAL PUNISHMENT  
10 AUTHORITIES.--

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

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

25 C. A summary court-martial may be convened by a

1 battalion commander, group commander or equivalent, as to all  
2 members of the commander's command.

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

7 SECTION 10. A new section of the Code of Military  
8 Justice is enacted to read:

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

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

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

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

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

23 B. Any person subject to Chapter 20 NMSA 1978  
24 shall be punished as a court-martial may direct if the person  
25 is a military recruiter and knew, or reasonably should have

1 known, that the person was engaged in prohibited sexual  
2 activity with:

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

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

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

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

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

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

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

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

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

14 G. As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 C. As used in this section, "wrongful" means that  
25 the conduct is done without legal justification or excuse.

1 Actual knowledge that the person was or is not authorized to  
2 wear the item in question is required. Knowledge may be  
3 proved by circumstantial evidence."

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

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