

## **CHAPTER 37-04 COMMISSIONED OFFICERS**

### **37-04-01. Commissioned officers of national guard - Qualifications.**

Officers of the national guard may not be commissioned as such unless they are at least nineteen years of age and shall have been selected from the classes of persons having the qualifications prescribed by federal law.

### **37-04-02. Commissioned officer of national guard to be examined.**

Any person appointed and commissioned an officer of the national guard shall successfully pass such tests as to the person's physical, moral, and professional fitness as shall be prescribed by federal law, and the examination to determine the person's qualifications for a commission also shall be as prescribed by federal law.

### **37-04-03. Officers commissioned by governor - Assigning or reassigning officers.**

Officers must be commissioned by the governor, and each commission must designate the arm or branch of service in which the officer named therein is commissioned. Officers must be assigned or reassigned to duty in the various regiments or lesser separate organizations by the immediate commander thereof.

### **37-04-04. Oath required of commissioned officers in national guard.**

Commissioned officers of the national guard of this state shall take and subscribe, in substance, the following oath of office:

I, \_\_\_\_\_, do solemnly swear that I will support and defend the Constitution of the United States and the Constitution of North Dakota, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will obey the orders of the president of the United States and of the governor of the state of North Dakota; that I make this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office of \_\_\_\_\_ in the national guard of the state of North Dakota upon which I am about to enter, so help me God.

### **37-04-05. Bond of officer.**

Repealed by S.L. 1983, ch. 389, § 2.

### **37-04-06. Duties of officer to devolve upon officer next in rank upon absence or disability.**

The duties assigned to a designated officer by any provision of this title devolve, in case of the absence or disability of such officer, upon the line officer next in rank who has been designated by command of the officer named, except as otherwise provided in this title.

### **37-04-07. Responsibility for efficiency.**

The officer commanding the national guard may cause those under that officer's command to perform any military duty, and that officer is responsible to the governor for the general efficiency of the national guard and for the drill, instruction, small arms and artillery practice, movements, operations, and care of the troops. Commanding officers of organizations are responsible to their immediate commanders for the equipment, drill, instruction, movements, and efficiency of their respective commands. All commissioned officers and enlisted personnel are responsible to their immediate commanding officers for prompt and unhesitating obedience, proper drill, and the preservation and proper use of the property of this state or of the organization which is in their possession.

### **37-04-08. Pay received by commissioned officers of the national guard.**

Every commissioned officer of the national guard is entitled to receive from this state, while engaged in any service ordered by the governor, pay and allowances at the rate allowed by law to officers of similar rank and length of service in the United States army. If ordered to active

duty by the governor in response to an emergency management assistance compact request and if the requesting state pays state active duty pay at a higher rate than this state, the commissioned officer is entitled to the higher rate of pay. Each commissioned officer of the national guard is entitled to receive a state active duty pay enhancement of three hundred dollars for every month spent on state active duty or a prorated amount for each day of state active duty up to three hundred dollars per month. The adjutant general and deputy assistant adjutant general when receiving salary from the state and not on active duty in a federal status are entitled to receive such compensation as may be appropriated by the legislative assembly for that purpose, provided that when the adjutant general receives compensation from the government of the United States as director of selective service, such compensation must be deducted from the compensation otherwise due the adjutant general from the state and the adjutant general may be paid from state funds only the difference, if any, between the compensation from the United States and the compensation provided in this section.

**37-04-09. Expenses allowed officers and enlisted men of national guard.**

When officers or enlisted men of the national guard are convened by order of the governor at a meeting of instruction other than annual camp, or when they are detailed under orders to perform military duties outside of their own stations, they must be reimbursed for traveling and incidental expenses at the same rate as provided by law for other state officials. The adjutant general may, in the adjutant general's discretion, authorize the purchase of meals or rations for officers or enlisted men of the national guard in a duty or travel status in lieu of individual reimbursement for meals.

**37-04-10. Allowances for commissioned officers.**

Repealed by S.L. 1953, ch. 223, § 9.

**37-04-11. Pay of officers serving on boards, commissions, and courts.**

An officer detailed to serve on any board or commission ordered by the governor, or under the governor's authority by the commanding officer of the national guard, or on any court of inquiry or court-martial ordered by proper authority in pursuance of any provision of this title, must be paid a sum equal to one day's duty pay for each day that officer is actually employed on such board or court or engaged in the business thereof, or in which that officer is traveling to and from such board or court. Such sum may not exceed ten days' pay and actual traveling expenses and subsistence unless, upon application of the president of the court-martial or the presiding officer of the board, the officer appointing the court or board has authorized such court or board to sit for a longer period, or in case of a court-martial, the governor or the officer ordering such court has authorized such court to sit for a longer period than ten days. An officer detailed to serve on a court-martial must be paid for each day actually employed therein, engaged in the business thereof, or in traveling to and from the same, and traveling expenses and subsistence, when such court is held at a place other than the city of the officer's residence.

**37-04-12. Pay and allowances allowed national guard officers assigned to duty with regular army.**

National guard officers assigned to duty with the regular army, while so assigned, shall receive the pay and allowances authorized by federal law.

**37-04-13. Pay of officers having administrative functions.**

In addition to the pay provided for in this title, officers commanding organizations less than a brigade and having administrative functions connected therewith shall receive such pay as the federal law provides for the faithful performances of such administrative functions, under such regulations as the secretary of defense may prescribe, whether or not such officers belong to such organizations.

#### **37-04-14. Resignation of commissioned officers.**

Commissioned officers may resign in such manner and under such circumstances as may be prescribed by federal regulations.

#### **37-04-15. Vacating commissions - Acquisition of reserve status.**

A commission in the national guard may be vacated:

1. At any time when it is determined by an efficiency board as provided by federal regulation that the officer holding the commission is no longer fit for service by reason of the officer's moral character, capacity, or general fitness for service;
2. By resignation of the officer holding the commission;
3. By the absence of the officer without leave for a period of three months; or
4. Pursuant to the sentence of a court-martial.

Officers of the national guard who are rendered superfluous by the disbandment of their organization must be disposed of as provided by federal law. An officer, upon application therefor, may be placed in the reserve in such manner as may be authorized by federal law.

#### **37-04-16. Retirement and discharge of national guard officers.**

Any officer of the national guard who has federal recognition removed due to age, as proscribed by federal law, must be placed on the retired list by the governor. Any officer who has served as such under a commission in the military service of this state for a continuous period of eight years may be placed, at the officer's own request, upon the retired list with an advance in grade and withdrawn from active service and command by the governor. A commissioned officer must be withdrawn from active service and placed upon the retired list whenever the officer becomes disabled and incapable of performing the duties of the officer's office. A commissioned officer, upon the recommendation of the officer's commanding officer or of an inspecting officer, must be placed by the governor upon the retired list whenever the officer becomes unfit or incompetent for service and thereby incapable of performing the duties of the officer's office. The governor, however, may not order the retirement of an officer until the provisions of section 37-04-17 have been complied with. Vacancies in the commissioned personnel of the national guard caused by the operation of this section must be filled in the same manner as other vacancies in the commissioned personnel are filled.

#### **37-04-17. Board appointed to determine disability, unfitness, or incompetency of officers - Powers of board - Findings.**

Before the governor shall make an order placing an officer on the retired list on the ground that such officer is disabled, unfit, or incompetent, the governor shall appoint a board of not less than five commissioned officers, one of whom must be a surgeon, to investigate and report on the matter. Such board shall determine the facts as to the nature and cause of the incapacity of the officer who appears to be disabled, unfit, or incompetent from any cause to perform military service, and whose case shall be referred to it. Before entering upon the discharge of a member's duties, each member of the board must be sworn to an honest and impartial performance of the person's duties as a member of the board. No officer whose grade or promotion would be affected by the decision of such board in any case that may come before it may participate in the examination or decision in such case. The board has the powers of courts of inquiry and courts-martial, and whenever it finds an officer incapacitated for active service, it shall report such fact to the governor, stating the cause of incapacity, whether from disability, unfitness, or incompetency. If the governor approves the finding of the board, the officer must be placed upon the retired list as provided in this chapter. No officer may be placed upon the retired list by the action of such board without having had a full and fair hearing before the board if, upon due notice, that officer demands it. It is not necessary to refer any case for the action of the board unless the officer designated to be placed upon the retired list, within twenty days after being notified that the officer will be so retired, serves on the adjutant general a notice in writing that the officer demands a hearing and examination before such board.

**37-04-18. Retired officer subject to orders of commander in chief only.**

The officers on the retired list are subject to detail for duty only by orders from the commander in chief, who shall cause to be issued such orders as the commander in chief deems necessary detailing them for duty upon boards of officers for military purposes, courts-martial, and courts of inquiry, and for such other military duties as in the commander in chief's judgment may be advisable. If officers on the retired list are detailed for active duty other than upon boards of officers, courts-martial, and courts of inquiry, they are entitled only to the rank which properly belongs to the office, the duties of which they are detailed to perform. When the duty ends, or the detail is canceled, the officer shall return again to the retired list with the officer's former retired rank.