

MAINE STATE LEGISLATURE

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(NEW DRAFT)

EIGHTIETH LEGISLATURE

HOUSE

NO. 466

House of Representatives, April 5, 1921.

Reported by Mr. Gardiner from Committee on Military Affairs and ordered printed under joint rules.

CLYDE R. CHAPMAN, Clerk.

STATE OF MAINE

**IN THE YEAR OF OUR LORD ONE THOUSAND
NINE HUNDRED AND TWENTY-ONE**

AN ACT to Amend Sections Eight, Twenty-two, Thirty-seven, Fifty-three, Fifty-four, Fifty-five, Fifty-seven, Sixty-three, Sixty-four and Eighty-eight of Chapter Two Hundred Fifty-nine of the Public Laws of Nineteen Hundred Seventeen, Known as the Military Law.

Be it enacted by the People of the State of Maine, as follows:

Section I. Section eight of chapter two hundred fifty-nine of the public laws of nineteen hundred seventeen is hereby amended by inserting before the word "all" in the fifth line thereof the words 'except as hereinafter provided', and by adding after the words "commander-in-chief" in the fifteenth line thereof the following: 'provided that honorably dis-

7 charged officers or enlisted men who served in the United
8 States army or navy during the World War may be ap-
9 pointed as aides-de-camp with rank of colonel or naval aide
10 with the rank of lieutenant-commander on the staff of the
11 commander-in-chief, but officers so appointed shall not be
12 considered as members of the national guard and shall
13 serve only during the term of office of the governor making
14 the appointment'; so that said section, as amended, shall
15 read as follows:

'Sect. 8. The staff of the commander-in-chief shall con-
2 sist of the adjutant general, who shall be ex-officio chief of
3 staff, quartermaster general, and paymaster general with
4 rank of brigadier general, the senior officer on duty with
5 each of the staff departments, and four aides-de-camp, with
6 the rank of captain, and one naval aide with the rank of
7 lieutenant. Except as herinafter provided all officers must
8 be at the time of their appointment, commissioned officers
9 in the Maine National Guard, on the active or retired list of
10 or above the grade of captain, but no officer shall be ap-
11 pointed from the retired list who shall have had less than
12 eight years of service in the active militia, the last year of
13 which shall have been within ten years immediately preced-
14 ing the appointment. The four aides-de-camp and naval aide
15 may be detailed from the commissioned officers of the na-
16 tional guard or naval militia of the grade above specified,
17 but officers so detailed shall not be relieved thereby from
18 their regular duties in the national guard or naval militia
19 except when on duty with the commander-in-chief, provided

20 that honorably discharged officers or enlisted men who
21 served in the United States army or navy during the World
22 War may be appointed as aides-de-camp with rank of
23 colonel or naval aide with rank of lieutenant-commander on
24 the staff of the commander-in-chief, but officers so appointed
25 shall not be considered as members of the national guard
26 and shall serve only during the term of office of the gover-
27 nor making the appointment. Officers of the staff of the
28 commander-in-chief excepting the senior officer on duty in
29 each of the staff departments and detailed aides-de-camp
30 shall be appointed and commissioned by the governor and
31 shall hold office during his pleasure and until their success-
32 ors are appointed and qualified.'

Sect. 2. Section twenty-two of said chapter is hereby
2 amended by striking out in the third line thereof the word
3 "and" and substituting therefor the word 'of'; also by strik-
4 ing out in the fourth line thereof the words "active militia"
5 and substituting therefor the words 'national guard'; so that
6 said section, as amended, shall read as follows:

'Sect. 22. The inspector general, whenever ordered by the
2 governor shall make an inspection and a detailed report up-
3 on the armories, property, books, records, financial condi-
4 tion, of the various organizations of the national guard, and
5 such other duties as the adjutant general may direct or the
6 law require, and submit to the adjutant general a report of
7 the transactions of his office by the fifteenth of December
8 annually.'

Sect. 3. To amend section thirty-seven of said chapter by
2 striking out all after the word "governor" in the fourth line
3 thereof and substituting therefor the following: 'he may
4 order an inspection to be made by an officer of the national
5 guard and if it is found that the conditions contemplated by
6 law for federal recognition can be met by the new organiza-
7 tion, the governor may appoint commissioned officers there-
8 for and cause an inspection to be made by an officer of the
9 regular army with a view to federal recognition', so that
10 said section, as amended, shall read as follows:

'Sect. 37. New organizations may be raised on petition to
2 the governor, or by his order; and when the minimum num-
3 ber of persons required by law has been enlisted and notice
4 thereof given to the governor, he may order an inspection to
5 be made by an officer of the national guard and if it is found
6 that the conditions contemplated by law for federal recog-
7 nition can be met by the new organization, the governor may
8 appoint commissioned officers therefor and cause an inspec-
9 tion to be made by an officer of the regular army with a
10 view to federal recognition.'

Sect. 4. To amend section fifty-three of said chapter by
2 striking out all of said section and substituting therefor the
3 following:

'Sect. 53. All officers shall be appointed and commissioned
2 by the governor as follows, subject in every case to the ex-
3 aminations provided in section fifty: Vacancies in the grade
4 of brigadier general shall be filled by promoting the senior

5 colonel in the arm of service in which the vacancy occurs;
6 vacancies in the grade of colonel and lieutenant-colonel of a
7 regiment or corps shall be filled by promoting the senior
8 officer of the regiment or corps of the next lower grade;
9 vacancies in the grade of major in a regiment, corps or sep-
10 arate battalion shall be filled by promoting the senior officer
11 of the next lower grade in the battalion in which the vacan-
12 cy occurs; vacancies in the grade of captain or lieutenant
13 shall be filled by promoting the senior officer of the next
14 lower grade in the organization in which the vacancy oc-
15 curs; vacancies in the grade of second lieutenant shall be
16 filled in the following manner: All enlisted men of the
17 company and any battalion or regimental non-commissioned
18 staff officer who was appointed from said company shall, if
19 physically sound, be eligible for appointment and shall be
20 permitted to appear before an examining board for a physi-
21 cal and competitive practical and theoretical examination.
22 The enlisted man whom the board considers, after the com-
23 petitive examination, to be best qualified shall be appointed
24 to fill the vacancy. The governor shall prescribe the scope
25 and manner of conducting such examination and if no en-
26 listed man appears or if none satisfactorily passes said ex-
27 amination, then the governor shall fill the vacancy by mak-
28 ing an appointment of any person eligible under the law to
29 hold a commission in the national guard.

‘Every officer duly commissioned shall within ten day ac-
2 cept the same and take the constitutional oath of office; such

3 oath may be taken and subscribed before any officer author-
4 ized by law to administer an oath; and in case of neglect or
5 refusal to accept the commission or to take and subscribe
6 the oath within the time mentioned, such commission shall
7 be cancelled by the governor and a new appointment made
8 to fill the vacancy.'

Sect. 5. Section fifty-four of said chapter is hereby
2 amended by striking out all of said section.

Sect. 6. To amend section fifty-five of said chapter by
2 striking out all of said section and substituting therefor the
3 following:

'Sect. 55. Vacancies occurring in the various grades ex-
2 cept the lowest of the several staff departments and corps,
3 shall be filled by promoting and appointing the senior offi-
4 cer in the next lower grade of said department or corps. Va-
5 cancies occurring in the lowest grade thereof shall be filled
6 in the following manner:

In the medical department appointments shall be made by
2 the governor upon recommendation of the state surgeon and
3 any active licensed practitioner of medicine and surgery in
4 this state who is a citizen of the United States, physically
5 sound and between the ages of twenty-two and thirty years,
6 shall be eligible for appointment.

In all other staff departments and corps any vacancy shall
2 be filled by the appointment thereto of any commissioned
3 officer in the national guard.

Commanding officers of brigades, regiments and separate
2 battalions shall appoint their respective staff officers subject

3 to the provisions of sections forty-nine, fifty and fifty-one of
4 this act. Battalion staff officers are appointed by the regi-
5 mental commanders upon the recommendation of the battal-
6 ion commander.

Staff officers appointed from organizations of the national
2 guard shall retain their eligibility to promotion in the or-
3 ganization from which they were drawn as if they had not
4 been detailed to such staff duty.'

Sect. 7. To amend section fifty-seven of said chapter by
2 striking out all of said section and substituting therefor the
3 following:

'Sect. 57. The President shall prescribe a system of exam-
2 ination of all officers of the national guard to determine their
3 physical, moral, professional and general fitness for federal
4 recognition; persons commissioned by the governor will not
5 be considered as officers of the national guard until recog-
6 nition is extended to them by the War Department. For
7 cogent reasons a reasonable period of time may be granted
8 to enable a person appointed or promoted as an officer to
9 prepare himself for the examination, or recognition may be
10 extended conditional upon future examination. When the
11 proceedings of an examining board has been approved by
12 the Secretary of War the governor will be informed as to
13 whether the candidate has passed the examination success-
14 fully and as to the grade, arm, department or corps for
15 which qualified; persons qualified for one grade and arm,
16 department, or corps will not be recognized in any other
17 grade, arm, department or corps unless examined and found

18 qualified therefor. Provided, that should the officer be
19 found incapacitated for service by reason of physical dis-
20 ability he shall be retired with the rank to which his senior-
21 ity entitled him to be promoted and should he fail for any
22 other reason, other than moral fitness, he shall be suspend-
23 ed from promotion or appointment to any office in the mili-
24 tia for one year, and should he fail the second time to pass
25 such examination he shall be honorably discharged, but
26 should he be found lacking in moral fitness, he shall, if the
27 governor approve of such finding, be discharged for the
28 good of the service. No candidate will be examined, whose
29 examination has not been authorized by the Secretary of
30 War; who is not a citizen of the United States or has not
31 declared his intention of becoming such; who, in the judg-
32 ment of the board, is not physically qualified to discharge all
33 the duties of an officer in active service; who has any men-
34 tal infirmity; whose moral fitness has not been clearly estab-
35 lished; who is less than twenty-one years of age or who be-
36 ing designated for commission other than by promotion, as
37 second lieutenant, shall be more than thirty-two; as first
38 lieutenant, more than thirty-six; as captain, more than for-
39 ty; as major, more than forty-five; as lieutenant colonel,
40 more than fifty; as colonel, more than fifty-five or as a gen-
41 eral officer more than sixty years old.'

Sect. 8. To amend section sixty-three of said chapter by
2 striking out after the words "shall be" in the second line
3 thereof, the words "for six years, the first three years of
4 which shall be in an active organization and the remaining

5 three years in the national guard reserve, hereinafter pro-
6 vided for” and substituting therefor the words ‘for a period
7 of three years and subsequent enlistments for periods of one
8 year each’, and by striking out all after the words “regular
9 army” in the fifth line thereof, so that said section, as
10 amended, shall read as follows:

‘Sect. 63. Hereafter the period of enlistment in the nation-
2 al guard shall be for a period of three years and subsequent
3 enlistments for periods of one year each, and the qualifica-
4 tions for enlistment shall be the same as those prescribed
5 for admission to the regular army.’

Sect. 9. To amend section sixty-four of said chapter by
2 striking out after the word “period of” in the sixth line
3 thereof, the words “three years in service and three years
4 in the reserve” and substituting therefor the words ‘three
5 (or one) year—’, so that said section, as amended, shall read
6 as follows:

‘Sect. 64. Every person who enlists or re-enlists shall sign
2 and make oath to an enlistment contract which shall con-
3 tain the following oath of allegiance to the state and to the
4 United States: “I do hereby acknowledge to have volun-
5 tarily enlisted this ——— day of ———, 19——, as a
6 soldier in the National Guard of the United States and of
7 the State of Maine, for the period of three (or one) year—
8 under the conditions prescribed by law, unless sooner dis-
9 charged by proper authority. And I do solemnly swear that
10 I will bear true faith and allegiance to the United States of

11 America and to the State of Maine, and that I will serve
12 them honestly and faithfully against all their enemies whom-
13 soever, and that I will obey the orders of the President of
14 the United States and of the Governor of the State of
15 Maine, and of the officers appointed over me according to
16 law and the rules and articles of war.”

Such oath shall be taken and subscribed to before a com-
2 missioned officer of the national guard and all such commis-
3 sioned officers are hereby authorized to administer such oath
4 when designated by the commanding officer of the company
5 or other organization or by any other proper military super-
6 ior, to make and complete valid enlistment in the national
7 guard. A person making a false oath as to any statements
8 contained in such enlistment paper, shall upon conviction,
9 be deemed guilty of perjury.’

Sect. 10. To amend section eighty-eight of said chapter by
2 striking out the first paragraph thereof and substituting
3 therefor the following: ‘Each officer and enlisted man or-
4 dered by the commander-in-chief or under his authority for
5 duty at encampments, maneuvers, field exercises, small arms
6 competitions, or other special duties or when called forth in
7 aid of the civil authorities shall receive for every day actual-
8 ly on duty, the same pay as officers and enlisted men of the
9 same grade and classification in the regular army, provided,
10 that enlisted men grade I as now or hereafter established
11 for the regular army shall be paid not less than two dollars
12 and fifty cents per day; grade II two dollars and twenty-
13 five cents; grade III two dollars; grade IV one dollar and

14 ninety cents; grade V one dollar and seventy-five cents;
15 grade VI one dollar and sixty cents; grade VII one dollar
16 and fifty cents, and provided further, that all band musicians
17 shall be paid not less than four dollars per day and all
18 specialists shall be paid the same additional compensation as
19 is allowed the corresponding classes of specialists in the
20 regular army, there shall be allowed the necessary transpor-
21 tation and subsistence, but no pay or compensation shall be
22 allowed except as otherwise provided by law when ordered
23 for inspection, muster, small arms practice, drill, parade,
24 review, field service or practice marches unless expressly
25 authorized in the order for such duties', so that said section,
26 as amended shall read as follows:

'Sect. 88. Each officer and enlisted man ordered by the
2 commander-in-chief or under his authority for duty at en-
3 campments, maneuvers, field exercises, small arms competi-
4 tions, or other special duties or when called forth in aid of
5 the civil authorities shall receive for every day actually on
6 duty, the same pay as officers and enlisted men of the same
7 grade and classification in the regular army, provided, that
8 enlisted men of grade I as now or hereafter established for
9 the regular army shall be paid not less than two dollars and
10 fifty cents per day; grade II two dollars and twenty-five
11 cents; grade III two dollars; grade IV one dollar and ninety
12 cents; grade V one dollar and seventy-five cents; grade VI
13 one dollar and sixty cents; grade VII one dollar and fifty
14 cents, and provided further that all band musicians shall be
15 paid not less than four dollars per day and all specialists

16 shall be paid the same additional compensation as is allowed
17 the corresponding classes of specialists in the regular army,
18 there shall be allowed the necessary transportation and sub-
19 sistence, but no pay or compensation shall be allowed except
20 as otherwise provided by law when ordered for inspection,
21 muster, small arms practice, drill, parade, review, field ser-
22 vice or practice marches unless expressly authorized in the
23 order for such duties.

When the national guard, or any portion thereof, shall be
2 called forth in aid of the civil authorities, or assembled in
3 obedience to such calls, as provided for in sections eighty-
4 one and eighty-two, all officers and men thereof shall re-
5 ceive the pay set forth in this section; and such compensa-
6 tion and the necessary expenses incurred in quartering, car-
7 ing for, transporting, and subsisting the troops as well as
8 the expense incurred for pay, care and subsistence of offi-
9 cers and enlisted men temporarily disabled in the line of
10 duty, while on such duty, shall be paid by the county where
11 such service is rendered. The treasurer of such county
12 shall upon presentation to him of vouchers and pay rolls
13 for such expenses and compensation, certified by the com-
14 manding officer of the organization or corps on duty in aid
15 of the civil authority in such county or counties, and ap-
16 proved by the adjutant general, forthwith execute in behalf
17 of and in the name of such county a certificate or certifi-
18 cates of indebtedness for the money required to pay such
19 vouchers and pay rolls; such certificates shall bear interest
20 at the rate of not to exceed six per centum per annum, and

21 shall be made payable on the first day of January following
22 the expiration of two months from their issue, and the
23 amount thereof shall be raised in the next tax budget of
24 said county succeeding their issue, and applied to the pay-
25 ment of such certificates. Said county treasurer shall sell
26 such certificates at public and private sale, and apply the
27 proceeds thereof to the payment of such expenses and com-
28 pensation. Any county treasurer or public officer, who shall
29 neglect or refuse to perform any of the duties required by
30 this section, shall be personally charged with the costs and
31 all necessary disbursements of any action or proceeding
32 brought to compel such performance, together with a rea-
33 sonable additional allowance to the plaintiff or relator in
34 such action or proceeding, to be fixed.'