

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SENATE BILL 175

**54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

INTRODUCED BY

William F. Burt

AN ACT

RELATING TO MILITARY AFFAIRS; AMENDING THE POWERS OF THE  
ADJUTANT GENERAL; AUTHORIZING ACTIVATION OF THE NATIONAL GUARD  
AND THE STATE DEFENSE FORCE IN THE CASE OF CERTAIN EVENTS;  
AMENDING, REPEALING AND ENACTING SECTIONS OF THE NEW MEXICO  
MILITARY CODE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 20-1-4 NMSA 1978 (being Laws 1987,  
Chapter 318, Section 4) is amended to read:

"20-1-4. GOVERNOR TO BE COMMANDER-IN-CHIEF--ENFORCEMENT  
OF NEW MEXICO MILITARY CODE.--

A. The governor shall be the commander-in-chief of  
the military forces, except so much thereof as may be in the  
actual service of the United States, and may employ the  
military forces for the defense or relief of the state, the

.215936.3SA

underscoring material = new  
~~[bracketed material] = delete~~

underscored material = new  
[bracketed material] = delete

1 enforcement of its law and the protection of life and property  
2 therein.

3 B. The adjutant general shall be the commanding  
4 general of New Mexico, and the deputy adjutant general shall be  
5 the deputy commanding general of New Mexico.

6 [~~B-~~] C. Whenever the governor or acting governor is  
7 unable to personally perform the duties of commander-in-chief  
8 or whenever the governor so directs, the adjutant general or,  
9 in [~~his~~] the adjutant general's absence, the senior line  
10 officer of the national guard present for duty with the troops  
11 shall command the military forces.

12 [~~G-~~] D. The governor may appoint a staff consisting  
13 of the adjutant general and aides-de-camp of field grade or  
14 higher who shall be detailed from the national guard or the  
15 state defense force. The governor may designate honorarily  
16 other persons as colonels aide-de-camp.

17 [~~D-~~] E. The governor may, by executive orders,  
18 proclamations or regulations not inconsistent with law, enforce  
19 all the provisions of the New Mexico Military Code."

20 SECTION 2. Section 20-1-5 NMSA 1978 (being Laws 1987,  
21 Chapter 318, Section 5, as amended) is amended to read:

22 "20-1-5. ADJUTANT GENERAL--APPOINTMENT, POWERS AND  
23 DUTIES.--In case of a vacancy, the governor shall appoint as  
24 the adjutant general of New Mexico for a term of five years an  
25 officer who for three years immediately preceding the

.215936.3SA

underscored material = new  
[bracketed material] = delete

1 appointment as the adjutant general of New Mexico has been  
2 federally recognized as an officer in the national guard of New  
3 Mexico and who during service in the national guard of New  
4 Mexico has received federal recognition in the rank of colonel  
5 or higher. The adjutant general shall not be removed from  
6 office during the term for which appointed, except for cause to  
7 be determined by a court-martial or efficiency board legally  
8 convened for that purpose in the manner prescribed by the  
9 national guard regulations of the United States department of  
10 defense. The adjutant general shall have the military grade of  
11 major general and shall receive the same pay and allowances as  
12 is prescribed by federal law and regulations for members of the  
13 active military in the grade of major general, unless a  
14 different rate of pay and allowances is specified in the annual  
15 appropriations bill. The adjutant general may promulgate rules  
16 for the conduct of courts-martial and punishments under the  
17 Code of Military Justice. Such procedural rules shall be  
18 consistent with and carry into effect the New Mexico Military  
19 Code and afford reasonable due process to criminal defendants.  
20 The process for promulgation of such rules shall be exempt from  
21 the State Rules Act. The adjutant general shall:

22 A. prepare and publish, by order of the governor,  
23 such orders, rules and regulations, consistent with law, as are  
24 necessary to maintain the military forces in a state of  
25 efficiency in conformity with the needs of the state and the

.215936.3SA

underscoring material = new  
~~[bracketed material] = delete~~

1 federal defense requirements;

2 B. supervise the receipt, preservation, repair,  
3 distribution, issue and collection of all arms and military  
4 equipment of the state;

5 C. supervise all personnel, organizations,  
6 facilities, equipment, supplies and funds of the military  
7 forces;

8 D. maintain records of all members of the military  
9 forces and keep on file in the adjutant general's offices  
10 copies of all orders, reports, regulations and communications  
11 received and issued by the adjutant general;

12 E. perform such other duties as may be required by  
13 the commander-in-chief; and

14 F. have a seal of office."

15 SECTION 3. Section 20-2-3 NMSA 1978 (being Laws 1987,  
16 Chapter 318, Section 10, as amended) is amended to read:

17 "20-2-3. GOVERNOR--POWER TO CALL OUT MILITIA.--

18 A. The governor may, in case of insurrection,  
19 invasion, riot or breach of the peace or of imminent danger  
20 thereof or in case of other emergency, order into active  
21 service of the state the militia or any components or parts  
22 thereof that have not been called into federal service. As  
23 used in this section, "emergency" includes any man-made or  
24 natural disaster causing or threatening widespread physical or  
25 economic harm that is beyond local control and requiring the

.215936.3SA

underscored material = new  
[bracketed material] = delete

1 resources of the state.

2 B. The governor may also order any member of the  
3 national guard to active state service for a period not to  
4 exceed a cumulative total of four months within a calendar year  
5 for any individual member for the following reasons:

6 (1) to protect critical infrastructure in the  
7 state from a cybersecurity threat or security vulnerability;

8 (2) to protect an information system owned or  
9 operated by the state from a cybersecurity threat or security  
10 vulnerability;

11 (3) to protect information that is stored on,  
12 processed by or transiting on an information system owned or  
13 operated by the state from a cybersecurity threat or security  
14 vulnerability; [~~or~~]

15 (4) to identify the source of a cybersecurity  
16 threat; or

17 (5) to assist in search and rescue missions,  
18 counter-drug operations or similar operations not otherwise  
19 authorized in Subsection A of this section.

20 C. A member of the national guard called to active  
21 service pursuant to the provisions of Subsection B of this  
22 section shall not have any police powers or arrest authority.  
23 "Subsection B of Section 20-2-3 NMSA 1978" shall be cited on  
24 all orders, vouchers and payroll documents submitted for  
25 reimbursement pursuant to Section 20-1-6 NMSA 1978 in support

.215936.3SA

underscored material = new  
~~[bracketed material] = delete~~

1 of all actions authorized by Subsection B of this section. In  
2 no case shall an activation ordered pursuant to Subsection B of  
3 this section be used to incur a debt under Article 9, Section 7  
4 of the constitution of New Mexico.

5 D. In case of any breach of the peace, tumult, riot  
6 or resistance to process of this state or imminent danger  
7 thereof, the sheriff of a county may call for aid from the  
8 governor as commander-in-chief of the national guard. If it  
9 appears to the governor that the power of the county is  
10 insufficient to enable the sheriff to preserve the peace and  
11 protect the lives and property of the peaceful residents of the  
12 county or to overcome the resistance to process of this state,  
13 the governor shall, on application of the sheriff, order out  
14 such military force as is necessary.

15 E. When any portion of the militia is called out  
16 for the purpose of suppressing an unlawful or riotous assembly,  
17 the commander of the troops shall cooperate with the civil  
18 officers to the fullest extent consistent with the  
19 accomplishment of the object for which the troops were called.  
20 The civil officials may express to the commander of the troops  
21 the general or specific objective that the civil officials  
22 desire to accomplish, but the tactical direction of the troops,  
23 the kind and extent of force to be used and the particular  
24 means to be employed to accomplish the object specified by the  
25 civil officers shall be left solely to the commander of the

.215936.3SA

underscored material = new  
~~[bracketed material]~~ = delete

1 troops present on duty.

2 F. When any portion of the militia is ordered into  
3 active service pursuant to this section in case of an  
4 emergency, the militia may provide those resources and services  
5 necessary to avoid or minimize economic or physical harm until  
6 a situation becomes stabilized and again under local self-  
7 support and control, including the provision, on a temporary,  
8 emergency basis, for lodging, sheltering, health care, food and  
9 any transportation or shipping necessary to protect lives or  
10 public property; or for any other action necessary to protect  
11 the public health, safety and welfare.

12 G. In the event of the exercise by the governor of  
13 the powers under this section, the governor shall first utilize  
14 the personnel and assets of the national guard and only in  
15 their absence or insufficiency utilize the personnel and assets  
16 of the state defense force."

17 SECTION 4. Section 20-2-6 NMSA 1978 (being Laws 1987,  
18 Chapter 318, Section 13) is amended to read:

19 "20-2-6. GOVERNOR--CALL FOR FEDERAL OR STATE SERVICE--  
20 POWERS.--

21 A. When the national guard or a part thereof is  
22 called or ordered into active federal service under the  
23 constitution and laws of the United States and the numbers or  
24 composition of the national guard forces are insufficient to  
25 meet such call or order, the governor may order out and cause

.215936.3SA

underscored material = new  
[bracketed material] = delete

1 through the adjutant general to be enrolled into the organized  
2 militia such persons as may be required and expected to  
3 reasonably meet the federal call or order.

4 B. The governor may order out the organized militia  
5 when:

6 (1) the national guard or any significant  
7 portion thereof is called or ordered into active federal  
8 service and the remaining national guard forces are  
9 insufficient for the needs of the state; or

10 (2) the ~~[total strength or composition of the~~  
11 ~~national guard within the state is deemed by the governor to be~~  
12 ~~insufficient]~~ governor deems it necessary to meet a major  
13 disaster, experienced or anticipated. The governor is  
14 authorized to call into active state service the state defense  
15 force or any portion thereof as may be necessary for the  
16 protection and well being of the state. If the numbers or  
17 composition of the state defense force ~~[be]~~ is inadequate to  
18 meet the need, the governor ~~[can]~~ may call out and cause  
19 through the adjutant general to be enrolled from the  
20 unorganized militia such persons as are required to bring the  
21 organized militia up to strength."

22 SECTION 5. Section 20-3-2 NMSA 1978 (being Laws 1987,  
23 Chapter 318, Section 17, as amended) is amended to read:

24 "20-3-2. DEPARTMENT STRUCTURE--AUTHORITY OF ADJUTANT  
25 GENERAL.--

.215936.3SA



underscored material = new  
[bracketed material] = delete

1           A. The department of military affairs [~~is composed~~  
2 ~~of~~] is a cabinet level department and consists of:

3                   (1) the office of the adjutant general;

4                   (2) three subordinate military divisions:

5                           (a) the army national guard division;

6                           (b) the air national guard division; and

7                           (c) the state defense force division;

8           and

9                   [~~(3) one subordinate civil division, the civil~~  
10 ~~air patrol division; and~~

11                   ~~(4) four~~ (3) five subordinate [~~support~~  
12 ~~agencies~~] civil divisions:

13                           (a) the selective service office;

14                           (b) the state armory board;

15                           (c) the civil air patrol division;

16                           [~~(e)~~] (d) the state programs [~~office~~]  
17 division; and

18                           [~~(d)~~] (e) the United States property and  
19 fiscal office and such other agencies, administrative staffs  
20 and clerical staffs necessary for departmental operation that  
21 the adjutant general may by regulation prescribe.

22           B. The adjutant general is the military chief of  
23 staff to the governor and is the head of the department of  
24 military affairs.

25           C. The adjutant general shall prescribe policies,

.215936.3SA

underscoring material = new  
~~[bracketed material] = delete~~

1 rules and procedures for the orderly functioning of the  
2 department of military affairs, which may include subordinate  
3 organizational structures and lines of authority.

4 D. The adjutant general may employ such  
5 administrative, technical, clerical and other personnel as the  
6 adjutant general deems necessary and may fix the compensation  
7 of exempt personnel subject to the concurrence of the  
8 department of finance and administration.

9 E. The adjutant general may make expenditures from  
10 appropriations or from other funds available to the adjutant  
11 general for all purposes within Chapter 20 NMSA 1978.

12 F. The adjutant general is authorized to accept  
13 through the United States property and fiscal officer such  
14 equipment, supplies, arms, facilities and personnel support  
15 funding as may be authorized and appropriated by federal law.

16 G. The adjutant general shall be furnished suitable  
17 buildings, facilities, supplies and equipment for conducting  
18 the business of the department of military affairs to include  
19 the proper storage, repair and issuance of military property.

20 H. The adjutant general may appoint as assistant  
21 adjutants general one officer from each of the three military  
22 divisions in the department of military affairs. The officers  
23 appointed shall hold the rank of brigadier general during such  
24 appointment. The qualifications of each person so appointed  
25 shall meet the specific standards required for such appointment

.215936.3SA

underscoring material = new  
~~[bracketed material] = delete~~

1 within Chapter 20 NMSA 1978 and any applicable federal  
2 standards or requirements. Once appointed, the assistant  
3 adjutants general shall serve at the pleasure of the adjutant  
4 general; their performance will be reviewed annually, in  
5 January, by the adjutant general; and if relieved, an assistant  
6 adjutant general shall revert to the rank previously held or to  
7 such higher rank to which promoted and federally recognized  
8 while serving as assistant adjutant general. The adjutant  
9 general may designate one federally recognized assistant  
10 adjutant general as deputy adjutant general. The deputy  
11 adjutant general shall serve on full-time active status for the  
12 state. In the incapacity or absence from the state of the  
13 adjutant general, the deputy adjutant general shall act in the  
14 adjutant general's stead. In the incapacity or absence from  
15 the state of both the adjutant general and the deputy adjutant  
16 general, the governor may call any assistant adjutant general  
17 to active service for the state. The assistant adjutants  
18 general shall perform all duties that may be required of them  
19 by the adjutant general. The adjutant general may delegate in  
20 writing to any of the assistant adjutants general such  
21 authorities and responsibilities as the adjutant general deems  
22 appropriate, consistent with the constitutions, laws and  
23 regulations of the state and of the United States. Assistant  
24 adjutants general, when on active status for the state, shall  
25 receive the same pay and allowances as are prescribed by

.215936.3SA

underscoring material = new  
~~[bracketed material] = delete~~

1 federal law and regulations for members of the active military  
2 in the grade of brigadier general, unless a different rate of  
3 pay and allowances are specified in a general appropriation act  
4 of the New Mexico legislature.

5 I. The adjutant general shall appoint individuals  
6 to serve as ~~[director]~~ directors of the ~~[one civil division and~~  
7 ~~as head of each of the four support agencies]~~ five subordinate  
8 civil divisions, except as stated in Section 20-9-1 NMSA 1978.  
9 The qualifications of each person so appointed shall meet the  
10 specific standards required for such appointment within Chapter  
11 20 NMSA 1978 and any applicable federal standards or  
12 requirements.

13 J. There shall be allowed to the adjutant general a  
14 contingent and entertainment fund of two thousand five hundred  
15 dollars (\$2,500) annually, plus such additional appropriations  
16 for carrying out the functions of the office as the legislature  
17 shall deem proper."

18 SECTION 6. Section 20-5-1 NMSA 1978 (being Laws 1987,  
19 Chapter 318, Section 32) is amended to read:

20 "20-5-1. NEW MEXICO STATE DEFENSE FORCE ESTABLISHED--NOT  
21 IN FEDERAL SERVICE--DEFINITIONS.--

22 A. The "New Mexico state defense force" is  
23 established as an element of the militia in the department of  
24 military affairs. The members and organizations of the former  
25 New Mexico state guard are transferred to the New Mexico state

.215936.3SA

underscored material = new  
[bracketed material] = delete

1 defense force on [~~the effective date of this act~~] April 10,  
2 1987.

3 B. Nothing in Chapter 20 NMSA 1978 shall be  
4 construed as authorizing the New Mexico state defense force or  
5 any part thereof to be called, ordered or in any manner drafted  
6 by federal authorities into the military service of the United  
7 States, but no person by reason of [~~his~~] the person's  
8 enlistment or appointment in the state defense force shall be  
9 exempted from military service under any law of the United  
10 States.

11 C. The following definitions apply to the duty  
12 statuses under which members of the state defense force serve:

13 (1) "militia duty" means the performance of  
14 actual military service for the state in time of need when  
15 called by the governor or adjutant general following  
16 mobilization of the national guard. It may be performed by the  
17 standing cadre of the state defense force at any time so  
18 ordered [~~following~~] upon mobilization of the national guard.  
19 It may be performed by the unorganized militia following its  
20 call by the governor pursuant to Subsection B of Section 20-2-6  
21 NMSA 1978 [~~of this chapter~~], in which case it shall include the  
22 post-call training of the New Mexico state defense force  
23 pursuant thereto; and

24 (2) "cadre duty" means the normal service and  
25 training performed by the standing cadre of the state defense

underscored material = new  
[bracketed material] = delete

1 force in anticipation and support of militia duty, including  
2 organization, administration and other pre-call matters."

3 SECTION 7. Section 20-5-3 NMSA 1978 (being Laws 1987,  
4 Chapter 318, Section 34) is amended to read:

5 "20-5-3. COMPOSITION--ENLISTMENT--APPOINTMENT.--

6 A. The state defense force shall consist of persons  
7 [~~between the ages of~~] eighteen [~~and sixty-four~~] years or older  
8 voluntarily appointed or voluntarily enlisted therein and such  
9 additional members of the unorganized militia as therein may be  
10 appointed, enlisted, enrolled or inducted as provided by law.  
11 [~~Volunteer members may be retained beyond age sixty-four with~~  
12 ~~their consent by direction of the adjutant general.~~]

13 B. The officers of the state defense force shall be  
14 appointed by the governor and serve at [~~his~~] the governor's  
15 pleasure. They shall be chosen from the public and private  
16 leadership bases within local communities so as to best enable  
17 the community to efficiently muster and lead its people and  
18 protect its assets and [~~well-being~~] well-being."

19 SECTION 8. Section 20-5-6 NMSA 1978 (being Laws 1987,  
20 Chapter 318, Section 37) is amended to read:

21 "20-5-6. UNIFORM--RANK PRECEDENCE AND COMMAND.--

22 A. The state defense force shall be uniformed. The  
23 [~~governor~~] adjutant general shall by regulation prescribe the  
24 uniform and insignia of the [~~New Mexico~~] state defense force,  
25 which uniform and insignia shall include distinctive devices

.215936.3SA

underscored material = new  
[bracketed material] = delete

1 identifying it as the uniform of the state defense force and  
2 distinguishing it from the national guard. When in uniform,  
3 members of the state defense force will reasonably conform to  
4 the dress and appearance standards of the national guard. The  
5 wearing of permanent military decorations earlier awarded is  
6 authorized.

7 B. The grade structure of the state defense force  
8 shall to the extent practicable be the same as that prescribed  
9 for the army national guard.

10 C. The senior line officer without distinction as  
11 to component present in any organization or formation of the  
12 state defense force shall command, unless the adjutant general  
13 shall designate otherwise."

14 SECTION 9. Section 20-5-16 NMSA 1978 (being Laws 2003,  
15 Chapter 111, Section 1) is amended to read:

16 "20-5-16. STATE DEFENSE FORCE--CADRE DUTY WORKERS'  
17 COMPENSATION.--

18 A. When a member of the state defense force is on  
19 state-ordered militia duty, [~~he~~] the member is a worker under  
20 the Workers' Compensation Act and the department of military  
21 affairs is [~~his~~] the member's employer.

22 B. Members of the New Mexico state defense force,  
23 while performing cadre duty, may be utilized by the adjutant  
24 general to assist the national guard with training or other  
25 exercises that are not considered state-ordered militia duty.

underscoring material = new  
[bracketed material] = delete

1           ~~[B-]~~ C. The average weekly wage of a member of the  
2 state defense force shall be computed at the pay earned in  
3 ~~[his]~~ the member's civilian capacity. Disability benefits to a  
4 member of the state defense force shall be limited to medical  
5 benefits and two-thirds of ~~[his]~~ the member's civilian pay if  
6 ~~[he]~~ the member is unable to work.

7           ~~[G-]~~ D. A member of the state defense force shall  
8 not be considered a worker under the Workers' Compensation Act  
9 when performing cadre duty.

10           ~~[D-]~~ E. As used in this section:

11                   (1) "cadre duty" means the normal service and  
12 training of the standing cadre of the state defense force in  
13 anticipation and support of militia duty, including  
14 organization, administration and other pre-call matters; and

15                   (2) "militia duty" means the performance of  
16 actual military service for the state in time of need when  
17 called by the governor or adjutant general following  
18 mobilization of the national guard. If performed by the  
19 unorganized militia following its call by the governor pursuant  
20 to Section 20-2-6 NMSA 1978, it shall include the post-call  
21 training of the New Mexico state defense force as required by  
22 that call.

23           F. Nothing in this section shall be construed as a  
24 waiver of immunity under the Tort Claims Act."

25           SECTION 10. Section 20-12-4 NMSA 1978 (being Laws 1987,  
.215936.3SA



underscored material = new  
[bracketed material] = delete

1 Chapter 318, Section 89, as amended) is amended to read:

2 "20-12-4. CONVENING AUTHORITIES--NONJUDICIAL PUNISHMENT  
3 AUTHORITIES.--

4 A. A general, special or summary court-martial may  
5 be convened by the governor or by the adjutant general.

6 B. A special or summary court-martial may be  
7 convened by the assistant adjutant general of the army national  
8 guard, as to all members of the army national guard; by the  
9 land component commander, as to members of the land component  
10 commander's command; by the commanding [~~general~~] officer of any  
11 brigade-level headquarters, as to members of the commanding  
12 [~~general's~~] officer's command; by the assistant adjutant  
13 general of the air national guard, as to all members of the air  
14 national guard; by the assistant adjutant general of the state  
15 defense force, as to all members of the state defense force;  
16 and to the commanders of such equivalent level commands as may  
17 be organized in the future.

18 C. A summary court-martial may be convened by a  
19 battalion commander, group commander or equivalent, as to all  
20 members of the commander's command.

21 D. Nonjudicial punishment authority is conferred  
22 upon all general, special or summary court-martial convening  
23 authorities and upon company, battery and squadron commanders  
24 or equivalent, as to members of their command."

25 SECTION 11. A new section of the Code of Military Justice

.215936.3SA

underscored material = new  
[bracketed material] = delete

1 is enacted to read:

2 "[NEW MATERIAL] PROHIBITED ACTIVITIES WITH MILITARY  
3 RECRUIT OR TRAINEE BY PERSON IN POSITION OF SPECIAL TRUST--  
4 CONSENT NOT A DEFENSE.--

5 A. Any person subject to Chapter 20 NMSA 1978 shall  
6 be punished as a court-martial may direct if the person:

- 7 (1) is an officer or noncommissioned officer;
- 8 (2) is in a training leadership position with  
9 respect to a specially protected junior member of the armed  
10 forces; and

11 (3) knew, or reasonably should have known,  
12 that the person was engaged in prohibited sexual activity with  
13 a specially protected junior member of the armed forces.

14 B. Any person subject to Chapter 20 NMSA 1978 shall  
15 be punished as a court-martial may direct if the person is a  
16 military recruiter and knew, or reasonably should have known,  
17 that the person was engaged in prohibited sexual activity with:

- 18 (1) an applicant for military service; or
- 19 (2) a specially protected junior member of the  
20 armed forces who is enlisted under a delayed entry program.

21 C. Any person subject to Chapter 20 NMSA 1978 shall  
22 be punished as a court-martial may direct if the person:

- 23 (1) is a commissioned, warrant or  
24 noncommissioned officer;
- 25 (2) is in a training leadership position with

.215936.3SA

1 respect to a specially protected member of the armed forces;  
2 and

3 (3) engaged in prohibited sexual activity with  
4 a person that the person knew, or reasonably should have known,  
5 was a specially protected junior member of the armed forces.

6 D. Any person subject to Chapter 20 NMSA 1978 shall  
7 be punished as a court-martial may direct if the person:

8 (1) is a commissioned, warrant or  
9 noncommissioned officer;

10 (2) is performing duties as a military  
11 recruiter; and

12 (3) engaged in prohibited sexual activity with  
13 a person that the person knew, or reasonably should have known,  
14 was an applicant for military service; or

15 (4) engaged in prohibited sexual activity with  
16 a person that the person knew, or reasonably should have known,  
17 was a specially protected junior member of the armed forces who  
18 is enlisted under a delayed entry program.

19 E. Consent is not a defense to prosecution pursuant  
20 to this section.

21 F. The maximum punishment of prosecution pursuant  
22 to this section shall be a dishonorable discharge, forfeiture  
23 of all pay and allowances received on or after the effective  
24 date of the sentence and confinement for less than one year.

25 G. As used in this section:

.215936.3SA

1 (1) "applicant for military service" means a  
2 person who, under regulations prescribed by the secretary  
3 concerned, is an applicant for original enlistment or  
4 appointment in the armed forces;

5 (2) "military recruiter" means a person who,  
6 under regulations prescribed by the secretary concerned, has  
7 the primary duty to recruit persons for military service;

8 (3) "prohibited sexual activity" means, as  
9 specified in regulations prescribed by the secretary concerned,  
10 inappropriate physical intimacy under circumstances described  
11 in such regulations;

12 (4) "regulations prescribed by the secretary  
13 concerned" means rules, regulations, instructions and  
14 procedures proscribed by the secretary of the army or secretary  
15 of the air force with respect to soldiers or airmen of the  
16 national guard;

17 (5) "specially protected junior member of the  
18 armed forces" means a member of the armed forces who is:

19 (a) assigned to, or is awaiting  
20 assignment to, basic training or other initial active duty for  
21 training, including a member who is enlisted under a delayed  
22 entry program;

23 (b) a cadet, an officer candidate or a  
24 student in any other officer qualification program; or

25 (c) in any program that, by regulation

underscored material = new  
[bracketed material] = delete

1 prescribed by the secretary concerned, is identified as a  
2 training program for initial career qualification; and

3 (6) "training leadership position" means, with  
4 respect to a specially protected junior member of the armed  
5 forces, any drill instructor position or other leadership  
6 position in a basic training program, an officer candidate  
7 school, a reserve officers' training corps unit, a training  
8 program for entry into the armed forces or any program that, by  
9 regulation prescribed by the secretary concerned, is identified  
10 as a training program for initial career qualification."

11 SECTION 12. A new section of the Code of Military Justice  
12 is enacted to read:

13 "[NEW MATERIAL] WEARING UNAUTHORIZED INSIGNIA, DECORATION,  
14 BADGE, RIBBON, DEVICE OR LAPEL BUTTON.--

15 A. Any person subject to Chapter 20 NMSA 1978 shall  
16 be punished as a court-martial may direct if the person:

17 (1) is not authorized to wear an insignia,  
18 decoration, badge, ribbon, device or lapel button; and

19 (2) wrongfully wears such insignia,  
20 decoration, badge, ribbon, device or lapel button upon the  
21 person's uniform or civilian clothing.

22 B. The maximum punishment of prosecution pursuant  
23 to this section shall be:

24 (1) for the wrongful wearing of the medal of  
25 honor, distinguished service cross, navy cross, air force

.215936.3SA

underscoring material = new  
~~[bracketed material] = delete~~

1 cross, silver star, purple heart or a valor device on any  
2 personal award, a dishonorable discharge, forfeiture of all pay  
3 and allowances received on or after the effective date of the  
4 sentence and confinement for less than one year; or

5 (2) for all other violations of this section,  
6 a bad conduct discharge, forfeiture of all pay and allowances  
7 and confinement for no more than six months.

8 C. As used in this section, "wrongful" means that  
9 the conduct is done without legal justification or excuse.  
10 Actual knowledge that the person was or is not authorized to  
11 wear the item in question is required. Knowledge may be proved  
12 by circumstantial evidence."

13 SECTION 13. REPEAL.--Sections 20-4-12, 20-12-57 and  
14 20-12-68 NMSA 1978 (being Laws 1987, Chapter 318, Section 29  
15 and Laws 1989, Chapter 337, Sections 56 and 67) are repealed.

16 SECTION 14. EFFECTIVE DATE.--The effective date of the  
17 provisions of this act is July 1, 2020.