WEST VIRGINIA CODE CHAPTER 15 ARTICLE 1F

WV Legislature

§15-1F-1. Leave of absence for public officials and employees for drills, parades, active duty, etc.

(a) Any officer or employee of state, county or municipal government hired for permanent employment who is a member of the National Guard or armed forces reserve, is entitled to a military leave of absence from his or her respective office or employment without loss of pay, status or efficiency rating, on the days during which he or she is ordered, by properly designated authority, to be engaged in drills, inactive duty training, parades, funeral details, service schools or other duty, during business hours, field training, annual training or other full-time National Guard duty pursuant to Title 10 or Title 32 of the United States Code, or active service of the state, for a maximum period of thirty working days, not to exceed two hundred forty hours in any one calendar year.

(b) Any officer or employee of state, county or municipal government hired for permanent employment ordered or called to active duty for a mobilization or deployment under Title 10 of the United States Code or in support of a contingency operation as defined in 10 U.S.C. §101(a)(13) by the properly designated federal authority is entitled to a military leave of absence from his or her respective office or employment without loss of pay, status or efficiency rating for a maximum period of thirty working days, not to exceed two hundred forty hours for a single call to active duty: Provided, That an officer or employee of state, county or municipal government called to active duty who has not used all or some portion of the thirty working days of military leave of absence granted by subsection (a) of this section is entitled to add the number of unused days from that calendar year to the thirty working days, not to exceed two hundred forty hours granted by this subsection, up to a maximum of sixty days for a single call to active duty: Provided, however, That none of the unused days of military leave of absence granted by subsection (a) of this section may be carried over and used in the next calendar year.

(c) The term "without loss of pay" means that the officer or employee shall continue to receive his or her normal salary or compensation, notwithstanding the fact that the officer or employee may have received other compensation from federal or state sources during the same period.

WV Legislature

§15-1F-1a. Educational leave of absence for active duty.

Whenever any member of the National Guard or other reserve component of the Armed Forces of the United States is called or ordered to active duty, other than active duty for training, including, in the case of members of the National Guard, active state duty, the educational institution in which the member is enrolled shall grant the member a military leave of absence from their education. Persons on military leave of absence from their educational institution shall be entitled, upon release from military duty, to be restored to the educational status they had attained prior to their being ordered to military duty without loss of academic credits earned, scholarships or grants awarded or tuition and other fees paid prior to the commencement of the military duty. It shall be the duty of the educational institution to refund tuition or fees paid or to credit the tuition and fees to the next semester or term after the termination of the educational military leave of absence at the option of the student. The provisions of this section shall not supercede federal laws, rules and regulations at the time of the military leave of absence.

WV Legislature

§15-1F-1b. Tolling of the running of any licensure or registration requirement.

The running of any licensure or registration requirement, including, but not limited to, the payment of any license or registration fees of a licensing board or commission of the state shall be tolled during the period of absence for active duty for any member of the National Guard or other reserve component of the armed services of the United States until sixty days after the return of the member from active duty: Provided, That the service member shall be granted a period of time equal to the period of active duty to fulfill any continuing education requirements needed for licensure or registration.

WV Legislature

§15-1F-2. Suits against officers or persons acting under military authority.

When a suit or proceeding shall be commenced in any court by any person, against any military officer of the state, for any act done by such officer in his official capacity in the discharge of any duty under this article, or against any person acting under the authority or order of any such officer, or by virtue of any warrant issued by him pursuant to law, the court shall, upon motion of the defendant, when it has been made to appear to the court by affidavit, or otherwise, that the act done is such as hereinbefore set forth, require the person prosecuting or instituting the suit or proceeding to file security for the payment of costs that may be incurred by the defendant therein. This security shall be by bond payable to the state, with surety to be approved by the clerk of the court, in a penalty equal to six times the costs incurred and likely to be incurred by the defendant, but in no case shall such bond be for a penalty less than $500. The court before whose clerk such bond is given, may, on motion by a defendant, give judgment for so much as he is entitled to by virtue of such bond under the provisions of this section. If such security for costs be not given within sixty days from the time the same is required by the court to be given, the suit or proceeding shall, by order of the court, be dismissed. In case any suit or proceeding shall be dismissed for failure to give security for costs, then the defendant shall recover three times the amount of the costs incurred by him In all such cases as are referred to in this section the defendant may make a general denial and give the special matter in evidence.

WV Legislature

§15-1F-3. Change of venue of prosecutions or suits against members of National Guard.

Any civil or military officer or member of the National Guard, or any person lawfully aiding them in the performance of any duty required under the provisions of this article, who is indicted or sued for any injury to person or property in endeavoring to perform such duty, shall have the right, and it is hereby made the duty of the court in which such indictment or suit is pending, upon the application of any person so indicted or sued, to remove the trial of the indictment or suit to some county free from exception.

WV Legislature

§15-1F-4. Arrest of persons belonging to state military forces.

No person belonging to the military forces of the state, while performing military duty under proper orders, shall be arrested on civil process, nor shall any person belonging to the military forces of the state, while performing military duty under proper orders, be arrested on criminal process, except upon process from a circuit or criminal court or a judge thereof in vacation.

WV Legislature

§15-1F-5. Unlawful conversion of military property.

Whoever shall secrete, sell or dispose of, or offer for sale, or purchase, knowing the same to be such, retain after proper demand is made, or in any manner pawn or pledge, any military property, which shall have been issued under the provisions of this article, shall be guilty of a misdemeanor, and, in addition to the punishment provided for misdemeanors in this article, shall forfeit to the state twice the amount or cost of the property so secreted, sold, disposed of, offered for sale, or purchased, retained after proper demand has been made, pawned or pledged.

WV Legislature

§15-1F-6. Unlawful wearing of uniforms.

Any person who shall wear any uniform or any device, strap, knot, or insignia of any design or character, used as a designation of grade, rank or officer, such as are by law or regulations, duly promulgated, prescribed for the use of the National Guard, or similar thereto, except members of the army or navy of the United States or the National Guard of this or any other state, members of associations wholly composed of soldiers honorably discharged from the service of the United States, or the members of the order of sons of veterans, shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than ten nor more than $100; and any member of the National Guard who shall, when not on duty, wear any such uniform or equipment issued by the state without the permission of his commanding officer, shall be subject to a fine of not more than $50.

WV Legislature

§15-1F-7. Unlawful military organizations.

(a) It is unlawful for any body of individuals other than the regularly organized National Guard or the troops of the United States, to associate themselves together as a military company or organization in this state.

(b) Notwithstanding subsection (a) of this section, the Governor may grant permission to public or private schools of the state to organize themselves into companies of cadets, and may furnish the cadets, under proper restrictions, obsolete ordnance stores and equipment owned by the state that are not in use by the National Guard.

(c) It is not a violation of this section for a group of individuals to associate as a military company or organization for historical, artistic or fictional performances; or, for an individual or group of individuals to drill, perform or parade at public ceremonies, including funerals.

(d) A person who violates subsection (a) of this section, or belongs to or parades with a body of individuals with arms violating subsection (a) of this section, is guilty of a misdemeanor and, upon conviction, shall be fined not more than $100 or confined in jail for not more than six months.

WV Legislature

§15-1F-8. Reemployment rights of members of the organized militia.

Members of the organized militia in the active service of the state or another state shall be entitled to the same reemployment rights granted to members of the reserve components of the Armed Forces of the United States by applicable federal law, including rights protected by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), as amended, 38 U. S. C. §§ 4301-4334.

WV Legislature

§15-1F-9. General penalty; jurisdiction under article.

A person convicted of a crime declared by this article to be a misdemeanor shall, unless otherwise provided, be punished by a fine of not more than $500, or by imprisonment in the county jail for not more than one year, or by both. Any circuit, intermediate, criminal court, or justice of the peace shall have jurisdiction over offenses enumerated in this article.

WV Legislature

§15-1F-10. Selective service registration and compliance.

(a) A person may not enroll in a state-supported institution of postsecondary higher education unless he is in compliance with the Military Selective Service Act, 50 U. S. C. Appendix §451, et seq., and the amendments thereto.

(b) A person may not receive a loan, grant, scholarship or other financial assistance for postsecondary higher education funded by state revenue, including federal funds or gifts and grants accepted by this state, or receive a student loan guaranteed by the state unless he is in compliance with the Military Selective Service Act.

(c) No male person who has attained the age of eighteen years who fails to be in compliance with the Military Selective Service Act is eligible for employment by or service with the state or a political subdivision of the state, including all boards, commissions, departments, agencies, institutions and instrumentalities.

(d) It is the duty of all officials having charge of and authority over the hiring of employees by the state or political subdivisions, and over state-supported institutions of postsecondary higher education, and over the granting of state supported financial assistance for postsecondary higher education as described in this section to assure themselves that applicants are in compliance with the Military Selective Service Act.

(e) A person may not be denied a right, privilege or benefit under this section by reason of failure to present himself for and submit to the requirement to register pursuant to the Military Selective Service Act if:

(1) The requirement for the person to so register has terminated or become inapplicable to the person; and

(2) The person is or has already served in the Armed Forces or has a condition that would preclude acceptability for military service.

WV Legislature

§15-1F-11. West Virginia Servicemembers Civil Relief Act.

(a) This section may be cited as the >West Virginia Servicemembers Civil Relief Act'

(b) A member of the West Virginia National Guard called to state active duty by the Governor for a period of thirty days or more, shall have all of the protections, rights or benefits that are afforded and may accrue to a person on federal active duty under the provisions of 50 U.S.C. App., §501, et seq. as amended by the Servicemembers Civil Relief Act, Pub. L. No. 108-189 (2003).

WV Legislature