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CHAPTER 2

STATE ARMORY BOARD

Section	39-2-1.	Personnel—A body corporate—Powers.
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	39-2-9.	Cities may assist in erecting armories.

39-2-1. Personnel — A body corporate — Powers.—The state armory board shall consist of the governor, the secretary of state and the adjutant general. It shall be a body corporate with perpetual succession. It may have and use a common seal, and under the name aforesaid may sue and be sued, and contract and be contracted with. It may take and hold by purchase, gift, devise, grant or bequest real and personal property required for its use. It may also convert property received by gift, devise or bequest, and not suitable for its uses, into other property so available, or into money. It shall have power to borrow money for the purpose of erecting arsenals and armories upon the sole credit of the real property to which it has the legal title, may secure such loans by mortgage upon such property, and said property so mortgaged shall be the sole security for such loan, and no deficiency judgment shall be made, rendered or entered against said board upon the foreclosure of any such mortgage; provided, however, that property in one city shall not be mortgaged for the purpose of obtaining money for the erection of armories in any other place. Said board shall be deemed a public corporation, and its property shall be exempt from all taxes and assessments.

History: L. 1909, ch. 75, §§ 1, 2; 1911, ch. 20, §§ 1, 2; C. L. 1917, §§ 3880, 3881; R. S. 1933 & C. 1943, 54-2-1.

Compiler's Notes.

Section 1 of Laws 1939, ch. 134 authorized the governor to convey to the state armory board certain land located in Juab County.

Cross-References.

Adjutant general in charge of armories, subject to direction of board, 39-1-12.

Arsenal, governor's power to provide, 39-1-46.

Veterans' organizations, free use of armories by, 71-3-1.

Collateral References.

Militia ⇄ 17.

57 C.J.S. Militia § 18.

39-2-2. Further powers.—The board shall have the supervision and control of the armories and arsenals, and of all real property held or acquired for the military purposes of the state, and may provide suitable armories and arsenals for the different organizations of the national guard. It may lease suitable buildings for armory and arsenal purposes in various places throughout the state wherever necessary for the use of organizations of the national guard and for the storage of state and government property, for a term of years not exceeding twenty at such

rental as it may deem reasonable. It may take options for the purchase of any premises under lease to the state for armory and arsenal purposes at any time within the life of such lease, when it shall appear to be to the interest of the state to purchase the same, at such prices as the board and the owner of such premises may agree upon; provided, that no option shall be binding upon the board until ratified by act of the legislature. It may erect armories and arsenals at such places within the state as it may deem expedient and necessary upon lands to which it shall have acquired the legal title, and may expend from the military funds in the hands of the state treasurer in acquiring the legal title to lands and in the erection of armories and arsenals such sums as it may from time to time deem advisable and necessary.

History: L. 1909, ch. 75, § 2; 1911, ch. 20, § 2; C. L. 1917, § 3881; R. S. 1933 & C. 1943, 54-2-2.

39-2-3. Construction of national guard armories.—The state armory board is hereby authorized to provide for the construction of national guard armories at St. George, Payson, Pleasant Grove, Lehi, Vernal, Murray, Provo, Springville, American Fork, Orem, Beaver, Morgan and Bountiful, Utah, as and when funds therefor are made available through appropriation by the legislature.

History: L. 1947, ch. 68, § 1; C. 1943, Supp., 54-2-2.10.

Title of Act.

An act authorizing the construction of national guard armories at St. George, Payson, Pleasant Grove, Lehi, Vernal, Mur-

ray, Provo, Springville, American Fork, Orem, Beaver, Morgan and Bountiful, Utah, authorizing the sale of the present existing armories at Bountiful and Provo and appropriating the funds received from such sale.

39-2-4. Order of construction of armories.—Upon the appropriation by the legislature of funds for the purpose of carrying out the provisions of this act, the state armory board shall determine which of the armories herein authorized shall be first constructed and shall allot any funds so appropriated in such manner as will in its judgment best promote the interests of the national guard in Utah.

History: L. 1947, ch. 68, § 2; C. 1943, Supp., 54-2-2.11.

39-2-5. Sale of Bountiful, Beaver and Provo armories—Disposition of proceeds.—The state armory board is hereby authorized to sell the present existing armories and armory premises at Bountiful, Beaver and Provo, Utah. The proceeds from such sales of the present existing armories and premises at Bountiful and Provo are hereby appropriated to the state armory board to be applied toward the construction of the new armories at Bountiful and Provo, respectively.

History: L. 1947, ch. 68, § 3; C. 1943, Supp., 54-2-2.12.

39-2-6. Sale of Salt Lake City armory—Sale of armories and armory premises—Disposition of proceeds.—The state armory board is hereby au-

thorized to sell armories and army [armory] premises within the state of Utah. The proceeds of such sales of armories and army [armory] premises are hereby appropriated to the state armory board to be applied toward the construction of new armories.

History: L. 1951, ch. 63, § 1; C. 1943, Supp., 54-2-2.13; L. 1953, ch. 64, § 1.

The bracketed words "armory" were inserted by the compiler.

Compiler's Notes.

Prior to amendment, this section read: "The state armory board is hereby authorized to sell the present existing armory premises, located at 4th East and 2nd South streets, Salt Lake City, state of Utah. The proceeds of such sale are hereby appropriated to the state armory board for construction of new armory buildings."

Title of Act.

An act authorizing the sale of the present existing armory, located at 4th East and 2nd South streets, Salt Lake City, Utah.

Effective Date.

Section 2 of Laws 1951, ch. 63 provides that act should take effect on approval. Approved March 7, 1951.

39-2-7. Budget—Annual legislative approval.—For the use of the state armory board, and for the purpose of payment of rentals for armories and for the purpose of paying interest on any sum borrowed by said board for the erection of armories, and for the purpose of construction of new armories or other military facilities, the adjutant general shall prepare and submit to the governor, to be included in his budget to be submitted to the legislature, a budget of the requirements for the expenses of that department in carrying out the provisions of law for the fiscal year next following the convening of the legislature.

History: L. 1909, ch. 75, § 3; 1911, ch. 20, § 3; C. L. 1917, § 3882; R. S. 1933 & C. 1943, 54-2-3; L. 1953, ch. 65, § 1; 1967, ch. 77, § 3; 1969, ch. 91, § 1.

The 1969 amendment substituted "fiscal year" for "biennium"; deleted the clause which limited expenditures of the national guard; and made minor changes in phraseology.

Compiler's Notes.

The 1953 amendment inserted "and for the purpose of the construction of new armories or other military facilities" in the first sentence and added a former second sentence which read: "Said state armory board may expend all or any part of said balance in said fund in any one calendar year."

Section 4 of Laws 1967, ch. 77 reads: "The unexpended balance in said military fund as of July 1, 1967 shall be transferred to the unappropriated surplus account of the general fund."

The 1967 amendment substituted the provisions relating to preparation and submission of the budget and limitations on expenditures for provisions relating to the annual appropriation of \$10,000 for the military fund, disbursements from the fund, expenditures by the state armory board, and the deposit of money appropriated for military purposes to the credit of the military fund.

Effective Dates.

Section 5 of Laws 1967, ch. 77 provides: "This act shall take effect July 1, 1967."

Section 2 of Laws 1969, ch. 91 provides: "This act shall take effect on July 1, 1969."

Collateral References.

Taxation for armory as within constitutional prohibition against imposition of taxes for county, city or corporate purposes, and the like, 46 A. L. R. 723, 106 A. L. R. 906.

39-2-8. Borrowing power limited—Land board authorized to lend.
Interest rate.—The borrowing power of the state armory board is limited to the sum of \$250,000 for which sum it may become indebted to any person, board, association or corporation, and the state land board is hereby authorized and empowered in its discretion to lend to the state armory board any sum not exceeding \$250,000; provided, however, that

any loan heretofore or hereafter made to the state armory board by the state land board shall not run for a longer period than twenty years, and shall not draw interest at a rate exceeding four per cent per annum; and provided further, that an armory and arsenal at Salt Lake City, Utah, shall be constructed out of said moneys.

History: L. 1909, ch. 75, § 4; 1911, ch. 20, § 4; C. L. 1917, § 3883; L. 1929, ch. 4, § 1; R. S. 1933, 54-2-4; L. 1939, ch. 64, § 1; C. 1943, 54-2-4.

Compiler's Notes.

The 1939 amendment substituted "\$250,000" for "\$100,000"; inserted "heretofore or hereafter" after "loan," "by the state land board" after "board" in first proviso, and "four" for "six" before "per cent," and added last proviso.

39-2-9. Cities may assist in erecting armories.—The board of commissioners and city councils of cities shall have power to appropriate from any funds of the city available for general purposes such sums as they may deem expedient for the purpose of assisting the state armory board in the erection of armories within their respective cities, and for the maintenance of armories located and maintained therein, and in all cities where waterworks and an electric light plant are owned by the city the water and electric light used in armories maintained therein may at the discretion of the city be furnished without cost.

History: L. 1909, ch. 75, § 5; 1911, ch. 20, § 6; C. L. 1917, § 3885; R. S. 1933 & C. 1943, 54-2-5.

CHAPTER 3

GOVERNMENTAL EMPLOYEES IN MILITARY SERVICE

- Section 39-3-1. Public officers and employees in military service—Not to be prejudiced thereby—Temporary appointments—Refusal to reinstate—Procedure—Motion—Hearing and determination.
- 39-3-2. State, county, and municipal employees in organized reserve of army, navy, air force, and marines allowed full pay for fifteen days spent on duty at annual encampment.

39-3-1. Public officers and employees in military service—Not to be prejudiced thereby—Temporary appointments—Refusal to reinstate—Procedure—Motion—Hearing and determination.—Every officer and employee of the state or of any county, municipal corporation, or governmental district who enlists or is called or inducted into and enters active service in the state militia or any branch of the federal military, naval, or marine service shall be entitled to absent himself from his duties or service while engaged in the performance of active military or naval duty and while going to and returning from such duty. No such officer or employee shall be subjected by any person directly or indirectly by reason of such absence to any loss or diminution of vacation or holiday privilege or be prejudiced by reason of such absence with reference to promotion or continuances in office, employment, reappointment to office, or re-employment.

In the case of any such person who engages in such active service or duty who is in the employ of the state, county, municipal corporation or governmental district who leaves or has left his position to enter in such service or duty, the person shall be given a leave of absence from such position by the state, county, municipal corporation or governmental district employing the person for the period of time the person is in such military service. Upon the termination of said military service or duty such person shall be restored to such position or to a position of like seniority, status and pay providing the person makes application for restoration of his position within forty days after he is relieved of training, service, or duty, and such person shall not be discharged from such position without just cause within one year after such restoration and shall be entitled to participate in insurance or other benefits offered by the state, county, municipal corporation, or political district pursuant to the established laws, rules, and practices, relating to persons on furlough or leave of absence in effect at the time the person commences such military service; provided, that this section shall not be construed to retain in office or in the employment of state, county, municipal corporation or governmental district any person elected or appointed for a definite term of office, or any person appointed by or serving under a person elected or appointed for a definite term of office, beyond the term at which the term of said person or the term of the person by whom he was appointed or under whom he was serving shall otherwise expire by operation of law.

No officer or employee of the state, county, municipal corporation or governmental district who enlists or is called or inducted into and enters active service in the state militia or any branch of the federal military, naval or marine service, shall be deemed to have forfeited or vacated his office or position while serving in the armed forces of the state or federal government and for purposes of this provision, no person shall be considered as holding such an office or being in the employ of the United States government that would disqualify or prohibit such officer or employee from holding any office or position or cause any office or position in the state, county, municipal corporation or political district of the state, to be forfeited or declared vacant.

The same person or authority which is now authorized by law to fill a vacancy caused by death or resignation of an officer or employee, may appoint an officer or employee tempore to perform the necessary duties of the officer or employee while he is in state or federal military service at not to exceed, the same rate of compensation as he is now and has been paid for such services in and as provided for by law or custom.

An elected officer shall be considered as on leave of absence only during a period of time not to exceed the term of office to which he is or was elected.

In case the state, county, municipal corporation, or political district fails or refuses to comply with the provisions of this section to reinstate such person within twenty days after an application for the termination

furlough or leave of absence is received, the district court in and for the county of Salt Lake, as to officers and employees of the state, and otherwise in and for the county wherein the county, municipal corporation or political district is located, shall have power, upon filing of a motion, petition or other appropriate pleading by the person entitled to the benefits of such provisions, to specifically require the state, county, or municipal corporation or political district to specifically comply with such provisions, and, as an incident thereto, to compensate such person for any loss of wages or benefits suffered by the unlawful action by the state, county, municipal corporation, or political district. The court shall order a speedy hearing in any such case and advance it on the calendar. Upon application to the district attorney, for the judicial district, or the county attorney of the county, by any person claiming to be entitled to the benefits of such provisions, such district attorney or county attorney, if reasonably satisfied that the person so applying is entitled to such benefits, shall appear and act as attorney for such person in the amicable adjustment of the claim or in the filing of any motion, petition or other appropriate pleading and the prosecution thereof to specifically require such state, county, municipal corporation, or political district to comply with such provisions; provided, that no fees or court costs shall be taxed against the person so applying for such benefits.

History: L. 1941, ch. 105, § 1; C. 1943, 54-3-1; L. 1943, ch. 63, § 1.

Compiler's Notes.

The 1943 amendment completely rewrote this section.

Title of Act.

An act relating to state officers and employees in military service and to provide that all officers and employees of the state or any municipal corporation or political subdivision of the state who are members of the national guard, naval militia, members of the reserve corps of the United States army or forces in the federal military, naval, or marine service may be absent from their places of employment.

Separability and Repealing Clauses.

Section 2 of Laws 1941, ch. 105 provided: "If any provision of this act is held invalid or unconstitutional the remainder of the act shall not be affected thereby, and all acts or parts of acts in conflict with the provisions of this act are repealed."

Effective Date.

Section 3 of Laws 1941, ch. 105 provided that act was to take effect upon approval. Approved March 22, 1941.

Cross-Reference.

State employees in service, care of dependents, 39-1-35.

1. Constitutionality.

This act is constitutional. *Critchlow v. Monson*, 102 U. 378, 131 P. 2d 794. For sequel to this case, see *State v. Grover*, 102 U. 459, 132 P. 2d 125.

2. Construction and application.

This "act was designed not to encourage men to enlist, but to prevent permanent severance of state officers and other officials and employees in public service from their particular positions and employment. The act refers to all who enter ordered military service, who are called to active duty, which comprehends all classes of service which the men enter for the reason they are required by law or executive order to enter because of the war and national emergency." The legislature intended that absence in the military service be construed as a leave of absence rather than a resignation or voluntary severance from employment. Among other things, the act was designed to aid morale. It definitely informs a man that he need not worry about leaving his office or position since he is granted a leave of absence and will not be unemployed when he returns. *Critchlow v. Monson*, 102 U. 378, 131 P. 2d 794, 802. For sequel to this case, see *State v. Grover*, 102 U. 459, 132 P. 2d 125.

3. Separability clause.

If the act is severable, and a part is unconstitutional, such determination will not vitiate the remainder of the act. *Critchlow v. Monson*, 102 U. 378, 131 P. 2d

794. For sequel to this case, see *State v. Grover*, 102 U. 459, 132 P. 2d 125.

Collateral References.

Militia \Leftrightarrow 2.

57 C.J.S. Militia § 7.

Compensation of public employees while in military service, 22 A. L. R. 2d 1139.

Constitutionality of statute providing for payments to public officers or employees who enter the military service of the United States, or to their dependents, 145 A. L. R. 1156.

Incompatibility of offices of judge and national guard officer, 26 A. L. R. 143, 132 A. L. R. 254, 147 A. L. R. 1419, 148 A. L. R. 1399, 150 A. L. R. 1444.

Incompatibility of offices of public officer and officer of national guard or militia, 26 A. L. R. 142, 132 A. L. R. 254, 147 A. L. R. 1419, 148 A. L. R. 1399, 150 A. L. R. 1444.

Induction or voluntary enlistment in military service as creating a vacancy or as ground of removal from, public office or employment, 143 A. L. R. 147 A. L. R. 1427, 148 A. L. R. 1400, 149 A. L. R. 1447, 151 A. L. R. 1462, 152 A. L. R. 1459, 154 A. L. R. 1456, 156 A. L. R. 157 A. L. R. 1456.

Public officers or employees in civil service, constitutionality, construction, application of statutes concerning statutory rights of, while performing military or naval duty, 134 A. L. R. 919.

Rights of parties to contract, the performance of which is interfered with or prevented by war conditions or action of government in prosecution of war, 148 A. L. R. 1273, 148 A. L. R. 1382, 149 A. L. R. 1447, 150 A. L. R. 1413, 151 A. L. R. 152 A. L. R. 1447, 153 A. L. R. 1417 A. L. R. 1445, 155 A. L. R. 1447, 156 A. L. R. 1446, 157 A. L. R. 1446, 158 A. L. R. 1446.

39-3-2. State, county, and municipal employees in organized reserve army, navy, air force, and marines allowed full pay for fifteen days spent on duty at annual encampment.—All state employees and all employees of county and municipality thereof who are or shall become members of organized reserve of the United States army, navy, air force and marines shall be allowed full pay for all time not in excess of fifteen days per year spent on duty at annual encampment or rifle competition or other duties in connection with the reserve training and instruction requirements of the army, navy, air force and marines of the United States. This leave shall be in addition to annual vacation leave with pay.

History: L. 1955, ch. 63, § 1.

Title of Act.

An act granting employees of the state of Utah and employees of any county or municipality thereof who are members of the reserve forces of the United States army, navy, air force and marines, full pay for the time not in excess of fifteen days per year spent on duty at annual encampment or rifle competition or other duties

in connection with the reserve training and instruction requirements of the departments of the army, navy, air force and marines of the United States; this leave shall be in addition to annual vacation leave with pay; emergency clause.

Effective Date.

Section 2 of Laws 1955, ch. 63 provides that the act should take effect upon approval. Approved March 11, 1955.

CHAPTER 4

STATE GUARD

- Section 39-4-1. Governor authorized to organize state guard.
 39-4-2. Governor to prescribe rules and regulations.
 39-4-3. Compensation of members.
 39-4-4. Governor may requisition arms and equipment from secretary of state.
 39-4-5. Service outside state prohibited—Exceptions.
 39-4-6. Forces of another state in fresh pursuit may make arrests.
 39-4-7. State guard, as such, not subject to United States military service. Members not exempt from United States military service.
 39-4-8. No organizations to be enlisted as a unit.
 39-4-9. Qualifications of members.

- 39-4-10. Oaths of officers.
 39-4-11. Term of enlistment—Oaths.
 39-4-12. Courts-martial rules of national guard applicable—When members exempt from arrest, posse comitatus and jury service.
 39-4-13. Short title.

39-4-1. Governor authorized to organize state guard.—The governor is authorized to organize and maintain within this state, under such regulations as the secretary of war of the United States may prescribe for discipline in training, such military forces as the governor may deem necessary to defend this state. Such forces shall be composed of officers commissioned or assigned, and such able-bodied male citizens of the state as shall volunteer for service therein, supplemented, if necessary, by men of the militia enrolled by draft or otherwise as provided by law. Such forces shall be additional to and distinct from the national guard and shall be known as the Utah state guard. Such forces may be uniformed.

History: L. 1941 (2nd S. S.), ch. 36, § 1;
 C. 1943, 54-4-1; L. 1953 (1st S. S.), ch. 9,
 § 1.

Title of Act.

An act to provide for a state guard.

Cross-Reference.

State council of defense may recommend call to active duty, 63-5-3.

Collateral References.

Militia↔2.
 57 C.J.S. Militia § 7.
 Generally, 36 Am. Jur. 192 et seq., Military § 1 et seq.

Compiler's Notes.

The 1953 amendment deleted "Whenever any part of the national guard of this state is in active federal service," at the beginning of the section, and "during such period," following "state" the first time it appears.

39-4-2. Governor to prescribe rules and regulations.—The governor is authorized to prescribe rules and regulations not inconsistent with the provisions of this act governing the enlistment, organization, administration, equipment, maintenance, training and discipline of such forces: Provided, such rules and regulations, in so far as he deems practicable and desirable, shall conform to existing law governing and pertaining to the national guard and the rules and regulations promulgated thereunder and shall prohibit the acceptance of gifts, donations, gratuities or anything of value by such forces or by any member of such forces from any individual, firm, association or corporation by reason of such membership.

History: L. 1941 (2nd S. S.), ch. 36, § 2;
 C. 1943, 54-4-2.

Collateral References.

Militia↔3.
 57 C.J.S. Militia § 7.
 Powers and duties of governor, 36 Am. Jur. 214, 215, Military §§ 45, 46.

39-4-3. Compensation of members.—Every member of the Utah state guard when called into active service by the governor shall receive such compensation as may be prescribed by the governor not exceeding the rate of pay prescribed by law for officers and men of the national guard when called into active service of this state by the governor.

History: L. 1941 (2nd S. S.), ch. 36, § 3;
 C. 1943, 54-4-3.

Collateral References.

Militia↔11.
 57 C.J.S. Militia § 14.

Cross-Reference.

Pay of national guard, 39-1-51.

39-4.4. Governor may requisition arms and equipment from secretary of war.—For the use of such forces, the governor is authorized to requisition from the secretary of war such arms and equipment as may be in the possession of and can be spared by the war department; and to make available to such forces the facilities of state armories and their equipment and such other state premises and property as may be available.

History: L. 1941 (2nd S. S.), ch. 36, § 4; **Collateral References.**
C. 1943, 54-4-4.

Militia \leftrightarrow 2.
57 C.J.S. Militia § 7.

39-4.5. Service outside state prohibited — Exceptions. — Such forces shall not be required to serve outside the boundaries of this state except

(a) Upon the request of the governor of another state, the governor of this state may, in his discretion, order any portion or all of such forces to assist the military or police forces of such other state who are actually engaged in defending such other state. Such forces may be recalled by the governor at his discretion.

(b) Any organization, unit or detachment of such forces, upon order of the officer in immediate command thereof, may continue in fresh pursuit of insurrectionists, saboteurs, enemies or enemy forces beyond the borders of this state into another state until they are apprehended or captured by such organization, unit or detachment or until the military or police forces of the other state or the forces of the United States have had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons; provided, such other state shall have given authority by law for such pursuit by such forces of this state. Any such person who shall be apprehended or captured in such other state shall without unnecessary delay be surrendered to the military or police forces of the state in which he is taken or to the United States, but such surrender shall not constitute a waiver by this state of its right to extradite or prosecute such persons for any crime committed in this state.

History: L. 1941 (2nd S. S.), ch. 36, § 5;
C. 1943, 54-4-5.

39-4.6. Forces of another state in fresh pursuit may make arrests.—Any military forces or organization, unit or detachment thereof, of another state who are in fresh pursuit of insurrectionists, saboteurs, enemies or enemy forces may continue such pursuit into this state until the military or police forces of this state or the forces of the United States have had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons and are authorized to arrest or capture such persons within this state while in fresh pursuit. Any such person who shall be captured or arrested by the military forces of such other state while in this state shall without unnecessary delay be surrendered to the military or police forces of this state to be dealt with according to law. This section shall not be construed so as to make unlawful any arrest in this state which would otherwise be lawful, and nothing contained in this section shall be deemed to repeal any of the provisions of the Uniform Act on the Fresh Pursuit of Criminals.

History: L. 1941 (2nd S. S.), ch. 36, § 6; Compiler's Notes.
C. 1943, 54-4-6.

The Uniform Act on The Fresh Pursuit of Criminals is compiled at 77-13-22 to 77-13-29.

39-4-7. State guard, as such, not subject to United States military service—Members not exempt from United States military service.—Nothing in this act shall be construed as authorizing such forces, or any part thereof to be called, ordered or in any manner drafted, as such into the military service of the United States, but no person shall by reason of his enlistment or commission in any such forces be exempted from military service under any law of the United States.

History: L. 1941 (2nd S. S.), ch. 36, § 7; Collateral References.
C. 1943, 54-4-7.

Militia↔6.
57 C.J.S. Militia § 5.

39-4-8. No organizations to be enlisted as a unit.—No civil organization, society, club, post, order, fraternity, association, brotherhood, body, union, league or other combination of persons or civil group shall be enlisted in such forces as an organization or unit.

History: L. 1941 (2nd S. S.), ch. 36, § 8; Collateral References.
C. 1943, 54-4-8.

Militia↔8.
57 C.J.S. Militia § 12.

39-4-9. Qualifications of members.—No person shall be commissioned or enlisted in such forces who is not a citizen of the United States or who has been expelled or dishonorably discharged from any military or naval organization of this state, or of another state, or of the United States.

History: L. 1941 (2nd S. S.), ch. 36, § 9; Collateral References.
C. 1943, 54-4-9.

Militia↔2.
57 C.J.S. Militia § 7.

39-4-10. Oaths of officers.—The oath to be taken by officers commissioned in such forces shall be substantially in the form prescribed for officers of the national guard substituting the words Utah state guard where necessary.

History: L. 1941 (2nd S. S.), ch. 36, § 10; Collateral References.
C. 1943, 54-4-10.

Militia↔7.
57 C.J.S. Militia § 11.

Cross-Reference.

Oath of national guard officers, 39-1-30.

39-4-11. Term of enlistment—Oaths.—No person shall be enlisted for more than one year, but such enlistment may be renewed. The oath to be taken upon enlistment in such forces shall be substantially in the form prescribed for enlisted men of the national guard, substituting the words, Utah state guard, where necessary.

History: L. 1941 (2nd S. S.), ch. 36, Collateral References.
§ 11; C. 1943, 54-4-11.

Militia↔8.
57 C.J.S. Militia § 12.

39-4-12. Courts-martial rules of national guard applicable—When members exempt from arrest, posse comitatus and jury service.—(a) Whenever such forces or any part thereof shall be ordered out for active service the articles of war of the United States applicable to members of the national guard of this state in relation to courts-martial, their jurisdiction and the limits of punishment and the rules and regulations prescribed thereunder shall be in full force and effect with respect to the Utah state guard.

(b) No officer or enlisted man of such forces shall be arrested on any warrant, except for treason or felony, while going to, remaining at, or returning from a place where he is ordered to attend for military duty. Every officer and enlisted man of such forces shall, during his service therein, be exempt from service upon any posse comitatus and from jury duty.

History: L. 1941 (2nd S. S.), ch. 36, § 12; C. 1943, 54-4-12.

Cross-Reference.

Courts-martial, 39-1-40 et seq., 39-1-55 et seq.

Separability Clause.

Section 13 of Laws 1941 (2nd S. S.), ch. 36 (Code 1943, 54-4-13) provided: "If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the

act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

Repealing Clause.

Section 14 of Laws 1941 (2nd S. S.), ch. 36 (Code 1943, 54-4-14) provided that all acts and parts of acts inconsistent with the provisions of this act are repealed.

Collateral References.

Militia \Leftrightarrow 21.

57 C.J.S. Militia § 25.

39-4-13. Short title.—This act may be cited as the State Guard Act.

History: L. 1941 (2nd S. S.), ch. 36, § 15; C. 1943, 54-4-15.

CHAPTER 5

CIVIL DEFENSE

- | | | |
|---------|---------|---|
| Section | 39-5-1. | Power of governor to execute. |
| | 39-5-2. | Form of compact. |
| | 39-5-3. | Owner of property free from liability for injuries to persons or property during actual, impending, or mock attack. |

39-5-1. Power of governor to execute.—The governor of this state is authorized to execute a compact on behalf of the state of Utah with any one or more of the states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Washington and Wyoming, and the Territories of Alaska and Hawaii.

History: L. 1953 (1st S. S.), ch. 10, § 1. Title of Act.

Compiler's Notes.

No federal statute giving Congressional approval to this compact has apparently been passed.

An act authorizing the governor to execute a Civil Defense Compact with western regional states and the territories of Alaska and Hawaii, providing for mutual aid and utilization of the resources of the

respective states and territories in meeting any emergency or disaster from enemy attack or other cause, and providing that directors of civil defense of party states shall, constitute a committee for implementation of the compact.

39-5-2. Form of compact.—The compact shall be in substantially the following form:

The contracting states solemnly agree:

ARTICLE 1

PURPOSE OF ACT—UTILIZATION OF RESOURCES—

DIRECTORS ACT AS COMMITTEE

The purpose of this compact is to provide mutual aid among the States in meeting any emergency as defined in 63-5-8 Utah Code Annotated 1953, or disaster from enemy attack or other cause (natural or otherwise) including sabotage and subversive acts and direct attacks by bombs, shellfire, and atomic, radiological, chemical, bacteriological means, and other weapons. The prompt, full and effective utilization of the resources of the respective States, including such resources as may be available from the United States Government or any other source, are essential to the safety, care and welfare of the people thereof in the event of such emergency, and any other resources, including personnel, equipment or supplies, shall be incorporated into a plan or plans of mutual aid to be developed among the Civil Defense agencies or similar bodies of the States that are parties hereto. The Directors of Civil Defense of all party States shall constitute a committee to formulate plans and take all necessary steps for the implementation of this compact.

ARTICLE 2

CIVIL DEFENSE PLANS—CONSULTATIONS— UNIFORMITY OF ACTION

It shall be the duty of each party State to formulate civil defense plans and programs for application within such State. There shall be frequent consultation between the representatives of the States and with the United States Government and the free exchange of information and plans, including inventories of any materials and equipment available for civil defense. In carrying out such civil defense plans and programs the party States shall so far as possible provide and follow uniform standards, practices and rules and regulations including:

- (a) Insignia, arm bands and other distinctive articles to designate and distinguish the different civil defense services;
- (b) Blackouts and practice blackouts, air raid drills, mobilization of civil defense forces and other tests and exercises;
- (c) Warnings and signals for drills or attacks and the mechanical devices to be used in connection therewith;
- (d) The effective screening or extinguishing of all lights and lighting devices and appliances;

(e) Shutting off water mains, gas mains, electric power connections and the suspension of all other utility services;

(f) All materials or equipment used or to be used for civil defense purposes in order to assure that such materials and equipment will be easily and freely interchangeable when used in or by any other party State;

(g) The conduct of civilians and the movement and cessation of movement of pedestrians and vehicular traffic, prior, during, and subsequent to drills or attacks;

(h) The safety of public meetings or gatherings; and

(i) Mobile support units.

ARTICLE 3

DUTIES OF MEMBER STATES

Any party State requested to render mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided that it is understood that the State rendering aid may withhold resources to the extent necessary to provide reasonable protection for such State. Each party State shall extend to the civil defense forces of any other party State, while operating within its State limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving State), duties, rights, privileges and immunities as if they were performing their duties in the State in which normally employed or rendering services. Civil defense forces will continue under the command and control of their regular leaders but the organizational units will come under the operational control of the civil defense authorities of the State receiving assistance.

ARTICLE 4

EFFECT OF STATE LICENSE, CERTIFICATE OR PERMIT IN OTHER STATES

Whenever any person holds a license, certificate or other permit issued by any State evidencing the meeting of qualifications for professional, mechanical or other skills, such person may render aid involving such skill in any party State to meet an emergency or disaster and such State shall give due recognition to such license, certificate or other permit as if issued in the State in which aid is rendered.

ARTICLE 5

RESTRICTION ON LIABILITY

No party State or its officers or employees rendering aid in another State pursuant to this compact shall be liable on account of any act or omission [omission] in good faith on the part of such forces while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith.

ARTICLE 6

BASIC CONSIDERATIONS AND AUXILIARY ACTION

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more States may differ from that appropriate among other States party hereto, this instrument contains elements of a broad base common to all States, and nothing herein contained shall preclude any State from entering into supplementary agreements with another State or States. Such supplementary agreements may comprehend, but shall not be limited to provisions for evacuation and reception of injured and other persons, and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, equipment and supplies.

ARTICLE 7

COMPENSATION AND BENEFITS

Each party State shall provide for the payment of compensation and death benefits to injured members of the civil defense forces of that State the representatives of deceased members of such forces of that State and the representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within such State.

ARTICLE 8

CONTRIBUTIONS AND REIMBURSEMENTS

Any party State rendering aid in another State pursuant to this compact shall be reimbursed by the party State receiving such aid for any loss or damage to or expense incurred in the operation of any equipment answering a request for aid, and for the cost incurred in connection with such requests; provided that any aiding party State may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party State without charge or cost; and provided further that any two or more party States may enter into supplementary agreements establishing a different allocation of costs as among those States. The United States Government may relieve the party States receiving aid from any liability and reimburse the party State supplying civil defense forces for the compensation paid to and the transportation, subsistence and maintenance expenses of such forces during the time of the rendition of such aid or assistance outside the State and may also pay fair and reasonable compensation for the use or utilization of the supplies, materials, equipment or facilities so utilized or consumed.

ARTICLE 9

PLANS FOR EVACUATION AND RECEPTION OF POPULATIONS

Plans for the orderly evacuation and reception of the civilian population as the result of an emergency or disaster shall be worked out from time

to time between representatives of the party States and the various local civil defense areas thereof. Such plans shall include the manner of transporting such evacuees, the number of evacuees to be received in different [different] areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party State receiving evacuees shall be reimbursed generally for the out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care and like items. Such expenditures shall be reimbursed [reimbursed] by the party State of which the evacuees are residents, or by the United States Government under plans approved by it. After the termination of the emergency or disaster the party State of which the evacuees are residents shall assume the responsibility for the ultimate support or repatriation of such evacuees.

ARTICLE 10

MEMBER STATES

This compact shall be available to the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Washington, and Wyoming, and the Territories [Territories] of Alaska and Hawaii.

ARTICLE 11

COMMITTEE ACTION AND REQUESTS

The committee established pursuant to Article 1 of this compact may request the Civil Defense Agency of the United States Government to act as an informational and co-ordinating body under this compact, and representatives of such agency of the United States Government may attend meetings of such committee.

ARTICLE 12

WHEN COMPACT EFFECTIVE

This compact shall become operative immediately upon its ratification by any of the States and Territories enumerated in Article 10 of this compact as between it and the State of Utah and any other of said States or Territories so ratifying and shall be subject to approval by Congress unless prior Congressional approval has been given. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party States and with the Civil Defense Agency and other appropriate agencies of the United States Government.

ARTICLE 13

DURATION OF COMPACT

This compact shall continue in force and remain binding on each party State until the legislature or the Governor of such party State takes action to withdraw therefrom. Such action shall not be effective until thirty days after notice thereof has been sent by the Governor of the party State desiring to withdraw to the Governors of all other party States.

ARTICLE 14

CONSTRUCTION OF COMPACT—CONSTITUTIONALITY

This compact shall be construed to effectuate the purposes stated in Article 1 hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances shall not be effected [affected] thereby.

History: L. 1953 (1st S. S.), ch. 10, § 2. **Effective Date.**

Compiler's Notes.

The bracketed words were inserted by the compiler.

Section 3 of Laws 1953 (1st S. S.), ch. 10 provided that the act should take effect upon approval. Approved December 11, 1953.

39-5-3. Owner of property free from liability for injuries to persons or property during actual, impending, or mock attack.—Any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the whole or any part or parts of such real estate or premises for the purpose of sheltering persons during an actual, impending, mock or practice attack, shall, together with his successors in interest, if any, not be civilly liable for negligently causing the death of, or injury to, any person on or about such real estate or premises or for loss of, or damage to, the property of such person.

History: L. 1955, ch. 130, § 1.

Title of Act.

An act relating to civil defense and relieving owners and controllers of real

estate from liability for death or injury to persons gratuitously occupying such premises during an actual, impending, mock, or practice attack.