

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND NINETEEN

H.P. 1287 - L.D. 1807

An Act To Amend Certain Laws Related to Members of the Military and the
Maine National Guard

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 19-A MRSA §1653-A is enacted to read:

§1653-A. Parental rights and responsibilities; parent on active duty

1. Departure under military orders. A court may not consider departure from the family residence or absence from the child or children as an adverse factor in determining parental rights and responsibilities with respect to a minor child when the departing parent is a member of the National Guard or the Reserves of the United States Armed Forces under an order to active duty for a period of more than 30 days and whose absence is due to compliance with military orders.

2. Change of residence of child prohibited when parent under military orders. A court may not order a change of the primary physical residence of a child when one of the child's parents is a member of the National Guard or the Reserves of the United States Armed Forces under an order to active duty for a period of more than 30 days and whose absence from the State is due to compliance with military orders unless the change is in the best interest of the child.

3. Application. This section applies only if the service of the member referred to in subsection 1 or subsection 2 is in support of:

A. An operational mission for which members of the reserve components have been ordered to active duty; or

B. Forces activated during a period of war declared by Congress or a period of national emergency declared by the President or Congress.

Sec. 2. 26 MRSA §813, as repealed and replaced by PL 2001, c. 662, §12, is amended to read:

§813. Remedies

1. Action authorized. If any employer fails to comply with any of the provisions of sections 811 and 812, the Attorney General, ~~Judge Advocates of the Maine National Guard~~ or employee may bring a civil action for damages for such noncompliance or apply to the courts for such equitable relief as may be just and proper under the circumstances.

2. Award of fees; costs. In any civil action under section 811 or 812, the court in its discretion may award reasonable attorney's fees and costs to any prevailing member of the National Guard or the Reserves of the United States Armed Forces.

Sec. 3. 37-B MRSA §108, as amended by PL 1991, c. 376, §64, is further amended to read:

§108. Designation of Deputy Adjutant General

~~The assistant adjutant general for the Maine Army National Guard or the assistant adjutant general for the Maine Air National Guard~~ Any federally recognized general officer currently serving in the Maine National Guard may be appointed as Deputy Adjutant General. The Deputy Adjutant General has all the military related powers, responsibilities and duties of the Adjutant General if the Adjutant General is unable to act, or in case of a vacancy in the office of the Adjutant General until the vacancy is filled by the Governor, as provided by law. The Deputy Adjutant General may also perform other military duties of the Adjutant General as assigned by the Adjutant General or the Governor.

Sec. 4. 37-B MRSA §112, as amended by PL 2013, c. 251, §3, is further amended to read:

§112. Joint Force Headquarters

The Adjutant General shall organize a staff to be called the Joint Force Headquarters. It shall command, control and supervise Army and Air National Guard units employed in support of civil authorities in the protection of life, property and preservation of peace, order and public safety under competent orders of state authorities. In the event of mobilization of some or all Army and Air National Guard units by the President of the United States, it shall assist the State in organizing and training a militia, if required, perform command and control functions in support of civil authorities, as directed, and prepare to reconstitute the Army National Guard and Air National Guard when units are relieved from federal service. ~~It must be commanded by a federally recognized officer who may be the Adjutant General or an Assistant Adjutant General.~~

Sec. 5. 37-B MRSA §113 is enacted to read:

§113. Security at National Guard military facilities and real property of the department

This section governs the provision of security at National Guard military facilities and real property of the department.

1. Appointment of a provost marshal. The Adjutant General may appoint a provost marshal to oversee security at National Guard military facilities and real property of the department consistent with federal regulations governing similar federally owned facilities located in the State. The provost marshal is an authorized recipient of confidential criminal history records for the purpose of carrying out the position's duties under state law.

2. Designation of military facilities. For purposes of this section, the Adjutant General may designate all or portions of department facilities or real property as military facilities.

3. Funding. Modifications of National Guard military facilities or real property of the department or changes to protocols or procedures or actions to provide security in a manner consistent with federal regulations governing similar federally owned facilities in the State are limited to those that are without cost or are federally funded either directly or indirectly through a cooperative agreement.

4. Authority to protect certain assets. In compliance with federal law, and subject to conditions and limitations as promulgated by the United States Department of Defense or its military departments, the National Guard is authorized to use all means necessary to protect its assets that are inherently dangerous or vital to national security.

Sec. 6. 37-B MRSA §143, as repealed and replaced by PL 1997, c. 455, §13, is amended to read:

§143. Pay and allowances

1. Pay and allowances. ~~Members~~ Subject to subsection 2 and section 150, members of the Maine National Guard ordered to active state service under ~~this Title, except under section 150, section 181-A, subsections 1 to 5~~ are entitled to receive at least the same pay and ~~allowance~~ allowances as would be payable to those persons from the United States Armed Forces. ~~The member's~~ Such pay, ~~except for that pay of those members serving under section 150, must include a minimum~~ may not be less than pay based upon at least 12 hours a day at the state minimum wage.

2. Cooperative agreement pay and allowances. Members and retired members of the Maine National Guard called to active state service under section 181-A, subsection 5 in support of a cooperative agreement with the Federal Government are entitled to receive the same pay and allowances as would be payable to those persons from the United States Armed Forces, but not more than the pay and allowances payable in accordance with the terms of the cooperative agreement. Pay may not be less than pay based upon 12 hours a day at the state minimum wage.

Sec. 7. 37-B MRSA §147, as amended by PL 2003, c. 583, §5, is repealed.

Sec. 8. 37-B MRSA §150, as amended by PL 1995, c. 196, Pt. A, §2, is further amended to read:

§150. Unauthorized voluntary service without pay prohibited

A unit of the state military forces may not perform any voluntary active state service without pay, unless authorized by express order of the Governor.

An officer, warrant officer or enlisted person or any retired officer, retired warrant officer or retired enlisted person of the state military forces may not perform any voluntary active state service without pay, unless authorized by express order of the Governor, the Adjutant General or the Deputy Adjutant General.

Sec. 9. 37-B MRSA §181-A, sub-§5, as enacted by PL 1995, c. 600, §2, is amended to read:

5. Military duty by consent. The Governor, ~~or the Governor's designee~~, Adjutant General or Deputy Adjutant General may ~~order~~ call a member or retired member of the Maine National Guard, with that member's consent, to perform active state service of any nature.

Sec. 10. 37-B MRSA §190, as enacted by PL 2017, c. 108, §5, is repealed.

Sec. 11. 37-B MRSA §264, sub-§3, ¶Q, as amended by PL 2015, c. 37, §2, is further amended to read:

Q. The Gardiner Armory, located on Brunswick Avenue, Gardiner, by means of a quitclaim deed as long as the purchaser agrees to indemnify and hold harmless the State from all claims, including any environmental clean-up costs that may arise in connection with the land or the buildings constituting the armory; ~~and~~

Sec. 12. 37-B MRSA §264, sub-§3, ¶R, as enacted by PL 2015, c. 37, §3, is amended to read:

R. The Belfast Armory, located on U.S. Route 1, Belfast, by means of a quitclaim deed as long as the purchaser agrees to indemnify and hold harmless the State from all claims, including any environmental clean-up costs that may arise in connection with the land or the buildings constituting the armory; and

Sec. 13. 37-B MRSA §264, sub-§3, ¶S is enacted to read:

S. The South Portland Air National Guard Station, located on Western Avenue, South Portland, by means of a quitclaim deed as long as the purchaser agrees to indemnify and hold harmless the State from all claims, including any environmental clean-up costs that may arise in connection with the land or the buildings constituting the station.

Sec. 14. 37-B MRSA §343, as enacted by PL 2005, c. 353, §4, is repealed.

Sec. 15. 37-B MRSA §462 is enacted to read:

§462. Operating under the influence

1. Prohibition; operating under the influence. Any person subject to this Code who commits an offense prohibited under Title 29-A, section 2411 is guilty of that offense under this Code.

2. Punishment. Any person subject to this Code who is found guilty of an offense prohibited under Title 29-A, section 2411 may be punished as a court-martial may direct.