

CHAPTER 1117**PUBLIC DEFENSE, EMERGENCY MANAGEMENT,
AND IOWA TECHNOLOGY CENTER***S.F. 2124*

AN ACT relating to the department of public defense by amending the state military code and the Iowa code of military justice, creating a statewide mutual aid compact, providing for the confidentiality of certain records, exempting the department of public defense from certain state service contract requirements and state competitive bidding requirements, exempting the Iowa technology center from anticompetition provisions, increasing a standing appropriation, providing criminal penalties for violations, and providing effective dates.

Be It Enacted by the General Assembly of the State of Iowa:

**DIVISION I
MILITARY DIVISION**

Section 1. Section 8.47, Code Supplement 2001, is amended by adding the following new subsection:

NEW SUBSECTION. 4. This section does not apply to service contracts or other agreements for services by the department of public defense that are funded with at least seventy-five percent federal moneys. The department of public defense shall establish terms and conditions for service contracts and other agreements for services that comply with this section to the greatest extent possible.

Sec. 2. Section 29A.1, subsection 9, Code Supplement 2001, is amended to read as follows:

9. "On duty" means training, including unit training assemblies, and other training, operational duty, and other service which may be required under state or federal law, regulations, or orders, and the necessary travel of an officer or enlisted person to the place of performance and return home after performance of that duty, but does not include federal service. A member of the national guard shall be considered to be on duty when called to testify about an incident which the member observed or was involved in while that member was on duty.

Sec. 3. Section 29A.1, subsection 11, Code Supplement 2001, is amended to read as follows:

11. "State active duty" means duty authorized and performed under section 29A.8 ~~or 29A.9~~ and paid for with state funds. "State active duty" also includes serving as the adjutant general, a deputy adjutant general, or the state quartermaster.

Sec. 4. Section 29A.7, Code Supplement 2001, is amended to read as follows:
29A.7 COMMANDER IN CHIEF.

1. The governor is the commander in chief of the military forces, except when they are in federal service. The governor may employ the military forces of the state for the defense ~~or relief of the state, the enforcement of its laws, the protection of life and property,~~ to provide assistance to civil authorities in emergencies resulting from disasters or public disorders as defined in section 29C.2, including homeland security and defense duties, and ~~for~~ parades and ceremonies of a civic nature.

2. The governor shall provide for the participation of the national guard in training at the times and places as necessary to ensure readiness for public defense or federal service.

3. If circumstances necessitate the establishment of a military district under martial law and the general assembly is not convened, the district shall be established only after the governor has issued a proclamation convening an extraordinary session of the general assembly.

Sec. 5. Section 29A.8, subsection 1, unnumbered paragraph 1, Code Supplement 2001, is amended to read as follows:

The governor may order into state active duty the military forces of the state, including retired members of the national guard, ~~both army and air~~, as the governor deems proper, under ~~command of an officer as the governor may designate~~ under one or more of the following circumstances:

Sec. 6. Section 29A.8, subsection 1, paragraphs b and c, Code Supplement 2001, are amended to read as follows:

b. For the purpose of ~~aiding~~ assisting the civil authorities of any political subdivision of the state in maintaining law and order in the subdivision in cases of breaches of the peace or imminent danger of breaches of the peace, if the law enforcement officers of the subdivision are unable to maintain law and order, and the civil authorities of the subdivision request the assistance.

c. For the purposes of providing support to civil authorities during emergencies resulting from disasters or public disorders and for performing homeland defense or homeland security duties.

Sec. 7. Section 29A.8, subsection 1, Code Supplement 2001, is amended by adding the following new paragraphs:

NEW PARAGRAPH. d. For training, recruiting, escort duty, and duty at schools of instruction, as a student or instructor, including at the Iowa military academy.

NEW PARAGRAPH. e. To participate in parades and ceremonies of a civic nature.

NEW PARAGRAPH. f. For other purposes as the governor may deem necessary.

Sec. 8. Section 29A.8, subsection 2, Code Supplement 2001, is amended by striking the subsection and inserting in lieu thereof the following:

2. The governor may prescribe regulations and requirements for duties performed under this section.

Sec. 9. Section 29A.8A, Code Supplement 2001, is amended to read as follows:

29A.8A ACTIVE STATE SERVICE.

If federal funding and authorization exist for this purpose, the governor may order to active state service the military forces of the Iowa army national guard or Iowa air national guard as the governor may deem appropriate for the purposes of homeland security, homeland defense, or other duty. A state employee shall take either a full day's leave or eight hours of compensatory time on a day in which the state employee receives a full day's pay from federal funds for national guard duty.

Sec. 10. Section 29A.19, Code 2001, is amended to read as follows:

29A.19 QUARTERMASTER.

A present or retired commissioned officer of the national guard who has ten years' service in the Iowa army national guard or the Iowa air national guard and has attained the grade of a field officer, shall be detailed to be the quartermaster and property officer of the state, who shall have charge of and be accountable for, under the adjutant general, all state military property. The quartermaster shall keep property returns and reports and give bond to the state of Iowa as the governor may direct.

Sec. 11. Section 29A.25, Code 2001, is amended to read as follows:

29A.25 ENLISTMENTS AND DISCHARGES.

All enlistments and discharges in the national guard shall be as prescribed by federal law and regulations.

Sec. 12. Section 29A.26, unnumbered paragraph 1, Code 2001, is amended to read as follows:

The number and grade of officers and enlisted personnel in the state headquarters and headquarters detachment shall be as prescribed by federal law and regulations, ~~but~~. However, in case of war, invasion, insurrection, ~~not~~ emergency, or imminent danger thereof, the governor may temporarily increase ~~such~~ the force to meet ~~such emergency~~ the circumstance.

Sec. 13. Section 29A.26, unnumbered paragraph 2, Code 2001, is amended by striking the unnumbered paragraph.

Sec. 14. Section 29A.31, Code 2001, is amended to read as follows:

29A.31 UNLAWFUL ORGANIZATIONS.

It shall be unlawful for any ~~body of persons, other than the national guard and the troops of the United States, to associate themselves together as~~ person to form a military organization within the limits of this state without the written permission of the governor, which the governor may at any time revoke, but this provision shall not prevent civic, social, or benevolent organizations from wearing uniforms and ~~swords~~ equipment not in conflict with the other provisions of this chapter.

Sec. 15. Section 29A.40, unnumbered paragraph 1, Code 2001, is amended to read as follows:

~~No~~ A member of the national guard shall ~~not~~ wear the uniform ~~thereof of the national guard~~ while not on duty ~~without permission from competent authority, except in accordance with state or federal regulations~~. ~~No~~ A person, firm, or corporation, other than a civic, social, or benevolent military organization or the members of such organizations organizing for the benefit of all its members, shall ~~not~~ incorporate under the name of, or adopt any trade name which embodies the name or designation, officially or generally recognized as the name of a military organization now or ~~heretofore~~ formerly in existence, or any distinctive part of such name. ~~Any person found guilty of a violation of any of the provisions of this section shall be guilty of a simple misdemeanor.~~

Sec. 16. Section 29A.41, Code 2001, is amended to read as follows:

29A.41 EXEMPTIONS — ~~HONORABLE DISCHARGE~~.

A member of the national guard shall not be arrested, or served with a summons, order, warrant or other civil process after having been ordered to any duty, or while going to, attending, or returning from, any place to which the ~~officer or enlisted person~~ national guard member is required to go for military duty. This section does not prevent the ~~officer's or enlisted person's~~ national guard member's arrest by order of a military officer or for a felony or breach of the peace committed while not in the actual performance of the ~~officer's or enlisted person's~~ national guard member's duty. The articles of equipment personally owned by such members are exempt from seizure or sale for debt. ~~Every member of the national guard who has faithfully served the full term of the member's commission, warrant or enlistment is entitled, upon application, to an honorable discharge, exempting the member from military duty except in time of war or public danger.~~

Sec. 17. Section 29A.43, Code Supplement 2001, is amended to read as follows:

29A.43 DISCRIMINATION PROHIBITED — LEAVE OF ABSENCE.

A person shall not discriminate against any officer or enlisted person of the national guard or organized reserves of the armed forces of the United States because of that membership. An employer, or agent of an employer, shall not discharge a person from employment because of being an officer or enlisted person of the military forces of the state, or hinder or prevent the officer or enlisted person from performing any military service the person is called upon to perform by proper authority. A member of the national guard or organized reserves of the armed forces of the United States ordered to temporary duty, as defined in section 29A.1, sub-

section 1, 3, or 11, for any purpose is entitled to a leave of absence during the period of the duty or service, from the member's private employment, other than employment of a temporary nature, and upon completion of the duty or service the employer shall restore the person to the position held prior to the leave of absence, or employ the person in a similar position. However, the person shall give evidence to the employer of satisfactory completion of the training or duty, and that the person is still qualified to perform the duties of the position. The period of absence shall be construed as an absence with leave, and shall in no way affect the employee's rights to vacation, sick leave, bonus, or other employment benefits relating to the employee's particular employment. A person violating a provision of this section is guilty of a simple misdemeanor.

Sec. 18. Section 29A.50, Code 2001, is amended to read as follows:

29A.50 IMMUNITY.

The commanding officer and members of any of the military forces engaged in the suppression of an insurrection, ~~the dispersion of a mob~~ assistance to civil authorities in emergencies, homeland defense, or security duties, or the enforcement of the laws, shall have the same immunity as peace officers.

Sec. 19. Section 29A.51, Code 2001, is amended to read as follows:

29A.51 SUIT OR PROCEEDING — DEFENSE.

If a suit or proceeding is commenced in any court by any person against ~~an officer~~ a member of the military forces of the state for an act done by ~~that officer~~ the member in the ~~officer's~~ member's official capacity in the discharge of a duty under this chapter or chapter 29B, ~~or against an enlisted person acting under the authority or order of an officer, or by virtue of a warrant issued by the officer pursuant to law,~~ the attorney general or state ~~staff~~ judge advocate, upon the request of the adjutant general, shall defend the member ~~of the military forces of the state~~ against whom the suit or proceeding has been instituted. The costs of the defense shall be paid out of any funds in the state treasury not otherwise appropriated. Before the suit or proceeding is filed or maintained against the ~~officer or enlisted person~~ member, the plaintiff must give security, to be approved by the court in a sum not less than one hundred dollars to secure the costs. If the plaintiff fails to recover judgment, the costs shall be taxed and judgment rendered against the plaintiff and the plaintiff's sureties. ~~When troops~~ members of the military forces of the state are called into active state service active duty by the governor under martial law or ~~as aid to the assist~~ assist civil authorities, in addition to the judge advocate's other duties, any judge advocate on duty with those troops may be appointed by the attorney general as an assistant attorney general, without pay for the judge advocate's services for acting in that capacity.

Sec. 20. Section 29A.54, Code 2001, is amended to read as follows:

29A.54 SENIOR COMMANDER ALLOWANCES.

A fund shall be established from an annual appropriation of funds to be used by senior commanders as an expense allowance to defer expenses incurred in conducting command functions or escorting military guests while acting in their official capacity as commander. Appropriations to the fund shall be made at the beginning of each fiscal year in the amount of ~~four~~ seven hundred fifty dollars for each federally recognized general officer of the army national guard and the air national guard. The adjutant general of Iowa shall have custodial and administrative responsibility for the fund and shall prescribe regulations requiring an itemized statement of expenditures from the fund. The fund shall not be used to purchase an alcoholic beverage or beer.

Sec. 21. Section 29A.74, unnumbered paragraph 1, Code 2001, is amended to read as follows:

Except as otherwise provided in this chapter ~~no~~ an agency created by a power of attorney in writing given by a principal who is at the time of execution, or who after executing such power of attorney becomes, ~~either~~ a member of the national guard or the armed forces of the United

States, or a person serving as a merchant seaman outside the limits of the United States included within the fifty states and the District of Columbia, or a person outside ~~said those~~ limits by permission, assignment or direction of any department, ~~in connection with any activity pertaining to or connected with the prosecution of any war in which the United States is then engaged,~~ shall not be revoked or terminated by the death of the principal, as to the agent or other person who, without actual knowledge or actual notice of the death of the principal, shall have acted or shall act, in good faith, under or in reliance upon such power of attorney or agency, and any action so taken, unless otherwise invalid or unenforceable, shall be binding on the heirs, devisees, legatees, or personal representatives of the principal.

Sec. 22. Section 29A.9, Code Supplement 2001, is repealed.

Sec. 23. EFFECTIVE DATE. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

DIVISION II IOWA NATIONAL GUARD CIVIL RELIEF

Sec. 24. NEW SECTION. 29A.90 DEFINITIONS.

As used in this division, unless the context otherwise requires:

1. "Dependent" means the spouse and children of a service member or any other person dependent upon the service member for support.
2. "Interest" includes service charges, renewal charges, fees, or any other charges in respect to any obligation or liability.
3. "Military service" means full-time active state service or state active duty, as defined in section 29A.1, for a period of at least ninety consecutive days, commencing on or after the effective date³ of this Act.
4. "Service member" means a member of the military forces of the state performing military service.

Sec. 25. NEW SECTION. 29A.91 APPLICABILITY.

1. This division shall apply to all service members on military orders who are unable to perform, continue, or complete civil obligations due to military service.
2. This division does not apply to military duty performed under orders issued pursuant to 10 U.S.C.
3. Proper application of this division shall suspend or postpone actions upon those obligations until thirty days after discharge from military service.

Sec. 26. NEW SECTION. 29A.92 REOPENING DEFAULT JUDGMENTS.

1. A default judgment rendered in any civil action against a service member during a period of military service or within thirty days after termination of military service may be set aside under the following circumstances:
 - a. It appears that the service member was prejudiced by reason of military service in making a defense to the action.
 - b. Application by the service member or the service member's legal representative is made to the court rendering the judgment not later than thirty days after the termination of military service.
 - c. The application provides enough facts that it appears that the service member has a meritorious or legal defense to the action or some part of the action.
2. Vacating, setting aside, or reversing a judgment because of any of the provisions of this chapter shall not impair any right or title acquired by a bona fide purchaser for value under the judgment.

³ See chapter 1175, §78, 102 herein

Sec. 27. NEW SECTION. 29A.93 STAY OF PROCEEDINGS.

1. If at any point during an action or proceeding it appears that a plaintiff or defendant is a service member and may be adversely affected by military service in the conduct of the proceedings, the court may, on its own motion, stay the proceedings.

2. The court shall stay the proceedings if the service member or another person on the service member's behalf makes a request in writing to the court, unless the court determines on the record that the ability of the plaintiff to pursue the action or the defendant to conduct a defense, is not materially affected by reason of military service.

Sec. 28. NEW SECTION. 29A.94 FINES AND PENALTIES ON CONTRACTS.

1. If compliance with the terms of a contract is stayed pursuant to this division, a fine or penalty shall not accrue by reason of failure to comply with the terms of the contract during the period of the stay.

2. If a service member has not obtained a stay, and a fine or penalty is imposed for nonperformance of an obligation, a court may relieve enforcement if the service member was in military service when the penalty was incurred and the service member's ability to pay or perform was materially impaired.

Sec. 29. NEW SECTION. 29A.95 EXERCISE OF RIGHTS NOT TO AFFECT FUTURE FINANCIAL TRANSACTIONS.

An application by a service member in military service for, or receipt of, a stay, postponement, or suspension under the provisions of this division in the payment of any fine, penalty, insurance premium, or other civil obligation or liability shall not be used as the basis for any of the following:

1. A determination by any lender or other person that the service member is unable to pay any civil obligation or liability in accordance with its terms.

2. With respect to a credit transaction between a creditor and a service member:

a. A denial or revocation of credit by the creditor.

b. A change by the creditor in the terms of an existing credit arrangement.

c. A refusal by the creditor to grant credit to the service member in substantially the amount or on substantially the terms requested.

d. An adverse report relating to the creditworthiness of the service member by or to any person or entity engaged in the practice of assembling or evaluating consumer credit information.

Sec. 30. NEW SECTION. 29A.96 STAY OF EXECUTION OF JUDGMENT.

Unless the court determines on the record that the ability of a service member to comply with a judgment or order entered or sought is not materially affected by reason of military service, the court shall, on its own motion, or upon application to it by the service member or another person on the service member's behalf, do the following:

1. Stay the execution of a judgment or order entered against the service member, as provided in this chapter.

2. Vacate or stay an attachment or garnishment of property, money, or debts in the hands of another, whether before or after judgment as provided in this chapter.

Sec. 31. NEW SECTION. 29A.97 DURATION OF STAYS.

1. A stay of an action, proceeding, attachment, or execution, ordered by a court under the provisions of this division, may be ordered for the period of military service plus thirty days after its termination or any part of that time period.

2. Where the service member in military service is a codefendant with others, the plaintiff may, with the permission of the court, proceed against the others.

Sec. 32. NEW SECTION. 29A.98 STATUTES OF LIMITATIONS AFFECTED BY MILITARY SERVICE.

The period of military service shall not be included in computing any period limited by law,

rule, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any service member or by or against the service member's heirs, executors, administrators, or assigns, whether the cause of action or the right or privilege to institute the action or proceeding has accrued prior to or during the period of military service.

Sec. 33. NEW SECTION. 29A.99 MAXIMUM RATE OF INTEREST.

An obligation or liability bearing interest at a rate in excess of six percent per year incurred before entry into military service by a service member shall not, during any part of the period of military service, bear interest at a rate in excess of six percent per year unless, in the opinion of the court and upon application to the court by the obligee, the ability of the service member to pay interest upon the obligation or liability at a rate in excess of six percent per year is not materially affected by reason of the member's service. The court may make any order in the action that, in its opinion, is just.

Sec. 34. NEW SECTION. 29A.100 DEPENDENT BENEFITS.

Dependents of a service member are entitled to the benefits accorded to service members under the provisions of sections 29A.101 through 29A.105. Dependents may obtain the benefits upon application to a court, unless, in the opinion of the court, the ability of the dependents to comply with the terms of the obligation, contract, lease, or bailment has not been materially impaired by reason of the military service of the service member of the dependents.

Sec. 35. NEW SECTION. 29A.101 TERMINATION OF LEASE OR RENTAL AGREEMENT — EXCEPTIONS.

1. A landlord shall not terminate the lease or rental agreement of a service member or the service member's dependents for nonpayment of rent from any premises used as a dwelling by the service member or dependents during the period of military service if the rent on the premises occupied by the service member or dependents is less than one thousand two hundred dollars per month. However, a court may allow an eviction or the recovery of property pursuant to chapter 646 or 648.

2. In any action affecting the right of possession, the court may, on its own motion, stay the proceedings for not longer than three months, or make any order the court determines to be reasonable and just under the circumstances, unless the court finds that the ability of the service member to pay the agreed rent is not materially affected by reason of military service.

3. When a stay is granted or other order is made by the court, the owner of the premises shall be entitled, upon application, to relief with respect to the premises similar to that granted service members in military service in sections 29A.102 through 29A.104 to the extent and for any period as the court determines to be just and reasonable under the circumstances.

4. A person who knowingly takes part in any eviction or distress otherwise than as provided in subsection 1, or attempts to do so, commits a simple misdemeanor.

5. The governor may order an allotment of the pay of a service member in military service in reasonable proportion to discharge the rent of premises occupied for dwelling purposes by any dependents of the service member.

Sec. 36. NEW SECTION. 29A.102 INSTALLMENT CONTRACTS.

1. The creditor of a service member who, prior to entry into military service, has entered into an installment contract for the purchase of real or personal property shall not terminate the contract or repossess the property for nonpayment or for any breach occurring during military service without an order from a court of competent jurisdiction.

2. The court, upon application to it under this section, shall, unless the court finds on the record that the ability of the service member to comply with the terms of the contract is not materially affected by reason of military service, do one or more of the following:

a. Order repayment of any prior installments or deposits as a condition of terminating the contract and resuming possession of the property.

b. Order a stay of the proceedings on its own motion, or on motion by the service member or another person on behalf of the service member.

c. Make any other disposition of the case it considers to be equitable to conserve the interests of all parties.

3. A person who knowingly repossesses property which is the subject of this section, other than as provided in subsection 1, commits a simple misdemeanor.

Sec. 37. NEW SECTION. 29A.103 MORTGAGE FORECLOSURES.

1. The creditor of a service member who, prior to entry into military service, has entered into a mortgage contract with the service member for the purchase of real or personal property shall not foreclose on the mortgage or repossess the property for nonpayment or for any breach occurring during military service without an order from a court of competent jurisdiction.

2. The court, upon application to it under this section, shall, unless the court finds on the record that the ability of the service member to comply with the terms of the mortgage is not materially affected by reason of military service, do one or more of the following:

a. Order repayment of any prior installments or deposits as a condition of terminating the contract and resuming possession of the property.

b. Order a stay of the proceedings on its own motion, or on motion by the service member or another person on behalf of the service member.

c. Make any other disposition of the case as it considers to be equitable to conserve the interests of all parties.

3. In order to come within the provisions of this section, the service member must establish all of the following:

a. That relief is sought on an obligation secured by a mortgage, trust deed, or other security in the nature of a mortgage on either real or personal property.

b. That the obligation originated prior to the service member's entry into military service.

c. That the property was owned by the service member prior to the commencement of military service.

d. That the property is owned by the service member at the time relief is sought.

4. A person who knowingly forecloses on property that is the subject of this section, other than as provided in subsection 1, commits a simple misdemeanor.

Sec. 38. NEW SECTION. 29A.104 APPLICATION FOR RELIEF.

1. A service member may, at any time during military service or within thirty days after discharge or termination of military service, apply to a court for relief in respect of any obligation or liability incurred by the service member prior to military service.

2. The court, after appropriate notice and hearing, unless in its opinion the ability of the service member to comply with the terms of the obligation or liability has not been materially affected by reason of military service, shall grant the following relief:

a. In the case of an obligation payable under its terms in installments under a contract for the purchase of real estate, or secured by a mortgage or other instrument in the nature of a mortgage upon real estate, a stay of the enforcement of the obligation during the applicant's period of military service and, from the date of termination of the period of military service or from the date of application if made after termination of military service, for a period equal to the period of the remaining life of the installment contract or other instrument plus a period of time equal to the period of military service of the applicant, or any part of the combined period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of the period of military service or from the date of application, in equal installments during the combined period at the rate of interest on the unpaid balance as is prescribed in the contract, or other instrument evidencing the obligation, for installments paid when due, and subject to any other terms as the court may consider just.

b. In the case of any other obligation or liability, a stay of the enforcement during the appli-

cant's period of military service and, from the date of termination of the period of military service or from the date of application if made after termination of the period of military service, for a period of time equal to the period of military service of the applicant or any part of that period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of the period of military service or from the date of application, in equal periodic installments during the extended period at the rate of interest prescribed for the obligation or liability, if paid when due, and subject to other terms the court considers to be reasonable and just.

3. When any court has granted a stay as provided in this section, a fine or penalty shall not accrue for failure to comply with the terms or conditions of the obligation or liability for which the stay was granted during the period the terms and conditions of the stay are complied with.

Sec. 39. NEW SECTION. 29A.105 PROVISIONS APPLY NOTWITHSTANDING CONTRARY CODE PROVISIONS.

Sections 29A.90 through 29A.104 apply notwithstanding any contrary provision of state law, which may include but is not limited to Titles XIII, XIV, and XV.

Sec. 40. EFFECTIVE DATE. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

DIVISION III MILITARY JUSTICE

Sec. 41. Section 29B.1, Code 2001, is amended to read as follows:

29B.1 PERSONS SUBJECT TO CODE.

This chapter applies to all members of the state military forces, while not in federal service. As used in this chapter, unless the context otherwise requires, "state military forces" ~~means the national guard of the state of Iowa as defined in 32 U.S.C. § 101, (3, 4, 6) (1981) and any other military force organized under state law when the national guard or other military force is not in a status subjecting it to jurisdiction under 10 U.S.C. ch. 47 (1981)~~ has the same meaning as in section 29A.6, and "code" means this chapter, which may be cited as the "Iowa Code of Military Justice".

Sec. 42. Section 29B.13, unnumbered paragraph 1, Code 2001, is amended to read as follows:

Under ~~such~~ regulations as may be prescribed under this code a person subject to this code who is on active state service or state active duty who is accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

Sec. 43. Section 29B.22, unnumbered paragraphs 1 and 2, Code 2001, are amended by striking the paragraphs and inserting in lieu thereof the following:

A judge advocate in the state military forces shall be a commissioned officer who is a member of the bar of the state. However, a judge advocate serving in the military forces of the state on the effective date of this division of this Act who is not a member of the bar of the state shall not be required to become a member of the bar of the state to maintain military membership as a judge advocate. A judge advocate shall be either a federally recognized judge advocate or appointed as a judge advocate in the state military forces by the adjutant general.

The adjutant general shall designate a staff judge advocate for the army national guard and the air national guard. The adjutant general may appoint the number of judge advocates of the state military forces as the adjutant general considers necessary to perform state active duty to supplement or replace national guard judge advocates in emergencies or when the national guard judge advocates are in federal service.

Sec. 44. Section 29B.27, unnumbered paragraph 2, Code 2001, is amended to read as follows:

A military judge must be a commissioned officer of the state armed forces or a retired officer of the reserve components of the armed forces of the United States, a member of the bar of a federal court or a member of the bar of the highest court of the state, and certified to be qualified for the duty by the ~~judge advocate of the armed forces or the state~~ appropriate staff judge advocate ~~of the state force concerned~~. The state judge advocate responsible for certifying the military judge may recommend to the adjutant general that the adjutant general order to active duty retired personnel of the national guard or the United States armed forces who are qualified to act as military judges.

Sec. 45. Section 29B.28, unnumbered paragraph 2, Code 2001, is amended to read as follows:

Trial counsel or defense counsel detailed for a general court-martial must be a person who is a member of the bar of the highest court of the state, ~~or a member of the bar of a federal court~~ and certified as competent for the duty by the state staff judge advocate.

Sec. 46. Section 29B.35, unnumbered paragraph 1, Code 2001, is amended to read as follows:

Before directing the trial of any charge by general court-martial, the convening authority shall refer it ~~the charge~~ to the state appropriate staff judge advocate ~~of the state force concerned~~ for consideration and advice. The convening authority may not refer a charge to a general court-martial for trial unless the authority has found that the charge alleges an offense under this code and is warranted by evidence indicated in the report of the investigation.

Sec. 47. Section 29B.62, Code 2001, is amended to read as follows:

29B.62 SAME — GENERAL COURT-MARTIAL RECORDS.

The convening authority shall refer the record of each general court-martial to the state appropriate staff judge advocate ~~of the state force concerned~~, who shall submit a written opinion thereon to the convening authority. If the final action of the court has resulted in an acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction.

Sec. 48. Section 29B.65, subsections 2, 4, 5, 6, and 7, Code 2001, are amended to read as follows:

2. In all other cases not covered by subsection 1 ~~of this section~~, if the sentence of a special court-martial as approved by the convening authority includes a bad-conduct discharge, dishonorable discharge, dismissal, or confinement, whether or not suspended, the entire record shall be sent to the appropriate staff judge advocate of the state force concerned to be reviewed in the same manner as a record of trial by general court-martial. ~~The record and the opinion of the staff judge advocate or legal officer shall then be sent to the state judge advocate for review.~~

4. The state staff judge advocate ~~of the state force concerned~~ shall review the record of trial in each case sent for review as provided under this section. If the final action of the court-martial has resulted in an acquittal of all charges and specifications, the opinion of the state staff judge advocate is limited to questions of jurisdiction.

The state staff judge advocate shall take final action in any case reviewable by the state staff judge advocate.

5. In a case reviewable by the appropriate state staff judge advocate under this section, the state staff judge advocate may act only with respect to the findings and sentence as approved by the convening authority. The state staff judge advocate may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as the state staff judge advocate finds correct in law and fact and determines, on the basis of the entire record, should be approved. In consideration of the record, the state staff judge advocate may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recog-

nizing that the trial court saw and heard the witnesses. If the state staff judge advocate sets aside the findings and sentence, the state staff judge advocate may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If the state staff judge advocate sets aside the findings and sentence and does not order a rehearing, the state staff judge advocate shall order that the charges be dismissed.

6. In a case reviewable by the state staff judge advocate under this section, the state staff judge advocate shall instruct the convening authority to act in accordance with the decision on the review. If the state staff judge advocate has ordered a rehearing but the convening authority finds a rehearing impracticable, the state staff judge advocate may dismiss the charges.

7. The state staff judge advocate may order one or more boards of review each composed of not less than three commissioned officers of the state military forces, each of whom must be a member of the bar of the highest court of the state. Each board of review shall review the record of any trial by court-martial including a sentence to a dishonorable discharge, dismissal or confinement, referred to it by the state staff judge advocate. Boards of review have the same authority on review as the state staff judge advocate has under this section.

Sec. 49. Section 29B.67, Code 2001, is amended to read as follows:

29B.67 REVIEW COUNSEL.

Upon the final review of a sentence of a general court-martial or of a sentence to a dishonorable discharge, dismissal, or confinement, the accused has the right to be represented by counsel before the reviewing authority, and before the appropriate staff judge advocate, ~~and before the appropriate state judge advocate.~~

Upon the request of an accused entitled to be so represented, the state appropriate staff judge advocate shall appoint a lawyer who is a member of the state military forces and who has the qualifications prescribed in section 29B.28, if available, to represent the accused before the reviewing authority, and before the appropriate staff judge advocate, ~~and before the appropriate state judge advocate,~~ in the review of cases specified in this section.

If provided by the accused, an accused entitled to be so represented may be represented by civilian counsel before the reviewing authority, and before the appropriate staff judge advocate ~~and before the appropriate state judge advocate.~~

Sec. 50. Section 29B.116, Code 2001, is amended to read as follows:

29B.116 GENERAL ARTICLE.

Though not specifically mentioned in this code, all disorders and neglects to the prejudice of good order and discipline in the state military forces, of which persons subject to this code may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court. However, cognizance shall not be taken of, and jurisdiction shall not be extended to, the crimes of murder, manslaughter, sexual abuse, robbery, maiming, ~~sedomy~~, arson, extortion, assault, burglary, or housebreaking, jurisdiction of which is reserved to civil courts.

Sec. 51. Section 29B.129, subsection 1, Code 2001, is amended by striking the subsection.

Sec. 52. EFFECTIVE DATE. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

DIVISION IV
EMERGENCY MANAGEMENT DIVISION

Sec. 53. Section 22.7, Code Supplement 2001, is amended by adding the following new subsection:

NEW SUBSECTION. 43. The critical asset protection plan or any part of the plan prepared pursuant to section 29C.8 and any information held by the emergency management division that was supplied to the division by a public or private agency or organization and used in the

development of the critical asset protection plan to include, but not be limited to, surveys, lists, maps, or photographs. However, the administrator shall make the list of assets available for examination by any person. A person wishing to examine the list of assets shall make a written request to the administrator on a form approved by the administrator. The list of assets may be viewed at the division's offices during normal working hours. The list of assets shall not be copied in any manner. Communications and asset information not required by law, rule, or procedure that are provided to the administrator by persons outside of government and for which the administrator has signed a nondisclosure agreement are exempt from public disclosures. The emergency management division may provide all or part of the critical asset plan to federal, state, or local governmental agencies which have emergency planning or response functions if the administrator is satisfied that the need to know and intended use are reasonable. An agency receiving critical asset protection plan information from the division shall not disseminate the information without prior approval of the administrator.

Sec. 54. Section 29C.8, subsection 3, Code Supplement 2001, is amended by adding the following new paragraph:

NEW PARAGRAPH. e. Prepare a critical asset protection plan that contains an inventory of infrastructure, facilities, systems, other critical assets, and symbolic landmarks, an assessment of the criticality, vulnerability, and level of threat to the assets, and information pertaining to the mobilization, deployment, and tactical operations involved in responding to or protecting the assets.

Sec. 55. NEW SECTION. 29C.22 STATEWIDE MUTUAL AID COMPACT.

This statewide mutual aid compact is entered into with all other counties, cities, and other political subdivisions that enter into this compact in substantially the following form:

ARTICLE I PURPOSE AND AUTHORITIES

This compact is made and entered into by and between the participating counties, cities, and political subdivisions which enact this compact. For the purposes of this agreement, the term "participating governments" means counties, cities, townships, and other political subdivisions of the state which have, through ordinance or resolution of the governing body, acted to adopt this compact.

The purpose of this compact is to provide for mutual assistance between the participating governments entering into this compact in managing any emergency or disaster that is declared in accordance with a countywide comprehensive emergency operations plan or by the governor, whether arising from natural disaster, technological hazard, man-made disaster, community disorder, insurgency, terrorism, or enemy attack.

This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by participating governments during emergencies, such actions occurring outside actual declared emergency periods.

ARTICLE II GENERAL IMPLEMENTATION

Each participating government entering into this compact recognizes many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each participating government further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to the emergency. This is because few, if any, individual governments have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

The prompt, full, and effective use of resources of the participating governments, including any resources on hand or available from any source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by the governor or any participating government, shall be the underlying principle on which all articles of this compact shall be understood.

On behalf of the participating government in the compact, the legally designated official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate intrastate mutual aid plans and procedures necessary to implement this compact.

ARTICLE III PARTICIPATING GOVERNMENT RESPONSIBILITIES

1. It shall be the responsibility of each participating government to formulate procedural plans and programs for intrastate cooperation in the performance of the responsibilities listed in this article. In formulating the plans, and in carrying them out, the participating governments, insofar as practical, shall:

a. Review individual hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the participating governments might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, civil disorders, insurgency, terrorism, or enemy attack.

b. Review the participating governments' individual emergency plans and develop a plan that will determine the mechanism for the intrastate management and provision of assistance concerning any potential emergency.

c. Develop intrastate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans.

d. Assist in warning communities adjacent to or crossing the participating governments' boundaries.

e. Protect and ensure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material.

f. Inventory and set procedures for the intrastate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness.

g. Provide, to the extent authorized by law, for temporary suspension of any ordinances that restrict the implementation of the above responsibilities.

2. The authorized representative of a participating government may request assistance of another participating government by contacting the authorized representative of that participating government. The provisions of this compact shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within thirty days of the verbal request. Requests shall provide all of the following:

a. A description of the emergency service function for which assistance is needed, such as but not limited to fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.

b. The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time that the personnel, equipment, materials, and supplies will be needed.

c. The specific place and time for staging of the assisting participating government's response and a point of contact at that location.

3. The authorized representative of a participating government may initiate a request by contacting the emergency management division of the state department of public defense. When a request is received by the division, the division shall directly contact other participating governments to coordinate the provision of mutual aid.

4. Frequent consultation shall occur between officials who have been assigned emergency management responsibilities and other appropriate representatives of the participating governments with affected jurisdictions and state government, with free exchange of information, plans, and resource records relating to emergency capabilities.

ARTICLE IV LIMITATIONS

Any participating government requested to render mutual aid or conduct exercises and training for mutual aid shall take the necessary action to provide and make available the resources covered by this compact in accordance with the terms of the compact. However, it is understood that the participating government rendering aid may withhold resources to the extent necessary to provide reasonable protection for the participating government. Each participating government shall afford to the emergency forces of any other participating government, while operating within its jurisdictional limits under the terms and conditions of this compact, the same powers, except that of arrest unless specifically authorized by the receiving participating government, duties, rights, and privileges as are afforded forces of the participating government in which the emergency forces are performing emergency services. Emergency forces shall continue under the command and control of their regular leaders, but the organizational units shall come under the operational control of the emergency services authorities of the participating government receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor or by competent authority of the participating government that is to receive assistance or commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect, or loaned resources remain in the receiving jurisdiction, whichever is longer.

ARTICLE V LICENSES AND PERMITS

If a person holds a license, certificate, or other permit issued by any participating government to this compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when the assistance is requested by another participating government, the person shall be deemed licensed, certified, or permitted by the participating government requesting assistance to render aid involving the skill to meet a declared emergency or disaster, subject to the limitations and conditions as the governor may prescribe by executive order or otherwise.

ARTICLE VI LIABILITY

Officers or employees of a participating government rendering aid in another participating government jurisdiction pursuant to this compact shall be considered agents of the requesting participating government for tort liability and immunity purposes and a participating government or its officers or employees rendering aid in another jurisdiction pursuant to this compact shall not be liable on account of any act or omission in good faith on the part of the forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection with the aid. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

ARTICLE VII SUPPLEMENTARY AGREEMENTS

Because it is probable that the pattern and detail of the machinery for mutual aid among two

or more participating governments may differ from that among other participating governments, this compact contains elements of a broad base common to all political subdivisions, and this compact shall not preclude any political subdivision from entering into supplementary agreements with another political subdivision or affect any other agreements already in force between political subdivisions. Supplementary agreements may include, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

ARTICLE VIII WORKERS' COMPENSATION

Each participating government shall provide for the payment of workers' compensation and death benefits to injured members of the emergency forces of that participating government and representatives of deceased members of the emergency forces in case the members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own jurisdiction.

ARTICLE IX REIMBURSEMENT

Any participating government rendering aid in another jurisdiction pursuant to this compact shall be reimbursed by the participating government receiving the emergency aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with the requests. However, an aiding political subdivision may assume in whole or in part the loss, damage, expense, or other cost, or may loan the equipment or donate the services to the receiving participating government without charge or cost, and any two or more participating governments may enter into supplementary agreements establishing a different allocation of costs among the participating governments. Article VIII expenses shall not be reimbursable under this provision.

ARTICLE X EVACUATION AND SHELTERING

Plans for the orderly evacuation and reception of portions of the civilian population as the result of any emergency or disaster shall be worked out and maintained between the participating governments and the emergency management or services directors of the various jurisdictions where any type of incident requiring evacuations might occur. The plans shall be put into effect by request of the participating government from which evacuees come and shall include the manner of transporting the evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of the evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. The plans shall provide that the participating government receiving evacuees and the participating government from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for the evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. The expenditures shall be reimbursed as agreed by the participating government from which the evacuees come. After the termination of the emergency or disaster, the participating government from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

ARTICLE XI
IMPLEMENTATION

1. This compact shall become operative immediately upon its adoption by ordinance or resolution by the governing bodies of any two political subdivisions. Thereafter, this compact shall become effective as to any other political subdivision upon its adoption by ordinance or resolution of the governing body of the political subdivision.

2. Any participating government may withdraw from this compact by adopting an ordinance or resolution repealing the same, but a withdrawal shall not take effect until thirty days after the governing body of the withdrawing participating government has given notice in writing of the withdrawal to the administrator of the emergency management division who shall notify all other participating governments. The action shall not relieve the withdrawing political subdivision from obligations assumed under this compact prior to the effective date of withdrawal.

3. Duly authenticated copies of this compact and any supplementary agreements as may be entered into shall be deposited, at the time of their approval, with the administrator of the emergency management division who shall notify all participating governments and other appropriate agencies of state government.

ARTICLE XII
VALIDITY

This compact shall be construed to effectuate the purposes stated in article I. If any provision of this compact is declared unconstitutional, or the applicability of the compact to any person or circumstances is held invalid, the constitutionality of the remainder of this compact and the applicability of this compact to other persons and circumstances shall not be affected.

Sec. 56. EFFECTIVE DATE. This division of this Act, being deemed of immediate importance, takes effect upon enactment.

DIVISION V
IOWA TECHNOLOGY CENTER

Sec. 57. Section 18.6, Code 2001, is amended by adding the following new subsection:
NEW SUBSECTION. 17. This section does not apply to Iowa technology center contracts in support of activities performed for another governmental entity, either state or federal. The Iowa technology center is an entity created by a chapter 28E agreement entered into by the department of public defense.

Sec. 58. Section 23A.2, subsection 10, Code Supplement 2001, is amended by adding the following new paragraph:

NEW PARAGRAPH. p. The provision of goods or services by the Iowa technology center as a part of an intergovernmental solution involving the federal government or a state agency. The Iowa technology center is an entity created by a chapter 28E agreement entered into by the department of public defense.

Approved April 22, 2002