

IC 10-16-7

Chapter 7. Training and Active Duty of National Guard; Benefits of Members

IC 10-16-7-1

"Employer"

Sec. 1. As used in section 6 of this chapter, "employer" refers to an employer:

- (1) other than the state or a county, township, municipality, or school corporation in Indiana; and
- (2) that employs any employee other than an employee in a temporary position.

As added by P.L.2-2003, SEC.7.

IC 10-16-7-2

"Member"

Sec. 2. As used in section 5 of this chapter, "member" refers to the following:

- (1) A member of the Indiana national guard.
- (2) A member of a reserve component.
- (3) A member of the retired personnel of the naval, air, or ground forces of the United States.

As added by P.L.2-2003, SEC.7.

IC 10-16-7-3

Drills; instruction; encampments; maneuvers; other exercises

Sec. 3. (a) Each detachment and unit in the national guard shall assemble for drill and instruction, including indoor target practice, in accordance with national guard regulations.

(b) In addition, each detachment and unit shall participate in encampments, maneuvers, or other exercises, including outdoor target practice, in accordance with national guard regulations, unless the unit or detachment is excused from participation by the governor.

(c) A commissioned officer and an enlisted person or a member of the Indiana air national guard shall be present and perform all the duties required of the officer, person, or member at each assembly for drill and instruction, encampment, maneuvers, or other exercises, unless regularly excused by competent authority.

As added by P.L.2-2003, SEC.7.

IC 10-16-7-4

Refusal to permit employees to attend drill or other duty

Sec. 4. An employer who knowingly or intentionally refuses to allow a member of the Indiana national guard to attend any assembly at which the member has a duty to perform under this chapter commits a Class B misdemeanor.

As added by P.L.2-2003, SEC.7.

IC 10-16-7-5

Government officers and employees; leave of absence for training

or active duty

Sec. 5. (a) This section applies to all officers and employees of the state or any county, township, municipality, or school corporation in Indiana who are members.

(b) A member is entitled to receive from the member's employer a leave of absence from the member's respective duties in addition to regular vacation period without loss of time or pay for the time that the member is:

- (1) on training duties of the state under the order of the governor as commander in chief; or
- (2) a member of any reserve component under the order of the reserve component authority;

for any consecutive or nonconsecutive period that does not exceed a total of fifteen (15) days in any calendar year. The entitlement to a leave of absence without loss of time or pay provided in this subsection is not at the discretion of the member's employer.

(c) A member is entitled to receive from the member's employer a leave of absence from the member's respective duties in addition to the member's regular vacation period for the total number of days that the member is on state active duty under section 7 of this chapter. A leave of absence provided under this subsection may be with or without loss of time or pay at the discretion of the member's employer.

As added by P.L.2-2003, SEC.7.

IC 10-16-7-6

Leave of absence while on active duty; effect on time or pay

Sec. 6. A member of the Indiana national guard is entitled to receive from the member's employer a leave of absence from the member's respective duties in addition to the member's regular vacation period for the total number of days that the member is on state active duty under section 7 of this chapter. The leave of absence may be with or without loss of time or pay at the discretion of the member's employer.

As added by P.L.2-2003, SEC.7.

IC 10-16-7-7

Governor; ordering on state duty; immunity from civil prosecution; order or requisition by President of the United States

Sec. 7. (a) The governor shall order on state duty all or part of the national guard in the following cases:

- (1) War.
- (2) Invasion.
- (3) Insurrection.
- (4) Public disaster.
- (5) Breach of the peace or imminent danger of breach of the peace.
- (6) Forcible obstruction of the execution of the laws, or reasonable belief that the execution of the laws will be obstructed.

(7) At any other time the governor considers necessary.

(b) A member of the Indiana national guard who is ordered out on duty may not be held civilly liable for any act done by the person in the discharge of the person's military duty. The member may not be subject to criminal prosecution if an alleged criminal act occurred while the member was carrying out the orders of a superior officer that the member reasonably believed to be legal orders under all of the attendant facts and circumstances.

(c) If the President of the United States calls, orders, or requisitions troops, the governor shall first order into the service of the United States the organization and arms of the service specified in the president's requisition.

(d) If a civil suit or proceeding is commenced in any court by any person against any member of the Indiana national guard acting under the authority of an order described in subsection (b), the attorney general shall defend the member. If the action or proceeding is criminal, the governor shall designate counsel to represent the accused and the state will be financially responsible for the expense of the defense of any civil or criminal action incurred. The expenses for the defense shall be paid by the adjutant general out of appropriated funds.

As added by P.L.2-2003, SEC.7.

IC 10-16-7-8

Arrest on civil process while on active duty

Sec. 8. (a) On days of military duty, the Indiana national guard, called out by proper authority and performing military duty, is considered to be under military discipline. An officer or enlisted person is not subject to arrest on any civil process during this time.

(b) For purposes of this section:

- (1) an attachment for contempt for failure to obey the command of a subpoena to testify is a civil process; and
- (2) a citation for a traffic violation is not a civil process.

As added by P.L.2-2003, SEC.7. Amended by P.L.115-2003, SEC.18.

IC 10-16-7-9

Sheriffs; requesting national guard be called to active duty

Sec. 9. (a) If:

- (1) insurrection, rebellion, invasion, tumult, riot, resistance to law or process, breach of the peace, or public disaster, occurs in the vicinity of a station of the Indiana national guard;
- (2) the exigencies of a situation make it impossible for the senior commanding officer of the Indiana national guard station to communicate with the governor or the adjutant general; and
- (3) the sheriff of the county involved or an officer acting on behalf of the sheriff provides the senior commanding officer of the Indiana national guard station with a written request signed by the sheriff of the county involved or officer stating the facts and the nature of the service desired;

the senior commanding officer may order out the Indiana national

guard units at that station and cause them to perform whatever duty is required by the circumstances.

(b) A commanding officer who has called out Indiana national guard units as described in subsection (a) shall immediately report what that officer has done and all the circumstances of the case to the governor. The actions performed shall be considered to have been taken by order of the governor.

As added by P.L.2-2003, SEC.7.

IC 10-16-7-10

Written orders calling to active duty; discretion in carrying out orders

Sec. 10. An officer whose command is called out under section 9 of this chapter and who is reporting to any civil officer may require the civil officer to make the order in writing and prescribe the outline of the duties required of the officer and the officer's command. The officer may decline to obey the orders until the orders are put in writing. Although the commanding officer must obey all lawful written orders of the civil officer, the military officer may use the officer's discretion as to the manner of carrying out the orders if the officer complies with their spirit.

As added by P.L.2-2003, SEC.7.

IC 10-16-7-11

Unlawful assembly; command to disperse

Sec. 11. (a) Except as provided in subsection (b), before using any military force to disperse an unlawful assembly (as defined in IC 35-45-1-1):

(1) the civil officer calling out the military force or a law enforcement officer; or

(2) if a civil officer or law enforcement officer is not present, the officer in command of the troops or the officer's designee; shall command the persons comprising the unlawful assembly to disperse and retire peaceably to their homes or businesses. A particular form of words is not required in ordering the dispersion of any unlawful assembly.

(b) A person is not required to order an unlawful assembly to disperse if:

(1) giving the order to disperse would put the person in imminent danger of loss of life or great bodily harm; or

(2) the unlawful assembly is engaged in the commission of any felony or is causing violence to a person or property.

As added by P.L.2-2003, SEC.7.

IC 10-16-7-12

Riots and mobs; death, personal injuries, and property damage

Sec. 12. (a) If a person taking part in an unlawful assembly described in this chapter refuses to disperse after having been ordered to disperse in accordance with this chapter or if a command to disperse is not required under this chapter and a civil officer to

whom military force is ordered to report, or if a civil officer is not present, then the military officer (or if the command is acting under the direct order of the governor, then the officer within the limits provided in the officer's instructions) shall:

- (1) arrest persons taking part in the unlawful assembly; or
- (2) disperse the unlawful assembly.

(b) If, in arresting a person or dispersing an unlawful assembly:

- (1) a person is killed, wounded, or otherwise injured; or
- (2) property is injured or destroyed;

by the civil officer or officer or member of the Indiana national guard, or other persons lawfully aiding them, the officer, member, or person shall be held blameless.

As added by P.L.2-2003, SEC.7.

IC 10-16-7-13

Assault on members; quelling attack

Sec. 13. If a part of the Indiana national guard or a person lawfully aiding the Indiana national guard in the performance of its duty as described in this chapter is attacked or in imminent danger of attack, the commanding officer:

- (1) is not required to await orders from a civil authority; and
- (2) may quell the attack, disperse the attacking party, and take any other necessary step for the safety of the officer's command.

As added by P.L.2-2003, SEC.7.

IC 10-16-7-14

Right-of-way on streets and highways

Sec. 14. (a) Except as provided in subsection (b), any part of the Indiana national guard parading or performing a lawful duty has the right-of-way in any street or highway through which the Indiana national guard passes.

(b) The Indiana national guard may not interfere with the following:

- (1) The carriage of United States mail.
- (2) The operations of any fire engine or fire department.
- (3) A police vehicle.
- (4) Any other emergency vehicle.

As added by P.L.2-2003, SEC.7.

IC 10-16-7-15

Assembly regulating passage and occupancy of streets; offense

Sec. 15. (a) If an unlawful assembly has occurred or is so imminent that the Indiana national guard has been called out under this chapter, the civil officer under whose orders the Indiana national guard is acting or the commanding officer of the Indiana national guard, if it is advisable in subduing or preventing the unlawful assembly, may:

- (1) prohibit a person from occupying or making use of a street or place where the Indiana national guard is located; and
- (2) otherwise regulate the passage and occupancy of streets and

places.

(b) A person who knowingly or intentionally enters a street or remains on a street after being informed that the Indiana national guard has prohibited this conduct commits a Class B misdemeanor.

(c) The officer in command of the Indiana national guard may immediately arrest or order the arrest of a person who violates subsection (b).

(d) If the officer in command of the Indiana national guard has arrested a person in accordance with this section, the officer shall deliver the person to a civil magistrate.

As added by P.L.2-2003, SEC.7.

IC 10-16-7-16

Election day; muster, assembly, review, or parade

Sec. 16. (a) A muster or an assembly for instruction, review, or parade may not be held or called in any county on any day during which a general election or special election is held in the county, except in case of or imminent danger of riot, invasion, insurrection, or public disaster.

(b) An officer who orders a muster or an assembly on an election day shall forfeit an amount as a court-martial adjudges.

As added by P.L.2-2003, SEC.7.

IC 10-16-7-17

Pay and allowance

Sec. 17. An officer or enlisted person in active service of the state shall be paid the greater of:

(1) the sum equivalent to the pay and allowances received by officers and enlisted men of the same rank or grade in the service of the armed forces of the United States; or

(2) the sum per day equal to twelve (12) times the hourly federal minimum wage in effect at the time of active service.

However, with the approval of the budget committee, the adjutant general may adjust the pay of an officer or enlisted person to meet the pay and allowance adjustments of officers and enlisted persons of the same rank or grade for service in the armed forces of the United States.

As added by P.L.2-2003, SEC.7.

IC 10-16-7-18

Injury, disability, or disease in line of duty; medical treatment; medical examiner or board; claims

Sec. 18. (a) A member of the Indiana national guard who:

(1) when on duty or assembled for duty, in case of riot, tumult, breach of peace, insurrection, invasion, public disaster or whenever ordered by the governor, the commanding general of the national guard, or called to the aid of civil authorities, is injured, is disabled, or contracts a disease because of the member's duty or assembly; or

(2) without fault or neglect on that member's part, is wounded

or disabled while performing any lawfully ordered duty that temporarily incapacitates the member from pursuing the member's usual business or occupation; shall, during the period of incapacity, receive the pay to which the member was entitled while on or assembled for duty, plus any actual necessary expenses for care and medical attention.

(b) If a claim is made under this section, the adjutant general may cause examinations of the claimant to be made from time to time by a medical officer designated for that purpose by the adjutant general. The adjutant general may direct the removal of a claimant to and treatment in a hospital designated by the adjutant general. If the claimant refuses:

- (1) to allow an examination; or
- (2) to go to a designated hospital or to otherwise follow the advice or treatment prescribed;

the claimant forfeits and is barred from all right to any claim or allowance under this section.

(c) Under this chapter:

- (1) a disability may not be considered temporary if the disability continues for more than one (1) year from the date of receiving the injury or of incurring or contracting the disease or disability; and
- (2) pay and expenses for care and medical attendance for more than one (1) year is not allowed.

(d) The adjutant general may appoint a medical examiner or a board of three (3) officers, at least one (1) being a medical officer, to inquire into the merits of any claim arising under this section. However, the adjutant general may determine any claim without appointing a medical examiner and fix the amount to be allowed under this section. A medical examiner or board appointed under this section has the same power to take evidence, administer oaths, issue subpoenas and compel witnesses to attend and testify and produce books and papers and punish their failures to do so as is possessed by a general court-martial. The findings of the medical examiner or board are subject to the approval of the adjutant general, who may return the proceedings of the medical examiner or board for revision and for taking further testimony. The amount found due a member by the medical examiner or board and approved by the adjutant general of the state shall be paid by the state in the same manner as other military accounts are paid.

As added by P.L.2-2003, SEC.7.

IC 10-16-7-19

Pensions; funeral expenses

Sec. 19. (a) A member of the Indiana national guard who is wounded or disabled or was disabled in the service of the state including service related to:

- (1) a riot;
- (2) a tumult;
- (3) a breach of the peace;

(4) a resistance to process;
(5) an invasion;
(6) a public disaster;
(7) the aid of civil authority; or
(8) a lawfully ordered parade, drill, encampment, or inspection;
within ten (10) years preceding the member's application for a pension under this chapter shall, upon proof of the disability, be placed on the roll of invalid pensioners of the state and shall receive out of money in the state treasury not otherwise appropriated, upon the audit of the adjutant general and approval of the governor, the same pension or reward that a person under similar circumstances would receive from the United States. In case of a wound, an injury, or a disease that results in death, the surviving spouse, dependent children, or dependent parent of the member of the Indiana national guard shall receive the pension and reward dating from the time of receiving the injuries on account of which the pension or reward is allowed. An officer or enlisted person is not entitled while in active service to apply for or receive a pension.

(b) If a member of the Indiana national guard dies in the active service of the state, the member's reasonable funeral expenses, not exceeding four thousand dollars (\$4,000), shall be paid by the state in the manner as the governor directs.

(c) This section does not make applicable any provision of the national service life insurance law of the United States, and the pension or reward granted under this section shall be that provided for by the pension laws of the United States in substance, without regard to form.

As added by P.L.2-2003, SEC.7.

IC 10-16-7-20

False or fraudulent representations; increasing, reducing, or withdrawing

Sec. 20. (a) Before the name of a person is placed upon the pension roll under this chapter, proof must be made under regulations as the adjutant general may prescribe that the applicant is entitled to a pension.

(b) The adjutant general, with the approval of the governor, shall strike from the pension roll the name of a person if it appears by satisfactory proof that the person was placed on the pension roll through a false or fraudulent representation.

(c) The adjutant general, with the approval of the governor, may increase, reduce, or withdraw any pension according to the right, justice, and practice in the United States Department of Veterans Affairs pension office.

As added by P.L.2-2003, SEC.7.

IC 10-16-7-21

Pension examiners and boards; lump sum payments

Sec. 21. (a) The adjutant general may appoint a pension examiner who shall inquire into the merits of any claim for pay and care and

pension, whether pending or adjudicated. The pension examiner may administer oaths, orally examine witnesses, issue subpoenas, and take affidavits and depositions in the course of an examination.

(b) The adjutant general shall appoint examining boards consisting of not more than three (3) medical officers of the Indiana national guard, who shall, under the adjutant general's direction, make an examination of a claimant as directed by the adjutant general. The examining board shall certify the result of its examination in the form prescribed by the adjutant general.

(c) A person who is adversely affected by the report of one (1) medical officer is entitled, upon request, to an examination before a board consisting of three (3) medical officers. The adjutant general, with the approval of the governor and with the consent of the applicant, may commute any pension by payment of a lump sum to be accepted by the applicant in full satisfaction of all claims.

As added by P.L.2-2003, SEC.7.

IC 10-16-7-22

Child visitation; making up lost time

Sec. 22. If a member of the Indiana national guard or a member of a reserve component of the armed forces of the United States:

- (1) is a noncustodial parent (as defined in IC 31-9-2-83);
- (2) misses visitation as provided in an order issued under IC 31-14-14 or IC 31-17-4 due to participating in an activity required under this chapter; and
- (3) notifies the custodial parent at least seven (7) days before the member misses the anticipated visitation described in subdivision (2), unless the member is unable to provide notice due to a government emergency;

the member shall be allowed to make up the lost visitation at the member's earliest convenience but not later than one (1) month after the member misses the visitation under this section, if exercising the lost visitation does not conflict with the child's school schedule.

As added by P.L.2-2003, SEC.7.

IC 10-16-7-23

Extension of federal benefits

Sec. 23. (a) As used in this section, "active duty" means:

- (1) training or duty under federal law; or
- (2) state active duty under section 7 of this chapter;

performed under an order of the governor.

(b) The rights, benefits, and protections of the federal Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. App. 501 et seq., as amended and in effect on January 1, 2003, apply to a member of the Indiana national guard ordered to active duty for at least thirty (30) consecutive days.

(c) The rights, benefits, and protections of the federal Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. 4301 et seq., as amended and in effect on January 1, 2003, apply to a member of the Indiana national guard ordered to active duty.

(d) Nothing in this section shall be construed as a restriction or limitation on any of the rights, benefits, and protections granted to a member of the Indiana national guard under federal law.

As added by P.L.113-2003, SEC.1.