WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1961

ENROLLED

HOUSE BILL No. 4-07

(By Mr. Speaker, Mr. Singleton)

PASSED March 16, 1961

In Effect Ninety Days from Passage

Filed in Office of the Secretary of State
of West Virginia MAR 17 1961
JOE F. BURDETT
SECRETARY OF STATE
AN ACT to amend chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by amending and reenacting article one thereof; by adding thereto six new articles, designated articles one-a, one-b, one-c, one-d, one-e and one-f; and by redesignating the present article one-a thereof as article one-g and adding to said article one-g a new section, designated section eleven, all relating to the government and administration of the military forces of the state.

Be it enacted by the Legislature of West Virginia:

That chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by amending and reenacting article one thereof; by adding thereto six new articles, designated articles one-a, one-b, one-c, one-d, one-e and one-f; and by redesignating the present article one-a
as article one-g and adding to said article one-g a new section, designated section eleven, all to read as follows:

Article 1. Military Forces of the State.

Section 1. Definitions.—When used in this chapter, unless a different meaning is plainly required by the context.

a. The term "Military Forces of the State" shall mean the organized militia, the state retired list, the honorary militia and the state guard, and all other components of the militia of the state which may hereafter be organized.

b. The term "Organized Militia" shall mean the West Virginia national guard, including the army national guard, the air national guard and the inactive national guard, and shall be deemed to include any unit, component, element, headquarters, staff or cadre thereof, as well as any member or members.

c. "Military Personnel of the National Guard" shall mean all the members of the organized militia.

d. "Military" shall mean army or land, air or air force, navy or naval.

e. The term "Service of the State" or "active service of
the State” shall mean active military duty in other than
a training status in or with a force of the organized militia
or with the adjutant general’s department, upon orders
of the governor.

f. The term “State duty” shall mean duty in a training
status or other duty in the interest of the state and the
organized militia.

g. The term “Service of the United States” or “active
service of the United States”, shall mean active military
duty in the armed forces of the United States except
active duty for training purposes.

h. The term “officer” or “commissioned officer” shall
be deemed to include warrant officers.

Sec. 2. Commander-in-Chief.—The governor shall be
commander-in-chief of the military forces of the state,
except those which are in the service of the United States.

Sec. 3. Regulations.—The governor shall issue regu-
lations for the governance of the military forces of the
state which shall have the force and effect of law. Such
regulations shall conform to the provisions of this chapter,
and as nearly as practicable to the laws and regulations
of the United States governing the armed forces of the
United States and relating to the organization, discipline
and training of the organized militia. Regulations in
force at the time of the passage of this act, not incon-
sistent with its provisions, shall remain in force until
superceded by new regulations issued hereunder.

Sec. 4. Services of the State; State Duty.—a. The gover-
nor may order all or any part of the organized militia and
the state guard or any other person with their consent to
active service of the state and all members of the orga-
nized militia and the state guard shall be liable for such
service.

b. The governor may order the organized militia or any
part thereof to serve outside the borders of the state and of
the United States in order to perform military duty and to
participate in parades, review, conferences, encampments,
maneuvers, and other training, to participate in military
competitions and to attend service schools.

c. The adjutant general, may order the organized
militia or any part thereof or any military personnel of
the national guard or any other person with his consent
to state duty within or without the state, and with or without compensation.

Sec. 5. Service of the United States.—When the organized militia, or any part thereof, is called for active service of the United States under the constitution and laws of the United States, the governor shall order the same to service, and if the number available is insufficient, the governor may call for and accept as many volunteers as are required for service in the organized militia and state guard. During the absence of units and organizations of the organized militia in the service of the United States, their state designations shall not be given to new organizations, and all organizations and officers on return from such service shall be given their former standing and rank.

Sec. 6. Federal Law and Regulations.—a. The duty of maintaining and governing the military forces of the state not in the service of the United States rests upon the state, subject to constitutional authority. The purpose of such forces are two-fold; national defense and service of the state. Their efficiency for both purposes
necessarily depends upon systematic uniformity in organization, composition, arms, equipment, training and discipline with the armed forces of the United States and the military forces of other states. Therefore, the governor shall cause the military forces of the state to conform to all federal laws and regulations applicable to the same, unless the same shall be incompatible with the state purpose of such forces.

b. All matters relating to the organizations, discipline and government of the military forces of the state, not otherwise provided for in this chapter or in regulations, shall be decided by custom, usage and regulations of the armed forces of the United States.


Sec. 1. Adjutant General's Department.—The adjutant general's department shall be a part of the executive branch of the government charged with the organization, administration, operation and training, supply and discipline of the military forces of the state. The adjutant general shall be the executive head of the adjutant general's department, and shall employ such clerical force
and assistants as may be required for the fulfilment of his duties

Sec. 2. The Adjutant General.—The adjutant general shall be appointed by the governor for a term of four years. He shall have the rank of major general, or such other rank as shall be recognized by federal authority. No person shall be appointed adjutant general unless he has had at least six years commissioned service and attained field grade or higher rank in the organized militia of this or some other state or in the armed forces of the United States, or in all combined. The governor shall require the adjutant general to furnish bond as required by law, which bond shall be filed with the auditor of the state.

Sec. 3. Duties of the Adjutant General.—a. The adjutant general shall be chief of staff to the governor and commanding general of the organized militia. He shall direct the planning and employment of the military forces of the state in carrying out their state mission, establish unified command of state forces whenever jointly engaged, coordinate the military affairs with the civil defense
of the state and organize and coordinate the activities of all civil agencies including local and state police in event of declaration of a limited emergency by the governor pursuant to article one of this chapter. The adjutant general shall direct and control the activities of the civil defense agency provided for by article five of this chapter in time of emergency or disaster. He shall be custodian of all military records of the state and shall keep the same indexed and available for ready reference. He shall keep an itemized account of all moneys received and dispensed from all sources and shall make an annual report to the governor on the condition of the organized militia, receipts and expenditures, and such other matters relating to the military forces of the state and the adjutant general's department as he shall deem expedient.

b. The adjutant general shall be responsible for the organization, administration, training, and supply of the organized militia and shall cause to be procured, prepared and issued to the organizations of the organized militia all necessary books and blanks for reports, records, returns and general administration, and shall, at the ex-
pense of the state, cause the military laws, military code,
and rules and regulations in force to be printed, bound
in proper form, and distributed, one copy to each com-
missioned officer, and one each to all the circuit, intermed-
iate and criminal court judges, sheriffs, and justices of
the peace in the state requiring them; and shall procure
and supply all necessary textbooks of drill and instruc-
tion. He shall keep in his office an accurate account
of all state and United States property issued to the
state. He shall keep on file in his office, all official
bonds required by this chapter; the reports and returns
of troops and military forces of the state; and all other
writings and papers which are required to be transmit-
ted to and preserved at the general headquarters of the
organized militia.

c. The adjutant general shall keep records of all service
personnel from the state of West Virginia, commissioned
or enlisted, in any of the wars of the United States, and
of individual claims of citizens of West Virginia for serv-
vice rendered in such wars. He shall assist all persons re-
siding in this state having claims against the United States
Enr. H. B. No. 409] 10

50 for pension, bounty or back pay, or such claims as have
51 arisen out of, or by reason of, service in any of said wars.
52 To this end he shall cooperate with the agents or attor-
53 neys of such claimants, furnish to claimants only all nec-
54 essary certificates or certified abstracts from, or copies of,
55 records or documents in his office, and shall in all prac-
56 ticable ways seek to secure speedy and just action in all
57 claims now pending or which may hereafter be filed:
58 Provided, That any and all of the above services shall be
59 rendered without charge to the claimant. He shall es-
60 tablish and maintain as a part of his office, a bureau of
61 records of the services of the West Virginia troops during
62 such wars, and shall keep arranged in proper and con-
63 venient form all records and papers pertaining thereto.

Sec. 4. Assistant Adjutants General.—The governor
2 shall appoint an assistant adjutant general for air, with
3 the rank of brigadier general, or such other rank as shall
4 be recognized by federal authority, who shall be deputy
5 commander of the air national guard. The governor may
6 also appoint two assistant adjutants general with the rank
7 of colonel or such other rank as shall be recognized by
federal authority, one of whom shall be executive officer and administrative assistant to assist the adjutant general in the administration of the adjutant general's department, and the other to be deputy commander of the army national guard. The assistant adjutants general shall be upon appointment, federally recognized officers of the air national guard and army national guard, respectively.

Article 1-b. National Guard.

Section 1. Organization of the National Guard.—The national guard shall be organized, equipped, disciplined, governed, administered and trained in accordance with the laws and regulations of the federal government for the purpose of organization and governance of the same, and for that purpose, the governor is authorized to organize, reorganize or disband any unit, headquarters or staff therein, to increase or decrease the number of officers and non-commissioned officers and the strength of the national guard or any unit thereof: Provided, however, That the governor shall not be required to consent to the organization of any forces required or withdrawal of units
organized in the state unless he deems the same in the best interest of the state. The governor, in case of war, insurrection, invasion or imminent danger thereof, shall have the power to increase the national guard and organize additional units thereof, though the same are not authorized or provided for by federal laws or regulations.

Sec. 2. Army National Guard.—The army national guard shall comprise the army units including army aviation units, which are a part of the West Virginia national guard and the personnel enlisted, appointed, or commissioned therein. All members of the army national guard shall be federally recognized as such.

Sec. 3. Air National Guard.—The air national guard shall comprise the air units of the West Virginia national guard, except army aviation units, and the personnel enlisted, appointed or commissioned therein. All personnel of the air national guard shall be federally recognized as such.

Sec. 4. Appointment and Promotion of Officers; Oath.—a. Oath, appointment, and promotion of officers shall be
made in conformity with applicable rules and regulations of the federal government.

b. Every officer duly commissioned shall, within ten days, after his commission is tendered to him, or within ten days after he shall be personally notified that the same is held in readiness for him by any superior officer, take and subscribe to the oath of office prescribed by the constitution of this state. In case of neglect or refusal to take and subscribe to such oath within the time mentioned, he shall be deemed to have resigned such office.

Such oath shall be taken and subscribed before any officer authorized to take acknowledgements of deeds in this state, or some officer who has taken it himself and who is hereby authorized to administer the same.

Sec. 5. Surplus Officers; Resignations.—a. Commissioned officers who shall be rendered surplus by reduction, consolidation, or disbandment of organizations, or in any manner provided by law, may be transferred to the inactive national guard in conformity with applicable rules and regulations prescribed by federal authority, or may be discharged.
b. An officer may tender his resignation or request transfer from the national guard at any time: Provided, that no such resignation shall be accepted unless the officer tendering the same shall furnish the adjutant general from each property accounting officer concerned a certificate that he has delivered all books and other property of the state and federal government in his possession to the person authorized to receive the same, and that his accounts for money or public property are correct, and that he is not indebted to the state or federal military authorities.

Sec. 6. Dismissal of Officers.—a. No officer of the national guard shall be dismissed unless by reason of resignation; approval of findings of an efficiency or medical examining board, withdrawal of federal recognition, the sentence of a court-martial, or for cause as provided in subsection-d of this section.

b. The efficiency, moral character, incompetency, inability to properly perform his duty, and general fitness for retention in the national guard of any officer may be investigated and determined by an efficiency examining board.
c. The physical fitness for further service of any officer of the national guard may be investigated by a medical examining board of officers.

d. Efficiency and medical examining boards consisting of three or more officers, shall be appointed by the adjutant general upon recommendation of the commanding officer of the officer under investigation. All members of such boards shall be senior in grade to the officer under investigation, unless unavailable. Such boards shall be vested with the powers of courts of inquiry and courts-martial. Any officer ordered to appear before such a board shall be allowed to appear in person or by counsel, to cross-examine and to call the witnesses in his behalf. He shall at all stages of the proceedings be allowed full access to records pertinent to his case and be furnished copies of the same. If the officer shall fail to appear at the time and place set for the hearing by the board, the board shall proceed to consider the evidence presented to it and make such findings as shall be warranted. If the findings of the board are unfavorable to an officer and are approved by the governor, the governor shall dismiss the officer, transfer him
to the state retired list or the honorary militia, or make such other order as may be appropriate.

e. Any officer who permanently moves from the state or who is absent without leave from drill, training and other duty for two months, or whose federal recognition is withdrawn may be dismissed automatically.

f. In any case in which the adjutant general shall have ground to believe an officer unfit, incompetent, or incapable of performing his duties, he may be dismissed or transferred to the reserve list or honorary national guard, if appropriate, without reference to an efficiency or medical examining board, unless the officer so dismissed or transferred shall within thirty days after being notified thereof, serve upon the adjutant general notice in writing demanding a hearing and examination before an appropriate board.

Sec. 7. Non-Commissioned Officers; Appointment, Promotion and Reduction.—Non-commissioned officers shall be appointed and promoted and may be reduced in accordance with applicable federal laws and regulations:

Provided, however, That in active service of the state, in
cases requiring immediate example, a non-commissioned officer may be reduced to the ranks by his immediate commander, subject to appeal to, and review and approval by the appointing officer.

Sec. 8. Enlistment; Qualification; Oath.—a. The qualification for enlistment and reenlistment, the period of enlistment, reenlistment and voluntary extension of enlistment, the period of service and the manner and form of transfer and discharge of enlisted personnel of the national guard shall be as prescribed by applicable federal law and regulations: Provided, That the governor may extend the period of any enlistment, reenlistment, voluntary extension of enlistment and the period of service of enlisted personnel of the national guard for a period not exceeding the duration of an emergency declared by him pursuant to article one-c of this chapter.

b. Any person who has been discharged under other than honorable conditions from the national guard of this or any other state or from any component of the armed forces of the United States and has not been re-
stored to duty shall not be eligible for enlistment in the
national guard.

c. Every person enlisted for the national guard shall
sign an enlistment paper, which shall be forwarded to
the adjutant general, on such form as may be prescribed,
which shall contain an oath of allegiance to the state and
the United States. Such an oath of allegiance may be
taken before any commissioned officer of the national
guard, who is hereby authorized to administer the same,
or before any civil officer fully authorized to administer
oaths.

Sec. 9. Discharge of Enlisted Personnel.—a. Enlisted
men may be honorably discharged, discharged, or dis-
charged dishonorably; but in no case may an enlisted man
be dishonorably discharged unless by sentence of a gen-
eral court-martial, except as hereinafter provided. No
enlisted man shall be honorably discharged from service
unless he produces the certificate of his immediate com-
manding officer that he has turned over or satisfactorily
accounted for all property issued to him.

b. Whenever any enlisted man of the national guard
shall have performed service therein for the term of his enlistment or reenlistment, and has turned into the proper officer all state or military property for which he is responsible, his commanding officer shall grant him a full and honorable discharge, except in time of insurrection or invasion or other emergency declared by the governor, when his enlistment shall be automatically extended for the period he shall be in the active service of the state, and until released therefrom by proper order. Discharge for physical disability shall be granted pursuant to applicable rules and regulations. The governor may authorize for sufficient reason, and in his discretion, the discharge of enlisted men, with or without their consent, at any time, upon the recommendation of the commanding officer of the unit or organization to which they belong. An enlisted man who cannot, after due diligence, be found, or who shall remove his residence from the state, or to such a distance from the armory of his organization, as to render it impracticable for him to perform properly military duties, or who shall be convicted of a felony, may be discharged by order of the governor.
c. A dishonorable discharge from service in the national guard shall operate as a complete expulsion from the guard, a forfeiture of all exemptions and privileges acquired through membership therein, and disqualification for any military office under the state. The names of all persons dishonorably discharged shall be published in orders by the adjutant general at the time of such discharge, and in two newspapers of opposite politics and general circulation, if such there be, in the locality in which such dishonorably discharged person resides. No persons so discharged shall be admitted to any armory or other meeting place of the national guard or to the immediate vicinity of any encampment, drill or parade of troops. All commanding officers are hereby required to enforce these prohibitions.

Sec. 10. Inactive National Guard.—The inactive national guard shall consist of the persons commissioned, appointed or enlisted therein at this date, such officers and enlisted personnel as may hereafter be transferred there-to from the army national guard and the air national
Sec. 11. Uniforms, Arms, Equipment and Supplies.—The uniform, arms, equipment and supplies necessary for performance of duties shall be those prescribed by applicable federal laws and regulations. Officers shall provide themselves with uniforms and equipment prescribed, and there shall be annually allowed, to aid them in procuring and maintaining the same in condition for service, the sum of one hundred dollars each. Such sum shall be paid during the last month of each fiscal year for such year. In the event of service for less than the full fiscal year one twelfth of such sum shall be allowed for each month of service during such year.

Sec. 12. Responsibility for Military Property and Funds; and Bond, Action by Attorney General.—a. Military property of the state and of the United States, shall be issued, safeguarded, maintained, accounted for, inventoried, inspected, surveyed and disposed of as provided in applicable laws and regulations of the United States.
and regulations issued by the adjutant general pursuant to this chapter.

b. Every officer of the national guard responsible for military property or funds of the state or of the United States shall give bond to the state in such amount as shall be determined by the adjutant general, with good and sufficient security, to be approved by him, conditioned upon the safekeeping, proper use and care and prompt surrender of such property or funds for which he may be properly responsible.

c. When military property is lost, damaged, or destroyed through the negligence or fault of a member of the national guard, the amount determined as the value of such property or the cost of repairing the same may be collected from any pay or allowance due or to become due him from the state.

d. An action may be maintained in the name of the state in any court having jurisdiction thereof by the attorney general upon the request of the adjutant general to recover from a member or former member of the organized militia found responsible for military property
lost, damaged or destroyed through his negligence or fault,
the amount determined as the value of such property or
the cost of repairing the same.

Sec. 13. Assemblies, Annual Training and Other Duty.

—a. Members and units of the organized militia shall as-
semble for drill, or other equivalent training, instruction
or duties during each year and shall participate in field
training, encampments, maneuvers, schools, conferences,
cruises or other similar duties each year as may be pre-
scribed by the applicable laws and regulations of the
United States and of the state.

b. Members of the organized militia may be ordered
by the governor or under his authority to perform special
duty, including but not limited to duty in a judicial pro-
ceeding, as a member of or in any other capacity with any
military board, or as an investigating officer or as a med-
ical examiner.

c. Organization and unit commanders may in their
discretion order drills of such portion of their command
as may be deemed necessary; and may in their discretion
order target practice for their command: Provided, That
if any expense is to be incurred, written authority must be obtained from the adjutant general.

Sec. 14. Annual Inspection and Muster.—An annual inspection and muster of each organization of the national guard shall be made by an inspector at such time and place as the adjutant general shall order and direct.

Sec. 15. Absence from Drill, Parade or Other Duty; Penalty.—a. Organization and unit commanders of the national guard, upon receiving information as to the whereabouts of any officer or enlisted man of their organization who is absent from any drill, parade or other prescribed duty without having been properly excused, may cause such officer or enlisted man to be taken into custody and forthwith conveyed to the organization or unit to be there kept until such duty is completed or until relieved by the organization or unit commander; and said organization or unit commander is hereby authorized to direct any or all members of his command at his discretion to apprehend such officer or enlisted man and convey him to the organization or unit.

b. Enlisted men who shall, without proper excuse, be
absent from or in any other respect be delinquent, at any
drill, parade, encampment, or other duty ordered by com-
petent authority, may be fined by a summary court not
more than five dollars, and imprisoned not more than five
days in jail for each offense or delinquency; jail refer-
cenced, county jail: Provided, That the aggregate punish-
ment under this section shall not exceed thirty days' jail
sentence at any one time.

Sec. 16. Pay and Allowances.—a. Pay and allowances
for officers and men of the national guard for drill, en-
campment or other duty for training prescribed or order-
ed by the federal government, shall be such as are pro-
vided by the laws of the United States.
b. Officers and men of the national guard in active
service of the state shall receive the same pay and allow-
ances, in accordance with their rank and service, as are
prescribed for the armed forces of the United States.
Transportation for all personnel and subsistence for en-
listed personnel when in active service of the state shall
be provided by the state.
c. Notwithstanding any of the provisions of this ar-
ticle, members of the national guard, may, with their con-
sent, perform without pay, or without pay and allowances
any duties prescribed by section thirteen of this article
pursuant to competent orders therefor: Provided, That
necessary expenses may be furnished such personnel
within the discretion of the adjutant general.

Sec. 17. Command Pay; Inspection, Compensation for
Clerical Services and Care of Property.—a. There shall
be paid to each commander of a regiment, group or other
corresponding type organization, one hundred dollars per
month and to each commander of a battalion, squadron
or other equivalent type organization, fifty dollars per
month, payable quarterly, to be known as command pay.
The governor may, by order, direct such organization
commanders to make inspections of the organizations and
units in their command, and file reports thereon, not ex-
ceeding four visits to each of such organizations and units
in any one year, and for which such commanding officer
shall receive no other compensation than that mentioned
herein, but may be reimbursed his actual traveling ex-
penses.
b. There shall be allowed to each headquarters of a regiment, group or equivalent type organization the sum of one hundred dollars per month and each headquarters of a battalion, squadron or corresponding type organization, the sum of fifty dollars per month for clerical services; and to each company or corresponding type unit, the sum of twenty dollars per month for like services, payable quarterly. The commandant of the West Virginia military academy shall be allowed the sum of twenty-five dollars a month, payable quarterly, for like services.

c. At the discretion of the adjutant general, there may be paid to the enlisted man who is directly responsible for the care and custody of the federal and state property of each organization or unit, the sum of ten dollars per month, payable quarterly, upon the certificate of his commanding officer, that he has faithfully and satisfactorily performed the duties assigned him and accounted for all property entrusted to his care.

Sec. 18. Injury or Death While in Service of State.—

A member of the organized militia who, (1) while in active service of the state, shall receive an injury, or incur
or contract any disability or disease, by reason of such
duty, or (2) while performing any lawfully ordered state
duty, shall without fault or neglect on his part be injured
or disabled, and shall be incapacitated from pursuing his
usual business or occupation, shall, during the period of
such incapacity, receive the pay provided by this article
and actual necessary expenses for care and medical at-
tendance, including burial and funeral expenses in case
of death resulting therefrom. All claims arising under
this section shall be inquired into by a board of three offi-
cers, at least one being a medical officer, to be appointed,
upon the application of the member claiming to be so in-
capacitated, or his personal representatives, by the com-
manding officer of the organization or unit to which such
member is attached or assigned. Such board shall have
the same power to take evidence, administer oaths, issue
subpoenas and compel witnesses to attend and testify and
produce books, and papers, and punish their failure to do
so, as is possessed by a general court-martial. The find-
ings of the board shall be subject to the approval of the
officer convening it, and also to the approval of the gov-
error, either of whom may return the proceedings of the
board for revision and for the taking of further testimony.
The amount found due such member by such board, to the
extent that its findings are approved by the reviewing
officers thereof, shall be paid by the treasurer of the state
out of any moneys in the military fund unexpended. The
widow and children of every officer or soldier killed, while
in the service of the state or performing lawfully ordered
state duty, shall be suitably provided for by the Legisla-
ture.

Sec. 19. Military Fund.—The sums of money which
may be appropriated by the Legislature for carrying into
effect any provisions of this article, and the penalties and
collections required thereby to be paid to the treasurer
of the state, shall constitute the military fund of the state
for the uses and purposes set forth in this article. The
state treasurer shall, at the end of each quarter, render
to the adjutant general a statement of the condition of the
military fund, showing the amount on hand at the begin-
ing of the quarter, the amount received and expended
during the quarter, and the balance on hand at the end
of the quarter. The adjutant general shall furnish the
governor a copy of this quarterly report.

Sec. 20. Military Expenses.—All payments made under
the provisions of this article, except pay and allowances
for active service of the state, shall be paid out of the mili-
tary fund. All pay and allowances and other expenses in-
curred in active service of the state shall be paid out of
any moneys in the treasury not otherwise appropriated.
The military fund shall be disbursed on warrant of the
adjutant general, properly drawn and in such manner as
the governor may order, or as may be required by law,
but no warrant for funds signed by him shall be honored
by the auditor until such adjutant general shall have ex-
cuted and filed such bond as may be required by the gov-
ernor. Payments shall be made on proper vouchers, which
vouchers shall show the authority under which the ex-
penditures are made, contain an itemized statement of the
transaction, and be filed for record in the office of the
adjutant general. All claims for services rendered or ma-
terial furnished shall be approved by the officer ordering
the work or material, and shall be over his certificate to
the effect that the amount is just and reasonable, and that it has not been previously paid. No expenditures shall be made by any officer until an estimate of the amount and a statement of the necessity therefor shall have been laid before the adjutant general and his approval received.

Article 1-c. State Retired List and Honorary Militia.

Section 1. State Retired List.—a. Any member of the national guard who has reached the age of sixty-four years, or shall be retired from service under applicable laws and regulations of the United States, shall be transferred to the state retired list by order of the governor.

b. Any officer who has served for at least twenty years in the national guard or in the national guard and the armed forces of the United States combined, upon his request, may be transferred to the state retired list in a grade one grade higher than the highest grade previously held by him during such service. In computing such twenty-year period, service as an enlisted man shall be counted.

c. Any enlisted man who has served at least twenty years in the national guard or in the national guard and
the armed forces of the United States combined, upon his request may be transferred to the state retired list by the governor in a grade equivalent to the highest grade held by him during such service. If said grade was of officer grade, the provisions of subsection b of this section will govern.

d. Any officer of the national guard may be transferred to the state retired list on his own request, approved by the adjutant general.

e. Any officer of the national guard who has been rendered surplus by reduction, disbandment, or reorganization of a unit or for any other reason, unless transferred to the inactive national guard, may be relieved from duty and command and may be transferred to the state retired or reserve list.

f. Any person who has served as an officer in the national guard or in the armed forces of the United States and has been honorably discharged therefrom, may be commissioned and placed on the state retired list in the highest grade previously held by him after complying
36 with such conditions as may be prescribed by regulations
37 issued pursuant to this chapter.

Sec. 2. **Duty with the National Guard.**—Upon recom-
2 mendation of the adjutant general with the consent of the
3 person concerned, the governor may order any person on
4 the state retired list to state duty in or with the national
5 guard for a period not to exceed three months, in which
6 case such person shall rank in his grade from the date of
7 such order.

Sec. 3. **Seniority, Resignation, Discharge, Etc.—**Time
2 spent on the state retired list shall not be credited in the
3 computation of seniority, pay, length of service, or any
4 of the privileges and exemptions pertaining thereto, ex-
5 cept that the time during which he served on active duty
6 by order of the governor shall be so credited. The pro-
7 visions of this article relative to resignation, court-mar-
8 tial, dismissal or discharge, including dismissal or dis-
9 charge on the finding of an efficiency or medical examin-
10 ing board shall be applicable to persons on the state re-
11 tired list.

Sec. 4. **Honorary Militia.**—The governor may appoint
and commission any person, with such rank as he may fix to serve in the honorary militia and may appoint and commission an honorary staff of such number and rank as he may deem advisable to serve during his term of office. Members of the honorary militia shall not be held to be a part of the organized militia.

Article 1-d. Active State Service.

Section 1. Calling Out National Guard by Governor.—In event of war, insurrection, rebellion, invasion, tumult, riot, mob or body of men acting together by force with intent to commit a felony or to offer violence to persons or property, or by force and violence to break and resist the laws of this state or the United States, or in case of the imminent danger of the occurrence of any of said events, or in event of public disaster or emergency, the governor shall have power to order the West Virginia national guard, or any part thereof, into the active service of the state, and to cause them to perform such duty as he shall deem proper.

Sec. 2. Limited Emergency.—In time of public disaster or emergency, the governor may declare a limited
emergency in the affected area and designate the com-
mander of the national guard units called to duty to coor-
dinate and direct the activities of all persons, organiza-
tions and agencies participating in the evacuation, safe-
guarding, relief and rehabilitation of the affected area,
delegating to such commander such authority as he deems
necessary and expedient in the circumstances. The com-
mander so designated by the governor shall act for and on
behalf of the governor and take all actions in his name.
Nothing contained in this section shall be construed to
limit or deny the authority of the governor to declare
martial law.

Sec. 3. Command to Assembly or Mob to Disperse.—
Before using any military force in the dispersion of any
riot, rout, tumult, mob or unlawful assembly, or combina-
tion mentioned in this article, it shall be the duty of the
civil authorities present, or if none be present, then of the
officer in command of the troops, or some person by him
deputed, to command the persons composing such riotous,
tumultuous or unlawful assembly or mob to disperse and
retire peaceably to their respective abodes and business;
but in no case shall it be necessary to use any set or particular form of words in ordering the dispersion of any riotous, tumultuous or unlawful assembly; nor shall any such command be necessary where the officer or person, in order to give it, would necessarily be put in imminent danger of loss of life or great bodily harm, or where such unlawful assembly or mob is engaged in the commission or perpetration of any forcible or atrocious felony, or in assaulting or attacking any civil officer or person lawfully called to aid in the preservation of the peace, or is otherwise engaged in actual violence to persons and property.

Sec. 4. Penalty for Failure to Disperse.—Any person or persons composing or taking part in any riot, rout, tumult, mob or lawless combination or assembly mentioned in this article, who, after being duly commanded to disperse, as provided in the preceding section, willfully and intentionally fails to do so as soon as practicable, shall be guilty of a felony, and, on conviction thereof, shall be imprisoned in the penitentiary for not less than one nor more than two years.
Sec. 5. **Power of Officers.**—After any person or persons, composing or taking part, or about to take part, in any riot, rout, mob, tumult, or unlawful combination or assembly mentioned in this article shall have been duly commanded to disperse, or when the circumstances are such that no such command is requisite under the provisions of this article, and the civil authority to whom such military force is ordered to report, or if there be no civil authority present, then such military officer acting within the limits provided in his orders shall take such steps for the arrest, dispersion, or quelling of the persons composing or taking part in any such mob, riot, tumult, outbreak, or unlawful combination or assembly mentioned in this article, as may be required, and if, in doing so, any person is killed, wounded, or otherwise injured, or any property injured or destroyed, by the civil authority or officer or member of the national guard, or other persons lawfully aiding them, such officer, member or person shall be held guiltless.

Sec. 6. **Assaults on National Guard or Persons Aiding Them; Penalty.**—It shall be unlawful for any person to
assault, fire upon, or throw any missile at, against or upon
any member or body of the national guard, or civil officer,
or other person lawfully aiding them, when going to, re-
turning from, or assembled for performing any duty un-
der the provisions of this article; and any person so of-
fending shall be guilty of a felony, and, on conviction, shall
be imprisoned in the penitentiary for not less than two
nor more than five years.

Sec. 7. Repelling Assault.—If any portion of the na-
tional guard, or any person lawfully aiding them in the
performance of any duty, under the provisions of this ar-
ticle, is assaulted, attacked or in imminent danger thereof,
the commanding officer of such national guard need not
await any orders from any civil authority but may at once
proceed to quell such attack and disperse the attacking
parties, and take all other needful steps for the safety of
his command.

Sec. 8. Failure to Retire from Unlawful Assembly;
Penalty.—Whenever any shot is fired or missile thrown
at, against or upon any body of the national guard, or up-
on any officer or member thereof; assembling or assemb-
led for the performance of any duty under the provisions of this article, it shall forthwith be the duty of every person in the assembly from which such shot is fired, or missile thrown, to immediately disperse and retire therefrom, without awaiting any order to do so; and any person knowing or having reason to believe that a shot has been so fired, or missile thrown from any assembly of which such person forms a part or with which he is present, and failing without lawful excuse to retire immediately from such assembly, shall be guilty of a misdemeanor; and any person so remaining in such assembly, after being duly commanded to disperse, shall be guilty of a felony, and on conviction shall be imprisoned in the penitentiary not less than one nor more than two years.

Sec. 9. National Guard to Have Right of Way.—Any portion of the national guard parading or performing any duty according to law shall have the right of way in any street or highway through which they may pass: Provided, That the carriage of United States mails and operations of fire engines and fire departments shall not be interfered with thereby.
Sec. 10. Regulation of Occupancy of Streets for Passage of National Guard.—Whenever any portion of the national guard is or has been called out for the performance of any duty under the provisions of this article, it shall be lawful for the commanding officer of such national guard, if it be deemed advisable in the circumstances of the emergency, to prohibit all persons from occupying or passing on any street, road, or place, or where the national guard may be for the time being, and otherwise to regulate the passage and occupancy of such streets and places. Any person, after being duly informed of such regulations, who willfully and intentionally without any lawful excuse, attempts to go or remain on such street, road, or place, and fails to depart after being warned to do so, shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than ten dollars nor more than one hundred dollars, or imprisoned in the county jail not less than ten nor more than sixty days, or both, and in such case the officer in command of the national guard may forthwith arrest persons so offending and turn them over to some civil authority.
Sec. 11. **Transportation of Officers and Men.**—The several railroads and other transportation companies in this state shall furnish transportation for all officers and enlisted men in the national guard, together with the stores, ammunition and equipment, when traveling on duty under orders from competent authority, on request of the officer desiring transportation, which request shall state the number of persons to be carried, and their destination, and for such transportation said companies shall be entitled to receive compensation from the state at the rate specified.

Sec. 12. **Arrest of Trespassers and Disturbers; Prohibition of Sales, Gambling, Spirituous Beverages, and Disorderly Places.**—a. Any person who shall, after due warning, trespass upon any armory, camp, range, or other facility of the national guard or other place where any force of the national guard is performing military duty, or who shall in any manner interrupt or molest the discharge of military duties by any member or force of the national guard, or who shall interrupt or prevent the passage of troops of the national guard, or who shall insult, by jeer
or otherwise, any member of the national guard, or refuse
to obey any lawful order of the military commander, may
be placed in arrest by any officer of the force performing
such military duty at the place where the offense is com-
mittcd and delivered to the proper civil authorities.

b. The commanding officer of any force of the national
guard performing military duty in or at any armory, ar-
senal, camp, range, base or other facility of the national
guard or other place or area where such force is perform-
ing duty in the service of the state may prohibit persons
from hawking, peddling, vending, selling, or auctioning
goods, wares, merchandise, food products or beverages,
and may prohibit all gambling, or the sale or use of spirit-
uous beverages, or the establishment or maintenance of
a disorderly place, within the limits of such armory, ar-
senal, camp, range, base or other facility of the national
guard or other place or area where such force is perform-
ing duty, or within such limits not exceeding one mile
therefrom as he may prescribe.

Sec. 13. Regulations While Military Forces on Duty.—

When any portion of the military forces of this state shall
be in active service of the state, pursuant to this article, the code of military justice and the general regulations for the government of the armed forces of the United States shall be considered in force and regarded as a part of this article until such forces shall be duly relieved from such duty. No punishment under such rules and articles which shall extend to the taking of life shall, in any case, be inflicted except in time of actual war, invasion, or insurrection, declared by proclamation of the governor to exist and then only after the approval of the governor of the sentence inflicting such punishment.

Sec. 14. Martial Law.—In the event of invasion, insurrection, rebellion or riot, flood or other public disaster or emergency, the governor, in his discretion, may by proclamation containing such powers as would meet the exigencies of the situation, declare a state of martial law or rule in the towns, cities, districts or counties where such disturbances or emergencies exist.


Section 1. Military Courts; Jurisdiction.—Military courts of this state shall be: (a) General courts-martial;
(b) special courts-martial; (c) summary courts-martial; 
(d) courts of inquiry; and shall have jurisdiction over 
any officer, warrant officer, or enlisted man of the military 
forces of the state and other persons subject to military 
law for any crime made punishable by this article. The 
jurisdiction of the courts established by this article shall 
be presumed and the burden of proof shall rest with the 
person seeking to oust any such court of jurisdiction in 
any matter or proceeding.

Sec. 2. Courts-Martial Generally.—Officers shall be tri-
able only by general courts-martial and special courts-
martial, and in no case, whether officer or enlisted man, 
shall a person be tried by persons inferior in rank or grade 
when it can feasibly be avoided. An enlisted man may 
request that at least one third of a general or special 
courts-martial total membership consist of enlisted men.

Sec. 3. Appointment and Composition of Military 
Courts.—(a) General courts-martial shall be appointed 
by the governor, and shall consist of not less than five 
members. (b) Special courts-martial may be appointed 
by the governor, or as provided in the manual for courts-
martial, United States army, and shall consist of not less
than three members. (c) Summary courts-martial may be
appointed by the governor, or as provided in the manual
for courts-martial, United States army, and shall consist
of one officer. (d) Courts of inquiry may be appointed by
the governor, or as provided in the manual for courts-
martial, United States army, and shall consist of from one
to three officers.

Sec. 4. *Forms; Practice; Procedure.*—The practice and
procedure of courts-martial and courts of inquiry shall
conform to the procedure of similar courts in the army of
the United States, except as otherwise specially provided
herein. Such forms as are necessary for carrying into
effect the provisions of this article shall be prescribed by
the governor. The president of any military court author-
ized herein shall have authority to appoint and dismiss
required clerks and reporters and the compensation there-
for shall be taxed as costs in such case. The clerk of a
summary court shall receive a reasonable compensation
to be fixed by the court, not to exceed one dollar for each
man tried.
Sec. 5. Personnel of Courts-Martial.—The senior in rank among the members present is the president and presiding officer of the court. The person ordering a general courts-martial may appoint a law officer for the same.

Sec. 6. Secrecy of Proceedings.—The proceedings and sentence of a courts-martial shall be kept secret until the same shall have been approved by proper authority. In any event, the vote and opinion of any member of a court shall be kept secret unless such is required to be revealed in a court of record.

Sec. 7. Powers of President; Witnesses; Oaths.—The president of a court-martial shall have power to issue subpoenas for the arrest of accused persons and to bring them before the court for trial whenever such persons shall have disobeyed an order in writing from the convening authority to appear before such a court, a copy of the charge or charges having been delivered to the accused with such order, and to issue subpoenas and subpoenas duces tecum and to enforce attendance of witnesses and the production of books and papers, and to sentence for a refusal to be sworn or to answer as provided in actions
before civil courts. All military courts shall have power

to administer oaths as required by the manual for courts-
martial, United States army.

Sec. 8. Charges; Trial.—When an officer or enlisted

man is put under arrest for the purpose of trial, a copy

of the charges and specifications upon which he is to be

tried shall be delivered to him or left at his last known

place of abode or business, within twenty days after ar-

rest, and a court shall be ordered for his trial within thirty

days after the notice of arrest is received by the officer

authorized to order the court. He may be held in any jail

or other place of detention or released upon his own recog-
nizance or upon such bail as is deemed necessary by the

circuit court of the county in which he is detained. If a

copy of the charges and specifications be not served, or a

court be not ordered within the time herein limited, then

arrest shall cease; but such charges and specifications may

be served, a court ordered and the officer or enlisted man

brought to trial within twelve months after such release

from arrest. The appearance of the accused, without ob-

jection, and pleading to the charges, shall be deemed a
waiver of any defect or irregularity of such service of any of the papers mentioned in this section. If an officer or enlisted man who has been ordered or duly summoned to appear before a military court for trial fail to appear, the court may enter a plea of not guilty for him and proceed to trial in his absence.

Sec. 9. General Court-Martial; Offenses by Commissioned Officers; Penalties.—Commissioned officers may be tried by a general court-martial for the following reasons and offenses:

(a) For unmilitary or unofficer-like conduct;
(b) For drunkenness on duty;
(c) For neglect of duty;
(d) For disobedience of orders or any act contrary to the provisions of this article, or to the provisions of the regulations for the government of the national guard;
(e) For refusing to grant a discharge to an enlisted man when entitled to the same;
(f) For oppression or injury of any one under his command;
(g) For a combination or attempt to break, resist or
16 evade the laws or lawful orders, given to a person, or ad-
17 vising any person so to do;
18 (h) For insult to a superior officer;
19 (i) For presuming to exercise his command while un-
20 der arrest or suspension;
21 (j) For neglect or refusal when commanding officer
22 to order out the troops under his command when required
23 by law or lawfully ordered by his superior officer;
24 (k) For neglect or refusal to make a draft or detach-
25 ment when lawfully ordered to do so;
26 (l) For parading the troops under his command on
27 days of election contrary to law;
28 (m) For receiving any fee or gratuity for any cer-
29 tificate;
30 (n) For neglect, when detailed to drill or instruct a
31 command, to make complaint for neglect or violation of
32 duty as provided by law, or for any other neglect for
33 which a commanding officer would be liable;
34 (o) For making a false certificate, account or muster
35 or parade or property return;
36 (p) For conduct unbecoming an officer or a gentleman,
or for conduct to the prejudice of good order and military discipline.

On conviction of any of the above-named offenses, officers may be sentenced to be dismissed, and shall thereby become incapacitated from holding any military commission, may be fined to any amount not exceeding two hundred dollars, and in addition, may be confined for a period not exceeding sixty days in the county jail of any county in the state, except, however, that the maximum penalties herein set forth shall not be regarded as affecting or limiting such penalties as may be imposed under other sections of this article. The order of the general court-martial directed to the jailer of such jail shall be sufficient authority for said jailer to receive and confine said prisoner.

Sec. 10. Special Court-Martial; Offenses by Commissioned Officers; Penalties.—Commissioned officers may be tried by a special court-martial for the same offenses listed under section nine, except that upon conviction of any of the named offenses, officers may be fined to any amount not exceeding one hundred dollars, and in addition, may
be confined for a period not exceeding thirty days in the county jail of any county in the state, except, however, that the maximum penalties herein set forth shall not be regarded as affecting or limiting such penalties as may be imposed under other sections of this article. The order of the special court-martial directed to the jailer of such jail shall be sufficient authority for said jailer to receive and confine said prisoner.

Sec. 11. General Court-Martial; Offenses by Enlisted Men; Penalties.—Enlisted men, in time of peace, may be tried by a general court-martial:

(a) For disobedience of orders;
(b) For disrespect to his superior;
(c) For mutiny;
(d) For desertion;
(e) For drunkenness on duty;
(f) For conduct prejudicial to good order and military discipline;
(g) For any act contrary to the military code, or to the provisions of the regulations for the government of the national guard.
14 On conviction, such enlisted man may be sentenced to
15 be dishonorably discharged with loss of time served, rep­
16 rimanded, reduced to the ranks, or may be fined not to
17 exceed one hundred dollars, and in addition thereto, may
18 be confined in the county jail for a period of not exceeding
19 sixty days in any county within the state, except how­
20 ever, that the maximum penalties herein set forth shall
21 not be regarded as affecting or limiting such penalties as
22 may be imposed under the other sections of this article.
23 The order of the general court-martial directed to the
24 jailer of such jail shall be sufficient authority to receive
25 and confine such prisoner in such jail.

Sec. 12. Special Court-Martial; Summary Court-Mar­
tial; Offenses by Enlisted Men; Penalties.—Enlisted men
may be tried by a special court-martial or a summary
court-martial for the same offenses listed under section
eleven, except that on conviction by a special court-mar­
tial such enlisted man may be reprimanded, reduced to
the ranks, or may be fined not to exceed fifty dollars, and
in addition thereto may be confined in the county jail for
a period of not exceeding thirty days in any county in the
state, except, however, that the maximum penalties here-
in set forth shall not be regarded as affecting or limiting
such penalties as may be imposed under other sections of
this article. In the case of a summary court-martial, on
conviction, such enlisted man may be reprimanded, fined
not to exceed twenty-five dollars, and in addition thereto
may be confined to the county jail for a period of not ex-
ceeding fifteen days in any county in the state, except,
however, that the maximum penalties herein set forth
shall not be regarded as affecting or limiting such penal-
ties as may be imposed under other sections of this article.
The order of the court-martial directed to the jailer of
such jail shall be sufficient authority for said jailer to
receive and confine said prisoner.

Sec. 13. Form of Summons.—The form of summons
issued by summary courts provided by this article shall
be substantially as follows:

SUMMONS

The State of West Virginia:

To.................................................., who is hereby designated
and directed to serve this summons:
You are commanded to summon to personally appear before the summary court for the trial of himself, which will meet pursuant to the laws of the state of West Virginia, at (address), West Virginia, on the day of, 19, at o'clock M., by virtue of Orders No. from Headquarters to answer delinquencies for offenses against (herein describe briefly the offense charged). Given under my hand this the day of.

Signed

(Signature and rank of Presiding Officer)

West Virginia National Guard

President of the Court.

Sec. 14. Service of Summons; Penalty for Failure.—

The president of a court-martial shall designate and direct a fit person or persons to summon all delinquents to appear before the court. Service of the summons shall be made by the person so designated in the same manner
as service of process in civil cases. The person serving the summons shall receive a fee of one dollar for such service, together with five cents per mile in necessary travel, and such fee of one dollar together with mileage, shall be taxed as a part of the costs in such proceeding.

The summons may be directed by the president of the court-martial to the sheriff, or his deputy, or any constable, or member of the department of public safety, or to any individual, in the county where such delinquent resides or may be found for service; and it shall be the duty of such person in whose custody the summons has been placed for service forthwith to serve same, if the delinquent be found, and make due return thereof, before the return day of such summons, to the president of the court-martial. The return of service of such summons shall be in form and effect the same as is customarily used by officers in making returns of civil process. Any member of the department of public safety, sheriff, or his deputy, constable or individual who shall refuse, fail or neglect to serve such summons and make his return thereon to the president of the court-martial before the
return day thereof, shall be deemed guilty of a misde-
meanor, and, on conviction thereof, shall be fined not to
exceed fifty dollars.

Sec. 15. Trial; Judgment; Duties of Sheriff; Penalty.—

On the return day of the summons the court shall hear
the evidence and render judgment thereon as the case
may be. If, however, on the return day of the summons
the accused shall fail to appear, after having been duly
served with summons, the court shall proceed to hear the
evidence and try the accused in his absence and render
judgment thereon as the case may be and the facts war-
rant. If such judgment be for a fine and costs solely,
the court shall forthwith issue an execution in form and
effect as hereafter set forth, and place it in the hands of
the sheriff of the county wherein the accused may be
found. If, however, the judgment of the court against
the accused is for confinement in the county jail, the court
shall forthwith issue an order directed to the sheriff of the
county, wherein the accused may be found, directing said
sheriff to take into custody the body of the accused and
confine him in the county jail. Such order so delivered
by the court shall be coextensive with the state, and shall
be sufficient evidence and authority for the jailer of such
county jail to receive the body of such accused and con-
fine him therein pursuant to said judgment. No pre-
scribed form of order for confinement of the accused shall
be required.

Any sheriff who fails, neglects or refuses to perform
any duty required of him by this section, by reason of
any order of confinement directed by any court, shall be
guilty of a misdemeanor, and, upon conviction thereof,
shall be fined not less than fifty dollars, nor more than
one hundred dollars for each offense.

Sec. 16. Form of Execution.—Execution for the purpose
of either collecting the fine and costs or imprisoning the
delinquent for failure to pay the same shall be substan-
tially in the following form, blanks being properly filled
in:

The State of West Virginia:

To the Sheriff of..................................County, greetings:

Whereas, pursuant to the laws of the State of West Vir-
ginia, by an order duly issued by (name and rank of
officer ordering court), of the West Virginia National Guard, and dated on the ___ day of ____________, 19____, a court was duly appointed, for (state object of court) _______________; and, whereas, the said court was duly and regularly convened and from time to time duly adjourned; and, whereas, (name and rank of accused) _______________ in (organization) ________________ of the West Virginia National Guard, was duly and regularly returned to said court, as required by law, charged with (state whether accused was charged with delinquencies of offenses against the military code, without specifying character thereof) as appears by (either summons or charges and specifications, as the case may be) to be duly filed with said court, and was duly summoned and notified to appear before said court; and it satisfactorily appearing to the court that such __________ was and is a __________ of the West Virginia National Guard and subject to the jurisdiction of the court; and after due deliberation of the evidence offered by the State and the accused, the court
did find and adjudge the said .................. ............................

(state finding) ........................................... and did sentence

him to pay costs of ................................. dollars, and

did also sentence him to pay costs of.........................

dollars, making a total fine of .................... dollars,

and,

Whereas, the proceedings, findings and sentences of

such court were thereafter duly approved by ..................

............................., the officer ordering said court.

These are therefore in the name of the State of West

Virginia to command you to levy and collect said fines,

together with your costs, according to law, of the goods

and chattels of ......................... and in default

do sufficient goods and chattels of such ..................,

to satisfy the same; then, within five days, to take the

body of such delinquent to the common jail of ..................

.................county, and deliver him to the jailer thereof;

and the said jailer is hereby directed and requested to

receive the body of such ........................... conveyed to

the jail aforesaid, and to keep such ..................

closely confined in the manner and during the time re-
quired by law, and until discharged according to law, for
which this shall be his warrant; and of your doings by
virtue thereof to make return to me within forty days
after the execution of these presents.

Given under my hand at ........................................, and
State of West Virginia, on the ........ day of ..................,
19........

Signed .........................................................

(Rank and organization of presiding officer.)

West Virginia National Guard

President of the Court.

Sec. 17. Courts of Inquiry.—Courts of inquiry shall be
ordered for the same purposes as provided in the manual
for courts-martial, United States army, which are appli-
cable to this state. Such courts of inquiry shall, without de-
lay, report the evidence adduced, a statement of the facts,
and, when required, an opinion thereof, to the appointing
authority.

Sec. 18. Disorderly Conduct before Military Court; Pen-
alty.—Any person other than a member of the national
guard who shall resort to disorderly, contemptuous or in-
solvent behavior in, or use any insulting or indecorous language or expressions to or before, any military court, or any member of either of such courts, in open court, to interrupt the proceedings or to impair the authority of such courts, shall be guilty of a misdemeanor and may he arrested by the ordering of the president of the court, and at once delivered to the civil authorities; and such person, if found guilty, shall be fined not less than five nor more than fifty dollars, or imprisoned in the county jail not exceeding thirty days, or both fined and imprisoned.

Sec. 19. Record and Approval of Court-Martial Sentence.—The record of the proceedings and sentence of every court-martial shall, without delay, be delivered to the appointing authority, who shall approve or disapprove thereof. A court may proceed with the execution of a sentence pending approval by the appointing authority.

Sec. 20. Reconvening Court-Martial.—A court-martial appointing authority is authorized to direct a court-martial to reconvene, and send back its proceedings for revision, and to remit, commute, or investigate any punish-
Sec. 21. **Collection and Disposition of Fines.**—All fines under the provisions of this article not collectible by the court may be levied or collected by the sheriff of any county of the state, and shall be transmitted to the adjutant general of the state, who shall deposit the same to the military fund of the state. Whenever process of law is necessary for collection of fines, the sheriff shall collect in addition thereto his usual fee.

Sec. 22. **Execution in Aid of Collection of Fines and Penalties.**—For the purpose of collecting any fines or penalties imposed by any courts-martial the president of the court shall issue execution, or executions, for the collection thereof, and deliver the same to the sheriff of any county for levy on the goods and chattels of the delinquent, and, in addition to such fine, shall collect the necessary costs of such proceedings, as provided in civil cases. On failure, within fifteen days from the time of delivery of such execution into his hands, to satisfy each execution from the goods and chattels of the delinquent, the sheriff shall forthwith take the body of the delinquent to the county jail and therein confine him to serve the execution.
at a space and rate of one day's confinement for each two
dollars of fine and the costs: Provided, however, That the
delinquent may furnish a bond with good and sufficient
surety to the sheriff to stay such execution and costs for a
period of thirty days, either before confinement or during
confine ment; and if at the expiration of said thirty days
such delinquent fails to pay the execution and costs, the
sheriff may apprehend the delinquent and confine him in
the county jail, as in the original proceeding; and if the
accused be not found, the sureties on such bond shall be
liable to the state of West Virginia for the amount of said
execution and costs thereof.

The sheriff shall be entitled to such commissions and
fees as provided in civil cases.

Sec. 23. Failure of Sheriff to Execute Process or Return

Fines.—Any sheriff failing to execute any process, or to
make proper return of all fines and penalties collected,
shall be guilty of a misdemeanor, and, upon conviction
thereof, be fined not less than fifty nor more than one
hundred dollars for each offense.

Sec. 24. Actions against Members of Military Courts.—
No actions shall be maintained against any member of a military court, or officer or agent acting under its authority, on account of the imposition of a fine or penalty or for the execution of a sentence on any person.

Sec. 25. *Trial by Civil Authorities.*—For any offense enumerated in this article which is also cognizable under civil law, the offender may, in the discretion of his superior officer, be delivered over to the civil authorities for such action and disposition as may be warranted.


Section 1. *Leave of Absence for Public Officials and Employees.*—All officers and employees of the state, or subdivisions or municipalities thereof, who shall be members of the national guard, shall be entitled to leave of absence from their respective offices or employments without loss of pay, status, or efficiency rating, on the days during which they shall be engaged in drills, parades, or other duty, during business hours ordered by proper authority, or for field training or active service of the state for a maximum period of thirty days in any one calendar year.

The term “without loss of pay” shall mean that the officer
or employee shall continue to receive his normal salary
or compensation, notwithstanding the fact that such offi-
cer or employee may have received other compensation
from federal or state sources during the same period. Ben-
efits of this section shall not accrue to individuals ordered
or called to active duty by the president.

Sec. 2. Suits against Officers or Persons Acting under
Military Authority; Security for Costs.—When a suit or
proceeding shall be commenced in any court by any per-
son, 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 act-
ing 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 other-
wise, 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 five hundred dollars. 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.

Sec. 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 in-
dicted or sued, to remove the trial of the indictment or
suit to some county free from exception.

Sec. 4. Exemption from Arrest.—No person belonging
to the military forces of the state, while performing mili-
tary 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.

Sec. 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 misde-
meanor, and, in addition to the punishment, provided for
Enr. H. B. No. 409]

8 misdemeanors in this article, shall forfeit to the state,
9 twice the amount or cost of the property so secreted, sold,
10 disposed of, offered for sale, or purchased, retained after
11 proper demand has been made, pawned or pledged.

Sec. 6. Unlawful Wearing of Uniforms; Penalty.—Any
2 person who shall wear any uniform or any device, strap,
3 knot, or insignia of any design or character used as a des-
4 ignation of grade, rank or office, such as are by law or
5 regulations, duly promulgated, prescribed for the use of
6 the national guard, or similar thereto, except members
7 of the army or navy of the United States or the national
8 guard of this or any other state, members of associations
9 wholly composed of soldiers honorably discharged from
10 the service of the United States, or the members of the
11 order of sons of veterans, shall be guilty of a misdemeanor,
12 and, on conviction thereof, shall be fined not less than ten
13 nor more than one hundred dollars, and any member of
14 the national guard who shall, when not on duty, wear
15 any such uniform or equipment issued by the state with-
16 out the permission of his commanding officer, shall be
17 subject to a fine of not more than fifty dollars.
Sec. 7. *Unlawful Military Organizations; Penalty.*—It shall be unlawful for any body of men whatever, other than the regularly organized national guard of the troops of the United States, to associate themselves together as a military company or organization in this state: Provided, That the governor may grant permission to public or private schools of the state to organize themselves into companies of cadets, and may furnish such cadets, under proper restrictions, such obsolete ordnance stores and equipment owned by the state as are not in use by the national guard. Whosoever offends against the provisions of this section, or belongs to or parades with any such unauthorized body of men with arms, shall be punished with a fine of not exceeding one hundred dollars or imprisoned for a term not exceeding six months.

Sec. 8. *Reemployment Rights.*—Members of the organized militia in the active service of the state for thirty consecutive days or longer, 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.
Sec. 9. General Penalty; Jurisdiction.—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 five hundred dollars, 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.

Article 1-g. Service Medals.

Sec. 11. State Service Ribbon.—A decoration to be known as the “State Service Ribbon” shall be presented by the adjutant general to all members of the national guard ordered to active service of the state pursuant to article one-d of this chapter. Bronze stars shall be affixed on the ribbon for each occasion upon which the recipient of the ribbon shall be ordered to such duty, and a larger silver star shall be worn in lieu of five bronze stars: Provided, however, That a separate distinctive ribbon may be designed and presented for any period of active service of the state involving extraordinary duties for a period of not less than one week's duration. Award of the
"State Service Ribbon" shall be made retroactively for all periods of duty in the service of the state subsequent to January one, one thousand nine hundred fifty-six. Design of the "State Service Ribbon" and separate distinctive ribbon for extraordinary periods of service shall be the responsibility of the military board of the state of West Virginia.
The Joint Committee on Enrolled Bills hereby certifies that
the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within approved this the 17th day of March, 1961.

[Signature]
Governor

Filed in Office of the Secretary of State
of West Virginia MAR 17 1961
JOE F. BURDETT
SECRETARY OF STATE