

# MAINE STATE LEGISLATURE

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**Legislative Document**

**No. 194**

H. P. 432

House of Representatives, January 23, 1941.

Referred to Committee on Military Affairs. Sent up for concurrence and 1000 copies ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. LaFleur of Portland.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
FORTY-ONE

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**AN ACT Establishing the "Maine State Guard."**

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**Emergency preamble.** Whereas, a part of the National Guard of this state is in the active service of the United States and other units thereof will shortly be called into federal service and the state will be without a National Guard; and

Whereas, it is of vital importance that the state of Maine be adequately and immediately prepared for home defense and to protect its sovereignty; and

Whereas, the state of Maine must immediately provide military forces to be prepared to act in case of invasion, tumult, riot, mob, or body of men acting together by force with intent to commit a felony, or to offer violence to persons or property, or by force or violence to break and resist the laws of this state or of the United States, or of imminent danger thereof, or in the event of public disaster resulting from flood, conflagration, or tempest; and

Whereas, in the judgment of the legislature, these facts create an emergency within the meaning of section 16 of Article XXXI of the constitution of Maine, and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now therefore

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

**Maine State Guard established.** Chapter 18 of the revised statutes is hereby amended by adding thereto the following sections :

**'Sec. 91. Authority and name.** Whenever any part of the National Guard of this state is in active federal service, the governor is hereby authorized to organize and maintain within this state during such period, under such regulations as the secretary of war of the United States may prescribe for discipline in training, such military forces as the governor, as commander-in-chief, may deem necessary to defend this state and protect its sovereignty.

Such forces shall be composed of officers commissioned or assigned, and such able-bodied male citizens of the state and such other able-bodied men who have or shall have declared their intention to become citizens of the United States as shall volunteer therein, who shall be more than 18 years of age and not more than 60; provided, the restriction as to citizenship shall not apply to soldiers and sailors who have previously served honestly and faithfully in the United States army, navy, marine corps, the organized militia, or the National Guard.

Such forces shall be replacements of and distinct from the National Guard and shall be known as the "Maine State Guard."

Such forces shall be uniformed, the expense thereof, exclusive of the uniform and equipment of the commissioned officers, thereof, shall be paid by the state.'

**'Sec. 92. Organization; rules and regulations.** The governor is hereby authorized from time to time to prescribe in rules and regulations not inconsistent with the provisions of sections 91 to 102 inclusive, the enlistment, designation and location of units, the organization, administration, equipment, maintenance, training and discipline of such forces; provided, that the organization shall not conflict with the laws of the United States; and further provided, such rules and regulations, insofar as he deems practicable and desirable, shall conform to existing laws governing and pertaining to the National Guard of the state and the rules and regulations promulgated thereunder.

He shall, subject to the rules and regulations prescribed by the war department, appoint officers for such units and organizations of the state guard as he may establish and such officers shall, subject to removal by the commander-in-chief, exercise the same military authority over their several commands as specified by the statutes of Maine for officers of the National Guard of the state.'

**‘Sec. 93. Active service Maine State Guard; pay and allowances; disability compensation.** All of the provisions of sections 9 and 46 of this chapter not inconsistent with the provisions of sections 91 to 103 hereof inclusive, shall apply to and govern the Maine State Guard whenever such guard has been organized, and while it is in such active service as defined in section 9.

Any member of the Maine State Guard who, while in such active service as defined in section 9 of this chapter, shall receive any injury or incur or contract any disability or disease by reason of such active duty, or who shall without willful negligence on his part receive any wound, injury, or disease incident thereto while performing any lawfully ordered duty in connection therewith, which shall incapacitate him from his usual business or occupation, shall receive compensation therefor in accordance with the provisions of chapter 55, and any amendments thereto, as an employee of the state of Maine, and the average weekly wage in such cases shall be taken to be the earning capacity of the injured in the occupation in which he is regularly engaged, and in case of death his dependents, if any, shall be entitled to compensation as provided in said chapter 55.’

**‘Sec. 94. Requisitions; armories; other buildings.** For the use of such forces, the governor is hereby authorized to requisition from the secretary of war such arms and equipment as may be in possession of and can be spared by the war department; and to make available to such forces the facilities of state armories and their equipment and such other state premises and property as may be available.’

**‘Sec. 95. Use without this state.** Such forces shall not be required to serve outside the boundaries of this state except:

Any organization, unit or detachment of such forces, upon order of the officer in immediate command thereof, may continue in fresh pursuit of insurrectionists, saboteurs, enemies or enemy forces beyond the borders of this state into another state until they are apprehended or captured by such organization, unit or detachment or until the military or police forces of the other state or the forces of the United States have had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons; provided, such other state shall have given authority by law for such pursuit by such forces of this state. Any such person who shall be apprehended or captured in such other state by an organization, unit or detachment of the forces of this state shall without unnecessary delay be surrendered to the military or police forces of the state in which he is taken or to the United States, but such surrender shall not constitute a waiver

by this state of its right to extradite or prosecute such person for any crime committed in this state.'

**'Sec. 96. Permission to forces of other states.** Any military forces or organization, unit or detachment thereof, of another state who are in fresh pursuit of insurrectionists, saboteurs, enemies, or enemy forces may continue such pursuit into this state until the military or police forces of this state or the forces of the United States have had a reasonable opportunity to take up the pursuit or to apprehend or capture such persons and are hereby authorized to arrest or capture such persons within this state while in fresh pursuit. Any such person who shall be captured or arrested by the military forces of such other state while in this state shall without unnecessary delay be surrendered to the military or police forces of this state to be dealt with according to law. This section shall not be construed so as to make unlawful any arrest in this state which would otherwise be lawful.'

**'Sec. 97. Federal service.** Nothing in sections 91 to 103, inclusive, shall be construed as authorizing such forces, or any part thereof to be called, ordered or in any manner drafted, as such into the military service of the United States, but no person shall by reason of his enlistment or commission in any such forces be exempted from military service under any law of the United States.'

**'Sec. 98. Civil groups.** No civil organization, society, club, post, order, fraternity, association, brotherhood, body, union, league, or other combination of persons or civil group shall be enlisted in such forces as an organization or unit.'

**'Sec. 99. Disqualifications.** No person shall be commissioned or enlisted in such forces who has been expelled or dishonorably discharged from any military or naval organization of this state, or of another state, or of the United States, or who has been convicted of a felony in any court of this state, or of another state, or of the United States.'

**'Sec. 100. Oath of officers; enlisted men.** The oath to be taken by officers commissioned and men enlisted in such forces shall be substantially in the form prescribed for officers and enlisted men of the National Guard, substituting the words Maine State Guard where necessary.'

**'Sec. 101. Period of service.** All officers and enlisted men shall be commissioned and/or enlisted for the period of the emergency, hereinafter defined, unless sooner discharged for the convenience of the state; provided,

that such commission and/or enlistment, without the consent of such officer and/or enlisted man, shall in no event exceed 3 years.

The emergency shall be considered terminated upon the return to the state of the military units heretofore designated as the National Guard (Maine) and the resumption by such units or personnel thereof of the status of organized state militia, hereinafter referred to as "Reorganized Militia."

**Sec. 102. Articles of war; freedom from arrest; jury duty.** (a) Whenever such forces or any part thereof shall be ordered out for active service under the provisions of section 9 the Articles of War of the United States applicable to members of the National Guard of this state in relation to courts-martial, their jurisdiction and the limits of punishment and the rules and regulations prescribed thereunder, and the provisions of section 14 of this chapter shall be in full force and effect with respect to Maine State Guard.

(b) No officer or enlisted man of such forces shall be arrested on any warrant, except for treason or felony, while going to, remaining at, or returning from a place where he is ordered to attend for military duty. Every officer and enlisted man of such forces shall, during his service therein, be exempt from service upon any posse comitatus and from jury duty.'

**Sec. 103. Maine State Guard; discharge.** Upon the return to the state of the military units heretofore designated as the National Guard (Maine) and the resumption by such units or personnel thereof of the status of organized state militia, hereinafter referred to as "Reorganized Militia" the personnel of the Maine State Guard hereinbefore created shall be discharged from service in the following manner:

Within 30 days from the creation of the reorganized militia there shall be discharged from the Maine State Guard in the order of its enlistment such number of the Maine State Guard as bears the same relation to the total enrollment in the Maine State Guard as the number in the reorganized militia bears to the total enrollment at peace time strength of the military units heretofore designated as the National Guard (Maine) and in the event that the military units or parts thereof heretofore designated as the National Guard (Maine) shall return to the state serially the discharge from the Maine State Guard as herein provided shall be executed serially within 60 days following the return of each such unit or part thereof which decremental discharge from the Maine State Guard shall continue until the same shall be disbanded; provided, however, that no commanding officer of the Maine State Guard shall be relieved of his command under the provisions of this section until the enlisted personnel thereof shall have

been first discharged; and provided further, that order of discharge may be altered from order of enlistment at the discretion of the adjutant general of the state.'

**'Sec. 104. Severability.** If any provision of sections 91 to 103 inclusive, or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the said sections which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.'

**'Sec. 105. Repealing clause.** All acts and parts of acts inconsistent with the provisions of this act are hereby repealed.'

**Emergency clause.** In view of the emergency cited in the preamble, this act shall take effect when approved.