

GOVERNMENT CODE  
SUBTITLE C. STATE MILITARY FORCES AND VETERANS  
CHAPTER 431. STATE MILITIA  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 431.001. DEFINITIONS. In this chapter:

(1) "Reserve militia" means the persons liable to serve, but not serving, in the state military forces.

(2) "State militia" means the state military forces and the reserve militia.

(3) "State military forces" means the Texas National Guard, the Texas State Guard, and any other active militia or military force organized under state law.

(4) "Texas National Guard" means the Texas Army National Guard and the Texas Air National Guard.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.002. COMMANDER-IN-CHIEF. (a) The governor is the commander-in-chief of the state military forces, except any portion of those forces in the service of the United States, and has full control and authority over all matters relating to the state military forces, including their organization, equipment, and discipline.

(b) If the governor is unable to perform the duties of commander-in-chief, the adjutant general shall command the state military forces, unless other state law requires the lieutenant governor or the president of the senate to perform the duties of governor.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.003. GOVERNOR'S MILITARY STAFF. (a) The governor's military staff consists of:

(1) the adjutant general;

(2) the assistant adjutants general;

(3) one aide-de-camp appointed by the governor from the Texas Army National Guard;

(4) one aide-de-camp appointed by the governor from the Texas Air National Guard; and

(5) one aide-de-camp appointed by the governor from the Texas State Guard.

(b) An aide-de-camp may be removed from the position by the governor. While serving, an aide-de-camp may not have a rank above the grade of lieutenant colonel. Service as an aide-de-camp does not make a person ineligible to hold an office of emolument, trust, or honor within the state or to serve as chairman or member of a committee of a political party or organization.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 613, Sec. 1, eff. June 15, 1991.

Sec. 431.004. REGULATING STATE MILITARY FORCES. (a) The governor shall make and publish regulations, according to existing military law, to govern the state military forces. The regulations must cover all general orders and forms for the performance of duties of persons in the military service, including the rules governing courts-martial.

(b) The governor, for cause the governor considers good and sufficient, may muster out of the service or reorganize any portion of the Texas National Guard or reserve militia.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.005. LEAVE OF ABSENCE FOR PUBLIC OFFICERS AND EMPLOYEES. (a) Except as provided by Subsection (b), a person who is an officer or employee of the state, a municipality, a county, or another political subdivision of the state and who is a member of the state military forces or a reserve component of the armed forces is entitled to a paid leave of absence from the person's duties on a day on which the person is engaged in authorized training or duty ordered or authorized by proper authority for not more than 15 workdays in a federal fiscal year. During a leave of absence the person may not be subjected to loss of time, efficiency rating, personal time, sick leave, or vacation time.

(b) A member of the legislature is entitled to pay for all days that the member is absent from a session of the legislature and engaged in training and duty as provided by Subsection (a).

(c) A state employee who is a member of the state military forces or a reserve component of the armed forces and who is ordered to duty by proper authority is entitled, when relieved from duty, to be restored to the position that the employee held when ordered to duty.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended

by Acts 1989, 71st Leg., ch. 441, Sec. 1, eff. June 14, 1989; Acts 1989, 71st Leg., ch. 1257, Sec. 1, eff. Oct. 1, 1989; Acts 2003, 78th Leg., ch. 175, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 971, Sec. 1, eff. June 20, 2003; Acts 2005, 79th Leg., ch. 728, Sec. 8.003, eff. Sept. 1, 2005.

Sec. 431.006. REEMPLOYMENT OF PERSON CALLED TO TRAINING OR DUTY. (a) A private employer may not terminate the employment of a permanent employee who is a member of the state military forces because the employee is ordered to authorized training or duty by proper authority. The employee is entitled to return to the same employment held when ordered to training or duty and may not be subjected to loss of time, efficiency rating, vacation time, or any benefit of employment during or because of the absence. The employee, as soon as practicable after release from duty, must give written or actual notice of intent to return to employment.

(b) A person injured by a violation of this section is entitled to:

(1) damages in an amount not exceeding six months' compensation at the rate at which the person was compensated when ordered to training or duty; and

(2) reasonable attorney's fees approved by the court.

(c) It is a defense to an action under this section that the employer's circumstances changed while the employee was in training or on duty to an extent that makes reemployment impossible or unreasonable. The employer has the burden of proving the impossibility or unreasonableness of reemploying the employee under the employer's changed circumstances.

(d) An employer may not delay or attempt to defeat a reemployment obligation under this section by demanding documentation that does not exist or is not readily available at the time notice is given under Subsection (a).

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 1205, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 335, Sec. 1, eff. May 24, 2001.

Sec. 431.007. OATH. (a) A commissioned officer of the state military forces may administer oaths for purposes of military administration. The officer's signature, without seal, and the title of the officer's assignment is prima facie evidence of the officer's authority.

(b) A person appointed, enlisted, or drafted in the state military forces shall take and subscribe an oath in the following form:

"I, \_\_\_\_\_, do solemnly swear that I will bear true faith and allegiance to the State of Texas and to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever, and that I will obey the orders of the governor of Texas, and the orders of the officers appointed over me, according to the laws, rules, and articles for the government of the military forces of the State of Texas."

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.008. COMMISSIONS. (a) A commission in the state military service must be:

(1) in the name and by authority of the state;

(2) sealed with the state seal;

(3) signed by the governor and attested by the secretary of state;

(4) recorded by the adjutant general in a record book kept in the adjutant general's office for that purpose; and

(5) conferred without fee.

(b) On the recommendation of the commanding officer of an officer or noncommissioned officer of the state military forces, the governor may confer on the officer or noncommissioned officer a brevet of a grade higher than the ordinary commission or brevet held by the officer or noncommissioned officer, for gallant conduct or meritorious state military service of not less than 25 years.

(c) The governor may confer on an officer in active service in the state military forces who has previously served in the forces of the United States during a war a brevet of a grade equal to the highest grade in which the officer previously served.

(d) A commission under Subsection (b) or (c) carries only the privileges or rights allowed for similar commissions in the military service of the United States.

(e) The governor, without examination, may appoint and confer a brevet of second lieutenant on an enlisted person who has

served well and faithfully in the state military forces for 25 years or more. The person shall immediately be placed on the retired list.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 13, Sec. 1, eff. Aug. 28, 1989.

Sec. 431.009. MILITARY UNIT AS CORPORATE BODY. (a) A military unit mustered into the state military forces by authority of the governor is, from the time of its muster, a body corporate and politic, and may:

(1) take, purchase, own in fee simple, hold, transfer, mortgage, pledge, and convey, under its corporate name, real or personal property of a value, when acquired, of not more than \$200,000;

(2) sue and be sued, plead and be impleaded, and prosecute and defend in court under its corporate name;

(3) have and use a common seal in a form it adopts;

(4) adopt bylaws to govern and regulate its affairs, consistent with state law and United States law and the orders and regulations of the governor; and

(5) otherwise act as necessary and proper to carry out its purpose.

(b) The officers of the unit, and in the case of a military band the noncommissioned officers, are its directors. The senior officer is its president.

(c) The power of a unit to hold or handle property is not affected by a natural increase in the property's value after it is acquired.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.010. ORGANIZATION PROHIBITED. (a) Except as provided by Subsection (b), a body of persons other than the regularly organized state military forces or the troops of the United States may not associate as a military company or organization or parade in public with firearms in a municipality of the state.

(b) With the consent of the governor, students in an educational institution at which military science is a prescribed part of the course of instruction and soldiers honorably discharged from the service of the United States may drill and parade with firearms in public.

(c) This section does not prevent a parade by the active militia of another state as provided by law.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.011. FOREIGN TROOPS. A military force from another state, territory, or district, except a force that is part of the United States armed forces, may not enter the state without the permission of the governor.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.012. INTERFERENCE WITH STATE MILITARY FORCES. (a) A person who intentionally hinders, delays, or obstructs or who intentionally attempts to hinder, delay, or obstruct a portion of the state military forces on active duty in the service of the state in performance of a military duty commits an offense. An offense under this subsection is a misdemeanor punishable by a fine of not less than \$100 nor more than \$1,000, by imprisonment for not less than one month nor more than one year, or by both.

(b) The commanding officer of a portion of the state military forces parading or performing a military duty in a street or highway may require a person in the street or highway to yield right-of-way to the forces, except that the commanding officer may not interfere with the carrying of the United States mail, a legitimate function of the police, or the progress or operation of a hospital ambulance or fire department.

(c) During an occasion of duty, a commanding officer may arrest a person who:

(1) trespasses on the campground, parade ground, armory, or other place devoted to the duty;

(2) interrupts or molests the orderly discharge of duty by those under arms; or

(3) disturbs or prevents the passage of troops going to or coming from duty.

(d) The commanding officer may prohibit and abate as a common nuisance a huckster or auction sale or gambling on the post, campground, or place of encampment, parade, or drill under the officer's command.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.013. EXPENDITURES. The comptroller may not issue a warrant on or initiate an electronic funds transfer from the state treasury for an expenditure under this chapter unless the expenditure is approved by the adjutant general or the adjutant general's designee before payment.  
Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 641, Sec. 18, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 50, Sec. 1, eff. May 15, 2003.

Sec. 431.014. COMPANY FUND. The commanding officer of each company is the custodian of the company fund. The commanding officer shall:

(1) receive, safely keep, and properly disburse, as the governor may require, the money trusted to the commanding officer's care; and

(2) submit to the adjutant general, on June 30 and December 31 of each year, an itemized statement of money received and disbursed during the preceding six months.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.015. ASSIGNMENT OF PAY. An assignment of pay by an officer or enlisted person is not valid, except as otherwise provided by the governor.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.016. PAY AND OTHER BENEFITS. (a) The state, according to adjutant general regulations, shall make suitable provision for the pay, transportation, subsistence, and quarters of state troops on active state duty.

(b) Pay and benefits received by members of the state military forces under this chapter are not a gratuity, but are compensation for services for which the member bargained as a condition of enlistment and employment.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.017. CERTAIN BENEFITS AND PROTECTIONS FOR STATE SERVICE. A member of the state military forces who is ordered to active state duty by the governor or by other proper authority under the law of this state is entitled to the same benefits and protections provided:

(1) to persons performing service in the uniformed services by 38 U.S.C. Sections 4301-4313 and 4316-4319, as that law existed on April 1, 2003; and

(2) to persons in the military service of the United States by 50 App. U.S.C. Sections 501-536, 560, and 580-594, as that law existed on April 1, 2003.

Added by Acts 2003, 78th Leg., ch. 216, Sec. 1, eff. June 18, 2003.

Sec. 431.0175. GRAVE MARKERS FOR STATE MILITARY PERSONNEL. (a) On the request of a person listed in Subsection (b), the adjutant general shall provide a grave marker for a decedent who served in the state military forces.

(b) The following persons may request a grave marker from the adjutant general:

(1) the decedent's spouse;

(2) the decedent's adult children, if there is no spouse;

(3) the decedent's parents, if there is no spouse or adult child;

(4) the decedent's brothers or sisters, if there is no spouse, adult child, or parent; or

(5) the executor or administrator of the decedent's estate, if there is no spouse, adult child, parent, or brother or sister.

(c) A person is not eligible for a grave marker under this section if the person is eligible for a grave marker under federal law.

(d) The adjutant general shall model the grave markers after the grave markers provided by the federal government.

(e) The adjutant general shall adopt rules to implement this section.

Added by Acts 2005, 79th Leg., ch. 1053, Sec. 1, eff. Sept. 1, 2005.

Sec. 431.018. MILITARY FACILITIES PROJECTS: MATCHING FEDERAL FUNDS. If the governor, after consulting with the adjutant general and the executive director of the Texas Military Facilities Commission, finds that the state is eligible for federal matching funds for projects at military facilities in this state, the governor may direct that money appropriated for the purpose be used to obtain the federal matching funds.

Added by Acts 2003, 78th Leg., ch. 949, Sec. 1, eff. Sept. 1, 2003.

Renumbered from V.T.C.A., Government Code Sec. 431.017 by Acts 2005, 79th Leg., ch. 728, Sec. 23.001(30), eff. Sept. 1, 2005.

SUBCHAPTER B. ADJUTANT GENERAL'S DEPARTMENT

Sec. 431.021. DEFINITION. In this subchapter, "department" means the adjutant general's department.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.022. ADJUTANT GENERAL. (a) The adjutant general is the head of the adjutant general's department and controls the military department of the state. The adjutant general is subordinate only to the governor in matters pertaining to the military department of the state and the state military forces. The adjutant general has the rank not to exceed lieutenant general at the discretion of the governor. Federal recognition is at the rank authorized by the National Guard Bureau, not to exceed lieutenant general.

(b) The adjutant general is appointed by the governor, with the advice and consent of the senate if in session, to a term expiring February 1 of each odd-numbered year. To be qualified for appointment as adjutant general a person must:

(1) when appointed be serving as a federally recognized officer of not less than field grade in the Texas National Guard;

(2) have previously served on active duty or active duty for training with the army, air force, or marines; and

(3) have completed at least 10 years' service as a federally recognized reserve or active duty commissioned officer with an active unit of the United States armed forces, the National Guard, or the Texas National Guard, including at least five years with the Texas National Guard.

(c) The appointment of the adjutant general shall be made without regard to the race, color, sex, religion, or national origin of the appointee.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1021, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1415, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1234, Sec. 1, eff. June 20, 2003.

Sec. 431.0225. CONFLICT OF INTEREST PROVISIONS. (a) A person may not be appointed adjutant general or act as the judge advocate general to the adjutant general or the department if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the department.

(b) An officer, employee, or paid consultant of a Texas trade association in the field of defense or veterans affairs may not be appointed adjutant general or be an employee of the department who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(c) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of defense or veterans affairs may not be appointed adjutant general and may not be an employee of the department who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(d) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

Added by Acts 1997, 75th Leg., ch. 1021, Sec. 2, eff. Sept. 1, 1997.

Sec. 431.023. SUNSET PROVISION. The adjutant general's department is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished and this subchapter expires September 1, 2009.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 17, Sec. 3.05, eff. Nov. 12, 1991; Acts 1997, 75th Leg., ch. 1021, Sec. 3, eff. Sept. 1, 1997.

Sec. 431.0245. MANDATORY TRAINING FOR ADJUTANT GENERAL. (a) Before the adjutant general may assume the duties of the office and before the adjutant general may be confirmed by the senate, the adjutant general must complete at least one course of the training program established under this section.

(b) A training program established under this section shall

provide information to the adjutant general regarding:

- (1) the enabling legislation that created the department;
- (2) the federal and state programs operated by the department;
- (3) the federal and state roles and functions of the department;
- (4) the rules of the department with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget for the department with emphasis on state and federal funds;
- (6) the results of the most recent formal federal and state audits of the department;
- (7) the requirements of:
  - (A) the open records law, Chapter 552; and
  - (B) the Freedom of Information Act (5 U.S.C. Section 552);

(8) the requirements of the conflict of interest laws and other laws relating to public officials;

(9) any applicable ethics policies adopted by the department or the Texas Ethics Commission; and

(10) the requirements and development of the Master Cooperative Agreement between the state and federal governments.

Added by Acts 1997, 75th Leg., ch. 1021, Sec. 4, eff. Sept. 1, 1997.

Sec. 431.025. SEAL. The seal of the adjutant general consists of a five-pointed star with "Office of Adjutant General, State of Texas" around the margin.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.0255. REMOVAL PROVISIONS. (a) It is a ground for removal if the adjutant general:

(1) does not have at the time of appointment the qualifications required by Section 431.022;

(2) does not maintain during service as adjutant general the qualifications required by Section 431.022;

(3) violates a prohibition established by Section 431.0225; or

(4) cannot because of illness or disability discharge the adjutant general's duties for a substantial part of the term for which the adjutant general is appointed.

(b) The validity of an action of the adjutant general is not affected by the fact that it is taken when a ground for removal exists.

(c) If a potential ground for removal exists, the assistant adjutant general with the longest tenure in that position in the department shall notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 1997, 75th Leg., ch. 1021, Sec. 5, eff. Sept. 1, 1997.

Sec. 431.026. ASSISTANT ADJUTANTS GENERAL. (a) On recommendation of the adjutant general, the governor shall appoint an assistant adjutant general for army, a deputy assistant adjutant general for army, and an assistant adjutant general for air. To be qualified for appointment a person must have the qualifications required for appointment as adjutant general under Section 431.022(b).

(b) Before taking office an appointee shall take and subscribe to the oath of office prescribed for officers of the Texas National Guard. This oath shall be filed in the adjutant general's office.

(c) An assistant or deputy assistant adjutant general has the rank prescribed by the governor, not to exceed the grade authorized for federal recognition in the position, and is entitled to the rights, privileges, and immunities granted officers of that rank in the Texas National Guard. The assistant or deputy assistant adjutant general may be removed from office by the governor.

(d) An assistant or deputy assistant adjutant general shall aid the adjutant general by performing assigned duties. If the adjutant general is dead, absent, or unable to act, the assistant adjutant general who is senior in rank shall perform the duties of the adjutant general.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1021, Sec. 6, eff. Sept. 1, 1997.

Sec. 431.027. SALARIES. The adjutant general and each assistant adjutant general are entitled to salaries in the amounts designated in a line item in the General Appropriations Act.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.028. PERSONNEL. (a) The adjutant general may employ clerks, employees, and laborers as necessary to carry on the operations of the department.

(b) The adjutant general or the adjutant general's designee shall provide to department employees, as often as necessary, information regarding their qualification for office or employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(c) The adjutant general or the adjutant general's designee shall develop an intra-agency career ladder program that addresses opportunities for mobility and advancement for employees within the department. The program shall require intra-agency posting of all positions concurrently with any public posting.

(d) The adjutant general or the adjutant general's designee shall develop a system of annual performance evaluations that are based on documented employee performance. All merit pay for department employees must be based on the system established under this subsection.

(e) The adjutant general or the adjutant general's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel that are in compliance with the requirements of Chapter 21, Labor Code;

(2) a comprehensive analysis of the department's workforce that meets federal and state laws, rules, and regulations and instructions directly promulgated from those laws, rules, and regulations;

(3) procedures by which a determination can be made about the extent of underuse in the department's workforce of all persons for whom federal or state laws, rules, and regulations and instructions directly promulgated from those laws, rules, and regulations encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of underuse.

(f) A policy statement prepared under Subsection (e) must cover an annual period, be updated annually and reviewed by the Commission on Human Rights for compliance with Subsection (e)(1), and be filed with the governor's office.

(g) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (f). The report may be made separately or as a part of other biennial reports made to the legislature.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1021, Sec. 7, eff. Sept. 1, 1997.

Sec. 431.029. GENERAL DUTIES. The adjutant general shall:

(1) perform duties that the governor assigns relating to the military affairs of the state and conduct the business of the department as the governor directs;

(2) perform for the state as near as practicable the duties that pertain to the chiefs of staff of the army and air force and the secretaries of the military services, under regulations and customs of the United States armed forces;

(3) control and supervise the transportation of troops, munitions of war, military equipment and property, and stores in the state;

(4) take custody and charge of books, records, papers, furniture, fixtures, and other property relating to the department;

(5) superintend the preparation of returns and reports required of this state by the United States;

(6) keep a register of all officers of the state militia;

(7) keep in the adjutant general's office records and papers required to be kept and filed in that office;

(8) have printed at state expense, when necessary, state military law and regulations and distribute one copy to each commissioned officer, sheriff, county clerk, and county tax assessor-collector in the state;

(9) issue to each commissioned officer and each headquarters one copy of the necessary textbooks and, as the governor directs, annual reports concerning the militia;

(10) have prepared and issued all necessary blank books, blank forms, and notices required to carry out this chapter;

(11) establish reasonable and necessary fees for the administration of this subchapter; and

(12) employ and arm persons as public security officers licensed under Chapter 415, Government Code, for the purposes of protecting property that is under the adjutant general's authority and satisfying applicable security requirements established by the secretaries of the army and air force.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 336, Sec. 1, eff. June 14, 1989.

Sec. 431.030. PROPERTY. (a) Except as provided by Subsection (b), the adjutant general, for and on behalf of the state, may lease from the Texas Military Facilities Commission a building, its site, and the equipment in it, as provided by Section 435.023, for use as an armory or for another proper purpose. The adjutant general may renew the lease.

(b) If adequate facilities for armory purposes are available for rental from the Texas Military Facilities Commission in or about a municipality, the adjutant general may not lease property in or about the municipality for those purposes from a person other than the commission.

(c) If all or part of a state-owned Texas National Guard camp and the land, improvements, buildings, facilities, installations, and personal property connected with the camp are designated by the adjutant general as surplus or are in excess of the needs of the Texas National Guard or its successors or components, the adjutant general, for and on behalf of the state, may transfer the property to the Texas Military Facilities Commission for administration, sale, or other proper disposal. Before declaring property as surplus and transferring it to the commission, the adjutant general may remove, sever, dismantle, or exchange all or part of the property for the use and benefit of the Texas National Guard or its successors.

(d) For the purposes of this section, "lease" includes "sublease."

(e) If the adjutant general receives notice from the asset management division of the General Land Office as provided by Section 31.156, Natural Resources Code, the adjutant general shall produce a report evaluating the military use of any real property under the management and control of the department or the Texas National Guard Armory Board. The adjutant general shall evaluate the use of the property as required by this subsection according to military criteria for use of real property.

(f) Not later than August 1 of the year in which the Commissioner of the General Land Office submits a report as provided by Section 31.157, Natural Resources Code, the adjutant general shall submit a preliminary report of the report required under Subsection (e) to the Commissioner of the General Land Office identifying the real property used for military purposes. Not later than September 1 of the year in which the Commissioner of the General Land Office submits a report as provided by Section 31.157, Natural Resources Code, the adjutant general shall submit the report as required by Subsection (e) to:

(1) the governor;

(2) the presiding officer of each house of the legislature;

(3) the Legislative Budget Board; and

(4) the governor's budget office.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 907, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1021, Sec. 8, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1168, Sec. 4, eff. Sept. 1, 1997.

Sec. 431.031. SUPPLIES. (a) The adjutant general shall:

(1) define and prescribe the kind and amount of supplies to be purchased for state military forces and the duties and powers respecting their purchase;

(2) prescribe general regulations for:

(A) transportation of supplies from the place of purchase to camps, stations, companies, or other necessary places of safekeeping; and

(B) distribution of an adequate and timely supply to commanders of units and to officers entrusted by the regulations with the supplies; and



(3) fix and make reasonable allowance for store rent and storage for safekeeping of the supplies.

(b) The adjutant general may purchase from money appropriated for this purpose and, as the best interests of the service require, keep ready for use or issue to the state military forces a necessary amount of quartermasters', ordnance, subsistence, medical, signal, engineers', and other military supplies. The adjutant general shall have the supplies, whether the property of the United States or the state, properly cared for and kept in good order and ready for use. The adjutant general shall certify and approve accounts that accrue against the state under this chapter, if correct. The claims shall be paid from the state treasury as other claims are paid.

(c) The adjutant general may sell, destroy, or exchange for other military supplies for use of the state military forces, as the adjutant general determines in the best interests of the service, military supplies owned by the state that become unserviceable, obsolete, or unfit for further use, or the supplies may be disposed of in the manner that the governor or adjutant general by regulation or order prescribes.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.032. BIDS. (a) The adjutant general may adopt rules governing the preparation, submission, and opening of bids for contracts under the department.

(b) The adjutant general may require a bid to be accompanied by a good bond in a penal amount that the adjutant general considers appropriate. The bond must be conditioned that the bidder, if awarded the contract, will enter into a contract consistent with the bid not later than the 60th day after the day the bids are opened. The bidder may not withdraw a bid before the 61st day after the day the bids are opened.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.033. REGULATIONS. The adjutant general shall adopt regulations to govern the department and the custody, use, and preservation of records and property relating to the department, whether owned by the United States or the state. The regulations take effect when adopted in the form of routine orders or letters of instruction.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.034. REPORT. (a) The adjutant general annually shall report to the governor. The report shall be delivered to the legislature. The report must include:

(1) a complete and detailed written statement accounting for all funds received and disbursed by the department during the preceding fiscal year that meets the reporting requirements applicable to financial reporting provided in the General Appropriations Act;

(2) an account, to the extent of the adjutant general's knowledge, of all arms, ammunition, and other military property owned by or in possession of the state, the source from which it was received, to whom it is issued, and its present condition;

(3) a statement of the number, condition, and organization of the Texas National Guard and reserve militia;

(4) suggestions that the adjutant general considers important to the military interests and conditions of the state and the perfection of its military organization;

(5) a list and description of all Texas National Guard missions that are in progress at the time the report is prepared; and

(6) a statement of department plans to obtain and maintain future Texas National Guard missions, including proposed missions that are consistent with the United States Department of Defense's war-fighting strategies, including strategies used in the war on terrorism.

(b) Information relating to current, proposed, or planned missions that is considered by the adjutant general or governor to be classified or of a sensitive nature need not be included in the annual report under this section.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1021, Sec. 9, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 31, Sec. 1, eff. Sept. 1, 2003.

Sec. 431.035. FUNDS. (a) Except as provided by Subsection (c), all money paid to the department under this chapter, other than money held in military unit funds authorized by adjutant general rule, is subject to Subchapter F, Chapter 404.

(b) Funds or other property or services may be donated to the department by any public or private entity, including:

- (1) a state agency or department;
- (2) a political subdivision, including a county, municipality, or public school district; or
- (3) a special purpose district or authority.

(c) The adjutant general may accept a donation or transfer of funds from the federal government directly or through another agency or from an agency or political subdivision of the state. The funds shall be deposited with the comptroller. The funds may be used for the legal purpose of the department set out in the donation or transfer. The comptroller shall pay out the funds on a properly drawn warrant issued by the comptroller on request of the adjutant general and approval of the governor under regulations adopted by the comptroller. An employee whose salary is paid from these funds is entitled to not less than the federal hourly minimum wage as provided by Section 206, Fair Labor Standards Act of 1938 (29 U.S.C. Section 206). The adjutant general may adopt regulations necessary to control the receipt and disbursement of these funds.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 17, Sec. 1, eff. April 11, 1991; Acts 1997, 75th Leg., ch. 1021, Sec. 10, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 8.14, eff. Sept. 1, 1997.

Sec. 431.036. CERTIFICATION OF MILITARY UNITS. On muster of a military unit into the state military forces, the adjutant general shall issue the unit a certificate, in a form prescribed by the adjutant general, stating that the unit has been duly organized according to the laws and regulations of the state military forces and is entitled to the rights, powers, privileges, and immunities conferred by those laws and regulations. The certificate is evidence in a state court that the unit is duly incorporated.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.037. INFORMATION OF INTEREST; COMPLAINTS. (a) The department shall prepare information of public interest describing the functions of the department and the procedures by which complaints are filed with and resolved by the department. The department shall make the information available to the public and appropriate state agencies.

(b) The adjutant general by policy shall establish methods by which the public and members of the Texas National Guard are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department. The department may provide for that notification on a sign prominently displayed at each Texas National Guard armory.

(c) The department shall keep information about each complaint filed with the department. The information shall include:

- (1) the date the complaint is received;
- (2) the name of the complainant;
- (3) the subject matter of the complaint;
- (4) a record of all persons contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) for complaints for which the department took no action, an explanation of the reason the complaint was closed without action.

(d) The department shall keep a file about each written complaint filed with the department that the department has authority to resolve. The department shall provide to the person filing the complaint and the persons or entities complained about the department policies and procedures pertaining to complaint investigation and resolution. The department, at least quarterly and until final disposition of the complaint, shall notify the person filing the complaint and the persons or entities complained about of the status of the complaint unless the notice would jeopardize an undercover investigation.

Added by Acts 1997, 75th Leg., ch. 1021, Sec. 11, eff. Sept. 1, 1997.

Sec. 431.038. PROGRAM AND FACILITY ACCESSIBILITY. The department shall comply with federal and state laws related to program and facility accessibility. The department shall also prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the department's programs and services.

Added by Acts 1997, 75th Leg., ch. 1021, Sec. 12, eff. Sept. 1, 1997.

#### SUBCHAPTER C. TEXAS NATIONAL GUARD

Sec. 431.041. COMPOSITION. (a) The Texas National Guard is composed of:

- (1) the state military forces organized as the Texas National Guard;
- (2) persons held to military duty under state law;
- (3) persons who accept appointment or voluntarily enlist in the Texas National Guard; and
- (4) members of the reserve militia mustered into the Texas National Guard.

(b) The Texas National Guard may not exceed 37,000 officers and enlisted persons except in case of war, insurrection, invasion or the prevention of invasion, the suppression of riot, or the aiding of civil authorities to execute state law.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.042. OFFICERS. An officer of the Texas National Guard is appointed and commissioned by the governor. To be qualified for appointment a person must be qualified under United States law and regulations. The officer shall take and subscribe the official oath.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1021, Sec. 13, eff. Sept. 1, 1997.

Sec. 431.043. ENLISTMENT AND APPOINTMENT. Federal law prescribes the terms and conditions of, and the qualifications and requirements for, enlistment and appointment in the Texas National Guard. The governor and legislature may prescribe additional terms, conditions, qualifications, and requirements.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 16, Sec. 9.01, eff. Aug. 26, 1991.

Sec. 431.044. GOVERNOR'S REGULATIONS. The governor shall adopt regulations that the governor considers appropriate for the organization of the Texas National Guard in accordance with this chapter. The organization as near as practicable must conform to the organization of the United States armed forces.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.045. LOCAL GOVERNMENTAL ASSISTANCE. (a) In this section, "unit" means a company, squadron-size organization, or separately administered or located platoon or flight of the Texas National Guard.

(b) Funds or other property or services may be donated to the Texas National Guard by any public or private entity, including:

- (1) a state agency or department;
- (2) a political subdivision, including a county, municipality, or public school district; or
- (3) a special purpose district or authority.

(c) The governing body of a county or municipality, on behalf of the county or municipality, may donate to the Texas Military Facilities Commission, or to a unit for transfer to that commission, land for use as a site for an armory or other building suitable for use by a unit. The donation may be in fee simple or otherwise.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 17, Sec. 2, eff. April 11, 1991; Acts 1997, 75th Leg., ch. 1168, Sec. 5, eff. Sept. 1, 1997.

Sec. 431.046. PROPERTY FORFEITURE. When the Texas National Guard Counterdrug Support Program assists a federal law enforcement agency in enforcing drug laws, the Texas National Guard Counterdrug Support Program is considered to be a law enforcement agency of the state for the purpose of participating in the sharing of property seized or forfeited to the United States under federal law.

Added by Acts 1997, 75th Leg., ch. 813, Sec. 1, eff. June 17, 1997.

#### SUBCHAPTER D. TEXAS STATE GUARD

Sec. 431.051. SUPPLEMENTAL VOLUNTEER MILITARY FORCES. To provide mission-ready volunteer military forces for use by the state in homeland security and community service activities as a supplement to the Texas National Guard, the Texas State Guard exists as part of the state militia under the Second Amendment to the United States Constitution and a defense force under 32 U.S.C. Section 109.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2003, 78th Leg., ch. 114, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1312, Sec. 4, eff. June 21, 2003.

Sec. 431.052. COMPOSITION. (a) The Texas State Guard is composed of units the governor considers advisable.

Text of subsec. (b) as amended by Acts 2003, 78th Leg., ch. 114, Sec. 2

(b) To volunteer for service in the Texas State Guard a person must:

- (1) be a citizen of the United States and a resident of this state for at least 180 days;
  - (2) be at least 17 years of age;
  - (3) meet qualifications that the governor prescribes;
- and
- (4) be acceptable to and approved by the governor or adjutant general under the governor's direction.

Text of subsec. (b) as amended by Acts 2003, 78th Leg., ch. 1312, Sec. 5

(b) To volunteer for service in the Texas State Guard a person must:

- (1) be a resident of this state for at least 180 days and:
    - (A) a citizen of the United States; or
    - (B) a person who has been lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.);
  - (2) be at least 17 years of age;
  - (3) meet qualifications that the governor prescribes;
- and
- (4) be acceptable to and approved by the governor or adjutant general under the governor's direction.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2003, 78th Leg., ch. 114, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1312, Sec. 5, eff. June 21, 2003.

Sec. 431.053. ACTIVE DUTY. (a) The governor may activate and call to active duty all or part of the Texas State Guard. The Texas State Guard, or part of the Texas State Guard, called to active duty has the rights, privileges, duties, functions, and authorities conferred or imposed by law on the state military forces.

(b) A member of the Texas State Guard is subject to serve on active duty at the call and by order of the governor.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.054. GOVERNOR'S AUTHORITY. (a) The governor has full control and authority over the Texas State Guard.

(b) The governor may adopt rules and regulations governing enlistment, organization, administration, uniforms, equipment, maintenance, command, training, and discipline of the Texas State Guard. The rules and regulations to the extent practicable and desirable must conform to law, rules, and regulations governing the Texas National Guard.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.055. OFFICERS. (a) Officers of the Texas State Guard are appointed, commissioned, and assigned by the governor or under the governor's authority. The governor may remove or reassign an officer.

(b) To be eligible for appointment as a general officer a person must have:

- (1) been a federally recognized officer of not less than field grade of the Texas National Guard or a regular or reserve component of the United States Army or Air Force; or
- (2) served at least 15 years as a commissioned officer in the state military forces or a regular or reserve component of the United States Army or Air Force.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.056. ASSISTANCE. (a) Funds or other property or services may be donated to the Texas State Guard by any public or private entity, including:

- (1) a state agency or department;
- (2) a political subdivision, including a county, municipality, or public school district; or
- (3) a special purpose district or authority.

(b) A school authority may permit the Texas State Guard to use a school building.

(c) An appropriation of state funds to the Texas State Guard must be in an amount designated in a line item in the General Appropriations Act.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended

by Acts 1991, 72nd Leg., ch. 17, Sec. 3, eff. April 11, 1991.

Sec. 431.057. USE OUTSIDE THE STATE; FRESH PURSUIT FROM OR INTO STATE. (a) Except as provided by Subsections (b) and (c), the Texas State Guard may not be required to serve outside the state.

(b) The governor, on request of the governor of another state, may order all or part of the Texas State Guard to assist the military or police forces of that state that are defending that state. The governor may recall these forces.

(c) If authorized by law of another state, an organization, unit, or detachment of the Texas State Guard, on order of the officer in immediate command, may continue in fresh pursuit of an insurrectionist, a saboteur, an enemy, or enemy forces into that state until the apprehension or capture of the person or forces pursued or until military or police forces of that state or the United States have had a reasonable opportunity to apprehend, capture, or take up the pursuit of the person or forces. The Texas State Guard without unnecessary delay shall surrender a person apprehended or captured in another state to the military or police forces of that state or the United States. This surrender is not a waiver by this state of a right to extradite or prosecute the person for a crime committed in this state.

(d) Military forces of another state may continue a fresh pursuit into this state in the same manner permitted the Texas State Guard for a pursuit into another state under Subsection (c). The military forces of the other state shall without unnecessary delay surrender a person captured or arrested in this state to the military or police forces of this state to be dealt with according to law. This subsection does not prohibit an arrest in this state permitted by other law.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.058. FEDERAL SERVICE. This chapter does not authorize the calling, ordering, or drafting of all or part of the Texas State Guard into military service of the United States, but a person is not exempted by enlistment or commission in the Texas State Guard from military service under United States law.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.059. RECORDS; ARMS; EQUIPMENT. (a) The adjutant general shall maintain and preserve the individual, unit, and organization records of the Texas State Guard and the Texas State Guard Honorary Reserve.

(b) The governor may requisition for use of the Texas State Guard arms and equipment that the United States government possesses and can spare. The governor may make available to the Texas State Guard state armories and their equipment and other available state property.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.060. TEXAS STATE GUARD HONORARY RESERVE. (a) The governor, or another person under the governor's authority and direction, may transfer to the Texas State Guard Honorary Reserve an officer or enlisted person of the Texas State Guard who:

- (1) is physically disabled;
- (2) is at least 60 years of age; or
- (3) has served satisfactorily for at least 25 years.

(b) The governor may advance the person one grade or rank at the time of the transfer.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

#### SUBCHAPTER E. RESERVE MILITIA

Sec. 431.071. MILITARY DUTY. (a) The reserve militia is not subject to active military duty, except that the governor may call into service the portion of the reserve militia needed for the period required in case of war, insurrection, invasion or prevention of invasion, suppression of riot, tumult, or breach of peace or to aid civil officers to execute law or serve process.

(b) The governor may assign members of the reserve militia who are called into service to existing organizations of the state military forces or organize them as circumstances require.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.072. COUNTY EMERGENCY BOARD. The county emergency board of each county consists of the county judge, sheriff, and tax assessor-collector. If one of those officers is unable to act, the governor shall designate another public official to serve on the board.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.073. DRAFT. (a) The governor, by order to the county emergency board, shall apportion the number of members of

the reserve militia called into service among the counties by draft according to each county's population or by other means the governor directs. The county emergency board shall establish fair and equitable procedures for selection of persons to fill the draft according to regulations adopted by the governor. On completion of the selection, the board shall deliver a list of the persons selected to the governor and notify each person selected of the time and place to appear and report.

(b) A member of the reserve militia while in active service is a member of the state military forces under Section 432.001(16), and is subject to the punitive provisions of Chapter 432. A member who does not appear at the time and place designated by the county emergency board shall be punished as a court-martial directs. Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.074. PENALTY. (a) A member of a county emergency board who neglects or refuses to perform a duty required by this subchapter commits an offense.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than \$1,000 and confinement in jail for not less than six nor more than 12 months. Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

#### SUBCHAPTER F. SERVICE AND DUTIES

Sec. 431.081. PERSONS SUBJECT TO MILITARY DUTY; PERSONS NOT ELIGIBLE TO ENLIST. (a) A person is subject to military duty if the person is:

- (1) able-bodied;
- (2) a citizen or a person of foreign birth who has declared an intent to become a citizen;
- (3) a resident of the state;
- (4) at least 18 and not more than 60 years of age; and
- (5) not exempt under Subsection (b) or (c) or United States law.

(b) A person is exempt from military duty, except in case of war, insurrection, invasion, or imminent danger of war, insurrection, or invasion if the person is:

- (1) the lieutenant governor;
- (2) a member or officer of the legislature;
- (3) a judge or clerk of a court of record;
- (4) a head of a state agency;
- (5) a sheriff, district attorney, county attorney, county tax assessor-collector, or county commissioner;
- (6) a mayor, council member, alderman, or assessor and collector of a municipality;
- (7) an officer or employee of the Texas Department of Corrections, a state hospital or special school, a public or private hospital, or a nursing home;
- (8) a member of a regularly organized and paid fire or police department in a municipality, except that a person is not relieved of military duty by joining such a department;
- (9) a minister of the gospel exclusively engaged in that calling; or
- (10) a person who conscientiously scruples against bearing arms.

(c) A mentally disabled person, vagabond, confirmed alcoholic, narcotics addict, or a person convicted of an infamous crime is exempt from military duty regardless of circumstances.

(d) A minor may not enlist without the written consent of the minor's parents or guardian.

(e) A person expelled or dishonorably discharged from state or United States military service is not eligible for enlistment or reenlistment unless the person submits written consent to enlistment from the commanding officer of the organization from which the person was expelled or dishonorably discharged and from the commanding officer who approved the expulsion or issued the dishonorable discharge.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.082. COMPENSATION. (a) Except as provided by Section 431.0821, a member of the state military forces who performs training or other duty under authority of the United States Code may not receive salary or allowances from the state for the training or other duty, but may be reimbursed for lodging and meals as authorized by the General Appropriations Act if the adjutant general authorizes the payment.

(b) A member of the state military forces who volunteers to perform training or other duty solely under state authority may not

receive salary or allowances from the state for the duty unless the adjutant general authorizes the payment, but may be reimbursed for lodging and meals as authorized by the General Appropriations Act if the adjutant general authorizes the payment. Training or duty without pay is considered for all purposes as if it were training or duty with pay.

(c) When the adjutant general authorizes payment for training or other duty under Subsection (b), a member of the state military forces performing the training or other duty is entitled, during the period of the training or other duty, to receive pay and allowances as provided by law for the United States Armed Forces, except that the pay may not be less than the reimbursement for lodging and meals authorized by the General Appropriations Act. This pay is an emolument for training or other duty and is salary or base pay. The pay and allowances may not be reduced because of food, shelter, or transportation that the state pays or furnishes in connection with the training or other duty.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 613, Sec. 2, eff. June 15, 1991; Acts 1999, 76th Leg., ch. 1205, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 282, Sec. 1, eff. June 18, 2003.

Sec. 431.0821. SUPPLEMENTAL ACTIVE DUTY PAY FOR ECONOMIC HARDSHIP. (a) A person who is called to active military duty as a member of the Texas National Guard in the service of this state or the United States by proper federal or state authority and who suffers an economic hardship as a result of serving on active duty is eligible to receive supplemental pay for serving on active duty in accordance with this section.

(b) The comptroller shall establish the Texas National Guard members' supplemental active duty pay account in the general revenue fund. Money in the account may only be appropriated for purposes of implementing this section. The comptroller, governor, or adjutant general may accept gifts and grants for deposit to the credit of the account. The legislature may transfer money into the account or may appropriate money to implement this section that the comptroller shall credit to the account.

(c) A member of the Texas National Guard described by Subsection (a) is eligible to receive supplemental pay under this section in an amount not to exceed the lesser of:

(1) the amount required to alleviate the economic hardship the member suffers as a result of serving on active duty; and

(2) the difference between the amount of income that the member has lost from civilian employment as a result of being called to active duty and the amount of military pay and allowances the member receives from state or federal sources while on active duty.

(d) The adjutant general determines whether a member is eligible to receive supplemental pay under this section and the amount of supplemental pay a member may receive. In determining the amount, the adjutant general shall consider the total amount that is available for supplemental pay during a period and the probable total need for supplemental pay during that period.

(e) The adjutant general may adopt rules to implement this section, including rules that prescribe the procedure for requesting supplemental pay and that prescribe evidence a member may or must present to demonstrate hardship. The comptroller, in consultation with the adjutant general, may adopt rules to govern the manner and method of paying supplemental pay under this section.

Added by Acts 2003, 78th Leg., ch. 282, Sec. 2, eff. June 18, 2003.

Sec. 431.0825. EMPLOYEES IN NATIONAL GUARD; EMERGENCY LEAVE. A state employee called to state active duty as a member of the state military forces by the governor is entitled to receive paid emergency leave without loss of military leave under Section 431.005(a) or annual leave.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 20, eff. Sept. 1, 1993. Renumbered from V.T.C.A., Government Code Sec. 431.085 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(14), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 175, Sec. 2, eff. Sept. 1, 2003.

Sec. 431.083. TAX EXEMPTION. (a) An officer or enlisted person in the state military forces who complies with the person's military duties as prescribed by this chapter is exempt from payment of a road or street tax.

(b) To obtain the exemption, a person must file in the county tax assessor-collector's office an affidavit, sworn to before a notary public or other person authorized to administer oaths in the state, in the following form:

"I, \_\_\_\_\_, do hereby solemnly swear or affirm that I am a member in good standing of the state military forces of the State of Texas.

Subscribed to and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
SEAL

\_\_\_\_\_  
Notary Public in and for \_\_\_\_\_ County, Texas"

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.084. TRAINING. The governor, or the adjutant general if designated by the governor, may require training for officers and enlisted persons in the state military forces. The training may include military duty in the form of community service missions.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 613, Sec. 3, eff. June 15, 1991.

Sec. 431.085. LIABILITY OF MEMBER. (a) A member of the state military forces ordered into active service of the state by proper authority is not civilly liable for an act performed in the discharge of duty.

(b) If a suit is instituted against an officer of the state military forces for an act of the officer in the officer's official capacity in the discharge of duty or against a person acting under the authority, order, or lawfully issued warrant of such an officer, the court shall require the plaintiff to file security for the payment of court costs that may be awarded to the defendant. The defendant in the case may make a general denial and give the special matter in evidence. If the plaintiff is nonsuited or the verdict or judgment is against the plaintiff, the defendant is entitled to recover three times the court costs.

(c) If an officer or member of the state military forces is sued for injury to a person or property occurring in the performance of or attempt to perform a duty required by law, the court shall remove the venue of the case to a court of competent jurisdiction in another county not subject to disqualification if:

(1) the defendant applies for the removal; and

(2) the application is supported by affidavit of two credible persons stating that they have good reason to believe the defendant cannot have a fair and impartial trial before the court.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.086. EXEMPTION FROM ARREST. (a) A member of the state military forces may not be arrested, except for treason, felony, or breach of the peace, while the person is going to or coming from a place that the person was required to be for military duty.

(b) This section does not prevent a peace officer from issuing a traffic summons or citation to appear in court at a later date that does not conflict with the member's duty hours.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.088. VOTING. (a) A unit, force, division, or command of the state military forces that is engaged in regular training on a day on which a primary, general, or special election for a state or federal office is held shall provide time off or arrange duty hours to permit all personnel to vote in the election.

(b) This section does not apply during war, invasion, insurrection, riot, tumult, or imminent danger of one of these situations, or during annual active duty for training not exceeding 15 days.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.089. DISCHARGE. (a) A person may be discharged from the state military forces according to regulations adopted by the adjutant general or to federal law or regulations.

(b) On termination of the appointment of an officer or enlistment of an enlisted person in the state military forces, the officer or enlisted person shall be given a certificate of discharge stating the character of the person's service.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.090. TUITION ASSISTANCE. (a) Because the state military forces are the state's only organized, trained, and



equipped military force under the direction of the governor available to respond to natural and man-made disasters, tuition assistance is provided under this section to eligible members of the state military forces to encourage voluntary membership, to improve the education level of its members, to diversify the composition of the forces, and to enhance the state's workforce.

(b) In this section, "institution of higher education" and "private or independent institution of higher education" have the meanings assigned by Section 61.003, Education Code.

(c) To be eligible for tuition assistance under this section, a person must:

(1) be a member in good standing, as certified by the adjutant general, of the Texas Army National Guard, Texas Air National Guard, or Texas State Guard who is:

- (A) an enlisted member;
- (B) a warrant officer of a grade from Warrant Officer One through Chief Warrant Officer Three; or
- (C) a commissioned officer of a grade from Second Lieutenant through Captain; and

(2) meet any additional qualifications established by the adjutant general to carry out the purposes of this section or to further the institutional needs of the state military forces.

(d) The adjutant general shall grant tuition assistance under this section to a number of eligible persons established by the adjutant general, considering funds available for that assistance and the needs of the state military forces. The adjutant general may apportion the number of tuition assistance awards among the components of the state military forces as the adjutant general considers necessary to meet the recruitment and retention needs of those components. The number of tuition assistance awards made to members of the Texas State Guard may not exceed 30 for any semester, unless the adjutant general finds a compelling need for additional awards to members of the Texas State Guard.

(e) Tuition assistance may be awarded under this section for tuition charged for any undergraduate or graduate course at an institution of higher education or private or independent institution of higher education, including a vocational or technical course.

(f) A person may not receive tuition assistance under this section for:

- (1) more than 12 semester credit hours in any semester; or
- (2) more than five academic years or 10 semesters, whichever occurs first for the person.

(g) Before each semester at a time determined by the adjutant general, the adjutant general shall certify to the appropriate public and private institutions of higher education a list of the persons to whom the adjutant general has awarded tuition assistance under this section for that semester. The amount of tuition assistance awarded by the adjutant general under this section may not exceed the amount of money available to fund the tuition assistance awards.

(h) From money appropriated for purposes of this section, the adjutant general shall authorize the comptroller to reimburse an institution of higher education in an amount equal to the amount of the tuition exemption the institution grants to a person under Section 54.2155, Education Code.

(i) From money appropriated for purposes of this section, the adjutant general shall authorize the comptroller to make a grant to a person attending a private or independent institution of higher education to whom the adjutant general has awarded tuition assistance for the semester under this section. The amount of a grant under this subsection is an amount equal to the average amount of reimbursement the adjutant general estimates will be paid per student for the same semester under Subsection (h).

Added by Acts 1999, 76th Leg., ch. 1206, Sec. 1, eff. Jan. 1, 2000. Amended by Acts 2005, 79th Leg., ch. 1181, Sec. 52, eff. Sept. 1, 2005.

#### SUBCHAPTER G. DISABILITY OR DEATH IN THE LINE OF MILITARY DUTY

Sec. 431.101. DEFINITIONS. In this subchapter:

- (1) "Disability" means injury or illness.
- (2) "Military duty" means military service to the state performed:

(A) in case of riot, tumult, breach of the peace, resistance to process, invasion, insurrection, or imminent danger

of one of these situations;

(B) on call to aid civil authorities;

(C) while participating in training formation or an activity under order of the commanding officer of the unit; or

(D) while traveling to or from a place of duty for service under Paragraphs (A)-(C).

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.104. COMPENSATION FOR DEATH OR DISABILITY. (a) A member of the state military forces who is killed or disabled while engaged in authorized training or duty is entitled to receive compensation under Chapter 501, Labor Code.

(b) Expired.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 1205, Sec. 3, eff. Sept. 1, 1999.

#### SUBCHAPTER H. CALLING OF FORCES

Sec. 431.111. CALLING OF FORCES BY GOVERNOR. (a) The governor may call all or part of the state military forces to repel or suppress an invasion of or insurrection in or threatened invasion of or insurrection in the state or if the governor considers it necessary to enforce state law. If the number of state military forces is insufficient, the governor shall call the part of the reserve militia that the governor considers necessary.

(b) The governor may call all or part of the state military forces to assist civil authorities in guarding prisoners, conveying prisoners within the state, or executing law as the public interest or safety requires.

(c) The governor may order a commander of a unit of the state military forces to appear at a time and place directed to suppress or prevent tumult, riot, or the actions of a group of persons acting together by force with intent to commit a breach of the peace or violence to a person or property or to otherwise violate state law.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.112. CALLING OF FORCES BY OTHER OFFICIAL. If military aid is immediately and urgently necessary to prevent or suppress violence under Section 431.111(c) and it is impracticable to secure the aid in time by order of the governor, the district judge of the judicial district, the sheriff of the county, or the mayor of the municipality in which the disturbance occurs may call for aid on the commanding officer of the state military forces stationed in the judicial district, county, or municipality or an adjacent judicial district, county, or municipality. The officer must make the call in writing and shall immediately notify the governor of the action.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.113. DUTY OF COMMANDING OFFICER. (a) On receipt of a call under this subchapter, a commanding officer immediately shall order the called forces under the officer's command to parade at the time and place appointed and shall notify the governor of the action.

(b) After the forces have appeared at the appointed place, the commanding officer shall obey and execute the general instructions of the civil authorities charged by law with the suppression of riot or tumult or the preservation of public peace. The instructions must be in writing, except that if written instructions are impracticable the instructions must be given verbally in the presence of two or more credible witnesses. The commanding officer is solely responsible for determining the kind and extent of force to be used and the method of implementing the instructions.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.114. SALE OF ARMS. The commanding officer of forces called to enforce law may order the closing of any place where arms, ammunition, or explosives are sold and forbid the sale, barter, loan, or gift of arms, ammunition, or explosives while forces are on duty in or near that place.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.115. STATE OF INSURRECTION. The governor by proclamation may declare any portion of the state where state military forces are serving in aid of the civil authority to be in a state of insurrection, if the governor determines that law and order will be promoted by the declaration.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

#### SUBCHAPTER I. ARMS AND EQUIPMENT

Sec. 431.121. PROVISION AND STORAGE. (a) The state shall provide each state military organization with the arms, equipment,

instruction and record books, and other supplies necessary for performance of the duties required of the organization by this chapter. The organization shall keep the property in proper repair and good condition.

(b) The governor may draw from the United States government the arms, equipment, munitions, or other military supplies to which the state is entitled for use of the state military forces. The governor may execute bonds in the name of the state as necessary to obtain this property.

(c) The governor shall have arms, equipment, munitions, or other military property owned by or under control of the state stored at places the governor considers in the state's best interests.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.122. ISSUANCE AND USE. (a) A person to whom the state issues a uniform or other military property shall give a receipt for the uniform or property. The adjutant general shall prescribe the manner in which the uniform and equipment shall be accounted for and kept.

(b) The uniform or other property may be used only for military purposes. An officer or enlisted person of the state military forces who is responsible to the governor for public property may not lend the property for private use or permit it to be used for a purpose for which it was not intended.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.123. UNIFORM. The uniform of the officers and enlisted persons of the state military forces is the uniform prescribed for the United States armed forces with modifications that the governor considers necessary.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.1235. TEXAS STATE GUARD UNIFORM FUND. (a) A special revolving fund is established outside the state treasury to be known as the Texas State Guard uniform fund. The fund may be used only to purchase uniforms and insignia to be used by members of the Texas State Guard. The fund shall be administered in accordance with the provisions of Section 431.014.

(b) The fund consists of:

- (1) money the legislature appropriates to the fund;
- (2) donations made to the fund;
- (3) revenue received by the the Texas State Guard from the sale of uniforms and insignia to members of the guard; and
- (4) depository interest and investment income earned on amounts in the fund.

(c) If any part of an amount appropriated by the legislature for the purposes of the fund remains unexpended and unobligated at the end of the period for which it is appropriated, that amount is dedicated for the purposes for which the appropriation was made. No amount in the fund may be diverted for any other purpose.

Added by Acts 1991, 72nd Leg., ch. 613, Sec. 4, eff. June 15, 1991.

Sec. 431.124. EXEMPTION FROM EXECUTION. Arms, equipment, clothing, or other military supplies issued by the state to organizations or members of the state military forces for military purposes are exempt from levy and sale because of execution for debt or other legal proceedings.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.125. SEIZURE. (a) On affidavit of a credible witness stating that a person unlawfully possesses, and refuses or fails to deliver up, arms, equipment, or other military property issued by the state for use of the state military forces, the governor by warrant shall command the sheriff of the county in which the person resides or is located to seize the arms, equipment, or other military property and keep the property subject to the governor's further order. The sheriff shall immediately execute the warrant and in doing so may invoke the power of the county and summon any convenient command of the state military forces.

(b) Each sheriff from time to time shall collect military arms or property issued by the state that is liable to loss or in the hands of unauthorized persons and safely keep the arms and property subject to order of the governor. The sheriff shall make a report of the collection to the governor. The sheriff's official bond covers faithful performance of duties under this subchapter.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

#### SUBCHAPTER J. AWARDS

Sec. 431.131. TEXAS LEGISLATIVE MEDAL OF HONOR. (a) The Texas Legislative Medal of Honor shall be awarded to a member of the

state or federal military forces designated by concurrent resolution of the legislature who voluntarily performs a deed of personal bravery or self-sacrifice involving risk of life that is so conspicuous as to clearly distinguish the person for gallantry and intrepidity above the person's comrades. Awarding of the medal shall be considered on the standard of extraordinary merit. The medal may be awarded only on incontestable proof of performance of the deed. To be eligible for the Texas Legislative Medal of Honor, a person must:

- (1) have been born in this state;
- (2) reside in this state or have been a resident of this state on the person's death; or
- (3) have been a resident of this state when the person entered military service.

(b) A person is not ineligible for the Texas Legislative Medal of Honor because the person has received any other medal or award for military service, including a medal or award made by the United States.

(c) To receive the Texas Legislative Medal of Honor, a person must be nominated during a regular session of the legislature by majority vote of all the members of a nominating committee consisting of:

- (1) the adjutant general or the adjutant general's designated representative;
- (2) the lieutenant governor or the lieutenant governor's designated representative;
- (3) the speaker of the house of representatives or the speaker's designated representative; and
- (4) the chair of the standing committee of each house of the legislature with primary jurisdiction over military and veterans affairs.

(d) The legislature by concurrent resolution may direct the governor to award the Texas Legislative Medal of Honor to a person nominated by the nominating committee. The committee chairs serving on the nominating committee shall jointly prepare a concurrent resolution directing the governor to award the medal to a person nominated. The legislature may direct the medal to be awarded only during a regular session and may not direct the medal to be awarded to more than one person during a regular session.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1999, 76th Leg., ch. 1092, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1020, Sec. 1, eff. June 20, 2003.

Sec. 431.132. LONE STAR MEDAL OF VALOR. The Lone Star Medal of Valor shall be awarded to a member of the military forces of this state, another state, or the United States who performs specific acts of bravery or outstanding courage, or who performs within an exceptionally short period a closely related series of heroic acts, if the acts involve personal hazard or danger and the voluntary risk of life and result in an accomplishment so exceptional and outstanding as to clearly set the person apart from the person's comrades or from other persons in similar circumstances. Awarding of the medal requires a lesser degree of gallantry than awarding of the Texas Legislative Medal of Honor, but requires that the acts be performed with marked distinction.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.133. LONE STAR DISTINGUISHED SERVICE MEDAL. The Lone Star Distinguished Service Medal shall be awarded to a member of the military forces of this state, another state, or the United States for exceptionally outstanding achievement or service to the state in performance of a duty of great responsibility while serving with the state military forces.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.134. OTHER AWARDS. The adjutant general may adopt rules and regulations relating to the:

(1) Texas Faithful Service Medal, which shall be awarded to a member of the state military forces who has completed five years of honorable service during which the person has shown fidelity to duty, efficient service, and great loyalty to the state;

(2) Federal Service Medal, which shall be awarded to a person who was inducted into federal service from the state military forces between June 15, 1940, and January 1, 1946, or after June 1, 1950, if the service was for more than 90 days;

(3) Texas Medal of Merit, which may be presented to a member of the military forces of this state, another state, or the

United States who performs outstanding service or attains extraordinary achievement in behalf of the state or United States;

(4) Texas Outstanding Service Medal, which may be presented to a member of the military forces of this state, another state, or the United States who has performed service in a superior and clearly outstanding manner;

(5) Texas State Guard Service Medal, which shall be awarded to a person who completes three consecutive years of honorable service in the Texas State Guard during which the person has shown fidelity to duty, efficient service, and great loyalty to the state;

(6) Texas Desert Shield/Desert Storm Campaign Medal, which shall be awarded to a person who was inducted into federal service from the Texas National Guard after August 1, 1990, in support of Operation Desert Shield or Operation Desert Storm, without regard to the place that the person was deployed while serving on active federal military duty;

(7) Texas Humanitarian Service Medal, which shall be awarded to a person who:

(A) does not meet the criteria for an award of the federal Humanitarian Service Medal;

(B) is a member of the state military forces; and

(C) while serving under state active duty orders, participates satisfactorily in the accomplishment of missions to protect life or property during or soon after a natural disaster or civil unrest;

(8) Texas Cavalry Medal, which shall be awarded to a person who:

(A) served on or after September 11, 2001, in the 124th Cavalry, Texas Army National Guard; and

(B) served in a hostile fire zone as designated by the United States secretary of defense;

(9) Texas Combat Service Ribbon, which shall be awarded to a member of the Texas National Guard who served, after September 11, 2001, in a hostile fire zone as designated by the United States secretary of defense; and

(10) Texas Purple Heart Medal, which shall be awarded to a person who, after September 11, 2001:

(A) was inducted into federal service from the Texas National Guard; and

(B) meets the criteria for an award of the federal Purple Heart Medal.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 257, Sec. 1, eff. Aug. 26, 1991; Acts 1999, 76th Leg., ch. 190, Sec. 1, eff. May 24, 1999; Acts 2005, 79th Leg., ch. 854, Sec. 1, eff. June 17, 2005.

Sec. 431.135. RECOMMENDATIONS. (a) A recommendation for award of the Texas Legislative Medal of Honor, Lone Star Medal of Valor, or Lone Star Distinguished Service Medal shall be forwarded through military channels to the adjutant general. An individual having personal knowledge of an act or achievement or exceptional service believed to warrant the award of one of these medals may submit a letter of recommendation to the adjutant general.

(b) A letter of recommendation for award of the Texas Legislative Medal of Honor or Lone Star Medal of Valor must give an account of the occurrence and statements of eyewitnesses, extracts from official records, sketches, maps, diagrams, or photographs to support and amplify the stated facts.

(c) A letter of recommendation for award of the Lone Star Distinguished Service Medal must give an account of the exceptional service or achievement, facts, and extracts from official documents and photographs to support and amplify the facts.

(d) If the adjutant general determines that a case meets the criteria established by this subchapter for the awarding of one of these medals, the adjutant general shall by endorsement recommend to the governor the awarding of the appropriate medal.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.136. AWARDING. The governor awards the Texas Legislative Medal of Honor as directed by the legislature under Section 431.131. The governor awards the Lone Star Medal of Valor, Lone Star Distinguished Service Medal, or any other award authorized by this subchapter on recommendation of the adjutant general.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2003, 78th Leg., ch. 1020, Sec. 2, eff. June 20, 2003.

Sec. 431.137. POSTHUMOUS AWARDS. An award may be made to a person who has died in the same manner as an award to a living person, except the orders and citation must indicate that the award is made posthumously.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 431.138. DESIGN; RIBBONS. (a) The adjutant general shall design and have manufactured the medals, awards, decorations, and ribbons awarded under this subchapter and others that the adjutant general has approved for award.

(b) The adjutant general shall adopt rules and regulations prescribing when a ribbon may be appropriately worn instead of the medal it symbolizes.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 68, Sec. 1, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., ch. 613, Sec. 5, eff. June 15, 1991.