

# HOUSE . . . . . No. 2917

---

## The Commonwealth of Massachusetts

---

PRESENTED BY:

***Paul McMurtry***

---

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the military forces of the Commonwealth.

---

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Paul McMurtry</i>	<i>11th Norfolk</i>	<i>1/21/2011</i>

# HOUSE . . . . . No. 2917

---

By Mr. McMurtry of Dedham, a petition (accompanied by bill, House, No. 2917) of Paul McMurtry relative to the military forces of the Commonwealth. Public Safety and Homeland Security.

---

## The Commonwealth of Massachusetts

\_\_\_\_\_  
In the Year Two Thousand Eleven  
\_\_\_\_\_

An Act relative to the military forces of the Commonwealth.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           MILITARY FORCES OF THE COMMONWEALTH

2           I. DEFINITIONS

3           Section 1. Definitions

4           a) As used in this chapter, the following words shall have the following meanings, unless  
5 a the context clearly requires otherwise:-

6           “Commander-in-chief”, the governor.

7           "Enlisted person", a member, other than a commissioned officer or a warrant officer,  
8 in the military forces of the commonwealth, whether performing state or federal duty.

9           “Military division”, the department conducting the military affairs of the executive  
10 branch of government for the commonwealth.

"Officer", a commissioned officer or a warrant officer in the military forces of the commonwealth, whether performing state or federal duty.

"Organization", a command composed of 2 or more units.

"Unit" includes headquarters, detachment, division, battalion, brigade, company, battery, troop, and equivalent air unit, and such other elements as the commander-in-chief may designate.

"Threat to homeland security", an attack or threatened attack on the population, infrastructure or government of the commonwealth by means of chemical, biological, radiological, nuclear, explosive, cyber or other means capable of causing material casualties and/or material disruption to our economic, transportation or governmental systems.

b) The use of the masculine gender throughout this code shall also include the feminine gender.

## II. ORGANIZATION

### Section 2. Military forces of the commonwealth

The military forces of the commonwealth shall consist of:

- a) the army and air national guard as organized by federal law;
- b) the state staff, legal residents of the commonwealth, and volunteers legally residing in other states who are organized into units as provided in this chapter; and
- c) the ceremonial militia as provided in this chapter.

Section 3. Ceremonial militia

The ceremonial militia shall consist of:

- a) the National Lancers;
- b) the Ancient and Honorable Artillery Company;
- c) the First Corps of Cadets; and
- d) the Second Corps of Cadets.

The units of the ceremonial militia shall be organized as they determine in their charters of organization or bylaws. These units may retain their name and the right to wear distinctive uniforms provided that such uniforms may be readily distinguishable from the uniforms of the armed forces of the United States. They may retain their methods of selecting their officers and conducting their internal affairs so long as the same are not repugnant to the laws of the commonwealth or of the United States. Officers' commissions shall be honorary and the term *ad honoris* shall be included on any commissioning order. The National Lancers may use land and stable facilities belonging to the commonwealth for their activities and exercises without charge and may receive from the commonwealth, its departments, divisions or bureaus, without charge, any surplus equipment, goods, or other materials, as are available, provided that all such equipment, goods and materials remain the property of the commonwealth and are accounted for as such by means of biannual audits conducted by a certified auditor at no expense to the commonwealth. Members of the ceremonial militia are not state employees, and shall not be considered agents of the commonwealth unless acting pursuant to the written direction of the adjutant general or his designee.

Section 4. Powers of commander-in-chief; regulations for the military forces of the  
commonwealth

The commander-in-chief, or the adjutant general when designated by the commander-in-chief, may from time to time make and publish regulations for the government of the military forces of the commonwealth to include the appointment; promotion and removal of officers, and non-commissioned officers.

Section 5. Powers of commander-in-chief; increase or decrease in forces

The commander-in-chief, or the adjutant general when designated by the commander-in-chief, may by order raise and disband volunteer units of the military forces of the commonwealth and may from time to time prescribe the organization of the military forces of the commonwealth, the designation and location of all units, and the numbers, titles, grades and duties of all officers and enlisted persons.

Section 6. State staff; composition; qualifications

a) The state staff shall consist of one adjutant general, with the grade of major general, who shall be commanding general of the military forces of the commonwealth, the chief of staff to the commander-in-chief, and the chief of the state staff and of the officers provided for in this section, each of whom shall perform his duties under the direction of the adjutant general. To be eligible for initial appointment on the state staff, an officer shall have federal recognition in an organization or unit of the Massachusetts national guard, army or air.

71           b) The adjutant general shall be appointed by the commander-in-chief from those persons  
72 who are, or have been active commissioned officers in a national guard of any state, army or air  
73 for a period of not less than five years, who have attained while serving therein, or in the national  
74 guard of the United States a grade not lower than that of colonel, and who shall be eligible for  
75 promotion to a grade of not lower than brigadier general in the National Guard of the United  
76 States. He shall serve at the pleasure of the commander-in-chief. The adjutant general shall  
77 receive the same pay and allowances as an officer of the regular service of corresponding grade  
78 with corresponding length of service.

79           The adjutant general shall be the immediate adviser of the commander-in-chief on all  
80 matters relating to the military forces of the commonwealth and shall be charged with the  
81 planning, development and execution of the program for these military forces. The adjutant  
82 general shall cause the state staff to prepare plans for recruiting, organizing, supplying,  
83 equipping and mobilizing the military forces of the commonwealth for use in the national  
84 defense, for state defense and emergencies, and for demobilizing the military forces of the  
85 commonwealth.

86           The adjutant general shall hold major organization commanders responsible for the  
87 proper training of their commands. All orders and instructions for the government of the military  
88 forces of the commonwealth and of the officers and enlisted persons therein shall be issued and  
89 communicated to those concerned through military channels.

90           The adjutant general shall make such returns and reports as may be prescribed by the  
91 commander-in-chief or required by the laws or regulations of the commonwealth or of the United  
92 States, and may detail such officers of appropriate grade and employ such clerks and other

93 assistants as may be necessary in the division at an expense not exceeding the amount  
94 appropriated therefore. The adjutant general shall keep a roster of all Massachusetts veterans in  
95 alphabetical order by cities and towns and shall provide, upon request, said rosters to such cities  
96 and towns.

97       Except where by law or regulation powers are specifically conferred upon the adjutant  
98 general, the adjutant general shall have no authority independent of the commander-in-chief,  
99 from whom his orders shall emanate, and the acts of the adjutant general shall be regarded as in  
100 execution of the orders of the commander-in-chief.

101       Under the control of the commander-in-chief, the adjutant general shall be the executive  
102 and administrative head of the military division of the executive branch of the government of the  
103 commonwealth. Except as otherwise provided, he shall require that all contracts, and may require  
104 that all expenditures, made by the division be submitted to him for approval.

105       c) There shall be three full-time assistant adjutants general appointed by the adjutant  
106 general, one of whom shall be designated the executive officer and who shall have the rank of  
107 brigadier general, one of whom shall be designated assistant adjutant general for the army  
108 national guard, and one of whom shall be designated assistant adjutant general for the air  
109 national guard. They shall perform such duties as may be delegated to them by the adjutant  
110 general, or as prescribed in orders and regulations from time to time. To be eligible for initial  
111 appointment as an assistant adjutant general, an officer shall have federal recognition in an  
112 organization or unit of the Massachusetts national guard, army or air, in the rank of colonel.

113       d) There shall be a state quartermaster appointed by the adjutant general who shall have  
114 the care and control of all land and buildings held for military purposes and all other military

property of the commonwealth except that which is expressly entrusted to the keeping of others under the laws of the commonwealth and if the United States. The quartermaster shall be the state finance officer for the receipt, disbursement and accounting for all funds received by him for the payment, equipment, travel and subsistence of the military forces of the commonwealth. The quartermaster shall be the property and fiscal officer for the commonwealth in the receipt, issue, and accounting of all federal funds and property issued or allotted to the commonwealth in connection with the military forces of the commonwealth.

e) There shall be a state judge advocate appointed by the adjutant general who shall be the chief legal counsel to the military division.

f) There shall be a state surgeon appointed by the adjutant general who shall be adviser to the military division on all matters pertaining to the medical services of the military forces of the commonwealth.

g) A member of the state staff shall receive the same pay and allowances as an officer of the regular service of his corresponding grade with corresponding length of service; except those serving on a part-time basis shall receive such salary as determined by the adjutant general.

h) Other such staff shall be appointed as deemed necessary by the adjutant general;

i) During the absence or disability of an officer of the state staff, or during such time as he is in the active military service of the United States, the commander-in-chief may designate an officer to perform his duties.

Section 7. Duty of adjutant general regarding functions and operation of armory  
commission



The armory commission established by section 18 of chapter 6 shall be within the military division.

The adjutant general shall conduct comprehensive planning with respect to the functions of said commission and coordinate its activities and programs; shall conduct studies of the operations of said commission with a view to effecting improvements in administrative organization, procedures and practices, and to promoting economy, efficiency, and avoiding useless labor and expenses in said commission shall from time to time recommend to the commander-in-chief changes in the laws relating to the organization, structure, efficiency or administrative functions, services, procedures and practices of said commission. The adjutant general shall have the same power as the secretaries having charge of the executive offices established by chapters 6A and 7 to review and act upon budgetary and other financial matters concerning said commission in accordance with sections 2C, 3, 3A, 4, 9B, 27A, 27B, 29 and 29A of chapter 29; sections 24C, 25B, 36 and paragraph (5A) of section 46 of chapter 30; and sections 12 to 15, inclusive, and 35 and 36 of chapter 31.

#### Section 8. Discharge of officers; grounds

Except as otherwise provided for in this chapter, at any time the moral character, integrity, capacity and general fitness for the service of any officer may be investigated and determined by an efficiency board of three commissioned officers, senior in rank to him, to be designated by the adjutant general. The investigation may include misconduct in civil life for which the officer is not amenable to court-martial. If the findings of the board are unfavorable to the officer and are approved by the commander-in-chief, the officer shall be discharged. If the discharge is based solely on the officer's substandard performance of duty, the officer's

discharge shall be characterized as honorable. If the discharge is based in whole or in part on the officer's moral character or integrity, the discharge may be characterized as general, under honorable conditions, or general, under other than honorable conditions.

### III. OPERATIONS AND TRAINING

Section 9: Assistance to civil authorities; use of military forces in case of riot, natural disaster, invasion, insurrection or threat to homeland security

a) The commander-in-chief may order out any part of the military forces of the commonwealth to support state and local civil authorities in the preservation of life and property, to perform other duty, and to otherwise assist in the enforcement of the laws.

b) In case of a tumult, riot, mob or body of persons acting together by force to violate or resist the laws of the commonwealth, or when such tumult, riot or mob is threatened, or in case of public catastrophe or natural disaster, the commander-in-chief may direct the adjutant general to order the military forces of the commonwealth, or any part thereof, to appear at a time and place therein specified to aid the civil authority in suppressing such violations, preserving order, affording such protection and supporting the laws.

c) The commander-in-chief may order out the military forces of the commonwealth to repel an invasion, to suppress an insurrection made or threatened, or to respond to a terrorist attack or other threat to homeland security.

### Section 10 Law enforcement authority, immunity

Whenever the military forces of the commonwealth shall be ordered out for service under section 9 of this chapter, or under title 32, section 502(f) of the United States Code, such

members who have been awarded a United States army military occupational specialty code as a military policeman or a United States air force speciality code as a security policeman and such other members designated by the written order of the commander-in-chief shall have and exercise throughout the commonwealth all the powers, duties and immunities of state police officers in addition to all powers, duties and immunities under this chapter and as otherwise provided by law. Members of the military forces of the commonwealth when performing duty under section 9 of this chapter, or under title 32, section 502(f) of the United States code may carry within the commonwealth such weapons as the adjutant general, with the consent of the commander-in-chief shall determine.

Section 11. Members of military forces on state active duty not state employees

All members of the military forces of the commonwealth called to duty under section 9 of this chapter shall not be subject to the provisions of chapters 268A and 268B by virtue of their duty under section 9, nor shall they be considered state employees for purposes of state retirement benefits.

Section 12. Orders; form; contents

As soon as practicable all orders issued under section 9 shall be in writing and signed by the commander-in-chief. Such orders shall set forth the mission to be performed, the purpose to be accomplished by the adjutant general, and the date when such orders shall expire. The orders shall not prescribe the military measures to be used or the orders to be issued by the adjutant general, who shall use such measures and issue such orders as he deems necessary to accomplish the purpose indicated.

Section 13. Expenses of military forces; source of funds

201           The commander-in-chief may expend for carrying out the provisions of section 9, such  
202    sums as may be appropriated therefore.

203           Section 14.   Use of streets and highways; right of way; exceptions; vehicle warning  
204    devices

205           The armed forces of the United States and any part of the military forces of the  
206    commonwealth parading or performing any duty according to law shall have the right of way in  
207    any street or highway through which they may pass, and driver(s) of vehicle(s) in a military  
208    convoy, may drive such vehicle(s) through an intersection of ways contrary to any traffic signs or  
209    signals regulating traffic at such intersection, and a police officer or duly authorized member of  
210    the military service shall be stationed at such intersection to regulate traffic, when practical;  
211    provided, that the carriage of the United States mails, the legitimate functions of the police, and  
212    the progress and operation of fire departments and emergency medical services shall not be  
213    interfered with thereby.

214           One or more vehicles in a military convoy may be equipped with sirens or other audible  
215    warning devices and with visible warning devices as provided for in section 7E of chapter 90.

216           Section 15.   Occupation of land and buildings; exceptions; liability for damages

217           When on duty under orders of the commander-in-chief, the military forces of the  
218    commonwealth may enter upon and occupy any public or private lands within the  
219    commonwealth for the necessary purposes of such duty, and no officer or enlisted person shall  
220    thereby become liable, either civilly or criminally, for trespass; but except in times of invasion,  
221    insurrection, riot, natural disaster, public catastrophe or danger, terrorist attack, or other threat to  
222    homeland security, no organization of the military forces nor individual members thereof shall be

permitted to enter houses or other buildings or their immediate enclosures, without the consent of the owner or tenant in possession, nor to go upon the gardens, lawns, tobacco fields, cranberry bogs, vineyards, nurseries, planted fields, orchards or cemeteries unless extreme necessity for such entry exists, and then only in obedience to the specific orders of the senior officer present.

#### Section 16. Exclusion of traffic from highways during military operations

The commander-in-chief, under such regulations as he may prescribe, may exclude traffic from highways during military operations under section 9 of any organization or unit of the armed forces of the United States or the military forces of the commonwealth, whenever he deems that public convenience or safety so requires.

#### Section 17. Boundaries of encampments; establishment; limitations; penalty for trespass

Every commanding officer, when on duty, may fix necessary bounds and limits to his parade or encampment, but not including a public road within such bounds in such manner as to prevent traveling thereon, within which bounds and limits no person shall enter without his leave. Whoever intrudes within the limits of the parade or encampment, after being forbidden, may be ejected, forcibly if necessary, or confined under guard during the time of parade or encampment, or during a shorter time, at the discretion of the commanding officer; and whoever resists a sentry may be arrested by the order of the commanding officer and dealt with as provided in section 18.

#### Section 18. Obstructing or interfering with military forces; penalty

Whoever interrupts, interferes, assaults, or obstructs any officer or enlisted person while on duty or at any parade, drill, military operation under section 9, or other assembly for military

purposes, may immediately be put under guard and kept at the discretion of the commanding officer until the duty, drill, parade or assembly is concluded; and may be delivered into the custody of any police officer of the city or town where such duty, parade, drill or assembly is held, who shall detain him in custody for examination or trial before a court having jurisdiction of the place; and any person found guilty of any of the offences enumerated in this section, or in section seventeen, or of obstructing, assaulting or interfering with the armed forces of the United States or any part of the military forces of the commonwealth in the exercise or enjoyment of the right of way granted by section fourteen, shall be punished by a fine or not more than \$1000 or by imprisonment for not more than 2 ½ years.

#### Section 19. Damages to lands; liability of personnel; conditions

No officer or enlisted person shall be liable, either civilly or criminally, for any damage to property or injury to any person, including death resulting therefrom, caused by him or by his order, while performing any military duty lawfully ordered under any provision of this chapter, unless the act or order causing such damage or injury was manifestly beyond the scope of the authority of such officer or enlisted person and except as otherwise provided by chapter 258.

### IV. PAY, EMPLOYMENT RIGHTS AND BENEFITS

#### Section 20. Rates of Pay for Certain Duties

a) For duty performed under the provisions of section 9 there shall be allowed and paid to members of the military forces of the commonwealth from funds appropriated therefore the same rate of pay for length of service and basic allowances as if they were on active duty status in the armed forces of the United States, however, such compensation shall not be less than \$100 per day, subject, however, to the provisions of subsection (b).

b) For duty performed under the provisions of section 9 funded pursuant to title 32 of the United States Code, subparagraph (a) of this section shall not apply.

#### Section 21. Travel Expenses

Travel expenses for each officer and enlisted person of the military forces of the commonwealth required and authorized to travel under any section of this chapter shall be allowed and paid from funds appropriated therefore and in conformity with the federal Joint Forces Travel Regulations, or any such successive regulation.

#### Section 22. Subsistence

Subsistence for members of the military forces of the commonwealth ordered to duty under the provisions of section 9 shall be furnished in kind unless otherwise directed by the adjutant general.

#### Section 23. Differential pay for public employees during active military service

Notwithstanding any general or special law to the contrary, an employee in the service of the commonwealth or a county, city or town that accepts the provisions of this section, including an employee of a school district, who has been granted a military leave of absence because the employee is a member of the army national guard, the air national guard or a reserve component of the armed forces of the United States called to active service in either the armed forces of the United States or in the military forces of the commonwealth after September 11, 2001, shall be entitled to receive pay at his regular base salary as such a public employee, and shall not lose any seniority or any accrued vacation leave, sick leave, personal leave, compensation time or earned overtime. An employee eligible under this section shall be paid his regular base salary as a

public employee for each pay period of such military leave of absence after September 11, 2001, reduced by any amount received either from the United States or the commonwealth as base pay for military service performed during the same pay period. For purposes of this section, base salary and base pay shall not include any allowances, overtime pay, shift differential pay, hazardous duty pay or any other additional compensation received. For the purposes of this section, the words "active service" shall not include active duty for training in the army national guard or air national guard or as a reservist in the armed forces of the United States. This section shall take effect in a county, city or town upon its acceptance in a county, by vote of the county commissioners; in a city or town, as provided in section 4 of chapter 4; and in a regional school district, by vote of the school committee. Nothing in this section shall limit or reduce a person's entitlement to benefits under section 24, and nothing in this section shall entitle a person to benefits in excess of the maximum benefit provided under said section 24 for any period during which that person is receiving benefits under this section.

Section 24. Effect of military training on salary or vacation allowance of public employees

Any person in the service of the commonwealth, or of a county, city or town which, by vote of its county commissioners or city council or of its inhabitants at a town meeting, accepts this section, shall be entitled, during the time of his annual training or active duty for training not exceeding (i) 30 days in any state fiscal year and not exceeding 15 days in any federal fiscal year as a member of a reserve component of the armed forces of the United States, or (ii) 42 days in any state fiscal year and not exceeding 21 days in any federal fiscal year for such person in the service of the military forces of the commonwealth who is a member of the state staff, or of a national guard unit of the commonwealth scheduled for imminent active service in the armed



forces of the United States and authorized by the adjutant general to perform extended annual training in support of such forthcoming active service, to receive pay therefore, without loss of his ordinary remuneration as an employee or official of the commonwealth, or of such county, city or town, and shall also be entitled to the same leaves of absence or vacation with pay, seniority or any accrued sick leave, personal leave, compensation time or earned overtime given to other like employees or officials.

Section 25. Employment discrimination, civil relief, employment and re-employment rights

a) The following provisions of federal law, as from time to time amended, are adopted as state law and applied to members of the military forces of the commonwealth when such members are ordered to duty under section 9 of this chapter, or full time national guard service under title 32 of the United States Code:

1. The Servicemembers Civil Relief Act of 2003 (SCRA), codified at 50 U.S.C. App., Section 501 et seq.; and

2. The Uniformed Services Employment and Reemployment Rights Act (USERRA), Sections 4301 through 4333 of title 38 of the United States Code.

b) As adopted as state law, the terms “service in the uniformed services” and “military service” under USERRA and SCRA shall also mean all service performed under section 9 of this chapter by a member of the military forces of the commonwealth.

c) For purposes of subchapter III of USERRA (§§4321-4326) the attorney general of the commonwealth shall perform all duties assigned to the secretary of labor or to the attorney general of the United States under the federal law.

d) The district and superior courts of the commonwealth shall have jurisdiction over actions under this section in accordance with their rules as to the amount of damages.

e) the crimes set forth in sections 521(c), 531(c), 532(b), 533(d), 535(h), 536(e) and 537(c) of the SCRA shall be criminal offenses under state law and shall carry the same punishments as set forth under the federal law.

#### Section 26. Awards and Decorations

a) To each member who completes three years of honorable service in the military forces of the commonwealth, there shall be awarded a Massachusetts Service Medal, and for each additional three years of like service a Bronze Service Star shall be affixed to the ribbon pendant thereof. Members of the military forces of the commonwealth, active, retired or honorably discharged, who have served in the armed forces of the United States in time of war and have been honorably discharged therefrom, shall receive a war service star indicative of such service, to be affixed to the ribbon pendant of the medal herein provided.

b) The adjutant general shall appoint an awards board consisting of three field grade officers and two senior NCO's to receive recommendations through military channels for the awarding of the decorations set forth in subsections (c), (d), (e) and (f).

c) The Massachusetts Medal of Valor may be awarded to a member of the armed forces of the commonwealth who, while on military duty, performs a deed of conspicuous gallantry at the risk of his life.

d) The Massachusetts Military Medal may be awarded to a member of the military forces of the commonwealth who, while on military duty performs a singular meritorious act of heroism which distinguishes him from his comrades but is of a lesser degree than that required for the awarding of the Massachusetts Medal of Valor. The Massachusetts Medal of Merit may be awarded to a member of the military forces of the commonwealth, the United States or any other state or territory of the United States who, while on military duty distinguishes himself by exceptionally meritorious conduct in performing outstanding services to the military forces of the commonwealth of Massachusetts

f) The Massachusetts Humanitarian Service Ribbon may be awarded to those personnel of the military forces of the commonwealth, who perform a singularly meritorious act of heroism or an act of significant achievement not involving actual military service with the military forces of the commonwealth, but reflecting favorably on the individual's membership in the national guard. The individual must have performed an act of heroism or an act of significant achievement so outstanding that he or she clearly went beyond what reasonably might have been expected from most persons under similar circumstances.

g) The Massachusetts Outstanding Soldier/Airman Ribbon may be awarded by the state command sergeant major to an enlisted member of the military forces within the commonwealth for meritorious service or achievement. The ribbon will also be awarded to all airmen and

369 soldiers selected as Airman/Soldier of the Year by commanders with the rank of colonel or  
370 higher.

371 Not more than one Medal of Valor, Massachusetts Military Medal or Medal of Merit  
372 shall be awarded to any person but a subsequent award of said decoration shall be evidenced by a  
373 suitable clasp or other device.

374 The Massachusetts Medal of Valor, Military Medal, Medal of Merit, and Humanitarian  
375 Service Ribbon may be awarded posthumously.

376 Section 27. Death or disability compensation

377 An officer or enlisted person of the military forces of the commonwealth, while  
378 performing any military duty ordered under any provision of this chapter, who in the line of duty  
379 receives any injury, is disabled, or contracts any sickness or disease, incapacitating him from  
380 pursuing his usual business or occupation, shall, during the period of such incapacity, receive  
381 compensation to be fixed by a board appointed under the provisions of section 31 to inquire into  
382 his claim, and actual, reasonable and necessary expenses for medical services and care,  
383 medicines and hospitalization, rehabilitation and retraining, replacement or repair of eyeglasses,  
384 dentures or prosthetic devices worn or carried. The rate of compensation for any such officer or  
385 enlisted member shall be their military rate of pay at the time of the accident or in the case of  
386 illness, when first diagnosed by a duly licensed medical doctor.

387 In case of death resulting from such sickness or disease, except in the case of any such  
388 death for which compensation is payable under the provisions of the third paragraph of this  
389 section, compensation shall be paid to the decedent's dependents, as determined in accordance  
390 with clause (3) of section 1 and section 32 of chapter 152, in the amounts provided by and

otherwise subject to section 31 of said chapter and further substituting their member's military rate of pay at the time of the accident or in the case of illness, when first diagnosed by a duly licensed medical doctor, if greater than the average weekly wage of the deceased as referred to in section 31 of chapter 152; provided, that dependents other than the widow/widower and children shall receive compensation to be fixed by said board, which shall use the provisions of chapter 152 to the department of industrial accidents in determining said benefits.

In the case of the death of a member of the Massachusetts national guard resulting from injury, sickness or disease received while in the line of duty pursuant to orders under titles 10 and 32 of the United States Code or this chapter, a single payment of \$200,000 shall be paid to the surviving spouse. If there is no surviving spouse the amount shall be paid to the child or children in equal shares, of the decedent. If there is no surviving spouse and no child or children, the surviving mother and father of the decedent, if the father and mother were dependent on the decedent for support at the time of his death shall each receive \$100,000. If only 1 parent survived the decedent or only one parent was dependent on the decedent for support, that parent shall receive \$200,000. The standard for dependency shall be determined in accordance with clause (3) of section 1 and section 32 of chapter 152. All claims presented under the provision of this section shall be made in accordance with the procedure set forth in section 31. All sums paid hereunder shall be considered exempt from taxation for income purposes by the commonwealth of Massachusetts.

If an officer or enlisted member is injured by reason of his serious and willful misconduct, he shall not receive compensation; but this provision shall not bar compensation to his dependents if the injury results in death.

413           Section 28     Group life insurance; partial payment of premium by commonwealth

414           For members of the Massachusetts national guard, army or air, the commonwealth shall  
415 pay 50 per cent of the monthly premiums for any coverage held in the serviceman's group life  
416 insurance program administered by the Veterans Administration, or for an equivalent group life  
417 insurance program authorized by the adjutant general.

418           Section 29     Health Care coverage

419           Members of the Massachusetts national guard, army or air, performing duty under this  
420 chapter for more than 30 days who do not otherwise have other health care coverage shall elect  
421 TRICARE Reserve Select coverage, or such other successor coverage afforded by the federal  
422 government to members of the national guard. One hundred percent of the monthly premium for  
423 individual or family health insurance coverage administered by TRICARE, or an equivalent  
424 health insurance program of the member's choosing provided that the reimbursement shall not  
425 exceed 100 percent of the monthly premium cost of TRICARE Reserve Select for a qualified  
426 member of the Massachusetts national guard, shall be borne by the commonwealth. A qualified  
427 member of the Massachusetts national guard as used in this section shall not include members  
428 ordered to active duty pursuant to titles 10 or 32 of the United States Code for more than 30  
429 consecutive days, members eligible for or enrolled in a Group Health Plan as an employee of any  
430 state or local government, or members who do not meet qualification standards otherwise  
431 established by TRICARE from time to time.

432           Section 30     Uncovered medical treatment costs

433           Under regulations promulgated by the adjutant general, the commonwealth shall pay 100  
434 percent of the cost of medical treatment, not otherwise covered by medical health insurance or

disability benefits available pursuant to section 27 of this chapter, for injuries incurred by members of the Massachusetts national guard, army or air, who are performing duty under this chapter.

Section 31. Board of compensation; powers and duties; payment of claims

Claims against the commonwealth for compensation under the provisions of section 27 shall be referred to a board of at least 3 members chaired by the state surgeon and including at least 1 physician serving as an officer in the military forces of the commonwealth, and a judge advocate officer. The board may also include such other members as appointed by the adjutant general. The board in consideration of the claim shall except as otherwise provided in section 27 take into account any compensation received by the claimant or his dependents from the United States. The board shall have the same power to take evidence, administer oaths, issue subpoenas and compel witnesses to attend and testify and produce books and papers, and to punish their failure to do so as is possessed by a general court-martial. The findings of the board shall be subject to the approval of the adjutant general. The amounts so found due and so approved shall be a charge against the commonwealth and shall be paid in the same manner as other military accounts.

Section 32. Subrogation

Where the damage or injury for which compensation is claimed under section 31 was caused under circumstances creating a legal liability in some person other than the commonwealth to pay damages in respect thereof, the commonwealth may enforce, in the name of the claimant or in its own name and for its own benefit, the liability of such other person. The entire sum recovered shall be for the benefit of the commonwealth.

Section 33. National guard education assistance program

There is hereby established a Massachusetts national guard education assistance program.

Said program shall be administered by the board of regents which shall have the authority to issue a certificate of exemption from the matriculation fee and tuition to any member of the Massachusetts army or air who is enrolled at any state institution in a program the cost of which is borne by the commonwealth and who is qualified as hereinafter provided. Said certificate shall remain in effect one full academic year and shall be renewed after the student has completed a full academic year of work equal to 30 semester hours, in accordance with regulations prescribed by said board: 1 certificate may therefore be in effect for more than 1 year.

To receive benefits from the program, the member shall be a member in good standing of the Massachusetts army or air national guard at the beginning of each semester that benefits are payable and shall remain a member in good standing of the Massachusetts army or air national guard throughout the entire semester for which benefits are payable.

Assistance shall continue for the benefit of said member only during such time as he remains a student in good standing at the institution in which he is enrolled and in no event shall any student receive the benefits for more than 130 semester hours.

Enrollment of a member in a course at said institutions shall be dependent on the availability of seats. Availability of seats for the purposes of this section shall mean vacancies that exist in a course after the enrollment of all tuition paying students, and all students who are enrolled under any scholarship or tuition waiver provisions.

V. MILITARY PROPERTY



Section 34. Inspection and condemnation of military property; reports

The state quartermaster as property officer for the commonwealth shall inspect and condemn military property of the commonwealth unfit for use. Except as is otherwise provided by law, no such property shall be sold until it has been inspected and condemned, and the condemnation approved by the adjutant general. The proceeds of any sales made hereunder shall be paid to commonwealth.

Section 35. Lease of military property

The commander-in-chief in chief may lease to or permit the use of military property belonging to the commonwealth by the armed forces of the United States, upon such terms and conditions which will fully protect the interests of the commonwealth.

Section 36. Acceptance of gifts for military purposes

The adjutant general may accept on behalf of the commonwealth any gift or bequest of personal property to or for the use of the military forces of the commonwealth, and shall forthwith transfer any money or securities so received to the state treasurer who shall administer the same as provided in section 17A of chapter 10.

VI. ARMORIES AND INSTALLATIONS

Section 37. Armories and installations;

The commonwealth shall provide for units of the army and air national guard permanently stationed within its boundaries with armories, air installations, and training installations, including suitable buildings for the purpose of drill, administrative work, and for the safekeeping of military property. The commonwealth shall provide for the operation and

499 maintenance of such armories and installations, and shall pay any costs associated thereof not  
500 paid by the United States.

501           Section 38.     Use of armories and installations; nature and scope

502           Armories, air installations and training installations provided for the military forces of the  
503 commonwealth shall be used by them for the military purposes or purposes incidental thereto  
504 designated by the adjutant general. Any state armory, air installation, or training installation  
505 when not in use for military purposes may be used without charge and subject to rules and  
506 regulations promulgated by the adjutant general for social activities or athletics by military units  
507 stationed in such armory, air installation or training installation. Non-military use of an armory,  
508 air installation or training installation under this section shall not be permitted if it interferes with  
509 its military use, and shall be subject to rules and regulations promulgated by the adjutant general.

510           Section 39.     Protection of military facilities and equipment

511           The senior military officer in charge of any armory, air installation, training installation,  
512 or other military facility owned, leased, licensed, or maintained by the commonwealth or by the  
513 United States for the use of the military forces of the commonwealth shall have control of such  
514 premises during the period of such occupation, subject to the orders of his superior officers, and  
515 whoever intrudes within the limits of such armory, air installation, training installation, or other  
516 military facility, after being forbidden, may be ejected, forcibly if necessary, or confined under  
517 guard during the time of parade or encampment, or during a shorter time by the order of the  
518 commanding officer; and whoever resists a sentry may be arrested by order of the commanding  
519 officer and dealt with as provided in section 18.

Within the Massachusetts Military Reservation or the Barnes Air National Guard Base, or about any vehicle or convoy transporting inherently dangerous property to include weapons, ammunition, missiles, rockets, explosives, and chemical agents to or from the Massachusetts Military Reservation or the Barnes Air National Guard Base, military forces of the commonwealth may use the means necessary and required, including the arming of trained personnel to include any officer, noncommissioned officer, airman, soldier, civilian or contract employee performing security, law enforcement, military police, or guard duties, to protect, guard, secure and defend and maintain all such facilities, vehicles or convoys, to include the assets, equipment and property located thereon. Use of force by any such personnel in active federal service, active state service, or service or employment of the United States, shall be in accordance with the applicable department of defense, United States army, United States air force, or commander-in-chief directives and instructions on rules of engagement and use of force. That person's honest and reasonable judgment under the circumstances then existing, in the exercise of the use of force in the performance of his or her duty under said directives and regulations, is full protection, civilly and criminally, for an act done in the line of duty.

#### Section 40. Armory commission

The armory commission provided for in section 18 of chapter 6 shall have full supervision and control of the construction of all armories or air installations taken, purchased or erected by the commonwealth, and on completion and acceptance of any such armory, air installation or training installation, the care and maintenance thereof shall devolve upon the state quartermaster.

### VII. GENERAL PROVISIONS

542           Section 41.     Unauthorized wearing of uniform; penalties

543           Whoever, not being in the service of the armed forces of the United States or the military  
544 forces of the commonwealth, appears in public wearing the distinctive uniform of any branch of  
545 such service shall be punished by a fine of not more than \$1000 or by imprisonment for not more  
546 than 6 months, or both, but this section shall not apply to any person discharged from such  
547 service, for any cause other than his own unworthiness, wearing his uniform in order to take part  
548 in any military or naval parade or on any occasion of ceremony, or to any person in the service of  
549 the armed forces of the United States, discharged for any cause other than his own unworthiness,  
550 wearing the uniform from place of discharge to his home. Any person found violating any  
551 provision of this section may be arrested without a warrant by any officer qualified to serve  
552 criminal process; provided, that nothing in this section shall subject to penalty any action with  
553 respect to the wearing of uniforms of the armed forces of the United States which is authorized  
554 by federal law.

555           Section 42.     Drill and military maneuver by private organizations

556           Excluding the armed forces of the United States, the military forces of the  
557 commonwealth, and foreign troops whose admission to the United States the government of the  
558 United States has consented, and subject to rules and regulations that may be promulgated by the  
559 adjutant general, no body of persons, except for ceremonial or historical purposes, shall conduct  
560 drill or military maneuvers with firearms anywhere within the commonwealth.

561           NON CHAPTER 33 SECTIONS

562           Chapter 151B: Section 4. Unlawful practices

563           Section 4. It shall be an unlawful practice:

564           1D. For an employer, an employment agency, the commonwealth or any of its political  
565 subdivisions, by itself or its agents, to deny initial employment, reemployment, retention in  
566 employment, promotion or any benefit of employment to a person who is a member of, applies to  
567 perform, or has an obligation to perform, service in a uniformed military service of the United  
568 States, including the national guard, when serving in title 10 or 32 of the United States Code or  
569 chapter 33 of the General Laws, on the basis of that membership, application or obligation.