

ed or solemnized between white persons and negroes in this state prior to the taking effect of this act and where the parties thereto have continued to live together as man and wife up to that date, such marriage shall be held valid to all intent and purposes.

§ 6. NEGRO MAN AND WHITE WOMAN OR WHITE MAN AND NEGRO WOMAN OCCUPYING SAME ROOM.] Any negro man and white woman or any white man and negro woman who are not lawfully married to each other who shall live in and occupy the same room, shall each be punished by imprisonment in the state penitentiary for a term not exceeding twelve months or by a fine not exceeding five hundred dollars or by both fine and imprisonment.

§ 7. WHITE PERSONS AND NEGROES LIVING IN ADULTERY OR FORNICATION.] If any white person and negro shall live in adultery or fornication with each other, each shall be punished by imprisonment in the state penitentiary for a term not exceeding twelve months or by a fine not exceeding five hundred dollars or by both fine and imprisonment.

Approved March 13, 1909.

MILITIA

CHAPTER 165.

[H. B. No. 351—Baker, of Stark.]

THE MILITARY CODE.

AN ACT to Provide a Military Code for the State of North Dakota.
Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. PERSONS SUBJECT TO MILITIA DUTY. EXEMPTIONS.] All able bodied male citizens and able bodied males of foreign birth who have declared their intention to become citizens, who are more than eighteen or less than forty-five years of age, and who are residents of this state, shall constitute the militia, subject to the following exemptions:

1. Persons exempted by the laws of the United States.
2. Persons exempted by the laws of this state.

§ 2. HOW MILITIA SHALL BE ENROLLED.] It shall be the duty of the assessor in each assessor's district in this state, when making the assessment, to make out a list containing the names of all persons in their respective districts liable to perform military duty, and file a copy of such lists with the county auditor when he makes his assess-

ment returns. Such list shall state the names, residence, age and occupation of the persons enrolled and their previous or existing military or naval service.

§ 3. NOTICE OF ENROLLMENT. EXEMPTION CLAIMS.] The assessor making the enrollment shall, at the time of making the same, serve a notice of such enrollment upon each person enrolled, by delivering such notice to him or leaving it with some person of suitable age and discretion, at his place of residence. All persons claiming exemption must, within fifteen days after receiving such notice, file a written statement of such exemption, verified by affidavit, in the office of the county auditor. Such auditor shall thereupon, if such person be exempted according to law, mark the word "exempt" opposite his name, and the remainder of all thus enrolled, and not thus found to be exempt, shall constitute the militia of the state, and such auditor shall transmit a certified copy of such corrected roll to the adjutant general on or before July first of each year.

§ 4. DESIGNATION AND CLASSIFICATION OF THE MILITIA.] The militia of the state shall be divided into two classes: the active and the reserve militia. The active militia shall consist of the organized and uniformed military forces of the state, which shall be known as the North Dakota national guard; the reserve militia shall consist of all those liable to service in the militia, but not serving in the national guard of the state.

§ 5. COMMANDER IN CHIEF.] The governor of the state, by virtue of his office, shall be commander in chief of the militia of the state, except of such portions as may at times be in the service of the United States. Whenever the governor is unable to perform the duties of commander in chief, the senior officer of the line of the national guard, present for duty in the state shall command the militia of the state. No armed military force from another state, territory, or district shall be permitted to enter the state for the purpose of doing military duty therein, without the permission of the governor, unless such force is part of the United States army or is acting under the authority of the United States.

§ 6. STAFF OF THE GOVERNOR.] The staff of the governor shall consist of one adjutant general, with the rank of brigadier general, who shall perform the duties of quarter-master-general and chief of ordnance; one judge advocate general, with the rank of colonel, who shall perform the duties of inspector-general; one chief of supply, with the rank of colonel, who shall perform the duties of paymaster-general and commissary general, and, when a vacancy shall occur in the office of chief of supply, by reason of the death, resignation or promotion of the present chief of supply, the title of this office shall thereafter be paymaster-general, and the said paymaster-general shall thereafter perform the duties of commissary general and chief of supply. The personal staff of the governor shall consist of nine aides-de-camp. Three of such number shall be detailed by him from the commissioned officers of the national guard

holding commissions on the active list of the grade below that of colonel, and shall have the rank of colonel, and their appointment shall operate as commission as aides-de-camp, but shall not add to the actual grade in the guard of the officers so appointed. Such aides-de-camp shall not be relieved from duty with their respective organizations when such organizations shall be performing any ordered duty. The governor is also authorized to appoint additional aides-de-camp, with the rank of lieutenant-colonel, not to exceed six in number, and without restriction as to source of selection. All of these staff officers shall be appointed by the governor, shall hold office during his pleasure, and their commissions or detail as staff officers shall expire with the term of office of the governor appointing them.

§ 7. POWER OF THE GOVERNOR IN CASE OF INVASION, ETC.] The governor shall have power, in case of insurrection, invasion, tumult, riot, or breach of the peace, or imminent danger thereof, to order into the active service of the state any part of the militia that he may deem proper. When the militia of this state or a part thereof is called forth under the constitution and laws of the United States, the governor shall order out for service the active militia or such part thereof as may be necessary, and if the number available be insufficient, he shall order out such part of the reserve militia as he may deem necessary. During the absence of organizations of the national guard in the service of the United States their state designations shall not be given to new organizations.

§ 8. METHOD OF DRAFTING RESERVES FOR SERVICE.] Whenever it shall be necessary to call out any portion of the reserve militia for active duty the governor shall direct his order to the adjutant general, who, upon receipt of same, shall forthwith cause to be drafted by lot, by mustering officers detailed for that duty from the national guard, as many of the reserve militia, or accept as many volunteers as are required by the governor, and the adjutant general shall forthwith forward to the governor a list of persons so drafted or accepted as volunteers.

§ 9. PUNISHMENT FOR FAILURE TO APPEAR.] Every member of the militia ordered out, or who volunteers, or is drafted under the provisions of this act, who does not appear at the time and place designated by his commanding officer, the adjutant general or mustering officer, within twenty-four hours of such time, or who does not produce a sworn certificate of physical disability from a physician in good standing, showing his disability to appear, shall be taken as a deserter and dealt with as prescribed in the articles of war of the United States.

§ 10. ORGANIZATION OF RESERVE MILITIA WHEN ORDERED OUT.] The portion of the reserve militia ordered out or accepted into the service, as indicated in sections eight and nine of this article, shall be immediately mustered into the service of the state for three years or such less period as the governor may direct, and shall be organ-

ized into batteries or companies, which may be arranged in battalions or regiments, or assigned to organizations of the national guard already existing. The governor is authorized to appoint the officers necessary to commence or complete any organization thus created. Such new organization shall be equipped, disciplined and governed according to this military code and the military regulations of the state.

§ 11. PROCLAMATION OF STATE OF INSURRECTION.] Whenever any portion of the militia is employed in aid of the civil authority, the governor, if in his judgment the maintenance of law and order will thereby be promoted, may by proclamation declare the county or city in which the troops are serving, or any specified portion thereof, to be in a state of insurrection.

§ 12. OCCASION WHEN THE ARTICLES OF WAR OF THE UNITED STATES ARE TO BE IN FORCE.] Whenever any portion of the militia shall be on duty under or pursuant to the orders of the governor or shall be on duty or ordered to assemble for duty in time of war, insurrection, invasion, public danger, or to aid the civil authorities on account of any breach of the peace, tumult, riot, resistance to process of this state, or imminent danger thereof, or for any other cause, the articles of war governing the army of the United States, as far as such regulations are consistent with this chapter and the regulations issued thereunder, shall be in force and regarded as a part of this chapter until said forces shall duly be relieved from such duty. As to offences committed when such articles of war are so in force, court-martial shall possess, in addition to the jurisdiction and power of sentence and punishment herein vested in them, all additional jurisdiction and power of sentence and punishment exercisable by like courts under such articles of war or the regulations or laws governing the United States army or the customs and usages thereof, but 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 by the governor of the sentence inflicting such punishment. Imprisonment other than in guardhouse shall be executed in jails or prisons designated by the governor for the purpose.

§ 13. RELIEF FROM CIVIL OR CRIMINAL LIABILITY. SECURITY FOR COSTS.] Members of the militia ordered into active service of the state by any proper authority shall not be liable, civilly or criminally, for any act or acts done by them while on duty. When a suit or proceeding shall be commenced in any court by any person against any officer of the militia, for any act done by such officer in his official capacity in the discharge of any duty under this act, or against any person acting under the authority or order of any such officer, or by virtue of any warrant issued by him pursuant to law, the defendant may require the person prosecuting or instituting the suit or proceeding to file security for the payment of the costs

that may be awarded to the defendant therein, and the defendant in all cases may make a general denial and give the special matter in evidence. In case the plaintiff shall be non-suited, or have a verdict or judgment rendered against him, the defendant shall recover treble costs. Active service under this act shall be deemed to be service in case of or to prevent insurrection, riot, or invasion, under order of the commander in chief, communicated through the proper military channels.

§ 14. THE ADJUTANT GENERAL.] The adjutant general shall be in control of the military department of the state. He will perform such duties as pertain to the adjutant general and the other chiefs of staff departments, under the regulations and customs of the United States army. He will superintend the preparation of all returns and reports required by the United States from the state and will perform all the duties prescribed for him in this military code. He shall receive the sum of nine hundred dollars per annum for the purpose of defraying his personal expenses in the discharge of the duties pertaining to his office and for other necessary expenses, to be paid quarterly without the filing of any itemized statement.

1. He shall keep a register of all the officers of the militia of the state, and keep in his office all records and papers required to be kept and filed therein, and make a report on or before the thirty-first day of December in each year to the governor, including a detailed statement of all the expenditures for military purposes during that year.

2. He shall, at the expense of the state, when necessary, cause the military law, the general regulations of the state, and articles of war of the United States, to be printed, indexed and bound in proper and compact form and distributed to the commissioned officers of this state at the rate of one copy to each; and to each commissioned officer and headquarters he shall issue one copy of the necessary text books and of such annual reports concerning the militia as the governor may direct.

3. He shall cause to be prepared and issued all necessary blank books, blanks, forms and notices required to carry into full effect the provisions of this chapter. All such books and blanks shall be and remain the property of the state.

4. The seal now used in the office of the adjutant general shall be the seal of his office, and shall be delivered by him to his successor.

5. The adjutant general may have the necessary clerks and employes and as many laborers as may be required from time to time.

6. In order that the national guard of the state may receive the benefit of the funds provided by congress, it shall be the duty of the adjutant general of the state to submit a plan of proposed field or camp service of instruction prepared by the commanding officer of the national guard for the ensuing year, with an estimate of

funds required for payment, subsistence and transportation of the portion of the national guard participating therein, said estimate to furnish the details and to be made out in the form required by instructions from the secretary of war.

7. He shall make such regulations relating to the preparation of reports and returns and to the care and preservation of property for military purposes, whether belonging to the state or to the United States, as in his opinion the conditions demand; such regulations to be operative and in force when promulgated in the form of general orders, circulars or letters of instructions.

8. The adjutant general shall, in addition to other duties, organize and conduct a bureau of pensions, for the purpose of assisting ex-soldiers or sailors, residents of the state, who may apply for pensions on account of wounds or disability incurred in the service of the United States, in establishing their claims, without fee or commissions.

9. All military property of the state which, after a proper inspection shall be found unsuitable for the use of the state, shall, under the direction of the governor, be disposed of by the adjutant general at public auction after suitable advertisement of the sale, daily for ten days, in at least one newspaper published in the English language in the city or county where the sale is to take place; or the same may be sold at private sale when so ordered by the governor. He shall bid in the property or suspend the sale whenever, in his opinion, better prices may or should be obtained. He shall, from time to time, render to the governor a just and true account of the sales made by him, and shall expend the proceeds of the same in the purchase of other military property, as the governor may direct. He shall be responsible for all the arms, ordnance, accoutrements, equipments, and other military property which may be issued to the state by the secretary of war in compliance with law; and it shall thereafter be his duty to prepare returns of said arms and other property of the United States at the times and in the manner requested by the secretary of war. He shall, upon the order of the governor, turn into the ordnance department of the United States army the rifles, carbines, bayonets, bayonet scabbards, gun slings, belts and such other necessary accoutrements and equipments, the property of the United States and now in possession of the state, which may be replaced from time to time, by new arms, equipments, etc., sent by the United States in substitution therefor, and cause the same to be shipped, under instructions from the secretary of war, to the designated arsenal or depot at the expense of the United States, and when the national guard of the state shall be fully armed and equipped with standard service magazine arms, and the standard equipment and accoutrement of the United States army, he shall cause all the remaining arms, equipments, etc., the property of the United States and in possession of the state, to be transferred and shipped as above directed.

10. He shall issue and cause to be issued all military property and make purchases for that purpose. No military property shall be issued to persons or organizations other than those belonging to the active militia, except to such portions of the reserve militia as may be called out by the governor. Purchases of property not exceeding one hundred dollars in value shall be made in such manner as the adjutant general shall direct. If such purchase requires an expenditure exceeding one hundred dollars and not exceeding five hundred dollars; he shall procure written proposals to furnish such property from at least two parties, and shall purchase such property from the lowest responsible bidder. If such purchase shall require the expenditure of a sum exceeding five hundred dollars, he shall publicly advertise, for not less than ten days, for sealed proposals for the furnishing of such property. Such proposals shall be publicly opened by the adjutant general at the place, day and hour designated in such advertisement. The adjutant general shall, if the governor approve, make contract with the lowest responsible bidder to furnish such property. All proposals and contracts made under the authority hereby conferred shall be filed in the office of the adjutant general. The adjutant general is authorized and directed whenever, in his opinion, it shall be to the interest of the state, to require a party who shall agree or contract to furnish such property, to give bond to the people of this state, in such sum and with such surety as he shall direct, conditioned for the faithful performance of such agreement or contract. In case default is made, such bond shall be prosecuted by the attorney general and all moneys recovered shall be applied by the adjutant general to the benefit of the national guard. All property purchased under the authority hereby granted shall be inspected by an inspector or an officer detailed for that purpose by the commanding officer of the national guard, and no payment shall be made therefor until it shall appear by the certificate of such officer that such property is of the kind and quality specified in such agreement or contract. In case of insurrection, invasion, tumult, riot, breaches of the peace, or imminent danger, or other exigency, the governor may, upon the certificate of the commanding officer of the national guard, temporarily suspend the operation of this paragraph and direct the adjutant general to purchase such military property as may be required in open market. He shall report such action, with the reason therefor, and a statement of the property purchased and the prices paid therefor, to the legislature at its next session.

11. He shall render annually to the governor a statement in detail showing the acquisition and disposition of all clothing, ordnance, arms, ammunition and other military property on hand or issued.

12. He shall keep in his office a list of the retired officers of the organized militia, showing their age, military experience and training. He shall annually request the commandant of cadets of the agricultural college and state university to furnish him with the

names of two graduates qualified to act as officers, and shall request from any other state educational institution that maintains an efficient military department, the name of one graduate similarly qualified. The names of the persons so reported to him, together with any others designated by the war department of the United States, shall be added to the list of persons eligible for appointment as officers. In case of a call upon the governor of North Dakota by the president of the United States for volunteers, all regiments organized, in addition to the then organized militia of North Dakota, shall be officered above the rank of second lieutenant by officers selected and commissioned by the governor by and with the advice of the adjutant general, from the persons whose names are listed in the adjutant general's office under this section, or from the officers and non-commissioned officers of the organized militia; provided, that no person shall be commissioned colonel of a volunteer regiment who has not served at least two years as a field officer in either the organized militia or volunteers or as a captain or field officer in the regular army of the United States, and that no person shall be commissioned major in a volunteer regiment who has not served at least two years as either captain or first lieutenant in either the organized militia, volunteers or regular army of the United States.

§ 15. PAYMASTER GENERAL.] The paymaster general shall, before entering upon the discharge of his duties, file in the office of the adjutant general a good and sufficient bond payable to the state of North Dakota in a penal sum of not less than ten thousand dollars, approved by the governor, conditioned for the faithful discharge of his duties.

1. He shall file at least quarterly with the state auditor receipts for all state funds paid out by him signed by the parties to whom payment was made.

2. His books and vouchers shall be at all proper times subject to inspection by the adjutant general, or any representatives of the commander in chief.

3. The paymaster general shall from time to time file with the state auditor a written requisition, approved by the adjutant general, for such amount of money standing to the credit of the national guard on the books of the state auditor or state treasurer as he may deem necessary to draw to pay indebtedness incurred or about to be incurred.

4. Immediately upon the filing in his office of said requisition, the state auditor shall draw a warrant on the state treasurer for the amount named in said requisition and forward same to the paymaster general.

5. It is hereby made the duty of the public examiner to examine said books and accounts at least once each year, and upon said examination to deliver to the paymaster general a certificate as to the correctness of the same.

6. The paymaster general shall make all purchases of commissary stores and supplies as may be necessary, under such rules and regulations as may be prescribed by the commander in chief.

7. No funds appropriated by the legislature for the maintenance of the militia shall be drawn except upon the requisition of the paymaster general. He shall file with the adjutant general an annual financial report showing all receipts and disbursements.

§ 16. ARMORY COMMISSION.] Whenever any arsenal, armory or other quarters of the militia, camp ground or rifle range is owned or leased by the state, the same shall be under the charge of the armory commission, which shall consist of the governor, the adjutant general and the commanding officer of the regiment. From the time this act takes effect a commission so constituted shall take charge of the erection and completion of all such property, as may hereafter be authorized to be erected and of all such property, the erection or completion of which is in progress at the time this act takes effect under any general or special law, and as to such work as is in progress, such commission is hereby invested with all the powers conferred by law on any officers, boards or commissions heretofore charged with such work or any part thereof. It shall keep in good repair the arsenals, armories, quarters, camp grounds and rifle ranges in its charge, and all moneys appropriated heretofore or which may be appropriated hereafter for the erection or repair of such buildings, grounds or ranges shall be expended by said commission in the same manner as other moneys appropriated for military purposes are authorized to be expended, except as herein otherwise provided. Every such commission is hereby authorized to appoint, and at its pleasure discharge, its own architects and inspectors. When ordinary repairs not exceeding one hundred dollars in cost are necessary, the officer in charge of the building or grounds shall report to the adjutant general what is required to be done, submitting estimates from at least two responsible parties, and the adjutant general may authorize the officer to cause the repairs to be made, designating the party who shall do the work. When repairs, the cost of which will amount to over one hundred dollars, but not more than five hundred dollars, are required, a full statement of the necessity thereof must be made by the officer in charge to the adjutant general, who shall cause estimates of the cost thereof to be prepared by two or more parties, and then cause the work to be done under a contract entered into by him for that purpose. When repairs are to be made, the expenditures for which will exceed the sum of five hundred dollars, the commission shall advertise for proposals, bids shall be received, and contracts regularly entered into. During and upon completion of the work, the expenditure for which will exceed five hundred dollars, it shall be inspected from time to time by an inspector selected by the commission, and payment shall not be made until it appears by the certificate of such inspector that such work has been properly performed and according to the con-

tract. Payment for repairs, the expenditure for which does not exceed five hundred dollars, shall only be made upon a like certificate of the officer in charge of the building or grounds where the same were made. All bills for work done on any of the arsenals, armories, quarters, camp grounds or rifle ranges of the state exceeding one hundred dollars, must be verified by a certificate setting forth that the work has been properly performed, and that the amount charged is reasonable and just. Copies of all contracts and agreements made for the repair or alteration of arsenals, armories, quarters, camp grounds or rifle ranges of the state shall be immediately filed in the office of the adjutant general. Whenever any real property is taken for the purpose of erecting a state armory thereon, the building on such property, or the old materials in the same, may be sold at public or private sale, for the best price that can be obtained, and if the property is taken by the state, the net sum realized therefrom shall be paid into the state treasury, and if taken by a county, to the county treasurer of such county, or it may be used for the improvement of the property taken by the authorities authorized to erect such armory. When real property shall be required for the purpose of a state camping ground, or for rifle practice, or other military purposes in connection with any state arsenal or armory, which is deemed necessary by the armory commission, and such armory commission is unable to agree with the owners for the purchase thereof, title thereto shall be acquired by the attorney general in the name of the people of the state by condemnation, on the written application of the armory commission. The cost of all real property so taken and damages and expenses incurred by and awarded in any proceedings for the condemnation of any such property, shall be paid by the state. The words "armory commission" when used in this chapter shall be construed to refer to the commission provided for by this section.

§ 17. LEGAL ADVISER OF THE COMMANDER IN CHIEF, ETC.] The attorney general of the state shall be the legal adviser of the governor, of the adjutant general and of the armory commission.

§ 18. AUDIT AND PAYMENT OF ACCOUNTS.] No officer of the militia shall incur any expense whatsoever to be paid by the state, except such as are authorized in this chapter, without first obtaining the authority of the governor. In extreme emergencies, however, the commanding officer of any organization or detachment of the active militia may make purchases of such necessities as are absolutely required for the immediate use and care of his command. A report of such action, containing a statement of the articles purchased and the price thereof, must be made forthwith through the channel to the adjutant general. The commander in chief of the state shall be the auditor of all accounts for property purchased by the adjutant general, and the copies of the orders or contracts under which such purchases are made shall be filed in the office of the paymaster general. All other military accounts payable by the state

shall be audited by the adjutant general. Military accounts thus audited shall be paid by the paymaster general of the state from the proper appropriation made by the legislature, upon the warrant of the auditor.

§ 19. THE NATIONAL GUARD, HOW COMPOSED.] The national guard of the state shall consist of one brigadier general, an adjutant general's department, a judge advocate general's department, a pay department, a corps of engineers, a hospital corps, the commissioned officers heretofore or hereafter retired or rendered supernumerary, the organization now forming the national guard at this date, and such others as may be organized hereafter and such persons as are enlisted and commissioned therein. The governor shall have power to alter, divide, annex, consolidate, disband or reorganize any organization or corps and create new organizations or corps when required by the provisions of this chapter, and he shall have power to change the organization of any organization or corps so as to conform to any organization, system of drill or instruction now or hereafter adopted by the army of the United States, or prescribed by the laws of the United States, for the government of the militia, and for that purpose the number of officers and non-commissioned officers of any grade in any organization or corps may be increased to the extent made necessary by the new positions thus created. The governor shall have power to fix, from time to time, and to alter the maximum number of enlisted men which shall form part of any organization, irrespective of but not exceeding the maximum prescribed therefor in this chapter. The governor shall have power, in case of war, insurrection, invasion, or imminent danger thereof, to increase the maximum now established by law, and to organize the same, with the proper officers, as the exigencies of the service may require.

§ 20. ORGANIZATION.] The military units of the national guard shall be composed and organized as follows:

Infantry—The minimum strength of a company shall be as follows:

- One captain,
- One first lieutenant,
- One second lieutenant,
- One first sergeant,
- One Q. M. sergeant,
- Four sergeants,
- Six corporals,
- Two cooks,
- Two musicians,
- Forty-two privates.

Total enlisted (minimum), fifty-eight.

The minimum strength of a battalion shall be as follows:

- One major,
- One adjutant (first lieutenant).

One Q. M. and commissary (second lieutenant).
 One sergeant major,
 Four companies.

The minimum strength of a regiment shall be as follows:

One colonel,
 One lieutenant colonel,
 One adjutant (captain),
 One quartermaster (captain),
 One commissary (captain),
 One assistant inspector of small arms practice (captain),
 One chaplain (captain),
 One regimental surgeon (major),
 Two assistant surgeons (captains),
 One sergeant major,
 One Q. M. sergeant,
 One commissary sergeant,
 Two color sergeants.

Band, twenty-eight enlisted—

One chief musician,
 One principal musician,
 One drum major,
 Four sergeants,
 Eight corporals,
 One cook,
 Twelve privates,
 Three battalions.

Total enlisted (minimum), seven hundred thirty-two.

§ 21. FIELD ARTILLERY.] The minimum strength of a battery shall be as follows:

One captain,
 Two first lieutenants,
 Two second lieutenants,
 One first sergeant,
 One Q. M. sergeant,
 One stable sergeant,
 Six sergeants,
 Twelve corporals,
 Three cooks,
 One chief mechanic,
 Four mechanics,
 Two musicians,
 One hundred and two privates.

Total enlisted men (minimum), one hundred thirty-three.

§ 22. HOSPITAL CORPS.] The hospital corps shall consist of sergeants of the first class, sergeants, corporals, privates of the first class and privates, in such number that there shall be enlisted not to exceed one sergeant of the first class, four sergeants, five corporals, twenty privates of the first class, and privates for each regi-

ment of infantry; and for each separate battalion not to exceed one sergeant of the first class, two sergeants and six privates, first class, and privates; for each separate battery of field artillery, one corporal and two privates, first class, and privates.

§ 23. COMMISSIONS.] All officers shall be commissioned by the governor, but no one shall be commissioned unless the conditions set forth in the next two sections have been complied with, and no one shall be recognized as an officer unless he shall have been duly commissioned and shall have taken the oath of office. The acceptance of a commission in the militia of this state shall be deemed a resignation by the person accepting the same of all other commissions held by him in such militia. Nothing herein shall apply to or affect the acceptance and holding of brevet commissions or appointments as aides-de-camp to the governor.

§ 24. ELIGIBILITY REQUIRED TO RECEIVE A COMMISSION.] Commissioned officers must be citizens of the United States and of the age of twenty-one years and upwards. No person who has been expelled or dishonorably discharged from any military organization of the state shall be commissioned unless he has re-enlisted and subsequently served as provided in this chapter. No person shall be commissioned unless he shall possess the additional requirements herein prescribed for the particular office to which he is to be commissioned. A brigadier general at the time of his appointment must be an officer in active service in the national guard of this state of the grade of field officer, and for five successive years immediately preceding his appointment he must have been in active service in said national guard as a commissioned officer. A colonel of a regiment, at the time of his appointment, must either be an officer in active service in the national guard of this state, and for three successive years immediately preceding his appointment must have been in active service in said national guard as a commissioned officer, or, if not in active service at the time of his appointment, must have had prior service of at least six years in the national guard of this state, or in the army of the United States, or in both combined, as a commissioned officer. A lieutenant colonel and major of the line, at the time of his appointment, must either be an officer in active service, and for two successive years immediately preceding his appointment must have been in active service in the national guard of this state, as a commissioned officer, or, if not in active service at the time of appointment, must have had prior service of at least six years in the national guard of this state, or in the army of the United States, or in both combined, as a commissioned officer. Staff officers or officers below the rank of brigadier general, except medical officers and chaplains, must have served one year immediately preceding their appointments in the national guard of this state. Staff officers of the brigadier general, except judge advocates, surgeons and engineers, must be selected from the commissioned officers in active service in the national guard of this state, who, for

one year immediately preceding their appointments, have been in active service in such national guard as commanding officers. A judge advocate must be a counsellor at law of the supreme court of this state of at least ten years' standing if of the grade of lieutenant colonel; of at least five years' standing if of the grade of major. Surgeons and assistant surgeons must be graduates of an incorporated school of medicine, and of at least fifteen years' practice if of the grade of colonel; of at least ten years' practice if of the grade of lieutenant colonel; of at least five years' practice if of the grade of major; of at least three years' practice if of the grade of captain; and of at least two years' practice if of the grade of first lieutenant. An engineer officer of the national guard must have been educated as a military or civil engineer. A signal officer must have a knowledge of signaling, telegraphy, topography and map making. A chaplain must be a regularly ordained minister of some religious denomination.

§ 25. EXAMINATION.] Before receiving a commission consequent upon an original appointment or election, or before being commissioned to a higher grade as a result of promotion, every officer above the rank of first lieutenant must have passed a satisfactory examination before a board as to his knowledge of military affairs, and general knowledge and physical and other fitness for the service, and any one failing to pass such examination shall not be eligible for an office in the militia of the state, or for promotion for the period of one year from the date of such failure. Judge advocates and medical officers shall be examined as to their general and professional knowledge and fitness for the service only. The following are exempt from examination: General officers, chaplains and those enlisted men who may be commissioned by brevet, and upon the completion of twenty-five years of good and faithful service as hereinafter provided. First and second lieutenants shall be examined by the judge advocate general.

§ 26. EXAMINING BOARD.] Boards of examination under the preceding section shall be appointed by the governor or caused by him to be appointed for the national guard by the commanding officer. Such boards shall consist of not less than four officers, one of whom shall be a medical officer, who shall take part only in the physical examination of the officer, and such board shall have the same power to take evidence and administer oaths 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.

§ 27. ELECTED OFFICERS.] The adjutant general shall have personal charge of his office at the state capitol, and shall be appointed by the commander in chief from the commissioned officers of the national guard of this state, and such adjutant general shall have been a commissioned officer of the field or line in active service in the guard of this state for a period of at least three years imme-

diately preceding his appointment, and such appointee shall be the officer highest in rank who will accept such appointment, and the judge advocate and paymaster general shall be appointed from the commissioned officers of the national guard of this state, each of whom shall have been a commissioned officer in the national guard of this state for a period of at least three years immediately preceding such appointment; provided, that on the expiration of the term of office of the adjutant general he shall not be eligible for reappointment, but shall be placed on the retired list. Colonels and majors of battalions shall be appointed according to seniority, and captains and lieutenants of batteries or companies shall be elected by members of these organizations who shall have performed during the period of not more than twelve months immediately preceding the election (if such organization has been in existence for such period), at least sixty per cent of the duty required of them; provided, that if an organization shall not have been in the service for a period of twelve months immediately preceding the date of election, then those voting shall be required to have performed sixty per cent of duty for the time organized.

§ 28. APPOINTED OFFICERS.] The brigadier general shall be appointed by the governor according to seniority. The officers on the staff of the brigadier general, the field officers of the line, officers of the signal corps, the extra officers allowed to regiments and battalions for staff duty, surgeons and assistant surgeons of regiments, assistant surgeons of separate batteries or companies and chaplains shall be appointed by the governor upon the recommendation of their immediate commanding officers. In case of original appointments from civil life the selection shall be made by the governor upon the recommendation of their immediate commanding officers.

§ 29. ELECTIONS.] The adjutant general shall issue orders for the election of all elective officers and shall detail an officer to preside thereat who shall give or cause to be given at least five days' notice to all the qualified voters when and where and for what office the election is to take place. Such notice shall be served on the persons entitled to vote at such election in the same manner as warnings for duty are given. The person or persons serving such notice shall make returns of the persons notified and of the manner of service. The return, if made by a commissioned officer, shall be authenticated by his certificate on honor; if by a non-commissioned officer, by the oath of the person making such service. The oath may be administered by any person authorized to take the acknowledgment of deeds or by any commissioned officer, and such return shall be presented to the officer directed to preside at such election before the polls for such election shall be opened. The commanding officer of the organization in which such election is held shall, before the polls are opened, present to the officer directed to preside, a list of the persons qualified to vote thereat and a list of persons disqualified, with a statement of the facts constituting such disqualification.

At the time fixed for the election, the officer ordered to preside thereat, or, in his absence, an officer authorized by him to act for him, or in the absence of such an officer, the commissioned officer highest in rank of those present, shall announce the purpose in hand and open the polls. If it shall happen at any election that legal notice has not been given to all the persons entitled to vote thereat, the presiding officer shall adjourn the meeting and cause such notice to be given; but the presence of a person entitled to vote at any election shall be deemed a waiver of his right to take exception to the want of legal notice to him. If any person offering to vote at any election shall be challenged as unqualified by any person entitled to vote thereat, the presiding officer shall declare to the person so challenged the qualifications of an elector, and if he shall state himself duly qualified, and the challenge shall not be withdrawn, the presiding officer shall examine him under oath and determine as to his qualifications as such elector. As soon as all the electors have cast their votes, or at the expiration of one hour from the opening of the polls, the presiding officer shall declare the polls closed, and at once publicly canvass the votes and declare the result of the election. A majority of the votes of all persons present voting at an election shall be necessary to a choice. The presiding officer shall forthwith make return thereof to the adjutant general. If a person elected at any such election shall not, within ten days after being notified of his election, signify his acceptance to the adjutant general, he shall be considered as declining the office to which he has been chosen, and a new election be held; provided, that in the event of an election, on the first ballot, failing to secure a majority of those present and entitled to vote, in favor of any one candidate, then the presiding officer is empowered to proceed with the taking of further ballots whenever in the judgment of said officer there is a reasonable expectation of a majority being obtained. Should there be no choice, the presiding officer shall adjourn the meeting to a reasonable date, and at that meeting open the polls for another election, and if such second meeting shall result in no choice, the governor shall be notified and may then fill the vacancy by appointment. The presiding officer shall forward the proceedings of an election in such manner as is provided in the regulations issued under this chapter.

§ 30. APPEAL FROM ELECTION.] Every person thinking himself aggrieved by the proceedings at an election may appeal to the governor, by filing at the time of an election with the presiding officer thereat notice of such intended appeal and forwarding a full statement of the grounds of such appeal within ten days from the date on which the election took place. The governor may direct upon such appeal, an officer to take testimony in the case and to report his findings, and such officer 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.

§ 31. OATH OF OFFICE.] Every officer duly commissioned shall within ten days after his commission is tendered to him, or within ten days after he shall have been notified personally or by mail that the same is held in readiness for him by a superior officer, take and subscribe the constitutional oath of office. Such oath shall be taken and subscribed before an officer authorized by law to administer an oath, or some general or field officer, or an officer who shall hold the assimilated grade of a field officer, who has taken the oath himself and who is hereby authorized to administer the same. In case of neglect or refusal to take and subscribe such oath within the time mentioned, such commission shall be cancelled by the governor, and a new appointment shall be made or a new election shall be ordered to fill the vacancy.

§ 32. SUPERNUMERARY OFFICERS.] Commissioned officers who shall be rendered surplus by reduction or disbandment of organization or in any manner provided by this chapter now or hereafter, shall be withdrawn from active service and placed upon the supernumerary list. The governor may, upon the recommendation of the commanding officer of the national guard, detail supernumerary officers for active duty, in which case they shall rank in their grade from the date of such detail, and he may relieve them from such duty and return them to the supernumerary list at his discretion.

§ 33. RESIGNATIONS.] A commissioned officer tendering his resignation, if the governor accept it, shall receive an honorable discharge; provided, he shall not be under arrest or returned to a military court for any deficiency or delinquency; and provided, further, that he be not indebted to the state in any manner, and that all his accounts for money or for public property be correct. In computing the time served, service as an enlisted man shall be allowed, and the service is not required to be continuous. If the governor accept the resignation of an officer who at the time shall be under arrest, under charges or returned to a military court for any offense, delinquency or deficiency, such officer shall then cease to be an officer of the militia, and shall receive a discharge in such form as the governor shall direct, nor shall he be again eligible to receive a commission, unless he first re-enlist, as provided in this chapter in the case of enlisted men dishonorably discharged, and until he shall have performed at least sixty per cent of duty in each year under such enlistment for two successive years.

§ 34. RETIREMENT AND DISCHARGE.] Any officer of the active militia who has reached the age of sixty-four years shall be placed upon the retired list by the governor. Any commissioned officer who shall have served for the continuous period of eight years in the military service of the state as a commissioned officer, may, at his own request, be placed upon the retired list with an advance in grade, and withdrawn from active service and command by the governor. Any commissioned officer who has become or shall hereafter become disabled, and incapable of performing the duties of

his office, shall be withdrawn from active service and command and placed upon the retired list. Any commissioned officer who has become or who shall hereafter become unfit or incompetent, and thereby incapable of performing the duties of his office, shall be placed upon the retired list upon the recommendation of his commanding officer or the recommendation of an inspecting officer. Such retirement shall be by the order of the governor, and shall be subject to the provisions of this chapter. Before making such order, a board of not less than five commissioned officers, one of whom shall be a surgeon, shall be appointed, whose duty it shall be to determine the facts as to the nature and cause of the incapacity of such officer as appears disabled, or unfit, or incompetent from any cause to perform military service, and whose case shall be referred to it. No officer whose grade or promotion would be affected by the decision of such board, in any case that may come before it, shall participate in the examination or decision of the board in such case. Such board is hereby invested with the powers of courts of inquiry and courts-martials, and whenever it finds an officer incapacitated for actual service shall report such fact to the governor, stating cause of incapacity, whether from disability, unfitness or incompetency, and if he approves such finding, such officer shall be placed upon the retired list as provided in this article. The members of the board shall, before entering upon the discharge of their duties, be sworn to an honest and impartial performance of their duties as members of such board. No officer shall be placed upon the retired list by the action of such board without having had a full and fair hearing before the board, if upon due notice he shall demand it. It shall not be necessary to refer any case for the action of the board arising under this section unless the officer designated to be placed upon the retired list shall, within twenty days after being notified that he will be so retired, serve on the adjutant general a notice in writing that he demands a hearing and examination before such board. Boards for the national guard shall be appointed by the governor. Vacancies created by the operation of this section shall be filled in the same manner as other vacancies.

§ 35. EXAMINATION AND DISCHARGE OF OFFICER.] The governor may, whenever he may deem that the good of the service requires it, order any commissioned officer before a board of examination, to consist of not more than five nor less than three general or field officers, which is hereby invested with the powers of courts of inquiry and courts-martial, and such boards shall examine into the moral character, capacity and general fitness for the service of such commissioned officer, and record and return the testimony taken and a record of its proceedings. If the findings of such board be unfavorable to such officer and be approved by the governor, he shall be placed on the retired list. No officer whose grade or promotion would in any way be affected by the decision of the board, in any case that may come before it, shall participate in the exam-

ination or decision of the board in such case. Failure to appear when ordered before a board constituted under this section shall be sufficient ground for a finding by such board that the officer ordered to appear be retired.

§ 36. COMMISSIONED OFFICER, HOW REMOVED.] A commissioned officer cannot be removed from office without his consent, except by the sentence of a general court martial, or as provided in this chapter.

§ 37. ENLISTMENTS.] Any man who is a citizen of the United States or has declared his intention to become a citizen, if more than eighteen and less than forty-five years of age, able-bodied, free from disease, of good character and temperate habits, may be originally enlisted in the national guard of this state, under the restrictions of this article, for a term of not less than three years; except that men may be enlisted as musicians if more than sixteen years of age. No minor shall be enlisted without the written consent of the parent or guardian. A man who has been expelled or dishonorably discharged from any military organization of the state or United States shall not be eligible for enlistment or re-enlistment unless he produces the written consent to such enlistment of the commanding officer of the organization from which he was expelled or dishonorably discharged and of the commanding officer who approved such expulsion or issued such dishonorable discharge. Men who have been discharged by reason of disbandment may be enlisted and shall then receive credit for the period served at the time of such disbandment. A man discharged for physical disability shall, if such disability cease, and he again enlists, or a man discharged upon his own request shall, if he again enlists, receive credit for the period served prior to such discharge. Bandmasters, drum majors, chief trumpeters, member of the hospital corps and musicians may be enlisted as such.

§ 38. RE-ENLISTMENTS.] Any man who has served the period of his original enlistment may be re-enlisted for a term of one year or more.

§ 39. ENLISTMENT PAPERS.] Every person who enlists or re-enlists shall sign and make oath to an enlistment paper which shall contain an oath of allegiance to the state and the United States and be in such form as may be prescribed in the regulations issued under this chapter. Such oath shall be taken and subscribed before a field officer, or the commanding officer of a signal corps, battery or company, who are hereby authorized to administer such oath; but no enlistment shall be valid until it be approved by the commanding officer of the organization to which the signal corps, battery or company is attached or of which it forms a part. A person making a false oath as to any statement contained in such enlistment paper shall, upon conviction, be deemed guilty of perjury.

§ 40. TRANSFERS.] Enlisted men may be transferred upon their own application in the same regiment or battalion not part

of a regiment, from one company to another, by the commanding officer of such regiment or battalion; from one regiment or battalion not part of a regiment, signal corps, battery or separate company, to another in the same brigade, by the commanding officer of the brigade. Non-commissioned officers must be returned to the ranks before they can be transferred.

§ 41. NON-COMMISSIONED OFFICERS.] Commanding officers of regiments and of battalions not part of regiments shall appoint and warrant the non-commissioned staff officers of their respective regiments or battalions, and they shall in their discretion, warrant the non-commissioned officers of the batteries and companies of their respective regiments and battalions from the members thereof, upon the written nomination of the commanding officers of the batteries and companies, respectively. In batteries and companies not part of a regiment or battalion and in signal corps, the non-commissioned officers shall be warranted by the commanding officer of the brigade, in his discretion, from the members thereof, upon the written nomination of the commanding officer of the battery, company, or signal corps. To be eligible for appointment as sergeant, first class, of the hospital corps, a candidate must be a registered pharmacist. A sergeant of the hospital corps must be appointed from the hospital corps. The officer warranting a non-commissioned officer shall have power to reduce to the ranks, for good and sufficient reasons, the non-commissioned officers named in this section, but such as were enlisted as non-commissioned officers shall be discharged. Non-commissioned officers who shall be dropped vacate their positions.

§ 42. DROPPING FROM THE ROLLS.] An enlisted man who shall remove his residence to such distance from the armory of his organization as to render it impracticable for him to perform his duties properly, or who, after due diligence, cannot be found, or who shall be expelled from his organization in accordance with by-laws lawfully adopted, may be dropped from the rolls of his company, battery or signal corps by order of the commanding officer of the brigade, regiment or battalion not part of a regiment.

§ 43. TAKING UP FROM DROPPED.] An enlisted man dropped by reason of removal may be taken up at any time within three years after such removal, in his former or any other organization, obtaining in the latter case first the written permission of his former commanding officer approved by the officer upon whose order he was dropped. An enlisted man dropped for removal may be taken up at any time after three years after such removal, upon his own application, approved by the officer upon whose order he was dropped, or his successor, after passing a physical examination. The taking up shall be done under the orders of any officer who is authorized to order the dropping of men, and men thus taken up shall receive credit for the time served before having been dropped.

§ 44. RETIREMENT.] The governor may appoint enlisted men and commission them, without examination, second lieutenants by brevet, upon the recommendation of their respective commanding officers, and place them upon the retired list at the same time, provided they have well and faithfully served the state in the national guard for a period of twenty-five years.

§ 45. DISCHARGES.] An enlisted man who has not returned all the public property for which he is responsible shall, under no circumstances, receive a full and honorable discharge. A discharge, or an honorable discharge, at the discretion of the officer discharging him, shall be granted to the following: A non-commissioned staff officer or a non-commissioned officer, who, had he not been enlisted as such, would be reduced to the ranks; an enlisted man at his own request, provided he assign sufficient and valid reason for such request; an enlisted man who by reason of disability is no longer able to perform his military duties properly; an enlisted man who by the reduction of his regiment or battalion has become surplus, or whose signal corps, battery or company shall be disbanded, provided he is not entitled at the time to a full and honorable discharge; an enlisted man who has served the time for which he enlisted or re-enlisted and is not entitled to a full and honorable discharge. A full and honorable discharge shall be granted to the following: An enlisted man who shall have performed in each year at least sixty per cent of the duty his signal corps, battery company, company or battalion not part of a regiment, or regiment has been required by law and orders to perform during the term of his enlistment or re-enlistment, or during his total service in case the same has been extended beyond the term for which he enlisted. An enlisted man who fails to perform sixty per cent of duty during any year of his service may continue in service at the option of his commanding officer and make up such deficiency. An enlisted man who continues in service after the expiration of his term of enlistment or re-enlistment shall, in case he desires a discharge, give fifteen days' notice of application therefor to the officer authorized to grant the same, and such officer may, in his discretion, grant such discharge forthwith or hold the same until the expiration of said fifteen days. An enlisted man shall be held for service until his discharge is granted and issued. Dishonorable discharges shall be given to the following: An enlisted man whose immediate commander applies to have him discharged for the good of the service, after giving him ten days' notice of such application and an opportunity to be heard in defense of his conduct. The discharges mentioned above shall be granted to the commanding officer of the regiment or battalion not part of a regiment in case of signal corps, separate batteries and separate companies, by the commanding officer of the brigade to which they are attached. Enlisted men may be dishonorably discharged pursuant to the sentence of a general court martial.

§ 46. WAR SERVICE.] For all purposes under this act, officers and enlisted men of the active militia who entered the United States

service in the Spanish-American war, or other war, shall, on re-entering the active militia, be entitled to credit for time served in the forces of the United States in that war, as if this service had been rendered in the active militia.

§ 47. RESPONSIBILITY FOR EFFICIENCY.] The officer commanding the national guard may cause those under his command to perform any military duty and shall be responsible to the governor for the general efficiency of the national guard and for the drill, instruction, small arms and artillery practice, movements, operations and care of the troops. Commanding officers of organizations shall be responsible to their immediate commanders for the equipment, drill, instruction, movements, and efficiency of their respective commands. All commissioned officers and enlisted men shall be responsible to their immediate commanding officers for prompt and unhesitating obedience, proper drill and the preservation and proper use of the property of the state or organization in their possession.

§ 48. DRILLS AND PARADES.] Officers and enlisted men of each battery and company shall assemble for and undergo drill and instruction at company, battalion, or regimental armories, or battery armories or rendezvous, or for target practice not less than twenty-four times during each calendar year preceding the annual allotment of funds under section 1661, revised statutes of the United States, as amended. During the same period there shall be at least one inspection of each battery and company by an officer of the national guard, or by an officer of the regular army of the United States, at such time as the governor may direct. In addition to such drill and parades, the commanding officer of any organization may require the officers and enlisted men of his command to meet for parade, drill or instruction at such times and places as he may appoint.

§ 49. PRACTICE MARCHES REQUIRED.] Each battery or company not especially excused by the governor will be required to participate for at least five consecutive days annually in practice marches or camps of instruction, under such regulations as the governor may prescribe, and under such instructors as he may appoint.

§ 50. SMALL ARMS PRACTICE.] To encourage marksmanship, the adjutant general is authorized to offer annually a state decoration to those who shall excel in small arms practice; a brigade prize, not exceeding one hundred dollars in value for competition among the organizations of a brigade, armed with rifle or carbine; a state prize and three prizes of the value of one hundred dollars, seventy-five dollars and fifty dollars respectively, to be awarded to the three companies having the highest general figure of merit. The adjutant general may also in his discretion, provide suitable decorations and prizes for proficiency in practice with light and heavy guns. All such prizes to be competed for under regulations prescribed by the adjutant general.

§ 51. CONDUCT OF COMMANDING OFFICER IN AID OF CIVIL AUTHORITIES.] In case of any breach of the peace, tumult, riot or resist-

ance to process of this state, or imminent danger thereof, a sheriff of a county, or mayor of a city, may call for aid upon the commanding officer of the national guard stationed therein or adjacent thereto. Such call shall be in writing. The commanding officer upon whom the call is made shall order out, in aid of the civil authorities, the military force or any part thereof under his command, and shall immediately report what he has done and all the circumstances of the case to the governor and the commanding officer of the national guard. If it appears to the governor that the power of the county is not sufficient to enable the sheriff to preserve the peace and protect the lives and property of the peaceful residents of this county, or to overcome the resistance to process of this state, the governor must, on the application of the sheriff, order out such military force from any other county or counties as is necessary. When an armed force is called out for the purpose of suppressing an unlawful or riotous assembly, it must obey the orders in relation thereto of the civil officer calling it out and render the required aid. The orders of the civil officer may extend to a direction of the general or specific object to be accomplished and the duration of service by the active militia, but the tactical direction of the troops, the kind and extent of force to be used, and the particular means to be employed to accomplish the object specified by the civil authorities are left solely to the officers of the active militia.

§ 52. IN CASE OF INSURRECTION OR INVASION.] In case of insurrection or invasion or imminent danger thereof within the limits of any command, the senior commanding officer of such command shall order out for the defense of the state the forces under his command, or any part thereof, and immediately report his action and the circumstances of the case to the governor and the commanding officer of the national guard.

§ 53. WARNING FOR DUTY.] Orders for duty may be oral or written. Officers and enlisted men may be warned for duty as follows: Either by stating the substance of the order, or reading the order to the person warned, or by delivering a copy of such order to such person or by leaving a copy of such order at the last known place of abode or business of such person with some one of suitable age and discretion, or by sending a copy of such order or a notice containing the substance thereof to such person by mail, directed to him at his last known place of abode or business, or to the postoffice nearest thereto. Such warning may be given by any officer or non-commissioned officer. The officer or non-commissioned officer giving such warning shall make a return thereof containing the names of the persons warned, and the time, place and manner of warning. Such return shall be verified by oath, which may be administered by any commanding officer; such verified return shall be as good evidence, on the trial of any person returned as a delinquent of the facts therein stated, as if such officer or non-commissioned officer had testified to the same before the delinquency court on such trial.

Every commanding officer shall make the like return on honor and with like effect, of every delinquency and neglect of duty of his officers and non-commissioned officers, and also of every enlisted man who shall refuse or neglect to perform such military duty as may be required.

§ 54. EXCUSES FROM DUTY.] The officer ordering any military duty shall have the power to excuse any officer or enlisted man for absence therefrom upon good and sufficient grounds.

§ 55. DISCIPLINE AND EXERCISE.] The system of discipline and exercise of the national guard of this state shall conform generally to that of the army of the United States as it is now or may hereafter be prescribed by the president, and to the provisions of the laws of the United States, except as otherwise provided in this chapter.

§ 56. MILITARY COURTS.] The military courts of this state shall be:

1. General courts-martial.
2. Garrison courts-martial.
3. The summary court.
4. Courts of inquiry.
5. Delinquency courts, which are of two kinds: (1) For officers; (2) for enlisted men.

The constitution and jurisdiction of courts-martial, the form and manner in which the proceedings of military courts shall be conducted and recorded, and the forms of oath and affirmations taken in the administration of military law by such courts, the limits of punishment and the proceedings in revision shall be governed by the articles of war and the law and procedure of the courts-martial of the United States, except as hereinafter provided.

§ 57. INDEMNITY FOR ACTION OF MILITARY COURTS.] No action or proceeding shall be prosecuted or maintained against a member of a military court or officer or person acting under its authority or reviewing its proceedings on account of the approval or imposition or execution of any sentence, or the imposition or collection of a fine or penalty, or the execution of any warrant, writ, executions, process, or mandate of a military court.

§ 58. PRESUMPTION OF JURISDICTION.] The jurisdiction of the courts and boards established by this chapter shall be presumed, and the burden of proof shall rest on any person seeking to oust such courts or boards of jurisdiction in any action or proceeding.

§ 59. FINES.] All fines imposed by sentence of the afore-named courts shall be collected by the presiding officer and remitted without delay to the adjutant general, who will remit them to the state auditor on the last days of February, April, June, August, October and December of each year, with a statement of the source from which collected. All sums thus collected as fines shall be credited to the general fund for maintenance of the militia and expended as authorized therefor; provided, further, that such portion of the

sentence imposed by the afore-named courts as prescribes confinement shall be executed in such county jails as the reviewing authority may direct, and the expenses of such confinement shall be borne by the commonwealth. A commitment in writing shall be executed by the presiding officer of the court to the sheriff or jailer where temporary restraint is deemed necessary, but where the confinement is the result of the confirmed action of the reviewing authority an official copy of the order publishing the sentence of the court shall be furnished the sheriff or jailer. The presiding officer is empowered to accept a bond for the delivery of the accused upon demand after the final action of the court, and pending the action of the reviewing authority, when his jurisdiction terminates. This bond will not be accepted in capital cases, nor for a less sum than twice the amount involved; provided, further, that the sentence of any courts-martial shall not, in time of peace, exceed that prescribed by the president for like offenses and that these substitutions obtain: two days' confinement for one dollar forfeiture or the reverse.

§ 60. COURTS-MARTIAL, GOVERNOR INSTITUTES. [NUMBER TO CONSTITUTE.] The governor is empowered to institute general courts-martial, garrison courts-martial, summary courts-martial, courts of inquiry and delinquent courts, and to review the proceedings of each of these courts. A general court-martial shall consist of not less than three nor more than seven commissioned officers and a judge advocate. The garrison court-martial shall consist of not less than one nor more than three commissioned officers and a judge advocate. The summary court-martial shall consist of one commissioned officer. Courts of inquiry may be instituted by the commander in chief of not more than three commissioned officers, whose duties will be defined with the order convening such court. Delinquent courts shall consist of not more than three nor less than one commissioned officer.

§ 61. ORGANIZATIONS.] All organizations shall be provided by the state with such arms, equipments, colors, camp and garrison equipage, books of instruction and of record, and other supplies as may be necessary for the proper performance of the duty required of them by this chapter; and each organization shall keep such property in proper repair and in good condition.

§ 62. COMMISSIONED OFFICERS.] Every commissioned officer shall provide himself with the arms, uniforms and equipments prescribed and approved by the governor.

§ 63. ENLISTED MEN.] Every enlisted man who enters the service of the state for three years shall be furnished by the state with a service uniform corresponding in make and general appearance to the service uniform of the United States army.

§ 64. RESPONSIBILITY FOR PUBLIC PROPERTY.] Every officer and enlisted man to whom public property of the state has been issued shall be personally responsible to the state for such property, and no one shall be relieved from such responsibility, except it be shown

to the satisfaction of the governor that the loss or destruction of such property was unavoidable and in no way the fault of the person responsible for the same; in all other cases the value of the property lost or destroyed shall be charged against the person at fault or to the organization to which it had been issued, and such person or organization, if not relieved from such charge by the governor, shall pay the value of such property to the adjutant general within two years after such loss or destruction. The value of lost or destroyed property and the person or organization to be charged therewith shall be determined by a board to consist of an inspector on the staff of the commanding officer of the national guard and the commanding officer of the organization in which such property is lost. In case of disagreement, such value shall be fixed by the commanding officer of the national guard.

§ 65. PURCHASE OF UNIFORMS AND EQUIPMENTS.] All uniforms and equipments used by the national guard of this state shall be procured by the adjutant general from the United States government, or other source, and shall conform to those in use by the regular army of the United States.

§ 66. BOARD OF ARMORY SUPERVISORS CREATED.] The governor, adjutant general and colonel commanding the regiment are hereby constituted a board of armory supervisors, whose duty it shall be to approve the selection of all armory sites and the purchase of buildings thereon; to approve the plans and specifications for the erection of all armories, and to audit and approve all bills, claims and accounts in connection with the construction or purchase of all armories before such bills, claims and accounts shall be paid, and to perform such other duties as the provisions of this act require.

§ 67. APPROPRIATION.] To every company, battery or regimental band of the North Dakota national guard who shall have first deposited with the state treasurer the sum of two thousand dollars as an evidence of good faith, and shall have conveyed to the state of North Dakota by a good and sufficient deed of warranty the title to a site for an armory, which site shall have first been approved by the board of armory supervisors, or shall have conveyed to the state an armory site with armory buildings thereon, such buildings to be of the value of not less than seven thousand dollars, and to be first approved by the board of armory supervisors, there is hereby appropriated the sum of five thousand dollars; provided, that only one such appropriation shall be made for armory purpose in any one city or town; and provided, further, that no more than thirteen state military organizations shall receive the benefit of this act; and provided, further, that no more than three state military organizations shall receive appropriations in the amount specified in the year A. D. 1908, and two in each year thereafter, until the thirteen state military organizations shall each have received an appropriation of five thousand dollars; and provided, further, that

the board of armory supervisors shall designate which state military organizations shall receive aid in any one year and in determining which shall receive aid first, they shall take into consideration the proficiency of the military organization asking for aid and its needs; and provided, further, there is hereby appropriated out of the state treasury in the year A. D. 1908 the sum of fifteen thousand dollars, and the sum of ten thousand dollars annually thereafter for five years.

§ 68. DUTY OF STATE TREASURER.] The state treasurer shall keep a separate account with each company, battery or regimental band that shall avail itself of the provision of this act, crediting the same with two thousand dollars deposited by the company, battery or regimental band with the state treasurer, together with the appropriation made under the provisions of this act, and all bills for the construction or purchase of armories, or the paying of debts or mortgages against armories shall, after being approved, be paid out of the said account or fund upon the warrant of the state auditor.

§ 69. TRANSFER OF ARMORIES WHEN COMPANY, BATTERY OR REGIMENTAL BAND IS MUSTERED OUT OF SERVICE.] Whenever any company, battery or regimental band which has availed itself of the provisions of this act and has received the appropriation provided herein, shall be mustered out of the service of the state and it shall appear that there is no probability of a new company, battery or regimental band being organized in the city or town in which the armory is located, then and in that case the board of armory supervisors shall have the authority, and are hereby empowered to transfer the said property to the municipality in which the same is located for public purposes upon the repayment to the state of the said appropriation provided in this act, without interest.

§ 70. PROVIDING FOR MORTGAGING ARMORIES TO THE STATE WHEN OWNED BY ANY COMPANY, BATTERY OR REGIMENTAL BAND.] Whenever any such company, battery or regimental band shall own any site with armory buildings thereon of the value of ten thousand dollars, exclusive of the value of the land, and such buildings and site have been approved by the board of armory supervisors as sufficient and desirable for armory purposes, then, such company, battery or regimental band may, with the approval of the board of armory supervisors, obtain the benefits of the appropriation hereinbefore provided by executing to the state of North Dakota a mortgage on such property for the sum of five thousand dollars, payable on demand and during the life of said mortgage said building and site shall be under the control and supervision of such company, battery or regimental band.

§ 71. REPEAL.] Sections 1789, 1790, 1791, 1792 and 1793 of the revised codes of 1905 are hereby repealed.

§ 72. PAY AND ALLOWANCES. DUTY PAY.] Each officer and enlisted man ordered for duty by the governor, or under his authority by the commanding officer of the national guard, shall receive

the duty pay herein specified for every day actually on duty, except when so ordered for inspection, muster or small arms practice, or parade or review or field service not extending beyond one day: A musician or private, seventy-five cents; a corporal, ninety cents; an assistant hospital steward, color bearer or a sergeant, one dollar; a first sergeant, guidon sergeant, veterinary sergeant, drum major, band master, hospital steward, ordnance sergeant, commissary sergeant, quartermaster sergeant, sergeant major, signal sergeant or a signal sergeant of a battalion of light artillery, one dollar and twenty cents; a first class sergeant of a signal company, one dollar and twenty-five cents; a sergeant of a signal company, one dollar and twenty-five cents; a corporal of a signal company, ninety cents; a first class private of a signal company, seventy-five cents; a non-commissioned officer performing the duties of a grade higher than his own shall receive the pay of such higher grade; a private acting as a non-commissioned officer shall receive the pay of the grade in which he is acting; a lieutenant, one dollar and seventy-five cents; a captain or company commander, two dollars; a major and a lieutenant colonel, two dollars and twenty-five cents; a colonel or commanding officer of a regiment or of a battalion not part of a regiment, three dollars; a brigadier general, four dollars; staff officers, the pay of [officers] of the line of equal grade; chaplains, the pay of captains. When on duty or assembled therefor in case of riot, tumult, breach of peace, insurrection, invasion, war, whenever called in aid of the civil authorities or when engaged in actual field or camp service for instruction as contemplated in section fourteen of the act of congress approved January 21, 1903, commissioned officers shall be entitled to and shall receive at least the same pay as commissioned officers of the army of the United States of equal grade. Each officer and enlisted man, mounted and equipped, shall be paid a reasonable compensation per day for each horse actually used by him.

§ 73. PAY WHEN AIDING THE CIVIL AUTHORITY.] All officers and enlisted men, while on duty or assembled therefor, pursuant to the orders of the governor of the state, sheriff of a county, or mayor of a city, or any other civil officer authorized by law to make such a demand on the military forces of the state, in case of riot, tumult, breach of the peace, resistance to process, or whenever called upon in aid of civil authorities, shall receive the pay set forth in section seventy-two of this chapter; and such compensation and the necessary expenses incurred in quartering, caring for, warning for duty, and transporting and subsisting the troops, as well as expenses incurred for pay, care and subsistence of officers and enlisted men temporarily disabled in the line of duty, while on such duty, as set forth in section eighty-three of this chapter, shall be paid by the county where such service is rendered. The county treasurer of such county shall, upon presentation to him of vouchers and pay-rolls for such expenses and compensation, certified by the officers

commanding such forces, and approved by the commanding officer of the brigade, forthwith execute, in behalf of and in the name of such county, a certificate or certificates of indebtedness for the money required to pay such vouchers and payrolls; such certificates shall bear interest at the rate of not to exceed six per cent per annum and shall be made payable on the first day of February following the expiration of two months from their issue, and the amount thereof shall be raised in the next tax budget of said county succeeding their issue, and applied to the payment of such certificates. Said county treasurer shall sell such certificates at public or private sale, and apply the proceeds thereof to the payment of such expenses and compensation. Any county treasurer or public officer who shall neglect or refuse to perform any of the duties required by this section shall be personally charged with the cost and all necessary disbursements of any action or proceeding brought to compel such performance, together with a reasonable additional allowance to the plaintiff or relator in such action or proceeding, to be fixed by the court.

§ 74. PAY OF OFFICERS SERVING ON BOARDS, COMMISSIONS AND COURTS.] All officers detailed to serve on any board or commission ordered by the governor, or under his authority by the commanding officer of the national guard, or on any court of inquiry, or delinquency court, ordered by proper authority in pursuance of any provision of this chapter, shall be paid a sum equal to one day's duty pay for each day actually employed in such board or court, or engaged in the business thereof, or in traveling to and from the same. The sum shall in no case exceed ten days' pay and actual traveling expenses and subsistence, unless, upon application of the judge advocate of a court-martial or the presiding officer of a delinquency court, or the presiding officer of the board, the officer appointing the court or board has authorized such court or board to sit for a longer period, or in case of such delinquency court, the governor or the officer ordering such court has authorized such court to sit for a longer period than ten days. An officer detailed to serve on a delinquency court for the trial of enlisted men shall be paid for each day actually employed therein, engaged in the business thereof, or in traveling to and from the same, and traveling expenses and subsistence when such court shall be held at a place other than the city or town of his residence. An officer whom a warrant for the collection of fines, dues, or penalties under the sentence of a military court is delivered shall be paid, by retaining to his own use twenty-five per cent of the fines, dues or penalties collected by him. Said percentage shall be taxed by the officer issuing the warrant and indorsed thereon and added to the amount collectible to satisfy the sentence of the court. In addition to this percentage a marshal of a military court shall be paid two dollars for each day actually employed in the execution of the duties required of him, and mileage or actual necessary traveling expenses while

engaged in executing any process or mandate of a military court. Mileage shall be computed at the rate of ten cents for each mile necessarily traveled going and returning to serve any process or mandate of a military court, the distance to be computed from the place where it is served to the place where it is returnable.

§ 75. PAYMENT OF EXPENSES OF DELINQUENCY COURTS FOR ENLISTED MEN.] The compensation and necessary expenses of the officer holding a delinquency court for enlisted men, and of the clerk and marshal thereof, and the actual expenses of the court for the time engaged in the trial of enlisted delinquents, and the necessary business connected therewith, shall be paid by the organizations of which the delinquents are members, and to whose military funds fines collected from such delinquents are paid, from the military fund of such organization, in the same manner as other accounts are paid from such fund.

§ 76. PAY OF OFFICERS AND ENLISTED MEN ASSIGNED TO SPECIAL DUTY.] Any commissioned officer assigned to special duty by the governor or under his authority shall be paid duty pay for the time actually employed, and his necessary traveling expenses and subsistence, when such payment is authorized by the governor. Judge advocates shall be paid for services in bringing any suits provided for in this chapter, and for services in actions or proceedings by habeas corpus, certiorari, or otherwise, such compensation as shall be approved by the governor. All staff officers shall be paid duty pay for special service ordered by competent authority with the approval of the governor. Enlisted men, on duty under the orders of the governor, but not at the time serving with troops, shall receive duty pay, their actual traveling expenses and subsistence.

§ 77. ALLOWANCES FOR OFFICERS.] Commissioned officers shall receive annually the sum of twenty dollars, mounted officers the sum of twenty-five dollars to assist in uniforming and equipping themselves, but not until they have performed eighty per centum of all ordered duty, and been in active service as such a calendar year of twelve months, beginning with the first day of January.

§ 78. PENSIONS.] Every member of the militia who shall be wounded or disabled while in the service of the state, in case of riot, tumult, breach of the peace, resistance to process, invasion, insurrection, or imminent danger thereof, or whenever called upon in aid of the civil authorities, shall be taken care of and provided for at the expense of the state, and every such member who shall be wounded or disabled, or has been so disabled in the performance of any actual service of this state within ten years preceding the application for a pension under this act, in cases of riots, tumults, breach of the peace, resistance to process, invasion, insurrection or imminent danger thereof, or whenever called upon in aid of the civil authorities, or while engaged in any lawfully ordered parade, drill, encampment, or inspection, shall upon proof of the fact, as

hereinafter provided, be placed on the roll of invalid pensioners of the state, and shall receive, out of any moneys in the treasury of the state not otherwise appropriated, upon the audit of the adjutant general and approval of the governor, the like pension or reward that persons under similar circumstances receive from the United States; and in case of any wound, injury or disease causing death, then the widow or minor children of such member of the militia shall receive such pension and reward from the time of receiving the injuries on account of which such pension or reward is allowed.

§ 79. PROOF REQUIRED. STRIKING FROM ROLL.] Before the name of any person is placed upon the roll under this article, proof shall be made, under such regulations as the adjutant general may from time to time prescribe, that the applicant is entitled to such pension. The adjutant general, with the approval of the governor, shall cause to be stricken from the pension roll the name of any person whenever it appears by satisfactory proof that such name was put upon such roll through false or fraudulent representations. The adjutant general, with the approval of the governor, may increase or reduce or withdraw any pension, according to right and justice and the practice in the United States pension office.

§ 80. PENSION EXAMINERS AND EXAMINING BOARDS.] The adjutant general is authorized to appoint pension examiners, whose duty it shall be to inquire into the merits of any claim for pay and care and pension, whether pending or adjudicated, and any person so appointed shall have power to administer oaths, to orally examine witnesses, to issue subpoenas, and to take affidavit and depositions in the course of such examinations. The adjutant general shall further appoint examining boards, consisting of not more than three medical officers of the national guard, who shall under his direction make such examination of claimants as he shall require, and certify the result in such form as he shall prescribe, and any person adversely affected by the report of one medical officer shall be entitled to an examination upon his request before a board consisting of three medical officers.

§ 81. PAY AND CARE WHEN INJURED OR DISABLED IN SERVICE.] A member of the national guard who shall, when on duty or assembled therefor, in case of riot, tumult, breach of the peace, insurrection or invasion, or whenever ordered by the governor, commanding officer of the national guard, or called in aid of the civil authorities, receive an injury, or incur or contract any disability or disease, by reason of such duty or assembly therefor, or who shall without fault or neglect on his part be wounded or disabled while performing any lawfully ordered duty which shall temporarily incapacitate him from pursuing his usual business or occupation shall, during the period of such incapacity, receive the pay provided by this chapter and actual necessary expenses for care and medical attendance. All claims arising under this section shall be inquired into by a board of three officers, at least one being a medical officer,

to be appointed upon the application of the member claiming to be so incapacitated by the commanding officer of the brigade to which such member is attached. 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 findings of the board shall be subject to the approval of the officer convening it when the claim is payable by a county, and in all other cases to the approval of the commanding officer of the national guard. The reviewing officer may return the proceeding of the board for revision and for taking further testimony. The amount found due such member by said board to the extent that its findings are approved by the reviewing officer thereof, shall be a charge against and be paid in the manner provided in this chapter, by the county in which such duty was rendered, in every case where a county is by this chapter made liable to pay for the performance of military duty. In all other cases such sums shall be paid by this state, in like manner as other military accounts are paid.

§ 82. EXEMPTION FROM CIVIL PROCESS.] No person belonging to the active militia of the state shall be arrested on any civil process while going to, remaining at, or returning from any place at which he may be required to attend for military duty.

§ 83. RIGHT OF WAY. FREEDOM FROM INTERFERENCE.] Commanding officers of any portion of the active militia parading or performing any military duty in any street or highway may require any or all persons in such street or highway to yield the right of way to such militia; provided, the carriage of the United States mail, the legitimate functions of the police and the progress and operations of the hospital ambulance and fire departments and apparatus of the insurance patrol shall not be interfered with thereby. All others who shall hinder, delay, or obstruct any portion of the active militia wherever parading or performing any military duty, or who shall attempt so to do, shall be guilty of a misdemeanor.

§ 84. FREE PASSAGE THROUGH TOLL GATES, ETC.] Any person belonging to the military forces of the state, going to or returning from any parade, encampment, drill, or meeting which he may be required by law to attend, shall together with his conveyance and military property of the state in his charge be allowed to pass free through all toll gates and over all toll bridges and ferries, if he is in uniform or presents an order for duty or certificate of membership in the active militia.

§ 85. EXEMPTION FROM JURY DUTY.] Every member of the active militia shall be exempt from all jury duty, provided he shall furnish the certificate of his immediate commanding officer that he has performed the duties required of him for the year immediately preceding a summons to act as a jurymen, and every such member who shall have received a full and honorable discharge shall be exempt forever after from all jury duty.

§ 86. UNLAWFUL CONVERSION OF MILITARY PROPERTY. UNLAWFUL WEARING OF UNIFORMS AND DEVICES INDICATING RANK.] Any person who shall secrete, sell, dispose of, offer for sale, purchase, retain after demand made by a commissioned officer of the national guard, or in any manner pawn or pledge any arms, uniforms, equipments, or other military property issued under the provisions of this chapter, and any person who shall wear any uniform or any device, strap, knot, or insignia of any design or character used as a designation of grade, rank of office, such as are by law or by general regulation, duly promulgated, prescribed for the use of the active militia or similar thereto, except members of the army and navy of the United States and the national guard of this or any other state, officers of the independent military organizations so designated in section eighty-eight of this chapter, members of associations wholly composed of soldiers honorably discharged from the service of the United States and members of the order of Sons of Veterans, shall be guilty of a misdemeanor and in addition thereto shall forfeit to the people of this state one hundred dollars for each offense, to be sued for in the name of the people by a judge advocate. All moneys recovered by any action or proceeding under this section shall be paid to the adjutant general, who shall apply the same to the use of the active militia.

§ 87. TRESPASSERS AND DISTURBERS TO BE PLACED IN ARREST. LIQUORS AND HUCKSTER SALES PROHIBITED.] The commanding officer upon any occasion of duty may place in arrest during continuance thereof any person who shall trespass upon the camp ground, parade ground, armory, or other place devoted to such duty, or shall in any way or manner interrupt or molest the orderly discharge of duty by those under arms, or shall disturb or prevent the passage of troops going to or returning from any duty.

§ 88. MILITARY PARADES BY UNAUTHORIZED BODIES PROHIBITED.] No body of men, other than the regularly organized corps of the national guard and militia and the troops of the United States, shall associate themselves together as a military company or organization, or parade in public with firearms in any city or town of this state. No city or town shall raise or appropriate any money toward arming or equipping, uniforming, or in any other way supporting, sustaining or providing drill rooms or armories for any such body of men; but associations wholly composed of soldiers honorably discharged from the service of the United States or members of the order of Sons of Veterans may parade in public with firearms on Decoration Day or upon the reception of any regiments or companies of soldiers returning from such service, and for the purpose of escort duty at the burial of deceased soldiers; and students in educational institutions where military science is a prescribed part of the course of instruction may, with the consent of the governor, drill and parade with firearms in public under the superintendence of their teachers. This section shall not be con-

strued to prevent any organization authorized to do so by law from parading with firearms, nor to prevent parades by the national guard of other states. Any person violating any provision of this section shall be deemed guilty of a misdemeanor.

§ 89. SEPARATE COMPANIES.] The words "separate company," wherever used in this act, shall be construed to apply to and mean separate companies existing, organized and recognized by the governor as such, irrespective of their being now or hereafter part of a regiment or battalion and to such similar organizations as may have been since or may be hereafter created, and as may be certified by the adjutant general to be separate companies within the meaning of this section, irrespective of their being or becoming parts of a regiment or battalion.

§ 90. PROVISION AS AMENDATORY AND REPEALING STATUTES. No section or provision of this chapter or any part thereof shall be deemed to be repealed, altered, or amended by any statute passed by the legislature unless such statute explicitly refers to this chapter as the military code, or by its other titles as part of the general laws or annual legislation and explicitly repeals, alters, or amends the same or some part thereof.

§ 91. DUTIES BY TITLE OF OFFICE.] The duties assigned to an officer by title in this chapter shall devolve, in case of absence or disability to command of the officer named, upon the line officer next in rank, except as otherwise provided in this chapter.

§ 92. FORMATION OF ASSOCIATION. BY-LAWS.] The officers of any regiment or battalion not part of a regiment, and members of any regiment, company, signal corps, hospital corps or field music may organize themselves into an association, of which the commanding officer shall be president, and by a vote of two-thirds of all their members, form by-laws, rules and regulations not inconsistent with this chapter and which shall conform to the system prescribed in general regulations and be submitted to the commanding officer of the national guard for his approval, and when approved by him, such by-laws, rules and regulations shall be binding upon all commissioned officers, and enlisted men therein, but they may be altered in the manner provided for their adoption, from time to time, as may be found necessary.

§ 93. VIOLATION OF BY-LAWS. EXPULSION.] For violation of by-laws, rules and regulations of associations organized pursuant to this chapter, enlisted men, in addition to trials by a military court, may also be expelled from the organizations to which they belong by a vote of the majority of all its members and upon such action being confirmed in orders by the commanding officer of the regiment, or battalion not part of a regiment, and in case of an organization not part of a regiment or battalion by the officer to whose command it is attached, the name of such person shall be stricken from the role of the organization not part of a regiment or battalion by the officer in whose command it is attached, the name of such

person shall be stricken from the role of the organization of which he is a member, his certificate of membership shall be surrendered and cancelled, and he shall cease to be a member thereof, and his time of service in the same shall not be allowed.

§ 94. RULES AND REGULATIONS.] The governor is hereby authorized to make such rules and regulations as he may deem expedient, but such rules and regulations shall conform to this act, and, as nearly as practicable, to those governing the United States army, and when promulgated shall have the same force and effect as the provisions of this chapter. Such rules and regulations shall not be repealed, altered, amended, or added to, except by the commanding officer of the national guard with the approval of the governor. The rules and regulations in force at the time of the passage of this chapter shall remain in force until new rules and regulations are approved and promulgated.

§ 95. CUSTOM AND USAGE OF THE UNITED STATES ARMY.] All matters relating to the organization, discipline and government of the national guard, not otherwise provided for in this act or in the general regulations, shall be decided by the custom and usage of the United States army or navy, respectively.

§ 96. ORGANIZATION NOT ATTACHED TO A BRIGADE.] Organizations not part of or attached to any brigade shall be under the commanding officer of the national guard for all purposes.

§ 97. REPEAL.] Sections 1714, 1715, 1716, 1718, 1719, 1720, 1721, 1722, 1723, 1724, 1725, 1726, 1727, 1728, 1729, 1730, 1732, 1733, 1735, 1736, 1738, 1739, 1741, 1742, 1743, 1744, 1745, 1747, 1748, 1749, 1750, 1751, 1752, 1753, 1756, 1757, 1758, 1759, 1760, 1761, 1762, 1763, 1764, 1765, 1766, 1767, 1768, 1769, 1770, 1771, 1772, 1773, 1774, 1775, 1776, 1777, 1778, 1779, 1782, 1783, 1784, 1785, 1786, 1788, 1794, 1795, 1796 and 1798 of the revised codes of 1905 are hereby repealed.

Approved March 6, 1909.

CHAPTER 166.

[H. B. No. 36—Price]

NATIONAL GUARD.

AN ACT to Amend Section 1787 of the Revised Codes of North Dakota, 1905.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] Section 1787 of the revised codes of 1905 is amended to read as follows:

§ 1787. APPROPRIATION.] For the purpose of paying the expenses of the maintenance of the national guard there is hereby an-

nually appropriated the sum of twenty-five thousand dollars out of any monies in the state treasury, not otherwise appropriated, and all warrants against such appropriation shall be drawn by the state auditor upon the state treasurer, upon the voucher of the chief of supply or pay master general, certified to by the adjutant general, and approved by the governor, said sum of twenty-five thousand dollars per annum to remain subject to warrants drawn as herein provided, until expended.

Approved March 20, 1909.

CHAPTER 167.

[S. B. No. 117—Walton]

MILITARY INSTRUCTION.

AN ACT to Provide for Instruction in Military Science at the State Normal-Industrial School, Located at Ellendale.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. MILITARY INSTRUCTION REQUIRED.] The state normal-industrial school is authorized and required to give theoretical and practical instruction in military science under such rules and regulations as the faculty of said institution may prescribe.

§ 2. INSPECTION BY ADJUTANT GENERAL.] Such company or companies as may be organized and drilled at said institution shall be subject to regular inspection by the adjutant general of the state of North Dakota, or by an officer detailed for that purpose.

§ 3. MUSKETS TO BE LOANED.] The adjutant general is hereby authorized to loan to said state normal-industrial school fifty muskets and accoutrements, or such part thereof as may be available, for efficiently organizing and drilling said company or companies, the adjutant general to prescribe the terms upon which such loan may be made.

§ 4. APPROPRIATION.] There is hereby appropriated out of the state treasury for said state normal-industrial school from any moneys not otherwise appropriated, the sum of one hundred fifty dollars annually for the purchase of such stores as may be necessary for target practice.

Approved March 11, 1909.