

WEST VIRGINIA LEGISLATURE

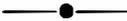
REGULAR SESSION, 1961



7 17
ENROLLED

HOUSE BILL No. *407*.....

(By Mr. *Speaker, Mr. Singleton*)



PASSED *March 11* 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

ENROLLED
House Bill No. 409

(By MR. SPEAKER, MR. SINGLETON)

[Passed March 11, 1961; in effect ninety days from passage.]

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,
2 unless a different meaning is plainly required by the
3 context.

4 a. The term “Military Forces of the State” shall mean
5 the organized militia, the state retired list, the honorary
6 militia and the state guard, and all other components of
7 the militia of the state which may hereafter be organized.

8 b. The term “Organized Militia” shall mean the West
9 Virginia national guard, including the army national
10 guard, the air national guard and the inactive national
11 guard, and shall be deemed to include any unit, com-
12 ponent, element, headquarters, staff or cadre thereof, as
13 well as any member or members.

14 c. “Military Personnel of the National Guard” shall
15 mean all the members of the organized militia.

16 d. “Military” shall mean army or land, air or air force,
17 navy or naval.

18 e. The term “Service of the State” or “active service of

19 the State” shall mean active military duty in other than
20 a training status in or with a force of the organized militia
21 or with the adjutant general's department, upon orders
22 of the governor.

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

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

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

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

Sec. 3. *Regulations.*—The governor shall issue regu-
2 lations for the governance of the military forces of the
3 state which shall have the force and effect of law. Such
4 regulations shall conform to the provisions of this chapter,
5 and as nearly as practicable to the laws and regulations

6 of the United States governing the armed forces of the
7 United States and relating to the organization, discipline
8 and training of the organized militia. Regulations in
9 force at the time of the passage of this act, not incon-
10 sistent with its provisions, shall remain in force until
11 superceded by new regulations issued hereunder.

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

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

13 c. The adjutant general, may order the organized
14 militia or any part thereof or any military personnel of
15 the national guard or any other person with his consent

16 to state duty within or without the state, and with or
17 without compensation.

Sec. 5. *Service of the United States.*—When the orga-
2 nized militia, or any part thereof, is called for active
3 service of the United States under the constitution and
4 laws of the United States, the governor shall order the
5 same to service, and if the number available is insufficient,
6 the governor may call for and accept as many volunteers
7 as are required for service in the organized militia and
8 state guard. During the absence of units and organiza-
9 tions of the organized militia in the service of the United
10 States, their state designations shall not be given to new
11 organizations, and all organizations and officers on return
12 from such service shall be given their former standing
13 and rank.

Sec. 6. *Federal Law and Regulations.*—a. The duty of
2 maintaining and governing the military forces of the
3 state not in the service of the United States rests upon
4 the state, subject to constitutional authority. The pur-
5 pose of such forces are two-fold; national defense and
6 service of the state. Their efficiency for both purposes

7 necessarily depends upon systematic uniformity in or-
8 ganization, composition, arms, equipment, training and
9 discipline with the armed forces of the United States and
10 the military forces of other states. Therefore, the gov-
11 ernor shall cause the military forces of the state to con-
12 form to all federal laws and regulations applicable to the
13 same, unless the same shall be incompatible with the
14 state purpose of such forces.

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

Article 1-a. Adjutant General.

Sec. 1. *Adjutant General's Department.*—The adjutant
2 general's department shall be a part of the executive
3 branch of the government charged with the organization,
4 administration, operation and training, supply and dis-
5 cipline of the military forces of the state. The adjutant
6 general shall be the executive head of the adjutant gen-
7 eral's department, and shall employ such clerical force

8 and assistants as may be required for the fulfilment of
9 his duties

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

Sec. 3. *Duties of the Adjutant General.*—a. The adju-
2 tant general shall be chief of staff to the governor and
3 commanding general of the organized militia. He shall
4 direct the planning and employment of the military forces
5 of the state in carrying out their state mission, establish
6 unified command of state forces whenever jointly engag-
7 ed, coordinate the military affairs with the civil defense

8 of the state and organize and coordinate the activities of
9 all civil agencies including local and state police in event
10 of declaration of a limited emergency by the governor
11 pursuant to article one-^d of this chapter. The adjutant
12 general shall direct and control the activities of the civil
13 defense agency provided for by article five of this chapter
14 in time of emergency or disaster. He shall be custodian
15 of all military records of the state and shall keep the same
16 indexed and available for ready reference. He shall keep
17 an itemized ^{account} ~~amount~~ of all moneys received and dispensed
18 from all sources and shall make an annual report to the
19 governor on the condition of the organized militia, re-
20 cepts and expenditures, and such other matters relating
21 to the military forces of the state and the adjutant gen-
22 eral's department as he shall deem expedient.

23 b. The adjutant general shall be responsible for the
24 organization, administration, training, and supply of the
25 organized militia and shall cause to be procured, prepared
26 and issued to the organizations of the organized militia
27 all necessary books and blanks for reports, records, re-
28 turns and general administration, and shall, at the ex-

OK
CAB
2/20
EJP

OK
CAB
2/20
EJP

29 pense of the state, cause the military laws, military code,
30 and rules and regulations in force to be printed, bound
31 in proper form, and distributed, one copy to each com-
32 missioned officer, and one each to all the circuit, intermed-
33 iate and criminal court judges, sheriffs, and justices of
34 the peace in the state requiring them; and shall procure
35 and supply all necessary textbooks of drill and instruc-
36 tion. He shall keep in his office an accurate account
37 of all state and United States property issued to the
38 state. He shall keep on file in his office, all official
39 bonds required by this chapter; the reports and returns
40 of troops and military forces of the state; and all other
41 writings and papers which are required to be transmit-
42 ted to and preserved at the general headquarters of the
43 organized militia.

44 c. The adjutant general shall keep records of all service
45 personnel from the state of West Virginia, commissioned
46 or enlisted, in any of the wars of the United States, and
47 of individual claims of citizens of West Virginia for serv-
48 ice rendered in such wars. He shall assist all persons re-
49 siding in this state having claims against the United States

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

8 federal authority, one of whom shall be executive officer
 9 and administrative assistant to assist the adjutant gen-
 10 eral in the administration of the adjutant general's de-
 11 partment, and the other to be deputy commander of the
 12 of the army national guard. The assistant adjutants gen-
 13 eral shall be upon appointment, federally recognized of-
 14 ficers of the air national guard and army national guard,
 15 respectively.

Article 1-b. National Guard.

Section 1. *Organization of the National Guard.*—The
 2 national guard shall be organized, equipped, disciplined,
 3 governed, administered and trained in accordance with^P~~the~~ HCB
CAB
OAP
 4 the laws and regulations of the federal government for
 5 the purpose of^f organization and governance of the same, HCB
CAB
OAP
 6 and for that purpose, the governor is authorized to or-
 7 ganize, reorganize or disband any unit, headquarters or
 8 staff therein, to increase or decrease the number of officers
 9 and non-commissioned officers and the strength of the
 10 national guard or any unit thereof: *Provided, however,*
 11 That the governor shall not be required to consent to the
 12 organization of any forces required or withdrawal of units

13 organized in the state unless he deems the same in the best
14 interest of the state. The governor, in case of war, insur-
15 rection, invasion or imminent danger thereof, shall have
16 the power to increase the national guard and organize
17 additional units thereof, though the same are not author-
18 ized or provided for by federal laws or regulations.

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

Sec. 3. *Air National Guard.*—The air national guard
2 shall comprise the air units of the West Virginia national
3 guard, except army aviation, units, and the personnel en-
4 listed, appointed or commissioned therein. All personnel
5 of the air national guard shall be federally recognized as
6 such.

Sec. 4. *Appointment and Promotion of Officers; Oath.*—
2 a. Oath, appointment, and promotion of officers shall be

OK
LAB
in
copy

3 made in conformity with applicable rules and regulations
4 of the federal government.

5 b. Every officer duly commissioned shall, within ten
6 days, after his commission is tendered to him, or within
7 ten days after he shall be personally notified that the
8 same is held in readiness for him by any superior officer,
9 take and subscribe to the oath of office prescribed by the
10 constitution of this state. In case of neglect or refusal to
11 take and subscribe to such oath within the time men-
12 tioned, he shall be deemed to have resigned such office.
13 Such oath shall be taken and subscribed before any offi-
14 cer authorized to take acknowledgements of deeds in this
15 state, or some officer who has taken it himself and who
16 is hereby authorized to administer the same.

Sec. 5. *Surplus Officers; Resignations.*—a. Commis-
2 sioned officers who shall be rendered surplus by reduc-
3 tion, consolidation, or disbandment of organizations, or
4 in any manner provided by law, may be transferred to
5 the inactive national guard in conformity with applicable
6 rules and regulations prescribed by federal authority, or
7 may be discharged.

8 b. An officer may tender his resignation or request
9 transfer from the national guard at any time: *Provided*,
10 That no such resignation shall be accepted unless the
11 officer tendering the same shall furnish the adjutant gen-
12 eral from each property accounting officer concerned a
13 certificate that he has delivered all books and other prop-
14 erty of the state and federal government in his possession
15 to the person authorized to receive the same, and that his
16 accounts for money or public property are correct, and
17 that he is not indebted to the state or federal military
18 authorities.

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

7 b. The efficiency, moral character, incompetency, ina-
8 bility to properly perform his duty, and general fitness for
9 retention in the national guard of any officer may be inves-
10 tigated and determined by an efficiency examining board.

11 c. The physical fitness for further service of any officer
12 of the national guard may be investigated by a medical
13 examining board of officers.

14 d. Efficiency and medical examining boards consist-
15 ing of three or more officers, shall be appointed by the ad-
16 jutant general upon recommendation of the commanding
17 officer of the officer under investigation. All members of
18 such boards shall be senior in grade to the officer under in-
19 vestigation, unless unavailable. Such boards shall be vest-
20 ed with the powers of courts of inquiry and courts-martial.
21 Any officer ordered to appear before such a board shall be
22 allowed to appear in person or by counsel, to cross-exam-
23 ine and to call the witnesses in his behalf. He shall at all
24 stages of the proceedings be allowed full access to records
25 pertinent to his case and be furnished copies of the same.
26 If the officer shall fail to appear at the time and place set
27 for the hearing by the board, the board shall proceed to
28 consider the evidence presented to it and make such find-
29 ings as shall be warranted. If the findings of the board
30 are unfavorable to an officer and are approved by the gov-
31 ernor, the governor shall dismiss the officer, transfer him

32 to the state retired list or the honorary militia, or make
33 such other order as may be appropriate.

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

38 f. In any case in which the adjutant general shall have
39 ground to believe an officer unfit, incompetent, or incapa-
40 ble of performing his duties, he may be dismissed or trans-
41 ferred to the reserve list or honorary national guard, if
42 appropriate, without reference to an efficiency or medical
43 examining board, unless the officer so dismissed or trans-
44 ferred shall within thirty days after being notified there-
45 of, serve upon the adjutant general notice in writing de-
46 manding a hearing and examination before an appro-
47 priate board.

Sec. 7. *Non-Commissioned Officers; Appointment, Pro-*
2 *motion and Reduction.*—Non-commissioned officers shall
3 be appointed and promoted and may be reduced in ac-
4 cordance with applicable federal laws and regulations:
5 *Provided, however,* That in active service of the state, in

6 cases requiring immediate example; a non-commissioned
7 officer may be reduced to the ranks by his immediate
8 commander, subject to appeal to, and review and approval
9 by the appointing officer.

Sec. 8. *Enlistment; Qualification; Oath.*—a. The quali-
2 fication for enlistment and reenlistment, the period of
3 enlistment, reenlistment and voluntary extension of en-
4 listment, the period of service and the manner and form
5 of transfer and discharge of enlisted personnel of the
6 national guard shall be as prescribed by applicable federal
7 law and regulations: *Provided*, That the governor may
8 extend the period of any enlistment, reenlistment, volun-
9 tary extension of enlistment and the period of service of
10 enlisted personnel of the national guard for a period not
11 exceeding the duration of an emergency declared by him
12 pursuant to article one-c of this chapter.

13 b. Any person who has been discharged under other
14 than honorable conditions from the national guard of
15 this or any other state or from any component of the
16 armed forces of the United States and has not been re-

17 stored to duty shall not be eligible for enlistment in the
18 national guard.

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

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

10 b. Whenever any enlisted man of the national guard

11 shall have performed service therein for the term of his
12 enlistment or reenlistment, and has turned into the proper
13 officer all state or military property for which he is re-
14 sponsible, his commanding officer shall grant him a full
15 and honorable discharge, except in time of insurrection or
16 invasion or other emergency declared by the governor,
17 when his enlistment shall be automatically extended for
18 the period he shall be in the active service of the state,
19 and until released therefrom by proper order. Discharge
20 for physical disability shall be granted pursuant to appli-
21 cable rules and regulations. The governor may authorize
22 for sufficient reason, and in his discretion, the discharge
23 of enlisted men, with or without their consent, at any
24 time, upon the recommendation of the commanding officer
25 of the unit or organization to which they belong. An
26 enlisted man who cannot, after due diligence, be found,
27 or who shall remove his residence from the state, or to
28 such a distance from the armory of his organization, as to
29 render it impracticable for him to perform properly mili-
30 tary duties, or who shall be convicted of a felony, may be
31 discharged by order of the governor.

32 c. A dishonorable discharge from service in the na-
33 tional guard shall operate as a complete expulsion from
34 the guard, a forfeiture of all exemptions and privileges
35 acquired through membership therein, and disqualifica-
36 tion for any military office under the state. The names of
37 all persons dishonorably discharged shall be published in
38 orders by the adjutant general at the time of such dis-
39 charge, and in two newspapers of opposite politics and
40 general circulation, if such there be, in the locality in
41 which such dishonorably discharged person resides. No
42 persons so discharged shall be admitted to any armory or
43 other meeting place of the national guard or to the im-
44 mediate vicinity of any encampment, drill or parade of
45 troops. All commanding officers are hereby required to
46 enforce these prohibitions.

Sec. 10. *Inactive National Guard.*—The inactive nation-
2 al guard shall consist of the persons commissioned, ap-
3 pointed or enlisted therein at this date, such officers and
4 enlisted personnel as may hereafter be transferred there-
5 to from the army national guard and the air national

6 guard, and such persons as may be enlisted therein, under
7 applicable regulations.

Sec. 11. *Uniforms, Arms, Equipment and Supplies.*—The
2 uniform, arms, equipment and supplies necessary for per-
3 formance of duties shall be those prescribed by applicable
4 federal laws and regulations. Officers shall provide them-
5 selves with uniforms and equipment prescribed, and there
6 shall be annually allowed, to aid them in procuring and
7 maintaining the same in condition for service, the sum of
8 one hundred dollars each. Such sum shall be paid during
9 the last month of each fiscal year for such year. In the
10 event of service for less than the full fiscal year one
11 twelfth of such sum shall be allowed for each month of
12 service during such year.

Sec. 12. *Responsibility for Military Property and
2 Funds; and Bond, Action by Attorney General.*—a. Mil-
3 itary property of the state and of the United States, shall
4 be issued, safeguarded, maintained, accounted for, inven-
5 toried, inspected, surveyed and disposed of as provided
6 in applicable laws and regulations of the United States

7 and regulations issued by the adjutant general pursuant
8 to this chapter.

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

17 c. When military property is lost, damaged, or destroy-
18 ed through the negligence or fault of a member of the
19 national guard, the amount determined as the value of
20 such property or the cost of repairing the same may be
21 collected from any pay or allowance due or to become
22 due him from the state.

23 d. An action may be maintained in the name of the
24 state in any court having jurisdiction thereof by the at-
25 torney general upon the request of the adjutant general
26 to recover from a member or former member of the or-
27 ganized militia found responsible for military property

28 lost, damaged or destroyed through his negligence or fault,
29 the amount determined as the value of such property or
30 the cost of repairing the same.

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

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

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

15 c. Organization and unit commanders may in their
16 discretion order drills of such portion of their command
17 as may be deemed necessary; and may in their discretion
18 order target practice for their command: *Provided*, That

19 if any expense is to be incurred, written authority must
20 be obtained from the adjutant general.

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

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

15 b. Enlisted men who shall, without proper excuse, be

16 absent from or in any other respect be delinquent, at any
17 drill, parade, encampment, or other duty ordered by com-
18 petent authority, may be fined by a summary court not
19 more than five dollars, and imprisoned not more than five
20 days in jail for each offense or delinquency; jail refer-
21 enced, county jail: *Provided*, That the aggregate punish-
22 ment under this section shall not exceed thirty days' jail
23 sentence at any one time.

Sec. 16. *Pay and Allowances.*—a. Pay and allowances
2 for officers and men of the national guard for drill, en-
3 campment or other duty for training prescribed or order-
4 ed by the federal government, shall be such as are pro-
5 vided by the laws of the United States.

6 b. Officers and men of the national guard in active
7 service of the state shall receive the same pay and allow-
8 ances, in accordance with their rank and service, as are
9 prescribed for the armed forces of the United States.
10 Transportation for all personnel and subsistence for en-
11 listed personnel when in active service of the state shall
12 be provided by the state.

13 c. Notwithstanding any of the provisions of this ar-

14 ticle, members of the national guard, may, with their con-
15 sent, perform without pay, or without pay and allowances
16 any duties prescribed by section thirteen of this article
17 pursuant to competent orders therefor: *Provided*, That
18 necessary expenses may be furnished such personnel
19 within the discretion of the adjutant general.

Sec. 17. *Command Pay; Inspection, Compensation for*
2 *Clerical Services and Care of Property.*—a. There shall
3 be paid to each commander of a regiment, group or other
4 corresponding type organization, one hundred dollars per
5 month and to each commander of a battalion, squadron
6 or other equivalent type organization, fifty dollars per
7 month, payable quarterly, to be known as command pay.
8 The governor may, by order, direct such organization
9 commanders to make inspections of the organizations and
10 units in their command, and file reports thereon, not ex-
11 ceeding four visits to each of such organizations and units
12 in any one year, and for which such commanding officer
13 shall receive no other compensation than that mentioned
14 herein, but may be reimbursed his actual traveling ex-
15 penses.

16 b. There shall be allowed to each headquarters of a
17 regiment, group or equivalent type organization the sum
18 of one hundred dollars per month and each headquarters
19 of a battalion, squadron or corresponding type organiza-
20 tion, the sum of fifty dollars per month for clerical serv-
21 ices; and to each company or corresponding type unit, the
22 sum of twenty dollars per month for like services, pay-
23 able quarterly. The commandant of the West Virginia
24 military academy shall be allowed the sum of twenty-five
25 dollars a month, payable quarterly, for like services.

26 c. At the discretion of the adjutant general, there
27 may be paid to the enlisted man who is directly respon-
28 sible for the care and custody of the federal and state
29 property of each organization or unit, the sum of ten dol-
30 lars per month, payable quarterly, upon the certificate
31 of his commanding officer, that he has faithfully and satis-
32 factorily performed the duties assigned him and account-
33 ed for all property entrusted to his care.

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

2 A member of the organized militia who, (1) while in act-
3 ive service of the state, shall receive an injury, or incur

4 or contract any disability or disease, by reason of such
5 duty, or (2) while performing any lawfully ordered state
6 duty, shall without fault or neglect on his part be injured
7 or disabled, and shall be incapacitated from pursuing his
8 usual business or occupation, shall, during the period of
9 such incapacity, receive the pay provided by this article
10 and actual necessary expenses for care and medical at-
11 tendance, including burial and funeral expenses in case
12 of death resulting therefrom. All claims arising under
13 this section shall be inquired into by a board of three offi-
14 cers, at least one being a medical officer, to be appointed,
15 upon the application of the member claiming to be so in-
16 capacitated, or his personal representatives, by the com-
17 manding officer of the organization or unit to which such
18 member is attached or assigned. Such board shall have
19 the same power to take evidence, administer oaths, issue
20 subpoenas and compel witnesses to attend and testify and
21 produce books, and papers, and punish their failure to do
22 so, as is possessed by a general court-martial. The find-
23 ings of the board shall be subject to the approval of the
24 officer convening it, and also to the approval of the gov-

25 error, either of whom may return the proceedings of the
26 board for revision and for the taking of further testimony.
27 The amount found due such member by such board, to the
28 extent that its findings are approved by the reviewing
29 officers thereof, shall be paid by the treasurer of the state
30 out of any moneys in the military fund unexpended. The
31 widow and children of every officer or soldier killed, while
32 in the service of the state or performing lawfully ordered
33 state duty, shall be suitably provided for by the Legisla-
34 ture.

Sec. 19. *Military Fund.*—The sums of money which
2 may be appropriated by the Legislature for carrying into
3 effect any provisions of this article, and the penalties and
4 collections required thereby to be paid to the treasurer
5 of the state, shall constitute the military fund of the state
6 for the uses and purposes set forth in this article. The
7 state treasurer shall, at the end of each quarter, render
8 to the adjutant general a statement of the condition of the
9 military fund, showing the amount on hand at the begin-
10 ning of the quarter, the amount received and expended
11 during the quarter, and the balance on hand at the end

12 of the quarter. The adjutant general shall furnish the
13 governor a copy of this quarterly report.

Sec. 20. *Military Expenses.*—All payments made under
2 the provisions of this article, except pay and allowances
3 for active service of the state, shall be paid out of the mili-
4 tary fund. All pay and allowances and other expenses in-
5 curred in active service of the state shall be paid out of
6 any moneys in the treasury not otherwise appropriated.
7 The military fund shall be disbursed on warrant of the
8 adjutant general, properly drawn and in such manner as
9 the governor may order, or as may be required by law,
10 but no warrant for funds signed by him shall be honored
11 by the auditor until such adjutant general shall have ex-
12 ecuted and filed such bond as may be required by the gov-
13 ernor. Payments shall be made on proper vouchers, which
14 vouchers shall show the authority under which the ex-
15 penditures are made, contain an itemized statement of the
16 transaction, and be filed for record in the office of the
17 adjutant general. All claims for services rendered or ma-
18 terial furnished shall be approved by the officer ordering
19 the work or material, and shall be over his certificate to

20 the effect that the amount is just and reasonable, and that
21 it has not been previously paid. No expenditures shall
22 be made by any officer until an estimate of the amount
23 and a statement of the necessity therefor shall have been
24 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
2 national guard who has reached the age of sixty-four
3 years, or shall be retired from service under applicable
4 laws and regulations of the United States, shall be trans-
5 ferred to the state retired list by order of the governor.

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

14 c. Any enlisted man who has served at least twenty
15 years in the national guard, or in the national guard and

16 the armed forces of the United States combined, upon his
17 request may be transferred to the state retired list by the
18 governor in a grade equivalent to the highest grade
19 held by him during such service. If said grade was of offi-
20 cer grade, the provisions of subsection b of this section
21 will govern.

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

25 e. Any officer of the national guard who has been ren-
26 dered surplus by reduction, disbandment, or reorganiza-
27 tion of a unit or for any other reason, unless transferred
28 to the inactive national guard, may be relieved from duty
29 and command and may be transferred to the state retired
30 or reserve list.

31 f. Any person who has served as an officer in the na-
32 tional guard or in the armed forces of the United States
33 and has been honorably discharged therefrom, may be
34 commissioned and placed on the state retired list in the
35 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

2 and commission any person, with such rank as he may fix
3 to serve in the honorary militia and may appoint and com-
4 mission an honorary staff of such number and rank as
5 he may deem advisable to serve during his term of office.
6 Members of the honorary militia shall not be held to be
7 a part of the organized militia.

Article 1-d. Active State Service.

Section 1. Calling Out National Guard by Governor.—

2 In event of war, insurrection, rebellion, invasion, tumult,
3 riot, mob or body of men acting together by force with
4 intent to commit a felony or to offer violence to persons
5 or property, or by force and violence to break and resist
6 the laws of this state or the United States, or in case of
7 the imminent danger of the occurrence of any of said
8 events, or in event of public disaster or emergency, the
9 governor shall have power to order the West Virginia
10 national guard, or any part thereof, into the active serv-
11 ice of the state, and to cause them to perform such duty
12 as he shall deem proper.

*Sec. 2. Limited Emergency.—*In time of public disas-
2 ter or emergency, the governor may declare a limited

3 emergency in the affected area and designate the com-
4 mander of the national guard units called to duty to coor-
5 dinate and direct the activities of all persons, organiza-
6 tions and agencies participating in the evacuation, safe-
7 guarding, relief and rehabilitation of the affected area,
8 delegating to such commander such authority as he deems
9 necessary and expedient in the circumstances. The com-
10 mander so designated by the governor shall act for and on
11 behalf of the governor and take all actions in his name.
12 Nothing contained in this section shall be construed to
13 limit or deny the authority of the governor to declare
14 martial law.

Sec. 3. Command to Assembly or Mob to Disperse.—

2 Before using any military force in the dispersion of any
3 riot, rout, tumult, mob or unlawful assembly, or combina-
4 tion mentioned in this article, it shall be the duty of the
5 civil authorities present, or if none be present, then of the
6 officer in command of the troops, or some person by him
7 deputed, to command the persons composing such riotous,
8 tumultuous or unlawful assembly or mob to disperse and
9 retire peaceably to their respective abodes and business;

10 but in no case shall it be necessary to use any set or par-
11 ticular form of words in ordering the dispersion of any
12 riotuous, tumultuous or unlawful assembly; nor shall
13 any such command be necessary where the officer or per-
14 son, in order to give it, would necessarily be put in immi-
15 nent danger of loss of life or great bodily harm, or where
16 such unlawful assembly or mob is engaged in the commis-
17 sion or perpetration of any forcible or atrocious felony,
18 or in assaulting or attacking any civil officer or person
19 lawfully called to aid in the preservation of the peace, or
20 is otherwise engaged in actual violence to persons and
21 property.

Sec. 4. *Penalty for Failure to Disperse.*—Any person
2 or persons composing or taking part in any riot, rout, tu-
3 mult, mob or lawless combination or assembly mentioned
4 in this article, who, after being duly commanded to dis-
5 perse, as provided in the preceding section, willfully and
6 intentionally fails to do so as soon as practicable, shall be
7 guilty of a felony, and, on conviction thereof, shall be
8 imprisoned in the penitentiary for not less than one nor
9 more than two years.

Sec. 5. *Power of Officers.*—After any person or persons,
2 composing or taking part, or about to take part, in any
3 riot, rout, mob, tumult, or unlawful combination or as-
4 ssembly mentioned in this article shall have been duly
5 commanded to disperse, or when the circumstances are
6 such that no such command is requisite under the pro-
7 visions of this article, and the civil authority to whom
8 such military force is ordered to report, or if there be no
9 civil authority present, then such military officer acting
10 within the limits provided in his orders shall take such
11 steps for the arrest, dispersion, or quelling of the persons
12 composing or taking part in any such mob, riot, tumult,
13 outbreak, or unlawful combination or assembly mentioned
14 in this article, as may be required, and if, in doing so, any
15 person is killed, wounded, or otherwise injured, or any
16 property injured or destroyed, by the civil authority or
17 officer or member of the national guard, or other persons
18 lawfully aiding them, such officer, member or person shall
19 be held guiltless.

Sec. 6. *Assaults on National Guard or Persons Aiding*
2 *Them; Penalty.*—It shall be unlawful for any person to

3 assault, fire upon, or throw any missile at, against or upon
4 any member or body of the national guard, or civil officer,
5 or other person lawfully aiding them, when going to, re-
6 turning from, or assembled for performing any duty un-
7 der the provisions of this article; and any person so of-
8 fending shall be guilty of a felony, and, on conviction, shall
9 be imprisoned in the penitentiary for not less than two
10 nor more than five years.

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

Sec. 8. *Failure to Retire from Unlawful Assembly;*
2 *Penalty.*—Whenever any shot is fired or missile thrown
3 at, against or upon any body of the national guard, or up-
4 on any officer or member thereof; assembling or assemb-

5 led for the performance of any duty under the provisions
6 of this article, it shall forthwith be the duty of every per-
7 son in the assembly from which such shot is fired, or mis-
8 sile thrown, to immediately disperse and retire therefrom,
9 without awaiting any order to do so; and any person
10 knowing or having reason to believe that a shot has been
11 so fired, or missile thrown from any assembly of which
12 such person forms a part or with which he is present, and
13 failing without lawful excuse to retire immediately from
14 such assembly, shall be guilty of a misdemeanor; and any
15 person so remaining in such assembly, after being duly
16 commanded to disperse, shall be guilty of a felony, and
17 on conviction shall be imprisoned in the penitentiary not
18 less than one nor more than two years.

Sec. 9. *National Guard to Have Right of Way.*—Any
2 portion of the national guard parading or performing any
3 duty according to law shall have the right of way in any
4 street or highway through which they may pass: *Provid-*
5 *ed,* That the carriage of United States mails and opera-
6 tions of fire engines and fire departments shall not be
7 interfere^d with thereby.

Sec. 10. *Regulation of Occupancy of Streets for Passage*

2 of *National Guard*.—Whenever any portion of the national
3 guard is or has been called out for the performance of any
4 duty under the provisions of this article, it shall be lawful
5 for the commanding officer of such national guard, if it
6 be deemed advisable in the circumstances of the emer-
7 gency, to prohibit all persons from occupying or passing
8 on any street, road, or place, or where the national guard
9 may be for the time being, and otherwise to regulate the
10 passage and occupancy of such streets and places. Any
11 person, after being duly informed of such regulations,
12 who willfully and intentionally without any lawful ex-
13 cuse, attempts to go or remain on such street, road, or
14 place, and fails to depart after being warned to do so, shall
15 be guilty of a misdemeanor, and, on conviction thereof,
16 shall be fined not less than ten dollars nor more than one
17 hundred dollars, or imprisoned in the county jail not less
18 than ten nor more than sixty days, or both, and in such
19 case the officer in command of the national guard may
20 forthwith arrest persons so offending and turn them over
21 to some civil authority.

Sec. 11. *Transportation of Officers and Men.*—The sev-
2 eral railroads and other transportation companies in this
3 state shall furnish transportation for all officers and en-
4 listed men in the national guard, together with the stores,
5 ammunition and equipment, when traveling on duty un-
6 der orders from competent authority, on request of the
7 officer desiring transportation, which request shall state
8 the number of persons to be carried, and their destination,
9 and for such transportation said companies shall be en-
10 titled to receive compensation from the state at the rate
11 specified.

Sec. 12. *Arrest of Trespassers and Disturbers; Prohibi-*
2 *tion of Sales, Gambling, Spirituous Beverages, and Disor-*
3 *derly Places.*—a. Any person who shall, after due warn-
4 ing, trespass upon any armory, camp, range, or other facil-
5 ity of the national guard or other place where any force
6 of the national guard is performing military duty, or who
7 shall in any manner interrupt or molest the discharge of
8 military duties by any member or force of the national
9 guard, or who shall interrupt or prevent the passage of
10 troops of the national guard, or who shall insult, by jeer

11 or otherwise, any member of the national guard, or refuse
12 to obey any lawful order of the military commander, may
13 be placed in arrest by any officer of the force performing
14 such military duty at the place where the offense is com-
15 mitted and delivered to the proper civil authorities.

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

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

2 When any portion of the military forces of this state shall

3 be in active service of the state, pursuant to this article,^{or}
4 the code of military justice and the general regulations for
5 the government of the armed forces of the United States
6 shall be considered in force and regarded as a part of this
7 article until such forces shall be duly relieved from such
8 duty. No punishment under such rules and articles which
9 shall extend to the taking of life shall, in any case, be in-
10 flicted except in time of actual war, invasion, or insurrec-
11 tion, declared by proclamation of the governor to exist and
12 then only after the approval of the governor of the sen-
13 tence inflicting such punishment.

Sec. 14. *Martial Law*.—In the event of invasion, insur-
2 rection, rebellion or riot, flood or other public disaster or
3 emergency, the governor, in his discretion, may by proc-
4 lamation containing such powers as would meet the exi-
5 gencies of the situation, declare a state of martial law or
6 rule in the towns, cities, districts or counties where such
7 disturbances or emergencies exist.

Article 1-c. Code of Military Justice.

Section 1. *Military Courts; Jurisdiction*.—Military
2 courts of this state shall be: (a) General courts-martial;

OK
E.S.
S.P.

3 (b) special courts-martial; (c) summary courts-martial;
4 (d) courts of inquiry; and shall have jurisdiction over
5 any officer, warrant officer, or enlisted man of the military
6 forces of the state and other persons subject to military
7 law for any crime made punishable by this article. The
8 jurisdiction of the courts established by this article shall
9 be presumed and the burden of proof shall rest with the
10 person seeking to oust any such court of jurisdiction in
11 any matter or proceeding.

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

Sec. 3. *Appointment and Composition of Military*
2 *Courts.*—(a) General courts-martial shall be appointed
3 by the governor, and shall consist of not less than five
4 members. (b) Special courts-martial may be appointed
5 by the governor, or as provided in the manual for courts-

6 martial, United States army, and shall consist of not less
7 than three members. (c) Summary courts-martial may be
8 appointed by the governor, or as provided in the manual
9 for courts-martial, United States army, and shall consist
10 of one officer. (d) Courts of inquiry may be appointed by
11 the governor, or as provided in the manual for courts-
12 martial, United States army, and shall consist of from one
13 to three officers.

Sec. 4. *Forms; Practice; Procedure.*—The practice and
2 procedure of courts-martial and courts of inquiry shall
3 conform to the procedure of similar courts in the army of
4 the United States, except as otherwise specially provided
5 herein. Such forms as are necessary for carrying into
6 effect the provisions of this article shall be prescribed by
7 the governor. The president of any military court author-
8 ized herein shall have authority to appoint and dismiss
9 required clerks and reporters and the compensation there-
10 for shall be taxed as costs in such case. The clerk of a
11 summary court shall receive a reasonable compensation
12 to be fixed by the court, not to exceed one dollar for each
13 man tried.

Sec. 5. *Personnel of Courts-Martial.*—The senior in
2 rank among the members present is the president and pre-
3 siding officer of the court. The person ordering a general
4 courts-martial may appoint^a a law officer for the same.

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

Sec. 7. *Powers of President; Witnesses; Oaths.*—The
2 president of a court-martial shall have power to issue
3 subpoenas for the arrest of accused persons and to bring
4 them before the court for trial whenever such persons
5 shall have disobeyed an order in writing from the conven-
6 ing authority to appear before such a court, a copy of the
7 charge or charges having been delivered to the accused
8 with such order, and to issue subpoenas and subpoenas
9 duces tecum and to enforce attendance of witnesses and
10 the production of books and papers, and to sentence for a
11 refusal to be sworn or to answer as provided in actions

12 before civil courts. All military courts shall have power
13 to administer oaths as required by the manual for courts-
14 martial, United States army.

Sec. 8. *Charges; Trial.*—When an officer or enlisted
2 man is put under arrest for the purpose of trial, a copy
3 of the charges and specifications upon which he is to be
4 tried shall be delivered to him or left at his last known
5 place of abode or business, within twenty days after ar-
6 rest, and a court shall be ordered for his trial within thirty
7 days after the notice of arrest is received by the officer
8 authorized to order the court. He may be held in any jail
9 or other place of detention or released upon his own recog-
10 nizance or upon such bail as is deemed necessary by the
11 circuit court of the county in which he is detained. If a
12 copy of the charges and specifications be not served, or a
13 court be not ordered within the time herein limited, then
14 arrest shall cease; but such charges and specifications may
15 be served, a court ordered and the officer or enlisted man
16 brought to trial within twelve months after such release
17 from arrest. The appearance of the accused, without ob-
18 jection, and pleading to the charges, shall be deemed a

19 waiver of any defect or irregularity of such service of any
20 of the papers mentioned in this section. If an officer or
21 enlisted man who has been ordered or duly summoned to
22 appear before a military court for trial fail^s to appear, the
23 court may enter a plea of not guilty for him and proceed
24 to trial in his absence.

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

- 5 (a) For unmilitary or unofficer-like conduct;
- 6 (b) For drunkenness on duty;
- 7 (c) For neglect of duty;
- 8 (d) For disobedience of orders or any act contrary to
9 the provisions of this article, or to the provisions of the
10 regulations for the government of the national guard;
- 11 (e) For refusing to grant a discharge to an enlisted man
12 when entitled to the same;
- 13 (f) For oppression or injury of any one under his
14 command;
- 15 (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,

37 or for conduct to the prejudice of good order and military
38 discipline.

39 On conviction of any of the above-named offenses, offi-
40 cers may be sentenced to be dismissed, and shall thereby
41 become incapacitated from holding any military commis-
42 sion, may be fined to any amount not exceeding two hun-
43 dred dollars, and in addition, may be confined for a period
44 not exceeding sixty days in the county jail of any county
45 in the state, except, however, that the maximum penal-
46 ties herein set forth shall not be regarded as affecting or
47 limiting such penalties as may be imposed under other
48 sections of this article. The order of the general court-
49 martial directed to the jailer of such jail shall be sufficient
50 authority for said jailer to receive and confine said
51 prisoner.

Sec. 10. *Special Court-Martial; Offenses by Commis-*
2 *sioned Officers; Penalties.*—Commissioned officers may be
3 tried by a special court-martial for the same offenses list-
4 ed under section nine, except that upon conviction of any
5 of the named offenses, officers may be fined to any amount
6 not exceeding one hundred dollars, and in addition, may

7. be confined for a period not exceeding thirty days in the
8 county jail of any county in the state, except, however,
9 that the maximum penalties herein set forth shall not be
10 regarded as affecting or limiting such penalties as may be
11 imposed under other sections of this article. The order
12 of the special court-martial directed to the jailer of such
13 jail shall be sufficient authority for said jailer to receive
14 and confine said prisoner.

Sec. 11. *General Court-Martial; Offenses by Enlisted*

2 *Men; Penalties.*—Enlisted men, in time of peace, may be
3 tried by a general court-martial:

- 4 (a) For disobedience of orders;
- 5 (b) For disrespect to his superior;
- 6 (c) For mutiny;
- 7 (d) For desertion;
- 8 (e) For drunkenness on duty;
- 9 (f) For conduct prejudicial to good order and military
10 discipline;
- 11 (g) For any act contrary to the military code, or to
12 the provisions of the regulations for the government of
13 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.

OK
EAB
SEP

Sec. 12. *Special Court-Martial; Summary Court-Mar-*
2 *tial; Offenses by Enlisted Men; Penalties.*—Enlisted men
3 may be tried by a special court-martial or a summary
4 court-martial for the same offenses listed under section
5 eleven, except that on conviction by a special court-mar-
6 tial such enlisted man may be reprimanded, reduced to
7 the ranks, or may be fined not to exceed fifty dollars, and
8 in addition thereto may be confined in the county jail for
9 a period of not exceeding thirty days in any county in the

10 state, except, however, that the maximum penalties here-
 11 in set forth shall not be regarded as affecting or limiting
 12 such penalties as may be imposed under other sections of
 13 this article. In the case of a summary court-martial, on
 14 conviction, such enlisted man may be reprimanded, fined
 15 not to exceed twenty-five dollars, and in addition thereto
 16 may be confined to the county jail for a period of not ex-
 17 ceeding fifteen days in any county in the state, except,
 18 however, that the maximum penalties herein set forth
 19 shall not be regarded as affecting or limiting such penal-
 20 ties as may be imposed under other sections of this article.
 21 The order of the court-martial directed to the jailer of
 22 such jail shall be sufficient authority for said jailer to
 23 receive and confine said prisoner.

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

4 **SUMMONS**

5 The State of West Virginia:

6 To....., who is hereby designated
 7 and directed to serve this summons:

8 You are commanded to summon
 9 to personally appear before the summary court for the
 10 trial of himself, which will meet pursuant to the laws of
 11 the state of West Virginia, at (address)
 12 (city), West Virginia, on the
 13 day of, 19, ato'clock M.,
 14 by virtue of Orders No..... from Head-
 15 quartersto answer delinquencies for
 16 offenses against..... (herein
 17 describe briefly the offense charged)

18 Given under my hand this the day of
 19 19.....

20 Signed

21 (Signature and rank of Presiding Officer)

22 West Virginia National Guard

23 President of the Court.

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

2 The president of a court-martial shall designate and direct
 3 a fit person or persons to summon all delinquents to ap-
 4 pear before the court. Service of the summons shall be
 5 made by the person so designated in the same manner

6 as service of process in civil cases. The person serving the
7 summons shall receive a fee of one dollar for such serv-
8 ice, together with five cents per mile in necessary travel,
9 and such fee of one dollar together with mileage, shall be
10 taxed as a part of the costs in such proceeding.

11 The summons may be directed by the president of the
12 court-martial to the sheriff, or his deputy, or any con-
13 stable, or member of the department of public safety, or
14 to any individual, in the county where such delinquent
15 resides or may be found for service; and it shall be the
16 duty of such person in whose custody the summons has
17 been placed for service forthwith to serve same, if the
18 delinquent be found, and make due return thereof, before
19 the return day of such summons, to the president of the
20 court-martial. The return of service of such summons
21 shall be in form and effect the same as is customarily
22 used by officers in making returns of civil process. Any
23 member of the department of public safety, sheriff, or
24 his deputy, constable or individual who shall refuse, fail
25 or neglect to serve such summons and make his return
26 thereon to the president of the court-martial before the

27 return day thereof, shall be deemed guilty of a misde-
28 meanor, and, on conviction thereof, shall be fined not to
29 exceed fifty dollars.

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

2 On the return day of the summons the court shall hear
3 the evidence and render judgment thereon as the case
4 may be. If, however, on the return day of the summons
5 the accused shall fail to appear, after having been duly
6 served with summons, the court shall proceed to hear the
7 evidence and try the accused in his absence and render
8 judgment thereon as the case may be and the facts war-
9 rant. If such judgment be for a fine and costs solely,
10 the court shall forthwith issue an execution in form and
11 effect as hereafter set forth, and place ^fit in the hands of
12 the sheriff ^fof the county wherein the accused may be
13 found. If, however, the judgment of the court against
14 the accused is for confinement in the county jail, the court
15 shall forthwith issue an order directed to the sheriff of the
16 county, wherein the accused may be found, directing said
17 sheriff to take into custody the body of the accused and
18 confine him in the county jail. Such order so delivered

on
CAB
2/18

19 by the court shall be coextensive with the state, and shall
 20 be sufficient evidence and authority for the jailer of such
 21 county jail to receive the body of such accused and con-
 22 fine him therein pursuant to said judgment. No pre-
 23 scribed form of order for confinement of the accused shall
 24 be required.

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

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

6 The State of West Virginia:

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

8 Whereas, pursuant to the laws of the State of West Vir-
 9 ginia, by an order duly issued by (name and rank of

10 officer ordering court)....., of the
11 West Virginia National Guard, and dated on the..... day
12 of....., 19....., a court was duly
13 appointed, for (state object of court);
14 and,

15 Whereas, the said court was duly and regularly con-
16 vened and from time to time duly adjourned; and,

17 Whereas, (name and rank of accused)
18in (organization)..... of the West

19 Virginia National Guard, was duly and regularly returned
20 to said court, as required by law, charged with (state
21 whether accused was charged with delinquencies of of-
22 fenses against the military code, without specifying char-
23 acter thereof) as appears by (either summons or charges
24 and specifications, as the case may be) to be duly filed
25 with said court, and was duly summoned and notified to
26 appear before said court; and it satisfactorily appearing
27 to the court that such was and is a

28 of the West Virginia National Guard and subject to the
29 jurisdiction of the court; and after due deliberation of the
30 evidence offered by the State and the accused, the court

31 did find and adjudge the said.....
 32 (state finding)..... and did sentence
 33 him to pay costs of dollars, and
 34 did also sentence him to pay costs of.....
 35 dollars, making a total fine of..... dollars,
 36 and,

37 Whereas, the proceedings, findings and sentences of
 38 such court were thereafter duly approved by.....
 39, the officer ordering said court.

40 These are therefore in the name of the State of West
 41 Virginia to command you to levy and collect said fines,
 42 together with your costs, according to law, of the goods
 43 and chattels of..... and in default
 44 of sufficient goods and chattels of such.....,
 45 to satisfy the same; then, within five days, to take the
 46 body of such delinquent to the common jail of.....
 47county, and deliver him to the jailer thereof;
 48 and the said jailer is hereby directed and requested to
 49 receive the body of such.....conveyed to
 50 the jail aforesaid, and to keep such.....
 51 closely confined in the manner and during the time re-

52 quired by law, and until discharged according to law, for
53 which this shall be his warrant; and of your doings by
54 virtue thereof to make return to me within forty days
55 after the execution of these presents.

56 Given under my hand at....., and
57 State of West Virginia, on the.....day of.....,
58 19.....

59 Signed.....

60 (Rank and organization of presiding officer.)

61 West Virginia National Guard

62 President of the Court.

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

Sec. 18. *Disorderly Conduct before Military Court; Pen-*
2 *alty*.—Any person other than a member of the national
3 guard who shall resort to disorderly, contemptuous or in-

4 solvent behavior in, or use any insulting or indecorous lan-
5 guage or expressions to or before, any military court, or
6 any member of either of such courts, in open court, to in-
7 terrupt the proceedings or to impair the authority of such
8 courts, shall be guilty of a misdemeanor and may be ar-
9 rested by the ordering of the president of the court, and
10 at once delivered to the civil authorities; and such person,
11 if found guilty, shall be fined not less than five nor more
12 than fifty dollars, or imprisoned in the county jail not ex-
13 ceeding thirty days, or both fined and imprisoned.

Sec. 19. *Record and Approval of Court-Martial Sen-*
2 *tence.*—The record of the proceedings and sentence of ev-
3 ery court-martial shall, without delay, be delivered to the
4 appointing authority, who shall approve or disapprove
5 thereof. A court may proceed with the execution of a sen-
6 tence pending approval by the appointing authority.

Sec. 20. *Reconvening Court-Martial.*—A court-martial
2 appointing authority is authorized to direct a court-mar-
3 tial to reconvene, and send back its proceedings for re-
4 vision, and to remit, commute, or investigate any punish-
5 ment awarded by the court.

Sec. 21. *Collection and Disposition of Fines.*—All fines
2 under the provisions of this article not collectible by the
3 court may be levied or collected by the sheriff of any
4 county of the state, and shall be transmitted to the adju-
5 tant general/ of the state, who shall deposit the same to
6 the military fund of the state. Whenever process of law
7 is necessary for collection of fines, the sheriff shall collect
8 in addition thereto his usual fee.

Sec. 22. *Execution in Aid of Collection of Fines and*
2 *Penalties.*—For the purpose of collecting any fines or pen-
3 alties imposed by any courts-martial the president of the
4 court shall issue execution, or executions, for the collec-
5 tion thereof, and deliver the same to the sheriff of any
6 county for levy on the goods and chattels of the delin-
7 quent, and, in addition/ to such fine, shall collect the neces-
8 sary costs of such proceedings, as provided in civil cases.
9 On failure, within fifteen days from the time of delivery
10 of such execution into his hands, to satisfy each execution
11 from the goods and chattels of the delinquent, the sheriff
12 shall forthwith take the body of the delinquent to the
13 county jail and therein confine him to serve the execution

14 at a space and rate of one day's confinement for each two
15 dollars of fine and the costs: *Provided, however,* That the
16 delinquent may furnish a bond with good and sufficient
17 surety to the sheriff to stay such execution and costs for a
18 period of thirty days, either before confinement or during
19 confinement; and if at the expiration of said thirty days
20 such delinquent fails to pay the execution and costs, the
21 sheriff may apprehend the delinquent and confine him in
22 the county jail, as in the original proceeding; and if the
23 accused be not found, the sureties on such bond shall be
24 liable to the state of West Virginia for the amount of said
25 execution and costs thereof.

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

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

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

Sec. 24. Actions against Members of Military Courts.—

2 No actions shall be maintained against any member of a
3 military court, or officer or agent acting under its author-
4 ity, on account of the imposition of a fine or penalty or
5 for the execution of a sentence on any person.

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

Article 1-f. Privileges and Prohibitions.

Section 1. *Leave of Absence for Public Officials and Em-*
2 *ployees.*—All officers and employees of the state, or sub-
3 divisions or municipalities thereof, who shall be members
4 of the national guard, shall be entitled to leave of absence
5 from their respective offices or employments without loss
6 of pay, status, or efficiency rating, on the days during
7 which they shall be engaged in drills, parades, or other
8 duty, during business hours ordered by proper authority,
9 or for field training or active service of the state for a
10 maximum period of thirty days in any one calendar year.
11 The term “without loss of pay” shall mean that the officer

12 or employee shall continue to receive his normal salary
13 or compensation, notwithstanding the fact that such offi-
14 cer or employee may have received other compensation
15 from federal or state sources during the same period. Ben-
16 efits of this section shall not accrue to individuals ordered
17 or called to active duty by the president.

Sec. 2. *Suits against Officers or Persons Acting under*
2 *Military Authority; Security for Costs.*—When a suit or
3 proceeding shall be commenced in any court by any per-
4 son, against any military officer of the state, for any act
5 done by such officer in his official capacity in the discharge
6 of any duty under this article, or against any person act-
7 ing under the authority or order of any such officer, or
8 by virtue of any warrant issued by him pursuant to law,
9 the court shall, upon motion of the defendant, when it
10 has been made to appear to the court by affidavit, or other-
11 wise, that the act done is such as hereinbefore set forth,
12 require the person prosecuting or instituting the suit or
13 proceeding to file security for the payment of costs that
14 may be incurred by the defendant therein. This security
15 shall be by bond payable to the state, with surety to be

16 approved by the clerk of the court, in a penalty equal to
17 six times the costs incurred and likely to be incurred by
18 the defendant, but in no case shall such bond be for a pen-
19 alty less than five hundred dollars. The court before whose
20 clerk such bond is given, may, on motion by a defendant,
21 give judgment for so much as he is entitled to by virtue
22 of such bond under the provisions of this section. If such
23 security for costs be not given within sixty days from the
24 time the same is required by the court to be given, the
25 suit or proceeding shall, by order of the court, be dis-
26 missed. In case any suit or proceeding shall be dismissed
27 for failure to give security for costs, then the defendant
28 shall recover three times the amount of the costs incurred
29 by him. In all such cases as are referred to in this section
30 the defendant may make a general denial and give the
31 special matter in evidence.

Sec. 3. *Change of Venue of Prosecutions or Suits against*
2 *Members of National Guard.*—Any civil or military officer
3 or member of the national guard, or any person lawfully
4 aiding them in the performance of any duty required un-
5 der the provisions of this article, who is indicted or sued

6 for any injury to person or property in endeavoring to
7 perform such duty, shall have the right, and it is hereby
8 made the duty of the court in which such indictment or
9 suit is pending, upon the application of any person so in-
10 dicted or sued, to remove the trial of the indictment or
11 suit to some county free from exception.

Sec. 4. *Exemption from Arrest.*—No person belonging
2 to the military forces of the state, while performing mili-
3 tary duty under proper orders, shall be arrested on civil
4 process, nor shall any person belonging to the military
5 forces of the state, while performing military duty under
6 proper orders, be arrested on criminal process, except
7 upon process from a circuit or criminal court or a judge
8 thereof in vacation.

Sec. 5. *Unlawful Conversion of Military Property.*—
2 Whoever shall secrete, sell or dispose of, or offer for sale,
3 or purchase, knowing the same to be such, retain after
4 proper demand is made, or in any manner pawn or pledge,
5 any military property, which shall have been issued under
6 the provisions of this article, shall be guilty of a misde-
7 meanor, and, in addition to the punishment, provided for

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
2 shall be unlawful for any body of men whatever, other
3 than the regularly organized national guard of the troops
4 of the United States, to associate themselves together as
5 a military company or organization in this state: *Pro-*
6 *vided*, That the governor may grant permission to public
7 or private schools of the state to organize themselves
8 into companies of cadets, and may furnish such cadets,
9 under proper restrictions, such obsolete ordnance stores
10 and equipment owned by the state as are not in use by
11 the national guard. Whosoever offends against the pro-
12 visions of this section, or belongs to or parades with any
13 such unauthorized body of men with arms, shall be pun-
14 ished with a fine of not exceeding one hundred dollars
15 or imprisoned for a term not exceeding six months.

Sec. 8. *Reemployment Rights.*—Members of the orga-
2 nized militia in the active service of the state for thirty
3 consecutive days or longer, shall be entitled to the same
4 reemployment rights granted to members of the reserve
5 components of the armed forces of the United States by
6 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

13 "State Service Ribbon" shall be made retroactively for
14 all periods of duty in the service of the state subsequent
15 to January one, one thousand nine hundred fifty-six.
16 Design of the "State Service Ribbon" and separate dis-
17 tinctive ribbon for extraordinary periods of service shall
18 be the responsibility of the military board of the state
19 of West Virginia.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Arnold Davis, Jr.
Chairman Senate Committee

Miss H. H. Withrow
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Howard Meyer
Clerk of the Senate

A. Blankenship
Clerk of the House of Delegates

Howard W. Carson
President of the Senate

Julius W. Singleton Sr.
Speaker House of Delegates

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

Mr. Barron
Governor

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

