

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1061

S.P. 384

In Senate, March 28, 1995

An Act to Amend Certain Provisions of the Law Relating to Defense.

Submitted by the Department of Defense and Veterans' Services pursuant to Joint Rule 24.
Reference to the Committee on Legal and Veterans Affairs suggested and ordered printed.

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS
Secretary of the Senate

Presented by Senator FERGUSON of Oxford.
Cosponsored by Representatives: BIRNEY of Paris, BUCK of Yarmouth, CHIZMAR of
Lisbon, FISHER of Brewer, LABRECQUE of Gorham, RICKER of Lewiston, TRUE of
Fryeburg, WINSOR of Norway.

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

2
4
6
8
10
12
14
16
18
20
22
24
26
28
30
32
34
36
38
40
42
44
46
48
50

PART A

Sec. A-1. 37-B MRSA §147, sub-§3, as enacted by PL 1983, c. 460, §3, is amended to read:

3. Active duty. Whenever the occasion requires, the Governor, the Adjutant General or Deputy Adjutant General, with the officer's consent, may order to active ~~duty~~ state service any retired officer, warrant officer or enlisted ~~man~~ person, who ~~shall--be--entitled--to~~ with or without pay and ~~emoluments~~ allowances of his that person's grade while performing the service.

Sec. A-2. 37-B MRSA §150, as enacted by PL 1983, c. 460, §3, is amended to read:

§150. Unauthorized volunteer service

No A unit of the state military forces may not perform any voluntary military active state service, unless authorized by express order of the Governor.

An officer, warrant officer or enlisted person or any retired officer, retired warrant officer or retired enlisted person of the state military forces may not perform any voluntary active state service, unless authorized by express order of the Governor, the Adjutant General or the Deputy Adjutant General.

PART B

Sec. B-1. 37-B MRSA §101-A, sub-§1, as enacted by PL 1987, c. 230, §1, is amended to read:

1. Active state service. As used in this Title, "active state service" means all military duty performed as a member of the state military forces ~~in-a-pay-status-described-in-section 143-by-order-of-the-Governor-under~~ pursuant to this Title or ~~performed-under~~ the United States Code, Title 32.

Sec. B-2. 37-B MRSA §185, sub-§1, as amended by PL 1983, c. 594, §9, is further amended to read:

1. Immunity from civil and criminal liability. No A member of the state military forces may not be liable civilly or criminally for any act done or caused, ordered or directed to be done by ~~him~~ that member while on active duty state service in the performance of his that member's duty. If an action of any nature has been commenced in any court by any person against an officer or enlisted ~~man~~ member of the state military forces for

2 such an act, done or caused, ordered or directed to be done, all
3 expenses of the defense of the action, including fees of
4 witnesses for the defense, defendant's court costs, and all costs
5 for transcripts of records and abstract thereof on appeal, ~~shall~~
6 must be paid by the State out of the Military Fund. ~~Where~~ When
7 the action is civil, it ~~shall--be~~ is the duty of the Attorney
8 General to defend that officer or enlisted ~~man~~ member. ~~Where~~
9 When the action ~~if~~ is criminal, the Adjutant General shall
10 designate a judge advocate of the National Guard or other
11 authorized state military or naval force to conduct the defense
12 of the member. If the services of a judge advocate are not
13 available, the Adjutant General shall select some other competent
14 attorney to conduct the defense. In any civil action, the
15 defendant may require the person instituting the action to file
16 security for payment of costs that may be awarded the defendant,
17 which costs, if paid out of the Military Fund, when received,
18 ~~shall~~ must be paid into the State Treasury and credited to the
19 Military Fund.

20 **Sec. B-3. 37-B MRSA §186, sub-§1, ¶A,** as amended by PL 1991,
21 c. 885, Pt. E, §44 and affected by §47, is further amended to
22 read:

23 A. Duty status is as follows.

24 (1) The types of duty that are covered are:

25 (a) ~~Active state duty by order of the Governor~~
26 ~~under this subchapter~~ service pursuant to this
27 Title;

28 (b) Inactive duty training, with or without pay,
29 under the United States Code, Title 32, Section
30 502;

31 (c) Annual training under the United States Code,
32 Title 32, Sections 502 and 503;

33 (d) Full-time training duty for 30 days or less
34 under the United States Code, Title 32, Section
35 502; and

36 (e) Other training duties or schools under the
37 United States Code, Title 32, with status of less
38 than 30 days' duration.

39 (2) The types of duty that are not covered are:

40 (a) Annual training or any other types of duty
41 under the United States Code, Title 10, including
42 Section 672, Subsections (b) and (d);

- 2 (b) Initial active duty for training, such as
initial active duty service schools;
- 4
- 6 (c) Full-time training duty for over 30 days
under the United States Code, Title 32, Section
502, Subsection (f); and
- 8
- 10 (d) Federal technician civilian duty under the
United States Code, Title 32, Section 709~~+~~.

12
14

PART C

16 **Sec. C-1. 37-B MRSA §3, sub-§2**, as amended by PL 1991, c. 376,
§62, is further amended to read:

18 **2. Deputy Adjutant General.** The Deputy Adjutant General
has all the ~~military---related~~ military-related powers,
20 responsibilities and duties of the Adjutant General if the
Adjutant General is unable to act or, if the office is vacant,
22 until the vacancy is filled by the Governor, as provided by law.
The Deputy Adjutant General may perform other military duties of
24 the Adjutant General as assigned by the Adjutant General or the
Governor. ~~The deputy may not concurrently hold any other state~~
26 ~~office for compensation.~~ The Deputy Adjutant General may not
concurrently hold any state office outside the department for
28 compensation.

30

PART D

32 **Sec. D-1. 14 MRSA §8102, sub-§1**, as repealed and replaced by
PL 1989, c. 878, Pt. A, §42, is amended to read:

34

36 **1. Employee.** "Employee" means a person acting on behalf
of ~~the~~ a governmental entity in any official capacity, whether
temporarily or permanently, and whether with or without
38 compensation from local, state or federal funds, including
elected or appointed officials; volunteer firefighters as defined
40 in Title 30-A, section 3151; emergency medical service personnel;
members and staff of the Consumer Advisory Board pursuant to
42 Title 34-B, section 1216; members of the Maine National Guardsmen
~~while receiving state active duty pay under Title 37-B, section~~
44 ~~143, in accordance with Title 37-B, sections 181 to 183 and 742,~~
~~and while engaged in the Domestic Action Program~~ Guard but only
46 while performing state active service pursuant to Title 37-B; and
sheriffs' deputies as defined in Title 30-A, section 381 when
48 they are serving orders pursuant to section 3135, but the term
"employee" does not mean a person or other legal entity acting in
50 the capacity of an independent contractor under contract to the
governmental entity.

2 **Sec. D-2. 14 MRSA §8104-B, sub-§5**, as enacted by PL 1987, c.
340, §4, is amended to read:

4
5 **5. Activities of state military forces.** The activities of
6 the state military forces when ~~receiving-state-active-duty-pay~~
7 ~~under-Title-37-B,-section-143,-in-accordance-with-Title-37-B,~~
8 ~~sections-181-and-182,-intervention-in-insurrections-and-Title~~
9 ~~37-B,-section-183,-human-health-emergency-assistance~~ on duty
10 pursuant to Title 37-B or 32 United States Code;

12 STATEMENT OF FACT

14 This bill makes the following changes.

16 Part A of this bill permits certain military personnel to
17 perform voluntary military service by order of the Governor, the
18 Adjutant General or the Deputy Adjutant General.

20 Part B of this bill amends the definition of "active state
21 service" for purposes of the laws governing military service.

22 Current law prohibits the Deputy Adjutant General from
23 concurrently holding any other state office for compensation.
24 Part C of this bill clarifies that the Deputy Adjutant General
25 may not hold any state office outside the Department of Defense
26 and Veterans' Services for compensation.

28 Part D of this bill clarifies the applicability of the Maine
29 Tort Claims Act, or "MTCA," to activities by members of the Maine
30 National Guard. Part D amends the definition of "employee" under
31 the MTCA as it relates to the National Guard and it specifies
32 governmental immunity for claims arising from activities of state
33 military forces on duty pursuant to Title 32 of the United State
34 Code or the Maine Revised Statutes, Title 37-B.