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39-1-63. Scholarship fund for National Guard members — Use and allocation — Appropriation.

(1) There shall be available to individual members of the Utah National Guard scholarships for undergraduate study at post-secondary institutions of learning subject to the following requirements:

(a) The individual must be, at the time he or she receives the benefits, an active member of the Utah National Guard.

(b) The benefit hereunder shall be for tuition only and shall be equal to the resident tuition for the actual course of study engaged in by the individual.

(c) The scholarship shall be payable only to individuals not eligible to receive scholastic financial assistance from the Federal Government by reason of having been a member of the armed forces of the United States.

(2) Scholarships provided hereunder are to be paid by the adjutant general of the state of Utah directly to the institutions involved from the fund appropriated hereunder.

(3) The adjutant general of the state of Utah shall have the power to establish such regulations, procedures, forms, and reports as are necessary to administer the allocation of scholarships and payments of funds under this act.

(4) There is appropriated annually to the adjutant general out of the General Fund the sum of not to exceed \$25,000 as specified in the annual appropriation bill. These funds shall be expended for the granting of scholarships in accordance with this act.

History: C. 1953, 39-1-63, enacted by L. 1975, ch. 117, § 1; 1979, ch. 144, § 1.

act," which appears in Subsections (3) and (4), means Laws 1975, Chapter 117, which enacted this section.

Meaning of "this act". — The phrase "this

CHAPTER 2

STATE ARMORY BOARD

Section		Section	
39-2-1.	Members — A body corporate — Powers.	39-2-6.	Sale of armories and army premises — Disposition of proceeds.
39-2-2.	Further powers.	39-2-7.	Budget — Annual legislative approval.
39-2-3.	Construction of National Guard armories.	39-2-8.	Borrowing power limited — Board of State Lands and Forestry authorized to lend — Interest rate.
39-2-4.	Order of construction of armories.	39-2-9.	Cities may assist in erecting armories.
39-2-5.	Sale of Bountiful, Beaver and Provo armories — Disposition of proceeds.		

39-2-1. Members — A body corporate — Powers.

The State Armory Board shall consist of the governor, the chairman of the State Building Board, 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; L. 1984, ch. 67, § 15.

Amendment Notes. — The 1984 amendment substituted "chairman of the State Building Board" for "secretary of state" in the first sentence.

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.

State Building Board, § 63-1-33.

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

COLLATERAL REFERENCES

Am. Jur. 2d. — 53 Am. Jur. 2d Military, and Civil Defense § 39.

C.J.S. — 57 C.J.S. Militia § 18.

Key Numbers. — Militia ⇌ 17.

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.

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.

Meaning of "this act". — The phrase "this

act," referred to near the beginning of the section, means Laws 1947, Chapter 68, codified as present §§ 39-2-3 to 39-2-5.

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 armories and armory premises — Disposition of proceeds.

The State Armory Board is hereby authorized 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.

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 the 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.

39-2-8. Borrowing power limited — Board of State Lands and Forestry 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 [Board of State Lands and Forestry] 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 [Board of State Lands and Forestry] 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.

Board of State Lands and Forestry. — Laws 1967, Chapter 176 repealed § 65-1-1, providing for a State Land Board, and reenacted it to create the Board of State Lands,

which assumed most of the functions of the State Land Board.

Laws 1988, Chapter 121 repealed § 65-1-1 and enacted § 65A-1-1, creating the Board of State Lands and Forestry. Section 63-34-3, as amended by Laws 1988, Chapter 121, and by Laws 1988, Chapter 169, also creates the Board of State Lands and Forestry.

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.

Section

39-3-2. State employees in United States armed forces or National Guard — Pay allowance for time spent on duty — Deduction of vacation time prohibited.

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 engage 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 such 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 time 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 such officer or employee referred to in this paragraph as set forth above 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 for 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 of 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.

Cross-References. — Care of dependents of state employees in service in National Guard, § 39-1-35.

Leaves of absence from employment for reserve members of armed forces on active duty, § 39-1-36.

NOTES TO DECISIONS

ANALYSIS

Constitutionality.
Construction and application.

Constitutionality.

This section is constitutional. *Critchlow v. Monson*, 102 Utah 378, 131 P.2d 794 (1942).

Construction and application.

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, to aid morale, and to inform 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 Utah 378, 131 P.2d 794, 802 (1942).

COLLATERAL REFERENCES

A.L.R. — Validity and construction of state statutes requiring employers to compensate employees for absences occasioned by military service, 8 A.L.R.4th 704.

C.J.S. — 57 C.J.S. Militia § 7.
Key Numbers. — Militia ⇌ 2.

39-3-2. State employees in United States armed forces or National Guard — Pay allowance for time spent on duty — Deduction of vacation time prohibited.

All state employees who are or shall become members of the organized reserve of the United States armed forces, including the National Guard of this state, 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 armed forces of the United States, including the National Guard of this state. This leave shall be in addition to annual vacation leave with pay. State employees of the National Guard of this state who spend time on active duty in connection with other duties of the National Guard not in service shall not have that additional time deducted from any vacation time to which those employees may be entitled.

History: L. 1955, ch. 63, § 1; 1981, ch. 174, § 2.

CHAPTER 4

UTAH STATE DEFENSE FORCE ACT

Section		Section	
39-4-1.	Governor authorized to organize Utah State Defense Force.		service — Members not exempt from United States military service.
39-4-2.	Governor to prescribe rules and regulations.	39-4-8.	No organizations to be enlisted as a unit.
39-4-3.	Compensation of force members.	39-4-9.	Qualifications of members.
39-4-4.	Governor may requisition arms and equipment from secretary of defense.	39-4-10.	Oaths of force officers.
39-4-5.	Service outside state prohibited — Exceptions.	39-4-11.	Term of force enlistment — Oaths.
39-4-6.	Forces of another state in fresh pursuit may make arrests.	39-4-12.	Courts-martial rules of National Guard applicable — Privilege from arrest, posse comitatus, and jury service.
39-4-7.	State Defense Force, as such, not subject to United States military	39-4-13.	Short title.

39-4-1. Governor authorized to organize Utah State Defense Force.

(1) The governor may organize and maintain within this state, under regulations the United States may prescribe for discipline in training, military forces the governor considers necessary to defend this state.

(2) These forces shall be composed of officers commissioned or assigned, and able-bodied citizens of the state who volunteer for service, supplemented if necessary by persons in the militia enrolled by draft or otherwise as provided by law.

(3) These forces shall be additional to and distinct from the National Guard and shall be known as the Utah State Defense Force. These 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; 1988, ch. 210, § 21.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, added the sub-

section designations; deleted "secretary of war of the" before "United States" in Subsection (1); substituted "Utah State Defense Force" for "Utah State Guard" in Subsection (3); and made minor stylistic changes throughout.

COLLATERAL REFERENCES

Am. Jur. 2d. — 53 Am. Jur. 2d Military, and Civil Defense § 1 et seq.

C.J.S. — 57 C.J.S. Militia § 7.
Key Numbers. — Militia ⇌ 2.

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.

Meaning of "this act". — The phrase "this act," appearing near the beginning of the sec-

tion, means Laws 1941 (2nd S.S.), Chapter 36, codified as Title 39, Chapter 4. The reference should probably be to "this chapter."

COLLATERAL REFERENCES

Am. Jur. 2d. — 53 Am. Jur. 2d Military, and Civil Defense §§ 35, 36.

C.J.S. — 57 C.J.S. Militia § 7.
Key Numbers. — Militia ⇌ 3.

39-4-3. Compensation of force members.

(1) Every member of the Utah State Defense Force, when called into active service by the governor shall receive compensation as prescribed by the governor.

(2) The compensation may not exceed the rate of pay under law for officers and other members of the National Guard when called into active service of the state by the governor.

History: L. 1941 (2nd S.S.), ch. 36, § 3; C. 1943, 54-4-3; L. 1988, ch. 210, § 22.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, rewrote this section which read "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."

Cross-References. — Pay of National Guard, § 39-1-51.

COLLATERAL REFERENCES

C.J.S. — 57 C.J.S. Militia § 14.
Key Numbers. — Militia ⇌ 11.

39-4-4. Governor may requisition arms and equipment from secretary of defense.

For the use of such forces, the governor is authorized to requisition from the secretary of war [secretary of defense] such arms and equipment as may be in possession of and can be spared by the War Department [Department of Defense]; 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; C. 1943, 54-4-4.

COLLATERAL REFERENCES

C.J.S. — 57 C.J.S. Militia § 7.
Key Numbers. — Militia ⇌ 2.

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.

Compiler's Notes. — All the states that border Utah except Wyoming have enacted statutes similar to § 39-4-6, authorizing fresh

pursuit and arrest by law enforcement officers of other states. See Ariz. Rev. Stat. Ann. § 13-3832; Colo. Rev. Stat. § 16-3-104; Idaho Code § 19-701; Nev. Rev. Stat. § 171.158; N.M. Stat. Ann. § 31-2-1.

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; C. 1943, 54-4-6.

Uniform Act on Fresh Pursuit. — See §§ 77-9-1 to 77-9-3.

39-4-7. State Defense Force, 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; C. 1943, 54-4-7.

Meaning of "this act". — See note under same catchline following § 39-4-2.

COLLATERAL REFERENCES

Am. Jur. 2d. — 53 Am. Jur. 2d Military, and Civil Defense § 86.

C.J.S. — 57 C.J.S. Militia § 5.
Key Numbers. — Militia ⇌ 6.

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; C. 1943, 54-4-8.

COLLATERAL REFERENCES

C.J.S. — 57 C.J.S. Militia § 12.
Key Numbers. — Militia ⇌ 8.

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; C. 1943, 54-4-9.

COLLATERAL REFERENCES

C.J.S. — 57 C.J.S. Militia § 7.
Key Numbers. — Militia ⇌ 2.

39-4-10. Oaths of force officers.

The oath to be taken by officers commissioned in the forces shall be substantially in the form prescribed for officers of the National Guard, but substituting the words Utah State Defense Force, where necessary.

History: L. 1941 (2nd S.S.), ch. 36, § 10; C. 1943, 54-4-10; L. 1988, ch. 210, § 23.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, substituted

"Utah State Defense Force" for "Utah state guard" and made minor stylistic changes.

Cross-References. — Oath of National Guard officers, § 39-1-30.

COLLATERAL REFERENCES

C.J.S. — 57 C.J.S. Militia § 11.

Key Numbers. — Militia ⇌ 7.

39-4-11. Term of force enlistment — Oaths.

A person may not be enlisted for more than one year, but enlistment may be renewed. The oath to be taken upon enlistment in the forces shall be substantially in the form prescribed for enlisted men of the National Guard, substituting the words, Utah State Defense Force, where necessary.

History: L. 1941 (2nd S.S.), ch. 36, § 11; C. 1943, 54-4-11; L. 1988, ch. 210, § 24.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, substituted

"Utah State Defense Force" for "Utah state guard" and made minor stylistic changes.

Cross-References. — Oath upon enlistment in National Guard, § 39-1-32.

COLLATERAL REFERENCES

C.J.S. — 57 C.J.S. Militia § 12.

Key Numbers. — Militia ⇌ 8.

39-4-12. Courts-martial rules of National Guard applicable — Privilege from arrest, posse comitatus, and jury service.

(1) When the forces or any part of them are ordered out for active service or are serving as members of the Utah State Defense Force, the Utah Code of Military Justice, as it applies to the state National Guard, and regulations prescribed under it apply to the Utah State Defense Force.

(2) Members of the Utah State Defense Force are privileged from arrest under Section 39-1-54, when in state service.

(3) Persons serving in the Utah State Defense Force are, during this service, exempt from posse comitatus and from jury duty.

History: L. 1941 (2nd S.S.), ch. 36, § 12; C. 1943, 54-4-12; L. 1988, ch. 210, § 25.

Amendment Notes. — The 1988 amendment, effective April 25, 1988, rewrote this section which read "(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.”
Cross-References. — Utah Code of Military Justice, Chapter 6 of this title.

COLLATERAL REFERENCES

Am. Jur. 2d. — 54 Am. Jur. 2d Military, and Civil Defense § 216 et seq.

C.J.S. — 57 C.J.S. Militia § 25.
Key Numbers. — Militia ⇔ 21.

39-4-13. Short title.

This chapter may be cited as the Utah State Defense Force Act.

History: L. 1941 (2nd S.S.), ch. 36, § 15; C. 1943, 54-4-15; L. 1988, ch. 210, § 26.
Amendment Notes. — The 1988 amend-

ment, effective April 25, 1988, rewrote this section which read “This act may be cited as the State Guard Act.”

**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 [states] of Alaska and Hawaii.

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

COLLATERAL REFERENCES

Am. Jur. 2d. — 54 Am. Jur. 2d Military, and Civil Defense § 354 et seq.

39-5-2. Form of compact.

The compact shall be in substantially the following form:
 The contracting states solemnly agree:

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."

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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 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 and 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 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 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 [states] 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. 254. For present comparable definitions, see §§ 63-5-2 and 63-5a-2.
Compiler's Notes. — Section 63-5-8, referred to in the first sentence of Article 1, defined "local emergencies" and "public emergencies." It was repealed by Laws 1981, Chapter 2281. For federal provisions relating to interstate civil defense compacts, see 50 U.S.C. App. § 2281.

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.

CHAPTER 6

UTAH CODE OF MILITARY JUSTICE

Section		Section	
39-6-1.	Short title.	39-6-12.	Person accused of offense against civilian — Sentences of military and civilian courts.
39-6-2.	Definitions.	39-6-13.	Limits on nonjudicial punishment.
39-6-3.	Persons subject to chapter.	39-6-14.	Disciplinary punishment — Without court martial — Limits and forms of punishment.
39-6-4.	Fraudulently obtained discharge — Desertion.	39-6-15.	Military court — Composition.
39-6-5.	Application of chapter to persons in and without state — Military courts held without the state.	39-6-16.	Military court — Jurisdiction.
39-6-6.	State staff judge advocate — Appointment — Duties — Qualifications.	39-6-17.	Bad conduct discharge or dismissal — Approval by governor.
39-6-7.	Apprehension.	39-6-18.	Convening military court.
39-6-8.	Arrest.	39-6-19.	Persons who may serve on a military court.
39-6-9.	Confinement.	39-6-20.	Military judge — Qualifications — Designation for detail.
39-6-10.	Parties under obligation to keep a prisoner — Reporting.		
39-6-11.	Person confined prior to trial — Punishment limitations.		