

CHAPTER 36 OF THE CONSOLIDATED LAWS.

MILITARY LAW.

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ARTICLE I

THE MILITIA OF THE STATE

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§ 1. Definitions. As used in this chapter:

1. The terms "New York national guard" and "national guard" shall mean the New York army national guard and the New York air national guard.
2. The term "naval militia" shall mean the New York naval militia.
3. The terms "military" and "military and naval" shall mean army or land, air or air force, space force or space and navy or naval.
4. The terms "military or naval" and "military (including air) or naval" shall mean army or land, air or air force, space force or space or navy or naval.
5. The term "military service of the state" as to military personnel shall mean service in or with a force of the organized militia or in the division of military and naval affairs of the executive department of the state. As to civilian personnel, it shall mean service in the division of military and naval affairs and not in the civil service of the state.

6. The terms "active service" and "active duty" shall mean military duty in or with a force of the organized militia (not including the inactive national guard and not including the New York guard when in an inactive status) or in the division of military and naval affairs of the executive department of the state, either in a full time status or in a part-time status, depending upon the conditions under which the duty is performed.

7. The term "on the active list" shall mean on the rolls of a force of the organized militia, not including the inactive national guard and not including the New York guard when in an inactive status.

8. The terms "active military service of the United States" and "in the armed forces of the United States" shall mean full time duty in the army, navy, marine corps, air force, space force or coast guard of the United States.

9. The term "force of the organized militia" shall mean, severally, the army national guard, the air national guard, the New York naval militia, the New York guard when organized, and such additional forces as may be created by the governor pursuant to section two of this chapter.

10. The terms "commissioned officer" and "officer" shall mean male commissioned officer, female commissioned officer appointed to serve as a nurse or medical specialist, or other female commissioned officer, otherwise qualified, when authorized by federal statute. The terms "he", "his" and "him", when used with relation to "commissioned officer" or "officer" shall also mean she, hers and her, respectively.

11. The term "warrant officer" shall mean male commissioned warrant officer or male warrant officer, or female commissioned warrant officer or female warrant officer, otherwise qualified, when authorized by federal statute. The terms "he", "his" and "him", when used with relation to the term "warrant officer" shall also mean she, hers and her, respectively.

12. The terms "enlisted personnel" and "enlisted person" shall mean male enlisted personnel and male enlisted person respectively, and female enlisted personnel and female enlisted person, otherwise qualified, when authorized by federal statute. The terms "he", "his" and "him", when used with relation to "enlisted personnel" and "enlisted person" shall also mean she, hers and her, respectively.

§ 2. Militia of the state; division and composition. 1. The militia of the state shall be divided into the organized militia, the state reserve list, the state retired list and the unorganized militia. The organized militia shall be composed of the New York army national guard; the New York air national guard; the inactive national guard; the New York naval militia; the New York guard whenever such a state force shall be duly organized and such additional forces as may be created by the governor.

2. The unorganized militia shall consist of all able-bodied male residents of the state between the ages of seventeen and forty-five who are not serving in any force of the organized militia or who are not on the state reserve list or the state retired list and who are or who have declared their intention to become citizens of the United States, subject, however, to such exemptions from military duty as are created by the laws of the United States.

3. The state reserve list and the state retired list shall include the persons who are lawfully carried thereon on the effective date of this act and such persons who may be transferred thereto or placed thereon by the governor in accordance with the provisions of this chapter.

4. The terms "organized militia," "all or any part of the organized militia," "organized militia or any part thereof" and "organized militia or any force thereof," whenever used in this chapter, unless a different meaning is plainly required by the context, shall be deemed to include any unit, command, component, element, headquarters, staff or cadre thereof as well as any member or members.

§ 3. Commander-in-chief; regulations; registration. 1. The governor of the state shall be the commander-in-chief of the militia of the state. The governor is hereby authorized to issue regulations for the government of the militia. Regulations issued by the governor shall have the same force and effect as the provisions of this chapter but they shall conform to the laws and regulations of the United States relating to the organization, discipline and training of the militia, to the provisions of this chapter and, as nearly as practicable to the laws and regulations governing the army, navy and air force of the United States. 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.

2. Whenever he shall deem it necessary, the governor may direct the members of the unorganized militia to present themselves for and submit to registration at such time and place and in such manner as may be prescribed by regulations issued pursuant to this section.

§ 4. Equality of treatment and opportunity. It is hereby declared to be the policy of the state that there shall be an equality of treatment and opportunity for all persons in the organized militia without regard to race, creed, color, national origin or sex. Such policy shall be put into effect by regulations to be issued pursuant to section three of this chapter, it being necessary to give due regard to the powers of the United States which are or may be exercised over the militia of the state.

§ 5. Militia call by the United States. When the militia of the state is called forth under the constitution and laws of the United States, the governor shall order out for service the organized militia or such part thereof as may be necessary, and if the number available be insufficient, the governor may call for and accept from the unorganized militia as many volunteers as are required for service in the organized militia or he may direct the members of the unorganized militia or such of them as may be necessary to be drafted into the organized militia.

§ 6. Ordering organized militia into active state service. 1. The governor shall have power, in case of invasion, disaster, insurrection, riot, breach of the peace, or imminent danger thereof, to order into the active service of the state for such period, to such extent and in such manner as he may deem necessary all or any part of the organized militia. Such power shall include the power to order the organized militia or any part thereof to function under the operational control of the United States army, navy or air force commander in charge of the defense of any area within the state which is invaded or attacked or is or may be threatened with invasion or attack.

2. Upon the request of the sheriff of a county, or in the county of Nassau the county executive or the mayor of a city, whenever it shall be made to appear to the governor that there is a breach of the peace, riot, resistance to process of this state or disaster or imminent danger thereof, the governor may order into the active service of the state, for such period, to such extent and in such manner as he may deem necessary all or any part of the organized militia. The compensation of all officers and enlisted men, while on duty or assembled pursuant to this subdivision, and all expenses incurred in connection with such duty or as a result thereof shall be paid in the manner prescribed by section two hundred twelve of this chapter.

§ 6-a. Organizations and volunteers from the unorganized militia. To the extent permitted by the constitution of the United States, the governor may, at any time, order, authorize or recognize such organizations of the unorganized militia, or of designated classes thereof, or of volunteers therefrom, as he may deem to be for the public interest, and may prescribe therefor such parts of the regulations governing the organized militia as may be applicable thereto or establish such regulations therefor, or both, as he may deem proper. The governor may, at any time, provide for the separate organization, or authorize the enlistment in organizations of the unorganized militia, of persons volunteering for such service, not otherwise subject to military

duty under section two of this chapter.

§ 7. Draft of unorganized militia. 1. Whenever it shall be necessary in case of invasion, disaster, insurrection, riot, breach of the peace or imminent danger thereof or to maintain the organized militia or any force thereof at the number required for public safety or prescribed by the laws of the United States, the governor may call for and accept from the unorganized militia as many volunteers as are required for service in the organized militia or he may direct the members of the unorganized militia or such of them as may be necessary to be drafted into the organized militia or any force thereof.

2. Whenever it shall be necessary in case of invasion, disaster, insurrection, riot, breach of the peace, or imminent danger thereof, the governor may direct the members of the unorganized militia or such of them as may be necessary to be drafted under such regulations as he may prescribe into the active service of the state, to serve as directed by him.

§ 8. Punishment for failure to appear. Any member of the unorganized militia who is ordered to register or to be drafted into the organized militia under the provision of this chapter and who fails to appear at the time and place designated in such order shall be guilty of a misdemeanor.

§ 9. Power of governor to declare martial rule. Whenever any portion of the organized militia is employed pursuant to section six of this chapter, 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 under martial rule.

§ 10. Military staff of the governor. The military staff of the

governor shall consist of the adjutant general and such aides as the governor shall deem necessary who shall be commissioned officers detailed by the governor from the organized militia. Officers detailed under this section shall not be relieved from their ordinary duties except when actually on duty with the governor. The military staff of the governor shall perform such ceremonial functions and duties as the governor may prescribe.

§ 11. Adjutant general. The adjutant general shall serve as such at the pleasure of the governor and, under his direction, shall exercise control over the division of military and naval affairs of the executive department of the state. The adjutant general may perform any act authorized by this chapter or the regulations issued pursuant to this chapter through or with the aid of such officers, officials or bureaus of the division of military and naval affairs as he may designate. It shall be the duty of the adjutant general to direct the planning and employment of the forces of the organized militia in carrying out their state military mission; to establish unified command of state forces whenever they shall be jointly engaged; to act as the state director of civil defense for the state; to submit an annual written report to the governor in such form as the governor may prescribe; and to perform such other duties as the governor may direct. The adjutant general may appoint such assistant adjutants general as may be necessary. Whenever the governor and those who would act in succession to the governor under the constitution and laws of the state shall be unable to perform the duties of commander-in-chief, the adjutant general shall command the militia.

§ 12. Deputy adjutant general. There shall be a deputy adjutant general who shall serve as such at the pleasure of the governor. The deputy adjutant general shall be appointed by the governor from among the commissioned officers on the active list of the organized militia upon the recommendation of the adjutant general and, while holding such title, shall have the rank of a general officer or flag officer. He shall have such duties as may be prescribed by the adjutant general and

shall act in place of the adjutant general during his absence or disability.

§ 13. The chief of staff of the state. There shall be a chief of staff of the state who shall serve as such at the pleasure of the governor. The chief of staff of the state shall be appointed by the governor and while holding such title shall have the grade of a general officer. The powers, functions and duties of the chief of staff of the state shall be those prescribed by this chapter and by regulations issued pursuant to this chapter. All such powers, functions and duties, however, as well as those which are or may be imposed upon the chief of staff of the state by the laws and regulations of the United States shall be exercised and performed by him under the direction and control of the adjutant general.

§ 13-a. Assistant adjutant general for air. The governor may appoint an assistant adjutant general for air who shall serve at the pleasure of the governor and may have the grade of brigadier general during his term of office. He shall be employed under section nineteen of this chapter with additional duties as a staff officer on the staff of the commander of the New York air national guard.

§ 13-b. Deputy commander of the New York army national guard. The governor, upon the recommendation of the adjutant general, may appoint a deputy commander, New York army national guard who shall serve at the pleasure of the governor. He shall be appointed by the governor from among the commissioned officers on the active list of the army national guard and, while holding such title, shall have the grade of major general during his term of office. He shall have such duties as may be prescribed by the commander, New York army national guard and shall act in the place of the commander of the New York army national guard during his absence or disability.

§ 13-c. Assistant adjutant general for army. The governor, upon the recommendation of the adjutant general, may appoint an assistant adjutant general for army who shall serve at the pleasure of the governor. He shall be appointed by the governor from among the commissioned officers on the active list of the army national guard and, while holding such title, shall have the grade of brigadier general during his term of office. He shall have such duties as may be prescribed by the adjutant general.

§ 14. Staff of the adjutant general. There shall be under the adjutant general a staff to consist of the deputy adjutant general, the chief of staff and such other officers as the adjutant general shall appoint provided, that each force of the organized militia shall be represented on the staff of the adjutant general by at least one officer. The staff of the adjutant general shall perform such functions, powers and duties as the adjutant general may prescribe.

§ 15. The attorney general. The attorney general of the state shall give such legal advice and assistance to the adjutant general as he may request.

§ 16. Audit of military accounts. The comptroller of the state shall be the auditor of all military accounts payable by the state. Such accounts shall be approved by the adjutant general prior to submission to the comptroller.

§ 17. Purchase of military property. Under the direction of the governor, the adjutant general shall authorize the purchase of such military property as may be required for the use of the organized militia. In extreme emergencies, however, the commanding officer of any unit of the organized militia may purchase such necessities as are required for the immediate use and care of his command. A report of such purchases shall be made forthwith to the adjutant general.

§ 18. Issue of military property. The adjutant general shall issue such military property as the governor shall direct. No military property shall be issued to persons or organizations other than those belonging to the organized militia. Obsolete ordnance property of the state, however, may be issued by the adjutant general, with the approval of the governor, to municipalities and to educational, patriotic and charitable organizations under such conditions as may be prescribed by regulations issued pursuant to this chapter.

§ 19. Employees of the division of military and naval affairs. 1. Within the amounts appropriated therefor, the adjutant general and the commanding general or commanding officer of each force of the organized militia may employ and discharge such personnel, including officers of the organized militia on permanent duty, as may be required in the offices, bureaus, camps and headquarters of their respective commands.

2. Within the amounts appropriated therefor the adjutant general may employ and discharge such other personnel as may be authorized by this chapter.

3. Personnel employed in the division of military and naval affairs, other than civilian employees performing the functions of the state civil defense commission, shall be considered as being in the military service and not in the civil service of the state.

4. The adjutant general shall promulgate rules and regulations pertaining to the work schedules, number of hours of work per week and per day, duties, annual leave, sick leave, leaves of absence, holidays, employment, promotion, demotion, assignment, transfer, discipline, discharge and any other matters pertinent to the administration of all employees authorized by this chapter.

§ 19-a. Family liaison officer. The adjutant general shall designate

family liaison officers to provide assistance to the families of those military personnel who have been deployed for active military duty, other than training. Such officer shall coordinate his or her duties with the state's employee assistance program that is maintained by the office of employee relations. The assistance provided by such officer shall include, but not be limited to: (a) serving as liaison between the families of service personnel and the department of defense; (b) providing information on family assistance programs that are available from the state and federal government; (c) ensuring that the families of those military personnel on active duty receive appropriate support and assistance. A family liaison officer shall be available beginning on the date of any declaration of war by the Congress through the date prescribed by presidential proclamation or concurrent resolution of Congress, or during any periods of combat as designated by presidential executive orders. The family liaison officer may be assisted in his or her duties by such staff under the jurisdiction of the adjutant general that may be necessary to perform the duties of such position.

§ 20. State reserve list. 1. Any commissioned or warrant officer of the organized militia may be transferred to the state reserve list on his own request approved by the commander of the force of which such officer is a member.

2. Any commissioned or warrant officer of the organized militia who has tendered his resignation or has been rendered surplus by reduction, disbandment or reorganization of a unit or denial, withdrawal or termination of his federal recognition or for any other reason, unless transferred to the inactive national guard may be relieved from duty or command and may be transferred to the state reserve list.

3. Any person who has served as a commissioned or warrant officer in the organized militia or in the armed forces of the United States and (a) has been honorably discharged therefrom, or (b) has a qualifying condition, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service, or (c) is a discharged LGBT veteran, as defined in section

one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service, may be commissioned and placed on the state reserve list in the highest grade previously held by him or her after complying with such conditions as may be prescribed by regulations issued pursuant to this chapter.

4. Upon the recommendation of the adjutant general, any officer eligible to be transferred to or placed upon the state reserve list under the provisions of this section, who has served for at least twenty-five years in the organized militia or in the armed forces of the United States or in two or more of such forces combined for at least twenty-five years may be transferred to or placed upon the state reserve list by the governor in a grade one grade higher than the highest grade previously held by him; provided that at least five years of such service shall have been in the organized militia. In computing such twenty-five year period, service as an enlisted man shall be counted.

5. Upon the recommendation of the adjutant general, the governor may order any person on the state reserve list to active duty in or with the organized militia for periods of not more than three months each in which case such person shall rank in his grade from the date of such order.

6. Time spent on the state reserve list shall not be credited in the computation of seniority, pay, length of service for promotion or otherwise, or retirement or any of the privileges and exemptions pertaining thereto, except that the time during which he served on active duty by order of the governor shall be so credited.

7. The provisions of this chapter relative to the resignation, retirement, court-martial, dismissal and discharge of commissioned officers and warrant officers of the organized militia including discharge on the findings of an efficiency or medical examining board shall be applicable to officers and warrant officers on the state reserve list.

8. A commissioned officer or warrant officer on the state reserve list

may be dropped from the rolls if he fails to report to the chief of staff of the state as prescribed by regulations issued pursuant to this chapter.

§ 21. State retired list. 1. Any commissioned officer or warrant officer of the organized militia who has reached the age of sixty-eight years shall be retired for age and transferred to the state retired list by the governor; provided, that any commissioned officer or warrant officer of the organized militia may be retired for age at an age less than sixty-eight years in order to conform with the laws and regulations of the United States applicable to the organized militia and may be transferred to the state retired list by the governor.

2. Any commissioned officer who shall have served in the same grade for the continuous period of ten years, or in the military or naval service of the state as a commissioned officer for fifteen years, or in the case of an officer of the naval militia retiring such service may have been in the naval service of the state and the United States combined for fifteen years, provided at least ten years of such service shall have been in the state, may, upon his own request, be retired from active service and placed upon the retired list.

3. Upon the recommendation of the adjutant general, any commissioned or warrant officer eligible to be transferred to the retired list under the provisions of this section who has served for at least twenty-five years in the organized militia or in the organized militia and the armed forces of the United States combined may be transferred to the state retired list by the governor in a grade one grade higher than the highest grade previously held by him in the organized militia; provided, that any person who has received a similar promotion at the time he was placed upon the state reserve list shall not again be eligible for promotion under this subdivision.

4. Upon the recommendation of the adjutant general, the governor may order any person on the state retired list to active duty for the purpose of serving on military courts or boards or performing staff duty

in or with the organized militia and in time of emergency to perform any military duty in or with the organized militia. In any such case, the person so ordered shall rank in his grade from the date of such order.

5. Time spent on the state retired list shall not be credited in the computation of seniority, pay, length of service for promotion or otherwise or any of the privileges and exemptions pertaining thereto, except that the time during which he served on active duty by order of the governor shall be so credited.

6. A commissioned officer or warrant officer on the state retired list, except an officer who is receiving retirement compensation or pension from the state pursuant to any provision of article ten of this chapter may be dropped from the rolls, if he fails to report to the chief of staff of the state as prescribed by regulations issued pursuant to this chapter.

7. A commissioned officer receiving retired compensation pursuant to the provisions of section two hundred fourteen of this chapter, may, with his consent, and provided he is otherwise qualified, be ordered by the governor to active duty in a force of the organized militia. While performing active duty, such officer shall not be required to forfeit his retired compensation, except during any period of duty when pay and allowances (as differentiated from subsistence and per diem) are authorized under the provisions of section two hundred ten of this chapter.

§ 22. Service without the state. The governor may order the organized militia or any part thereof to serve outside of the borders of this state or of the United States in order to perform military duty of every description and to participate in parades, reviews, cruises, conferences, encampments, maneuvers or other training, and to participate in small arms and other military competitions and to attend service schools.

§ 22-a. Compacts for military aid. 1. a. With the prior or subsequent consent of the congress of the United States, the governor is authorized to enter into, amend, supplement and implement agreements or compacts with the executive authorities of other states and the Dominion of Canada and any of the provinces thereof, providing for mutual military aid, and matters incidental thereto, in case of invasion or other hostile action, disaster, insurrection, or imminent danger thereof.

b. Such agreements or compacts may include but shall not be limited to provisions for joint military action against a common enemy; for the protection of bridges, tunnels, ferries, pipelines, communication facilities and other vital installations, plants and facilities; for the military support of civil defense agencies; for the fresh pursuit, by the organized militia or military forces or any part thereof of a signatory into the jurisdiction of any other signatory, of persons acting or appearing to act in the interest of any enemy government or seeking or appearing to seek to overthrow the government of the United States or of any signatory; for the powers, duties, rights, privileges and immunities of the members of the organized militia or military forces of any signatory while so engaged outside their own jurisdiction; for such other matters as are of a military nature, or incidental thereto, and which the governor may deem necessary or proper to promote the health, safety and welfare of the people of this state; for the allocation of all costs and expenses arising from the planning and operation of such agreements or compacts.

2. Nothing contained in this section shall be construed or interpreted as expressing a limitation, directly or indirectly, of the power of the governor to enter into, and to amend or supplement, such compacts, with legal force and effect and without the legislative authorization expressed herein.

§ 23. Application of this chapter to service without the state. The provisions of this chapter shall apply to the members of the organized militia while serving without the state and while going to and returning from such service without the state in like manner and to the same

extent as while serving within the state.

§ 24. Bureau of war records; completion and preservation of the records and relics; free inspection of the same and quarters in the capitol.

1. The adjutant general shall cause the chief of staff of the state to establish and maintain as part of his office, a bureau of war records, in which all records in his office relating to the wars in which the state participated, and relics shall be kept. The chief of staff of the state shall be the custodian of all such records, relics, colors, standards and battle flags of New York troops now the property of the state or in its possession, or which the state may hereafter acquire or become possessed of. The adjutant general, upon recommendation of the chief of staff, shall appoint a chief of this bureau, who shall hold office under his direction for six years.

2. The chief of staff of the state by all reasonable ways and means, shall complete such records and gather from every available source such colors, standards and battle flags as were borne by New York state troops in the wars in which the state participated, and such statistics and historical information and relics as may serve to perpetuate the memory and heroic deeds of the soldiers of the state, and keep and carefully preserve the same in such bureau.

3. He is authorized to request and accept from incorporated associations of veterans of the different regiments, statements and information duly authenticated by them, descriptive of their colors, standards and battle flags, together with the number and class of arms of the regiment, the date and place of muster into the service of the state and also into the service of the United States, the period of service, and the date and place of muster-out, the date of departure for the seat of war, and the various battles and engagements and places of service, including garrison duty, the time of joining brigades, corps and armies, with the time and nature of the service, and the names of colonels of such regiments, the names of those killed in action, including those who died of wounds, and the names of those who died of disease during their period of service. He is further authorized to ask

the cooperation and assistance of the adjutant-general of the United States, and of the city, county and town authorities and officials, and of the Grand Army of the Republic, the Military Order of the Loyal Legion, the United Spanish War Veterans, the American Legion, the Veterans of Foreign Wars, the Jewish War Veterans of the United States, Inc., the Catholic War Veterans, Inc., the Italian American War Veterans of the United States, Incorporated, the Polish Legion of American Veterans, Inc., Vietnam Veterans of America and of other organizations and persons in the state of New York and elsewhere in the collection of such other information, relics, memorials and battle flags as is contemplated by this article, in order to make as complete as possible the records, history and statistics of the patriotic service of the soldiers of the state during the wars in which the state participated.

4. The chief of staff of the state is directed to cause to be transcribed and kept in books of record in such bureau the historical facts, information and statistics as provided above; and is authorized to determine a convenient size for the volumes in which such statistics and historical data may be bound, and to request veteran associations and others proposing to supply such historical data and information to furnish the same on printed or manuscript sheets of a uniform size to correspond with the size of such volumes.

5. He is further authorized to provide locked and sealed cases with glass fronts, as nearly air-tight as practicable, in which shall be kept and displayed the colors, standards and battle flags above mentioned, and receive placards in duplicate, which incorporated in regimental veteran associations are privileged and empowered to furnish and upon which shall be inscribed synopses of the historical information and statistics herein provided to be furnished to such bureau by regimental veteran associations, or failing to receive such data and information from such veteran associations, for the preparation of such placards, he may utilize the authentic information which he may obtain from other sources, as herein provided, which placards shall be uniform in size and color and shall be attached to or conspicuously placed in proximity to the colors, standards and battle flags to which they refer. If any placard or inscription shall be lost, destroyed or removed, the chief of

staff of the state shall at once replace it by duplicate of the original on file.

The legislature shall annually make suitable appropriations to enable the adjutant general of the state to carry out the provisions of this section.

6. a. The books, records, relics and other property in such bureau shall be open for inspection and use, except the use of the colors, standards and battle flags, at such reasonable hours and under such regulations as the chief of staff of the state may determine.

b. No property placed in such bureau for the purposes of this section shall be removed therefrom, or from the immediate custody and control of the chief of staff of the state, except as follows:

(1) colors, standards, battle flags and guidons received from the United States may be turned over by the chief of staff, with the approval of the governor, under such conditions as the governor may prescribe, to active organizations of the New York national guard and New York naval militia, representing the organizations which carried such colors, standards, battle flags and guidons while in the active military service of the United States;

(2) the chief of staff of the state, subject to the approval of the adjutant general, may lend any of the property placed in such bureau for the purposes of this section to a public corporation or agency thereof; state institution or other state agency; educational corporation or institution; museum; or historical society under such conditions as the chief of staff may prescribe;

(3) notwithstanding any other provision of law, the chief of staff of the state, subject to the approval of the adjutant general, may destroy, sell or otherwise permanently dispose of any property in such bureau, except books and records, provided he:

(a) advises the state historian of the nature of the property;

(b) certifies to the state historian that such property no longer has sufficient administrative, historical or military value to warrant its retention; and

(c) receives the consent of the state historian to the destruction,

sale or other permanent disposition of the property;

(4) books and records in such bureau shall be disposed of or destroyed in accordance with the provisions of subdivision eleven of section 57.05 of the arts and cultural affairs law.

7. The commissioner of general services is authorized and directed to provide suitable and convenient quarters in the capitol for the bureau of war records whenever the adjutant general shall require and make demand therefor, and to properly fit up and prepare the same for the safe-keeping of such records, books and property, and for the display of such colors, standards, battle flags and relics which shall be known and maintained as the hall of military records. The several municipalities of the state may deposit their record books and papers relating to the wars in which the state participated in the archives of the hall for safe-keeping, and transcripts therefrom shall be furnished on application by the chief officer of the municipality without cost to it. Officers or soldiers may deposit therein their discharge papers, descriptive lists, muster rolls or company or regimental books and papers for safe-keeping.

ARTICLE II

THE ORGANIZED MILITIA

Section 40. Appointment of commanders.

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51. Marksmanship and merit prizes.

52. Responsibility for public property.

§ 40. Appointment of commanders. 1. The commanding generals of the New York army national guard and the New York guard, the commander of the New York air national guard and the commanding officer of the New York naval militia shall be appointed by the governor and shall hold command at the pleasure of the governor. They shall be responsible to the governor for the military efficiency of their respective forces.

2. The New York army national guard shall be commanded by a general officer who shall be federally recognized or qualified for federal recognition in a grade not below that of major general.

3. The New York air national guard shall be commanded by a general officer who shall be federally recognized or qualified for federal recognition in a grade not below that of brigadier general, and who has received an aeronautical rating.

4. The organized militia shall be commanded by the adjutant general to the governor, subject to the orders of the governor.

§ 41. The New York army national guard. The New York army national guard is an active land force of the organized militia and shall comprise the army units which are part of the New York national guard at this date and such other army units as may be organized hereafter, including the personnel who are enlisted, appointed or commissioned therein; provided, that all persons who are members of the New York army national guard shall be federally recognized or qualified for federal recognition therein.

§ 42. The New York air national guard. The New York air national guard is the active air force of the organized militia and shall comprise the air units which are a part of the New York national guard at this date and such other air units as may be organized hereafter, including the personnel who are enlisted, appointed or commissioned therein; provided, that all persons who are members of the New York air

national guard shall be federally recognized or qualified for federal recognition therein. The army aviation units of the New York army national guard shall not be considered air units within the meaning of this chapter.

§ 43. The New York naval militia. 1. The naval force of the organized militia shall be the New York naval militia and shall comprise the units and personnel forming the naval militia of the state at this date and such other naval units as may be organized hereafter including the personnel who are enlisted, appointed or commissioned therein; provided, that ninety-five percent of the persons who are members of the New York naval militia shall be members of the United States naval reserve, the United States marine corps reserve or the United States coast guard reserve.

2. The New York naval militia shall be commanded by:

(a) an officer of the United States navy or naval reserve who has attained a grade of commander or higher;

(b) an officer of the United States marine corps or marine corps reserve who has attained a grade of lieutenant colonel or higher; or

(c) an officer of the United States coast guard or coast guard reserve who has attained a grade of commander or higher.

The commanding officer of the New York naval militia shall maintain liaison with the United States navy, United States marine corps, United States coast guard, and their reserve components.

§ 44. The New York guard. The New York guard, whenever a state force shall be duly organized under the constitution and laws of the United States and of the state, shall be a reserve land force of the organized militia, and shall be commanded by a general officer.

§ 45. Organization and training. The forces of the organized militia shall be organized, armed, disciplined, governed, administered and

trained as prescribed by the laws of the United States and by this chapter and the regulations issued thereunder.

§ 46. Assemblies, annual training and other duty. 1. Members and units of the organized militia shall assemble for drill or other equivalent training, instruction or duties and shall participate in field training, annual training, full-time training duty, active duty for training, encampments, maneuvers, schools, conferences, cruises or other similar duties as may be prescribed by the laws of the United States or the state or the regulations issued thereunder; provided, that no assembly of any unit of the organized militia shall be ordered in time of peace for any day during which a general election shall be held, except in case of riot, disaster, invasion, insurrection, or imminent danger thereof.

2. Within the amount appropriated therefor, the adjutant general may prescribe and order the number of days, if any, for assemblies for drills or other equivalent training, instruction or duties to be performed annually by members of the organized militia for which they may receive pay.

3. Within the amount appropriated therefor, the adjutant general may prescribe and order the number of days, if any, of field training, encampments, maneuvers, schools, conferences, cruises or other similar duties to be performed by members of the organized militia for which they may receive pay and allowances.

4. Members of the organized militia may be ordered by the governor or under his authority to perform special duty, including duty in a judicial proceeding or course of justice conducted pursuant to article seven of this chapter or as a member of or in any other capacity with any military board or as an investigating officer or as a medical examiner or as a judge advocate in the performance of legal services in any suit, action or proceeding.

§ 47. Maintenance of militia units. Unless the same shall be furnished by the United States, the state shall provide adequate armory accommodations, bases, camps, target ranges, mooring and other facilities and shall maintain the same for units of the army national guard, the air national guard, the organized naval reserve and the organized marine corps reserve allotted to the state under the laws of the United States, accepted by the governor and organized under the authority of this chapter.

§ 48. Organization of militia units. The governor shall conform the organization of the New York national guard and the New York naval militia, including the composition of all units thereof, to the organization of national guard and naval militia units prescribed by the laws of the United States and the regulations issued thereunder. For that purpose, the governor is hereby authorized to organize, reorganize, inactivate or disband any unit, headquarters or staff therein; to increase or decrease the number of commissioned officers, commissioned warrant officers, warrant officers and enlisted personnel of any grade therein; and to increase or decrease the strength of the New York national guard and the New York naval militia; provided, that no organization of the New York national guard the members of which shall be entitled to and shall have received compensation under the applicable laws of the United States shall be disbanded without the consent of the president of the United States, nor, without such consent, shall the commissioned or enlisted strength of any organization in the New York national guard be reduced below the minimum that shall be prescribed therefor by the president of the United States.

§ 49. Inactive national guard. The inactive national guard shall consist of the persons commissioned, appointed or enlisted therein or assigned thereto at this date, such officers and enlisted men as may be hereafter transferred thereto from the New York army national guard and the New York air national guard and such persons as may be enlisted therein under the laws of the United States and the regulations issued thereunder.

§ 50. Credit for active federal service. For all purposes under this chapter, members of the organized militia who entered the active military service of the United States in time of war or under a call, order or draft by the president or who hereafter enter such service under like conditions or who enter and serve on active duty in the military service of the United States in time of peace and who thereafter return to the military service of the state, shall be entitled to credit for time so served as if such service had been rendered to the state.

§ 51. Marksmanship and merit prizes. 1. To encourage marksmanship, the governor is authorized to offer annually:

- a. a state decoration to those who shall excel in small arms practice;
- b. a prize not exceeding three hundred dollars in value, for competition among the units of the New York national guard and the New York naval militia armed with the rifle;
- c. a prize not exceeding one hundred dollars in value for competition among the units armed with the rifle (1) not forming part of or attached to a brigade or division of the New York army national guard; (2) of each brigade and division of the New York army national guard; (3) of the New York air national guard and (4) of the New York naval militia.

2. The governor may also offer annually three prizes of the value of one hundred dollars, seventy-five dollars and fifty dollars, respectively, to be awarded to the three companies or corresponding units of the organized militia having the highest general figure of merit (1) in organizations not forming part of or attached to a brigade or division of the New York army national guard; (2) in each brigade or division of the New York army national guard; (3) in the New York air national guard; and (4) in the New York naval militia.

3. The governor may also in his discretion provide suitable decorations and prizes for proficiency in practice with other small arms and with light and heavy weapons.

4. All such prizes and decorations shall be competed for under regulations issued pursuant to this chapter.

§ 52. Responsibility for public property. 1. Public property of the state and of the United States shall be issued, kept, stored, safeguarded, maintained, inventoried, inspected, surveyed and disposed of; and responsibility and accountability for public property, liability for the loss, damage or destruction thereof and relief from such responsibility, accountability and liability shall be fixed and determined by the chief of staff; as provided in applicable laws of the United States, regulations issued thereunder or regulations issued pursuant to this chapter.

2. When public property is lost, damaged or destroyed through the negligence or fault of a member of the organized militia, the amount determined as the value of such property or the cost of repairing the same may be collected from any pay or allowance due or to become due him from the state. Such amount may also be collected from the military fund or other allowances payable by the state to the unit of the organized militia to which such member belonged at the time such property was lost, damaged or destroyed, or such amount may be deducted one-half in successive calendar years from any fund, allowance or money due or to become due such unit from the state.

3. An action may be maintained by the people of the state in any court having jurisdiction thereof by the attorney-general upon the request of the chief of staff to recover from a member or former member of the organized militia found responsible for public property lost, damaged or destroyed through his negligence or fault the amount determined as the value of such property or the cost of repairing the same. Monies so recovered shall be paid into the military fund of the unit to which such member or former member belonged at the time such property was lost,

damaged or destroyed.

ARTICLE III

OFFICERS OF THE ORGANIZED MILITIA

Section 70. Appointment of commissioned officers.

71. Qualifications.

72. Assignment and transfer of officers.

73. Oath of office.

74. Uniforms.

75. Efficiency or fitness examining boards and medical examining boards.

76. Efficiency or fitness examining boards and medical examining boards; procedure.

77. Resignations.

78. Absence without leave; discharge.

79. Warrant officers.

80. Tenure of commissioned officers.

§ 70. Appointment of commissioned officers. 1. All commissioned officers of the organized militia shall be appointed and promoted by the governor upon recommendation of the commanding general or the commanding officer of the force in which such officers are to serve.

2. General officers above the grade of brigadier-general and flag officers above the grade of commodore shall be appointed and promoted by the governor with the consent of the senate. During the time that the senate is not in session the governor may make such appointment subject to subsequent confirmation by the senate.

§ 71. Qualifications. No person shall be appointed or promoted as a commissioned officer of the organized militia unless he shall have passed such examination as to his physical, moral and professional qualifications as may be prescribed by the laws of the United States and by this chapter and the regulations issued thereunder. No person shall

be recognized as a commissioned officer of the organized militia and no appointment as such shall become effective until he shall have taken and subscribed an oath of office.

Any person who has been dismissed or dishonorably discharged from the organized militia of this or any other state or from the armed forces of the United States and has not been restored to duty or any commissioned officer who was discharged from the organized militia as a result of the findings of an efficiency examining board or whose resignation from the organized militia was accepted by the governor at a time when such officer was under arrest or under charges for the commission of an offense punishable by a court-martial shall not be eligible for appointment as a commissioned officer in any force of the organized militia.

§ 72. Assignment and transfer of officers. Commissioned officers may be assigned, reassigned, transferred or detailed to and from units of the organized militia, as prescribed by applicable laws of the United States and by this chapter and by the regulations issued thereunder.

§ 73. Oath of office. Every commissioned officer shall take and subscribe the oath of office prescribed for officers of the organized militia by the applicable laws of the United States and regulations issued pursuant to this chapter. Such oath shall be taken and subscribed before a commissioned or warrant officer of the organized militia or of any branch of the armed forces of the United States, or before a notary public or other officer authorized by the laws of this state to take and certify the acknowledgment and proof of conveyances of real property to entitle them to be recorded.

§ 74. Uniforms. Every commissioned officer shall provide himself with such uniforms and articles of equipment as may be prescribed by regulations issued pursuant to this chapter.

§ 75. Efficiency or fitness examining boards and medical examining boards. 1. The efficiency, moral character, conduct and general fitness for retention in the organized militia of any commissioned officer may be investigated, examined into and determined by an efficiency or fitness examining board. The members of an efficiency or fitness examining board shall be senior in rank to the officer under investigation unless unavoidable.

2. The physical fitness for further service of any commissioned officer in the organized militia may be investigated and determined by a medical examining board of officers.

3. Efficiency or fitness examining boards and medical examining boards shall be appointed by the governor upon the recommendation of the adjutant general; provided, that whenever an examining board shall be appointed for the purpose of determining the fitness of any officer for continued federal recognition, such board shall be appointed by the commander designated, and shall follow the practice and procedure prescribed in the applicable laws of the United States and the regulations issued thereunder.

§ 76. Efficiency or fitness examining boards and medical examining boards; procedure. Efficiency or fitness examining boards and medical examining boards appointed by the governor are hereby vested with the powers and immunities of courts of inquiry and courts-martial. Such boards shall follow the practice and procedure prescribed by regulations issued pursuant to this chapter. Any officer ordered to appear before such a board shall be allowed to appear in person or by counsel, if provided by him at his own expense, to cross-examine witnesses and to call witnesses on his behalf. He shall at all stages of the proceeding be allowed full access to records pertinent to his case and be furnished with copies of the same. Failure to appear before any such board shall be sufficient ground for a finding by such board that the officer ordered to appear be discharged. If the findings of any board appointed by the governor or under applicable laws and regulations of the United

States are unfavorable to an officer and are approved as provided by applicable laws and regulations of the state or United States, the governor shall relieve the officer from duty and may discharge him in such manner and form as the governor may deem appropriate; or, in the discretion of the governor, such officer may be transferred to the state reserve list or the state retired list in accordance with the provisions of this chapter.

§ 77. Resignations. 1. A commissioned officer of the organized militia may tender his resignation at any time to the governor. If the governor shall accept the resignation, the officer shall receive an honorable discharge but if the officer tendering his resignation shall be under arrest or if charges have been preferred against him for the commission of an offense punishable by a court-martial, he may be given a discharge in such form as the governor may direct.

2. Enlistment in the regular army, air force, navy, marine corps or coast guard of the United States shall be deemed a resignation by the person so enlisting of all commissions in the militia held by him.

3. The acceptance of a commission in the organized militia shall be deemed a resignation by the person accepting the same of any other commission held by him in the militia.

§ 78. Absence without leave; discharge. The governor may discharge any commissioned officer who absents himself without leave for three months. Such officer shall receive a discharge in writing in such form and of such type or classification as may be prescribed by applicable laws and regulations of the United States and by regulations issued pursuant to this chapter.

§ 79. Warrant officers. The provisions of this article relating to commissioned officers shall apply to warrant officers and commissioned warrant officers, except that warrant officers who shall have been

absent without leave may be discharged as may be prescribed by the applicable laws of the United States and by this chapter and the regulations issued thereunder.

§ 80. Tenure of commissioned officers. No commissioned officer shall be involuntarily discharged or dismissed from the service, unless by the senate on the recommendation of the governor, stating the grounds for such recommendation; or by the sentence of a court-martial; or upon the findings of an examining board appointed pursuant to section seventy-five of this chapter; or, as provided by section seventy-eight of this chapter, for absence without leave for a period of three months; provided, however, that a commissioned officer may be transferred to the state reserve list or state retired list as provided by section twenty and section twenty-one of this chapter, respectively.

ARTICLE IV

ENLISTED PERSONNEL OF THE ORGANIZED MILITIA

Section 90. Enlistment, period of service, transfer, discharge, and extension of enlistment.

- 91. Contract and oath of enlistment.
- 92. Promotion and reduction.
- 93. Discharges.
- 94. Dropping from the rolls.

§ 90. Enlistment, period of service, transfer, discharge, and extension of enlistment. 1. The qualifications for enlistment and re-enlistment, the periods of enlistment, re-enlistment and voluntary extension of enlistment, the period of service, the form of oath to be taken, and the manner and form of transfer and discharge of enlisted personnel of the forces of the organized militia shall be those prescribed by applicable laws of the United States and by this chapter and by regulations issued thereunder.

- 2. a. The governor is authorized to extend the period of any

enlistment, re-enlistment, voluntary extension of enlistment, and the period of service of enlisted personnel of the organized militia for a period not to exceed six months after the termination of an emergency declared by him, the legislature or congress.

b. Whenever the period of enlistment, re-enlistment, voluntary extension of enlistment and the period of service of enlisted personnel of the reserve components of the armed forces of the United States are extended, the governor shall extend the period of any enlistment, re-enlistment, voluntary extension of enlistment and the period of service of enlisted personnel in the corresponding force of the organized militia for the same period.

§ 91. Contract and oath of enlistment. Every person who enlists or re-enlists in any force of the organized militia shall sign an enlistment contract and shall take and subscribe such oath or affirmation of enlistment as may be prescribed by applicable laws of the United States and by regulations issued pursuant to this chapter. Such oath shall be taken and subscribed before any officers authorized by section seventy-three of this chapter to administer the oath of office to a commissioned officer. A person making a false oath as to any statement contained in such enlistment contract shall upon conviction be deemed guilty of perjury.

§ 92. Promotion and reduction. Enlisted personnel of the organized militia shall be promoted and reduced in grade or rate, as prescribed by regulations issued pursuant to this chapter.

§ 93. Discharges. 1. An enlisted person may be discharged from any force of the organized militia prior to the expiration of his term of enlistment under such conditions as may be prescribed by applicable laws and regulations of the United States and by this chapter and by regulations issued pursuant to this chapter.

2. An enlisted person discharged from a force of the organized militia shall receive a discharge in writing in such form and of such type or classification as may be prescribed by applicable laws and regulations of the United States and by regulations issued pursuant to this chapter.

§ 94. Dropping from the rolls. When an enlisted person of the organized militia absents himself without leave and there is reason to believe that he does not intend to return, he may be dropped from the rolls, under such regulations as may be prescribed pursuant to this chapter.

ARTICLE VII

CODE OF MILITARY JUSTICE

Part	I. General provisions.....	130.1	to	130.6
	II. Apprehension and restraint.....	130.7	to	130.14
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PART I

GENERAL PROVISIONS

Section	130.1. Definitions.
	130.2. Persons subject to the code.
	130.3. Jurisdiction to try certain personnel.
	130.4. Discharge of commissioned officers.
	130.5. Territorial applicability of the code.

130.6. Judge advocates and legal officers.

§ 130.1. Definitions. The following terms when used in this article shall be construed in the sense indicated in this section, unless the context shows that a different sense is intended, namely:

(1) "Organized militia" means the organized militia, the composition of which is stated in section two of this chapter;

(2) "Officer" means a commissioned officer including a commissioned warrant officer;

(3) "Superior officer" means an officer superior in rank or command;

(4) "Enlisted person" means any person who is serving in an enlisted grade in any force of the organized militia;

(5) "Active state duty" means full time military duty in the active service of the state under an order of the governor issued pursuant to sections six or seven of this chapter and while going to and returning from such duty;

(6) "Duty status other than active state duty" means any one of the types of duty described in section forty-six of this chapter and while going to and returning from such duty;

(7) "Military court" means a court-martial, a court of inquiry, a provost court;

(8) "Military judge" means an official of a general court-martial detailed in accordance with section 130.26 of this article;

(9) "Judge advocate" means an officer of a force of the organized militia who is a member of the judge advocate general's corps or who is designated as a judge advocate;

(10) "Legal officer" means an officer of the New York naval militia designated to perform legal duties for a command;

(11) "Code" means article seven of this chapter;

(12) "Accuser" means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any other person who has an interest other than an official interest in the prosecution of the accused.

§ 130.2. Persons subject to the code. The following persons are

subject to the code:

All persons belonging to the organized militia; all persons on the state reserve list and the state retired list; and all other persons lawfully called, ordered, drafted, transferred or inducted into, or ordered to duty in or with the organized militia, from the dates they are required by the terms of the call, order or other directive to obey the same.

§ 130.3. Jurisdiction to try certain personnel. (a) Subject to the provisions of section 130.43, any person subject to this code who is charged with having committed an offense against this code while serving during a prior enlistment in a force of the organized militia shall not be relieved from amenability to trial by court-martial by reason of the termination of said prior enlistment, if such person re-enlisted in any force of the organized militia not more than one day after the date of termination of the prior enlistment.

(b) All persons discharged from the organized militia subsequently charged with having fraudulently obtained said discharge shall, subject to the provisions of section 130.43, be subject to trial by court-martial on said charge and after apprehension, shall be subject to this code. Upon conviction of said charge they shall be subject to trial by court-martial for all offenses under this code committed prior to the fraudulent discharge.

(c) Any person who has deserted from the organized militia shall not be relieved from amenability to the jurisdiction of this code by virtue of a separation from any subsequent period of service.

(d) In the case of persons charged with absence without leave under section 130.82 of this article, in personam jurisdiction of special courts-martial with powers to adjudge a bad-conduct discharge can be obtained over such persons by any method of personal service sufficient for personal jurisdiction under the provisions of section three hundred eight of the civil practice law and rules; provided that diligent efforts have been made to deliver the charges to such persons. In all cases where personal jurisdiction is obtained by service in accordance with the provisions of this section, the special courts-martial shall

not have the power to adjudge confinement.

§ 130.4. Discharge of commissioned officers. (a) When any officer, discharged by order of the governor for absence without leave for a period of three months or more pursuant to section seventy-eight of this chapter, makes a written application for trial by court-martial, setting forth under oath that he has been wrongfully discharged, the adjutant general, as soon as practicable, shall convene a general court-martial to try such officer on the charges on which he was discharged. A court-martial so convened shall have jurisdiction to try the discharged officer on such charges, and he shall be held to have waived the right to plead any statute of limitations applicable to the offense with which he is charged. The court-martial may, as part of its sentence, adjudge the affirmance of the discharge, but if the court-martial acquits the accused or if the sentence adjudged, as finally approved or affirmed, does not include discharge, the adjutant general shall substitute for the discharge ordered by the governor a form of discharge authorized for administrative issuance.

(b) If the adjutant general fails to convene a general court-martial within six months from the presentation of an application for trial under this article, the adjutant general shall substitute for the discharge ordered by the governor a form of discharge authorized for administrative issuance.

(c) Where an administrative discharge is substituted for a dismissal or discharge under the authority of this article, the governor alone may reappoint the officer to such commissioned rank and precedence as in the opinion of the governor such former officer would have attained had he not been dismissed or discharged. The reappointment of such a former officer may be made provided a position vacancy is available under applicable tables of organization. All time between the dismissal or discharge and such reappointment shall be considered as service for all purposes.

(d) When an officer is discharged from the organized militia by administrative action or by board proceedings pursuant to sections seventy-five and seventy-six of this chapter or is dropped from the rolls by the senate on the recommendation of the governor pursuant to

section eighty of this chapter, there shall not be a right to trial under this section.

§ 130.5. Territorial applicability of the code. (a) This code shall be applicable in all places within the state. It shall also apply to all persons subject to this code while serving without the state and while going to and returning from such service without the state in like manner and to the same extent as while such persons are serving within the state.

(b) Courts-martial and courts of inquiry may be convened and held in units of the organized militia while serving without the state with the same jurisdiction and powers as if held within the state and offenses committed without the state may be tried and punished either without the state or within the state.

§ 130.6. Judge advocates and legal officers. (a) The state judge advocate or his assistants shall make frequent inspections in the field in supervision of the administration of military justice in the organized militia.

(b) Convening authorities shall at all times communicate directly with their staff judge advocates or legal officers in matters relating to the administration of military justice; and the staff judge advocate or legal officer of any command is authorized to communicate directly with the staff judge advocate or legal officer of a superior or subordinate command, or with the state judge advocate.

(c) No person who has acted as member, military judge, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel or investigating officer in any case shall subsequently act as a staff judge advocate or legal officer to any reviewing authority upon the same case.

PART II

APPREHENSION AND RESTRAINT

Section 130.7. Apprehension.

- 130.8. Apprehension of deserters.
- 130.9. Imposition of restraint.
- 130.10. Restraint of persons charged with offenses.
- 130.11. Confinement and imprisonment in civil jails.
- 130.12. Reports and receiving of prisoners.
- 130.13. Punishment prohibited before trial.
- 130.14. Delivery of offenders to civil authorities.

§ 130.7. Apprehension. (a) Apprehension is the taking into custody of a person.

(b) Any person authorized under regulations issued pursuant to this chapter to apprehend persons subject to this code, any marshal of a court-martial appointed pursuant to the provisions of this chapter and any peace officer, acting pursuant to his special duties, or police officer may apprehend persons subject to this code upon reasonable belief that an offense has been committed and that the person apprehended committed it.

(c) All officers, warrant officers, petty officers, and non-commissioned officers shall have authority to quell all quarrels, frays, and disorders among persons subject to this code and to apprehend persons subject to this code who take part in the same.

(d) Except as otherwise specifically provided in this chapter, no peace officer, police officer or marshal of a court-martial shall demand or require payment of any fee or charge of any nature for apprehending or placing in confinement any person subject to this code.

§ 130.8. Apprehension of deserters. It shall be lawful for any civil officer having authority to apprehend offenders under the laws of the United States or of any state, district, territory or possession of the United States summarily to apprehend a deserter from the organized militia and deliver him into the custody of the organized militia.

§ 130.9. Imposition of restraint. (a) Arrest is the restraint of a person by an order not imposed as a punishment for an offense, directing

him to remain within certain specified limits. Confinement is the physical restraint of a person.

(b) An enlisted person may be ordered apprehended or into arrest or confinement by any officer by an order, oral or written, delivered in person or through other persons subject to this code, or through any person authorized by this code to apprehend persons. A commanding officer may authorize warrant officers, petty officers, or noncommissioned officers to order enlisted persons of his command or subject to his authority into arrest or confinement.

(c) An officer or a warrant officer may be ordered into arrest or confinement only by a commanding officer to whose authority he is subject, by an order, oral or written, delivered in person or by another officer. The authority to order such persons into arrest or confinement may not be delegated.

(d) No person shall be ordered into arrest or confinement except for probable cause.

(e) Nothing in this section shall be construed to limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

§ 130.10. Restraint of persons charged with offenses. Any person subject to this code charged with an offense under this code shall be ordered apprehended or into arrest or confinement, as circumstances may require. When any person subject to this code is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charges and release him.

§ 130.11. Confinement and imprisonment in civil jails. Confinement and imprisonment other than in guard house, whether prior to, during or after trial by a military court, shall be executed in jails, penitentiaries or prisons designated by the governor or by the adjutant general for that purpose.

§ 130.12. Reports and receiving of prisoners. (a) No provost marshal, commander of a guard, master at arms, warden, keeper or officer of a city or county jail or any other jail, penitentiary or prison designated by the governor or by the adjutant general under section 130.11 of this article, shall refuse to receive or keep any prisoner committed to his charge when the committing person furnishes a statement, signed by him, of the offense charged against the prisoner.

(b) Every commander of a guard, master at arms, warden, keeper or officer of a city or county jail or of any other jail, penitentiary or prison designated by the governor or by the adjutant general under section 130.11 of this article, to whose charge a prisoner is committed shall, within twenty-four hours after such commitment or as soon as he is relieved from guard, report to the commanding officer of the prisoner the name of such prisoner, the offense charged against him, and the name of the person who ordered or authorized the commitment.

§ 130.13. Punishment prohibited before trial. Subject to the provisions of section 130.57, no person, while being held for trial or the results of trial, shall be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him, nor shall the arrest or confinement imposed upon him be any more rigorous than the circumstances require to insure his presence, but he may be subjected to minor punishment during such period for infractions of discipline.

§ 130.14. Delivery of offenders to civil authorities. (a) Under such regulations as may be issued pursuant to this chapter, a person subject to this code accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

(b) When delivery under this article is made to any civil authority of a person undergoing sentence of a court-martial, such delivery, if followed by conviction in a civil tribunal, shall be held to interrupt the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for his offense shall, upon the request of the adjutant general, be returned to military

custody for the completion of the said court-martial sentence.

PART III

NON-JUDICIAL PUNISHMENT

Section 130.15. Commanding officer's non-judicial punishment.

§ 130.15. Commanding officer's non-judicial punishment. (a) Under such regulations as may be issued pursuant to this chapter, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one of the following disciplinary punishments for minor offenses without the intervention of a court-martial---

(1) upon officers and warrant officers of his command:

(A) withholding of privileges for a period not to exceed two consecutive weeks; or

(B) restriction to certain specified limits, with or without suspension from duty, for a period not to exceed two consecutive weeks; or

(C) if imposed by the governor, the commanding officer of a force of the organized militia, an officer of general or flag rank in command a fine not exceeding two hundred dollars;

(2) upon other military personnel of his command:

(A) withholding of privileges for a period not to exceed two consecutive weeks; or

(B) restriction to certain specified limits, with or without suspension from duty, for a period not to exceed two consecutive weeks; or

(C) extra duties for a period not to exceed two consecutive weeks, and not to exceed two hours per day, holidays included; or

(D) reduction to next inferior grade if the grade from which demoted was established by the command or an equivalent or lower command; or

(E) if imposed upon a person attached to or embarked in a vessel, confinement for a period not to exceed seven consecutive days; or

(F) a fine not exceeding one hundred fifty dollars.

(b) Under such regulations as may be issued pursuant to this chapter, limitations may be placed on the powers granted by this section with

respect to the kind and amount of punishment authorized, the categories of commanding officers authorized to exercise such powers, and the applicability of this section to an accused on active state duty who demands trial by a court-martial. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized hereunder. Under such regulations as may be issued pursuant to this chapter, an officer of general or flag rank in command may delegate his powers under this section to a principal assistant.

(c) An officer in charge may, for minor offenses, impose on enlisted persons assigned to the unit of which he is in charge, such of the punishments authorized to be imposed by commanding officers as may be specifically prescribed by regulations issued pursuant to this chapter.

(d) A person punished under authority of this section who deems his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The officer who imposes the punishment, his successor in command, and superior authority shall have power to suspend, set aside, or remit any part or amount of the punishment and to restore all rights, privileges and property affected.

(e) The imposition and enforcement of disciplinary punishment under authority of this section for any act or omission shall not be a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this section; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(f) The adjutant general may, by regulation, prescribe the form of records to be kept of proceedings under this section and may also prescribe that certain categories of those proceedings shall be in writing.

PART IV

COURT-MARTIAL JURISDICTION

Section 130.16. Courts-martial classified.

130.17. Jurisdiction of courts-martial in general.

130.18. Jurisdiction of general courts-martial.

130.19. Jurisdiction of special courts-martial.

130.20. Jurisdiction of summary courts-martial.

130.21. Jurisdiction of courts-martial not exclusive.

§ 130.16. Courts-martial classified. There shall be three kinds of courts-martial in each of the forces of the organized militia, namely:

(1) General courts-martial, consisting of---

(A) A military judge and not less than five members; or

(B) Only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests in writing a court composed of only a military judge and the military judge approves;

(2) Special courts-martial, consisting of---

(A) Not less than three members; or

(B) A military judge and not less than three members; or

(C) Only a military judge, if one has been detailed to the court, and the accused under the same conditions as those prescribed in clause (1)

(B) so requests; and

(3) Summary courts-martial, which shall consist of one commissioned officer.

§ 130.17. Jurisdiction of courts-martial in general. Each force of the organized militia shall have court-martial jurisdiction over all persons subject to this code. The exercise of jurisdiction by one force over personnel of another force shall be in accordance with regulations issued pursuant to this chapter.

§ 130.18. Jurisdiction of general courts-martial. Subject to section 130.17, general courts-martial shall have jurisdiction to try persons subject to this code for any offense for which they may be punished by this code and shall have the power to sentence to: confinement with

hard labor for not exceeding two hundred days; fines not exceeding two hundred dollars; confinement with hard labor in lieu of fines imposed not exceeding one day for each dollar of fine imposed; forfeiture of pay and allowances, not exceeding two hundred dollars; dismissal; dishonorable discharge; bad conduct discharge; reprimand; reduction of non-commissioned officers to an inferior grade; and to combine any two or more of such punishments in the sentences imposed.

§ 130.19. Jurisdiction of special courts-martial. Subject to section 130.17, special courts-martial shall have jurisdiction to try persons subject to this code for any offense for which they may be punished by this code. Special courts-martial shall have the power to sentence to: confinement with hard labor for not exceeding one hundred days; fines not exceeding one hundred dollars; confinement with hard labor in lieu of fines imposed not exceeding one day for each dollar of fine imposed; forfeiture of pay and allowances not exceeding one hundred dollars; bad conduct discharge; reprimand; reduction of noncommissioned officers to an inferior grade; and to combine any two or more of such punishments in the sentences imposed. A bad conduct discharge shall not be adjudged unless a complete record of the proceedings and testimony before the court has been made.

§ 130.20. Jurisdiction of summary courts-martial. (a) Subject to section 130.17, summary courts-martial shall have jurisdiction to try persons subject to this code, except officers and warrant officers, for any offense for which they may be punished by this code.

(b) No persons with respect to whom courts-martial have jurisdiction shall be brought to trial before a summary court-martial if he objects thereto. Where objection to trial by summary court-martial is made, trial shall be ordered by special or general court-martial, as may be appropriate.

(c) Summary courts-martial shall have the power to sentence to: confinement with hard labor for not exceeding twenty-five days; fines not exceeding twenty-five dollars; confinement with hard labor in lieu of fines imposed not exceeding one day for each dollar of fine imposed;

forfeiture of pay and allowances not exceeding twenty-five dollars; reprimand; reduction of non-commissioned officers to an inferior grade; and to combine any two or more of such punishments in the sentences imposed.

§ 130.21. Jurisdiction of courts-martial not exclusive. The provisions of this code conferring jurisdiction upon courts-martial shall not be construed as depriving provost courts or other military tribunals of concurrent jurisdiction in respect to offenders or offenses that by statute or by the law of war may be tried by such provost courts or other military tribunals.

PART V

APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL

Section 130.22. Who may convene general courts-martial.

130.23. Who may convene special courts-martial.

130.24. Who may convene summary courts-martial.

130.25. Who may serve on courts-martial.

130.26. Military judge of a general court-martial or special court-martial.

130.27. Appointment of trial counsel and defense counsel.

130.28. Appointment of reporters and interpreters.

130.29. Absent and additional members.

§ 130.22. Who may convene general courts-martial. General courts-martial may be convened by order of the adjutant ageneral, the commanding officer of a force of the organized militia, the commanding officer of a division or corresponding unit of the army national guard or the commanding officer of a wing or corresponding unit of the air national guard.

§ 130.23. Who may convene special courts-martial. (a) Special courts-martial may be convened by--

(1) any person who may convene a general court-martial;

(2) the commanding officer of a force of the organized militia, or of a garrison, fort, camp, station, air base or other place where members of a force of the organized militia are on duty;

(3) the commanding officer of a division, brigade, detached or separate battalion, or corresponding unit of the army national guard, the New York guard or of any other land force of the organized militia;

(4) the commanding officer of a wing, group, detached or separate squadron or corresponding unit of the air national guard;

(5) the commanding officer of any naval vessel, and the commanding officer of any area, brigade, battalion, division, marine battalion or separate marine company of the naval militia;

(6) the commanding officer of any separate or detached command or group of detached units of any of the forces of the organized militia placed under a single commander; or

(7) the commanding officer or officer in charge of any other command when empowered by the adjutant general.

(b) When any such officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority when deemed advisable by him.

§ 130.24. Who may convene summary courts-martial. (a) Summary courts-martial may be convened by--

(1) any person who may convene a general or special court-martial;

(2) the commanding officer of a detached or separate company or corresponding unit or other detachment of a force of the organized militia;

(3) the commanding officer or officer in charge of any other command when empowered by the adjutant general.

(b) When but one officer is present with a command or detachment he shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases brought before him. Summary courts-martial may, however, be convened in any case by superior competent authority when deemed desirable by him.

§ 130.25. Who may serve on courts-martial. (a) Any officer of or on duty with the organized militia shall be eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(b) Any warrant officer of or on duty with the organized militia shall be eligible to serve on general and special courts-martial for the trial of any person, other than an officer, who may lawfully be brought before such courts for trial.

(c) (1) Any enlisted person of the organized militia who is not a member of the same unit as the accused shall be eligible to serve on general and special courts-martial for the trial of any enlisted person who may lawfully be brought before such courts for trial, but he shall serve as a member of a court only if, before the conclusion of a session called by the military judge under subdivision (a) of section 130.39 of this chapter prior to trial or, in the absence of such a session, before the court is assembled for the trial of the accused, the accused personally has requested in writing that enlisted persons serve on it. After such a request, no enlisted person shall be tried by a general or special court-martial the membership of which does not include enlisted persons in a number comprising at least one-third of the total membership of the court, unless eligible enlisted persons cannot be obtained on account of physical conditions or military exigencies. Where such persons cannot be obtained, the court may be convened and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

(2) For the purposes of this section, the word "unit" shall mean a duly organized body of the organized militia not larger than a company, a squadron, a division of the naval militia, or a body corresponding to one of them.

(d) (1) When it can be avoided, no person subject to this code shall be tried by a court-martial any member of which is junior to him in rank or grade.

(2) When convening a court-martial, the convening authority shall appoint as members thereof such persons as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No person shall

be eligible to sit as a member of a general or special court-martial when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case. If within the command of the convening authority there is present and not otherwise disqualified an officer who is a member of the bar of this state and of appropriate rank, the convening authority shall appoint such officer as president of a special court-martial; provided, however that although this requirement shall be binding on the convening authority, failure to follow it in any case shall not divest a military court of jurisdiction.

§ 130.26. Military judge of a general court-martial or special

court-martial. (a) The authority convening a general court-martial shall, and, subject to such regulations as may be issued pursuant to this chapter, the authority convening a special court-martial may, detail a military judge thereto. A military judge shall preside over each open session of the court-martial to which he has been detailed.

(b) A military judge shall be a commissioned officer of a force of the organized militia or a person on the state reserve list or state retired list who is a member of the bar of this state and who is certified to be qualified for duty as a military judge by the state judge advocate.

(c) The military judge of a general court-martial shall be designated by the state judge advocate, or his designee, for detail by the convening authority. A commissioned officer who is certified to be qualified for duty as a military judge when performing such duties shall be assigned and directly responsible to the state judge advocate, or his designee.

(d) No person is eligible to act as a military judge in a case if he is the accuser or a witness for the prosecution or has acted as investigating officer or counsel in the same case.

(e) The military judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial counsel, and the defense counsel, nor may he vote with the members of the court.

§ 130.27. Appointment of trial counsel and defense counsel. (a) For

each general and special court-martial the authority convening the court shall appoint a trial counsel and a defense counsel, together with such assistants as he deems necessary or appropriate. No person who has acted as investigating officer, military judge, or court member in any case shall act subsequently as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant defense counsel in the same case. No person who has acted for the prosecution shall act subsequently in the same case for the defense, nor shall any person who has acted for the defense act subsequently in the same case for the prosecution.

(b) Any person who is appointed as trial counsel or defense counsel in the case of a general court-martial shall be a person who is a member of the bar of this state.

(c) In the case of a special court-martial--

(1) if the trial counsel is qualified to act as counsel before a general court-martial, the defense counsel appointed by the convening authority shall be a person similarly qualified; and

(2) if the trial counsel is a judge advocate, or a legal officer, or a member of the bar of a federal court or of the highest court of a state of the United States, the defense counsel appointed by the convening authority shall be one of the foregoing.

§ 130.28. Appointment of reporters and interpreters. Under such regulations as the adjutant general may prescribe, the convening authority of a military court shall appoint qualified court reporters, who shall record the proceedings of and testimony taken before such court. Under like regulations the convening authority of a military court may appoint an interpreter who shall interpret for the court.

§ 130.29. Absent and additional members. (a) No member of a general or special court-martial shall be absent or excused after court has been assembled for the trial of the accused except for physical disability or as a result of a challenge or by order of the convening authority for good cause.

(b) Whenever a general court-martial other than a general

court-martial composed of a military judge only is reduced below five members, the trial shall not proceed unless the convening authority appoints new members sufficient in number to provide not less than five members. The trial may proceed with the new members present after the recorded evidence previously introduced before the members of the court has been read to the court in the presence of the military judge, the accused, and counsel for both sides.

(c) Whenever a special court-martial, other than a special court-martial composed of a military judge only, is reduced below three members, the trial shall not proceed unless the convening authority appoints new members sufficient in number to provide not less than three members. The trial shall proceed with the new members present as if no evidence had previously been introduced at the trial, unless a verbatim record of the evidence previously introduced by the members of the court or a stipulation thereof is read to the court in the presence of the military judge, if any, the accused, and counsel for both sides.

(d) If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed, subject to any applicable conditions of section 130.16 of this chapter, after the detail of a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence previously introduced or a stipulation thereof is read in court in the presence of the new military judge, the accused, and counsel for both sides.

PART VI

PRE-TRIAL PROCEDURE

Section 130.30. Charges and specifications.

130.31. Compulsory self-incrimination prohibited.

130.32. Investigation.

130.33. Forwarding of charges.

130.34. Advice of staff judge advocate and reference for trial.

130.35. Service of charges.

§ 130.30. Charges and specifications. (a) Charges and specifications shall be signed by a person subject to this code under oath before a person authorized by this chapter to administer oaths and shall state--

(1) that the signer has personal knowledge of, or has investigated, the matter set forth therein; and

(2) that the same are true in fact to the best of his knowledge and belief.

(b) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges against him as soon as practicable.

§ 130.31. Compulsory self-incrimination prohibited. (a) No person subject to this code shall compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

(b) No person subject to this code shall interrogate, or request any statement from, an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial.

(c) No person subject to this code shall compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.

(d) No statement obtained from any person in violation of this section, or through the use of coercion, unlawful influence, or unlawful inducement shall be received in evidence against him in a trial by court-martial.

§ 130.32. Investigation. (a) No charge or specification shall be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiries as to the truth of the matter set forth in the charges, form of charges, and the disposition

which should be made of the case in the interest of justice and discipline.

(b) The accused shall be advised of the charges against him and of his right to be represented at such investigation by counsel. Upon his own request he shall be represented by civilian counsel if provided by him at his own expense, or military counsel of his own selection if such counsel be reasonably available, or by counsel appointed by the adjutant general. At such investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after such investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

(c) If an investigation of the subject matter of an offense has been conducted prior to the time the accused is charged with the offense, and if the accused was present at such investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in subdivision (b) of this section, no further investigation of that charge is necessary under this section unless it is demanded by the accused after he is informed of the charge. A demand for further investigation entitled the accused to recall witnesses for further cross-examination and to offer any new evidence in his own behalf.

(d) The requirements of this section shall be binding on all persons administering this code, but failure to follow them in any case shall not divest a military court of jurisdiction.

§ 130.33. Forwarding of charges. When a person is held for trial by general court-martial, the commanding officer shall, within eight days after the accused is ordered into arrest or confinement, if practicable, forward through channels the charges, together with the investigation and allied papers, to the general court-martial convening authority. If the same is not practicable, he shall report in writing to the general court-martial convening authority the reasons for delay.

§ 130.34. Advice of staff judge advocate and reference for trial. (a) Before directing the trial of any charge by general court-martial, the convening authority shall refer it to the state judge advocate for consideration and advice. The convening authority shall not refer a charge to a general court-martial for trial unless he has found that the charge alleges an offense under this code and is warranted by evidence indicated in the report of investigation.

(b) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections and such changes in the charges and specifications as are needed to make them conform to the evidence may be made.

§ 130.35. Service of charges. The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. In time of peace no person shall, against his objection, be brought to trial, or be required to participate by himself or counsel in a session called by the military judge under subdivision (a) of section 130.39 of this chapter, in a general court-martial case within a period of five days after the service of charges upon him or in a special court-martial within a period of three days subsequent to the service of the charges upon him.

PART VII

TRIAL PROCEDURE

Section 130.36. Adjutant general may prescribe rules.

130.37. Unlawfully influencing action of court.

130.38. Duties of trial counsel and defense counsel.

130.39. Sessions.

130.40. Continuances.

130.41. Challenges.

130.42. Oaths.

130.43. Statute of limitations.

130.44. Former jeopardy.

- 130.45. Pleas of the accused.
- 130.46. Opportunity to obtain witnesses and other evidence.
- 130.47. Refusal to appear or testify.
- 130.48. Contempts.
- 130.49. Depositions.
- 130.50. Admissibility of records of courts of inquiry.
- 130.51. Voting and rulings.
- 130.52. Number of votes required.
- 130.53. Court to announce action.
- 130.54. Record of trial.

§ 130.36. Adjutant general may prescribe rules. The procedure, including modes of proof, in cases before military courts and other military tribunals may be prescribed by the adjutant general by regulations issued pursuant to this chapter which shall, so far as he deems practicable, apply the forms and modes of procedure, the principles of law and the rules of evidence generally recognized in the trial of cases in the courts-martial of the United States, but which shall not be contrary to or inconsistent with this chapter.

§ 130.37. Unlawfully influencing action of court. (a) No authority convening a general, special, or summary court-martial, nor any other commanding officer, shall censure, reprimand, or admonish such court or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding. No person subject to this code shall attempt to coerce or, by any unauthorized means, influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts. The foregoing provisions of the subdivision shall not apply with respect to (1) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of

courts-martial, or (2) to statements and instructions given in open court by the military judge, president of a special court-martial, or counsel.

(b) In the preparation of an effectiveness, fitness, or efficiency report or any other report or document used in whole or in part for the purpose of determining whether a member is qualified to be advanced, in grade, or in determining the assignment or transfer of a member or in determining whether a member should be retained on any type of duty or status, no person subject to this chapter may, in preparing any such report (1) consider or evaluate the performance of duty of any such member as a member of a court-martial, or (2) give a less favorable rating or evaluation of any member because of the zeal with which such member, as counsel, represented any accused before a court-martial.

§ 130.38. Duties of trial counsel and defense counsel. (a) The trial counsel of a general or special court-martial shall prosecute in the name of the state, and shall, under the direction of the court, prepare the record of the proceedings.

(b) The accused shall have the right to be represented in his defense before a general or special court-martial by civilian counsel if provided by him, or by military counsel of his own selection if reasonably available, or by the defense counsel duly appointed pursuant to section 130.27. Should the accused have counsel of his own selection, the duly appointed defense counsel, and assistant defense counsel, if any, shall, if the accused so desires, act as his associate counsel; otherwise they shall be excused by the military judge or by the president of a court-martial without a military judge.

(c) In every court-martial proceeding, the defense counsel may, in the event of conviction, forward for attachment to the record of proceedings a brief of such matters as he feels should be considered in behalf of the accused on review, including any objection to the contents of the record which he may deem appropriate.

(d) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when he is qualified to be a trial counsel as required by section 130.27, perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the

court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(e) An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when he is qualified to be the defense counsel as required by section 130.27, perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

§ 130.39. Sessions.

(a) At any time after the service of charges which have been referred for trial to a court-martial composed of a military judge and members, the military judge may, subject to section 130.35 of this chapter, call the court into session without the presence of the members for the purpose of--

(1) hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

(2) hearing and ruling upon any matter which may be ruled upon by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by members of the court;

(3) if permitted by regulations issued pursuant to this chapter, holding the arraignment and receiving the pleas of the accused; and

(4) performing any other procedural function which may be performed by the military judge under this chapter or under rules prescribed pursuant to section 130.36 of this chapter and which does not require the presence of the members of the court. These proceedings shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made a part of the record.

(b) When the members of a court-martial deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and, in cases in which a military judge has been detailed to the court, the military judge.

§ 130.40. Continuances. The military judge or a court-martial without a military judge may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

§ 130.41. Challenges. (a) The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The military judge, or, if none, the court, shall determine the relevancy and validity of challenges for cause, and shall not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(b) Each accused and trial counsel shall be entitled to one peremptory challenge, but the military judge shall not be challenged except for cause, and if the president of a special court-martial is a member of the bar of this state, he shall not be challenged except for cause.

§ 130.42. Oaths. (a) Before performing their respective duties, military judges, members of general and special courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully. The form of the oath, the time and place of the taking thereof, the manner of recording the same, and whether the oath shall be taken for all cases in which these duties are to be performed or for a particular case, shall be as prescribed in regulations issued pursuant to this chapter. These regulations may provide that an oath to perform faithfully duties as a military judge, trial counsel, assistant trial counsel, defense counsel, or assistant defense counsel may be taken at any time by any judge advocate or other person certified to be qualified or competent for the duty, and if such oath is taken it need not again be taken at the time the judge advocate or other person is detailed to that duty.

(b) All witnesses before military courts shall be examined on oath or affirmation.

§ 130.43. Statute of limitations. (a) A person charged with desertion or absence without leave in time of war, or with aiding the enemy or with mutiny may be tried and punished at any time without limitation.

(b) Except as otherwise provided in this section, a person charged with desertion in time of peace or any of the offenses punishable under sections 130.112 and 130.113 shall not be liable to be tried by court-martial if the offense was committed more than three years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

(c) Except as otherwise provided in this article, a person charged with any offense shall not be liable to be tried by court-martial or punished under section 130.15 if the offense was committed more than two years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command or before the imposition of punishment under section 130.15.

(d) Periods in which the accused was absent from territory in which the state has the authority to apprehend him, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this section.

§ 130.44. Former jeopardy. (a) No person shall without his consent, be tried a second time by a civil court or a military court of the state for the same offense.

(b) No proceeding in which an accused has been found guilty by a court-martial upon any charge or specification shall be held to be a trial in the sense of this section until the finding of guilty has become final after review of the case has been fully completed.

(c) A proceeding which, subsequent to the introduction of evidence but prior to a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused shall be a trial in the sense of this section.

§ 130.45. Pleas of the accused. (a) If an accused after arraignment

makes any irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if he fails or refuses to plead, a plea of not guilty shall be entered in the record and the court shall proceed as though he had pleaded not guilty.

(b) With respect to any charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge or by a court-martial without a military judge, a finding of guilty of the charge or specification may, if permitted by regulations issued pursuant to this chapter, be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceeding shall continue as though the accused had pleaded not guilty.

§ 130.46. Opportunity to obtain witnesses and other evidence. The trial counsel, defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with regulations issued by the governor pursuant to this chapter. Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall run to any part of the state and to any other state in which the court-martial may be sitting.

§ 130.47. Refusal to appear or testify. Every person not subject to this code who (a) has been duly subpoenaed to appear as a witness or to produce books and records before any military court or board or before any military or civil officer designated to take a deposition to be read in evidence before such military court or board; and

(b) has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending the supreme court of the state; and

(c) willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which such person may

have been duly subpoenaed to produce shall be deemed guilty of an offense against the state and may be punished by the supreme court of the county in which such military court or board was convened or in which such military or civil officer is located, in the same manner and to the same extent as provided for the failure to appear, refusal to qualify as a witness or to testify or refusal or failure to produce any evidence which such person may have been duly subpoenaed to produce, in actions or proceedings in the supreme court of the state.

§ 130.48. Contempts. A military court may punish for contempt any person who uses any menacing words, signs, or gestures in its presence, or who disturbs its proceedings by any riot or disorder. Such punishment shall not exceed confinement for thirty days or a fine of one hundred dollars, or both.

§ 130.49. Depositions. (a) At any time after charges have been signed as provided in section 130.30, any party may take oral or written depositions unless the military judge or court-martial without a military judge hearing the case or, if the case is not being heard, an authority competent to convene a court-martial for the trial of such charges forbids it for good cause. If a deposition is to be taken before charges are referred for trial, such an authority may designate officers to represent the prosecution and the defense and may authorize such officers to take the deposition of any witness.

(b) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

(c) Depositions may be taken before and authenticated by any military or civil officer authorized by the laws of the state or by the laws of the place where the deposition is taken to administer oaths.

(d) A duly authenticated deposition taken upon reasonable notice to the other party, so far as otherwise admissible under the rules of evidence may be read in evidence before any court-martial or in any proceeding before a court of inquiry, if it appears

(1) that the witness resides or is beyond the state in which the

court-martial or court of inquiry is ordered to sit, or beyond the distance of one hundred miles from the place of trial or hearing; or

(2) that the witness by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, non-amenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing; or

(3) that the present whereabouts of the witness is unknown.

§ 130.50. Admissibility of records of courts of inquiry. (a) In any case not extending to the dismissal of an officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of such evidence.

(b) Such testimony may be read in evidence only by the defense in cases extending to the dismissal of an officer.

(c) Such testimony may also be read in evidence before a court of inquiry or a military board.

§ 130.51. Voting and rulings. (a) Voting by members of a general or special court-martial on the findings and on the sentence, and by members of a court-martial without a military judge upon questions of challenge, shall be by secret written ballot. The junior member of the court shall in each case count the votes, which count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(b) The military judge and, except for questions of challenge, the president of a court-martial without a military judge shall rule on all questions of law and all interlocutory questions arising during the proceedings. Any such ruling made by the military judge upon any question of law or any interlocutory question other than the factual issue of mental responsibility of the accused, or by the president of a court-martial without a military judge upon any question of law other

than a motion for finding of not guilty, is final and constitutes the ruling of a court. However, the military judge or the president of a court-martial without a military judge may change his ruling at any time during the trial. Unless such ruling be final, if any member objects thereto, the court shall be cleared and closed and the question decided by a vote as provided in section 130.52, viva voce, beginning with the junior in rank.

(c) Before a vote is taken on the findings, the military judge or the president of a court-martial without a military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them--

(1) that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;

(2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt shall be resolved in favor of the accused and he shall be acquitted;

(3) that if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

(4) that the burden of proof to establish the guilt of the accused beyond reasonable doubt is upon the state.

(d) Subdivisions (a), (b) and (c) do not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial shall make a general finding and shall in addition on request find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

§ 130.52. Number of votes required. (a) No person shall be convicted of any offense, except as provided in subdivision (b) of section 130.45 of this chapter, or by the concurrence of two-thirds of the members present at the time the vote is taken.

(b) All sentences shall be determined by the concurrence of two-thirds of the members present at the time that the vote is taken.

(c) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote, but a determination to reconsider a finding of guilty or to reconsider a sentence, with a view toward decreasing it, may be made by any lesser vote which indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence. A tie vote on a challenge shall disqualify the member challenged. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity shall be a determination against the accused. A tie vote on any other question shall be a determination in favor of the accused.

§ 130.53. Court to announce action. Every court-martial shall announce its findings and sentence to the parties as soon as determined.

§ 130.54. Record of trial. (a) Each general court-martial shall keep a separate record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by that of a member if the trial counsel is unable to authenticate it by reason of his death, disability, or absence. In a court-martial consisting of only a military judge the record shall be authenticated by the court reporter under the same conditions which would impose such a duty on a member under this subdivision. If the proceedings have resulted in an acquittal of all charges and specifications or, if not affecting a general or flag officer, in a sentence not including discharge and not in excess of that which may otherwise be adjudged by a special court-martial, the record shall contain such matters as may be prescribed by regulations issued pursuant to this chapter.

(b) Each special and summary court-martial shall keep a separate record of the proceedings in each case, which record shall contain such matter and be authenticated in such manner as may be required by regulations issued pursuant to this chapter.

(c) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as authenticated.

PART VIII

SENTENCES

Section 130.55. Cruel and unusual punishments prohibited.

130.56. Maximum limits.

130.57. Effective date of sentences.

130.58. Execution of confinement.

§ 130.55. Cruel and unusual punishments prohibited. Punishment by flogging, or by branding, marking or tattooing on the body, or any other cruel or unusual punishment, shall not be adjudged by any court-martial or inflicted upon any person subject to this code. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

§ 130.56. Maximum limits. The punishment which a court-martial may direct for an offense shall not exceed the limits prescribed by this code.

§ 130.57. Effective date of sentences. (a) Whenever a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture of pay or allowances in addition to confinement not suspended or deferred, the forfeiture may apply to pay or allowances becoming due on or after the date such sentence is approved by the convening authority and to any pay or allowances accrued before such date.

(b) Any period of confinement included in a sentence of a court-martial shall begin to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement. Regulations adopted pursuant to this chapter may provide that sentences of confinement shall not be executed

until approved by such officers as may be designated in such regulations.

(c) All other sentences of court-martial shall become effective on the date ordered executed.

(d) On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under his jurisdiction, the officer exercising similar court-martial convening authority over the command to which the accused is currently assigned, may in his sole discretion defer service of a sentence to confinement. The deferment shall terminate when the sentence is ordered executed. The deferment may be rescinded at any time by the officer who granted it or, if the accused is no longer under his jurisdiction, by the officer exercising similar court-martial jurisdiction over the command to which the accused is currently assigned.

§ 130.58. Execution of confinement. (a) Any sentence or punishment of confinement adjudged by a military court, whether or not such sentence or punishment includes discharge or dismissal, and whether or not such discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the forces of the organized militia, or in any jail, penitentiary or prison designated for that purpose as prescribed in section 130.11 of this code; and persons so confined in such a jail, penitentiary or prison shall be subject to the same discipline and treatment as persons confined or committed to such jail, penitentiary or prison by the courts of the state or of any political subdivision thereof.

(b) The omission of the words "hard labor" in any sentence or punishment of a court-martial adjudging confinement shall not be construed as depriving the authority executing such sentence or punishment of the power to require hard labor as a part of the punishment.

(c) The keepers, officers and wardens of all city or county jails and of all other jails, penitentiaries or prisons designated by the governor or by the adjutant general pursuant to section 130.11 of this chapter shall receive the bodies of persons ordered into confinement prior to

trial and of persons committed to confinement by the process or mandate of a military court and shall confine them according to law, and no such keeper, officer or warden shall demand or require payment of any fee or charge of any nature for receiving or confining a person in such jail, penitentiary or prison.

PART IX

POST-TRIAL PROCEDURE AND REVIEW OF COURTS-MARTIAL

- Section 130.59. Error of law; lesser included offense.
- 130.60. Action by the convening authority.
- 130.61. Waiver or withdrawal of appeal.
- 130.62. Rehearings.
- 130.63. Review by a judge advocate.
- 130.64. Disposition of records
- 130.65. Review by board of military review and approval by the adjutant general.
- 130.66. Review by the governor.
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- 130.69. Execution of sentence; suspension of sentence.
- 130.70. Vacation of suspension.
- 130.71. Petition for a new trial.
- 130.72. Remission and suspension.
- 130.72-a. Restoration.
- 130.72-b. Finality of proceedings, findings and sentences.
- 130.72-c. Leave required to be taken pending review of certain court-martial convictions.

§ 130.59. Error of law; lesser included offense. (a) A finding or sentence of a court-martial shall not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(b) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm, instead, so much of the findings as includes a lesser included offense.

§ 130.60. Action by the convening authority. (a) The findings and sentence of a court-martial shall be reported promptly to the convening authority after the announcement of the sentence.

(b) (1) Within thirty days after the sentence of a general court-martial or of a special court-martial which has adjudged a bad-conduct discharge has been announced, the accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence. In the case of all other special courts-martial, the accused may make such a submission to the convening authority within twenty days after the sentence is announced. In the case of all summary courts-martial the accused may make such a submission to the convening authority within seven days after the sentence is announced. If the accused shows that additional time is required for the accused to submit such matters, the convening authority or other person taking action under this section, for a good cause, may extend the period:

(A) in the case of a general court-martial or a special court-martial which has adjudged a bad-conduct discharge, for not more than an additional twenty days; and

(B) in the case of all other courts-martial, for not more than an additional ten days.

(2) In a summary court-martial case the accused shall be promptly provided a copy of the record of trial for use in preparing a submission authorized by paragraph one of this subdivision.

(3) In no event shall the accused in any general or special court-martial case have less than a seven-day period from the day on which a copy of the authenticated record of trial has been given to him within which to make a submission under paragraph one of this subdivision. The convening authority or other person taking action on the case, for good cause, may extend this period for up to an additional ten days.

(4) The accused may waive his right to make a submission to the convening authority under paragraph one of this subdivision. Such a waiver must be made in writing and may not be revoked. For the purposes of paragraph two of subdivision (c) of this section, the time within

which the accused may make a submission under this subdivision shall be deemed to have expired upon the submission of such a waiver to the convening authority.

(c) (1) The authority under this section to modify the findings and sentence of a court-martial is a matter of command prerogative involving the sole discretion of the convening authority. Under regulations of the adjutant general, a commissioned officer commanding for the time being, a successor in command, or any person exercising general court-martial jurisdiction may act under this section in place of the convening authority.

(2) Action on the sentence of a court-martial shall be taken by the convening authority or by another person authorized to act under this section. Subject to regulations of the adjutant general, such action may be taken only after consideration of any matters submitted by the accused under subdivision (b) of this section and, if applicable, under subdivision (d) of this section, or after the time for submitting such matters expires, whichever is earlier. The convening authority or other person taking such action, in his sole discretion, may approve, disapprove, commute, or suspend the sentence in whole or in part.

(3) Action on the findings of a court-martial by the convening authority or other person acting on the sentence is not required. However, such person, in his sole discretion, may:

(A) dismiss any charge or specification by setting aside a finding of guilty thereto; or

(B) change a finding of guilty to a charge or specification to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge or specification.

(d) Before acting under this section on any general court-martial case or any special court-martial case that includes a bad-conduct discharge or any court-martial case which includes a sentence of confinement, the convening authority or other person taking action under this section shall obtain and consider the written recommendation of the staff judge advocate or legal officer. The convening authority or other person taking action under this section shall refer the record of trial to his staff judge advocate or legal officer, and the staff judge advocate or legal officer shall use such record in the preparation of his recommendation. The recommendation of the staff judge advocate or legal

officer shall include such matters as the adjutant general may prescribe by regulations and shall be served on the accused, who shall have five days from the date of receipt in which to submit any matter in response. The convening authority or other person taking action under this section, for good cause, may extend that period for up to an additional twenty days. Failure to object in the response to the recommendation or to any matter attached to the recommendation waives the right to object thereto.

(e) (1) The convening authority or other person taking action under this section, in his sole discretion, may order a proceeding in revision or a rehearing.

(2) A proceeding in revision may be ordered if there is an apparent error or omission in the record or if the record shows improper or inconsistent action by a court-martial with respect to the findings or sentence that can be rectified without material prejudice to the substantial rights of the accused. In no case, however, may a proceeding in revision:

(A) reconsider a finding of not guilty of any specification or a ruling which amounts to a finding of not guilty;

(B) reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some article of this chapter; or

(C) increase the severity of some article of the sentence.

(3) A rehearing may be ordered by the convening authority or other person taking action under this section if he disapproves the findings and sentence and states the reasons for disapproval of the findings. If such person disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges. A rehearing as to the findings may not be ordered where there is a lack of sufficient evidence in the record to support the findings. A rehearing as to the sentence may be ordered if the convening authority or other person taking action under this subdivision disapproves the sentence.

§ 130.61. Waiver or withdrawal of appeal. (a) In each case subject to appellate review under section 130.65 or section 130.68 of this article

the accused may file with the convening authority a statement expressly waiving the right of the accused to such review. Such a waiver shall be signed by both the accused and by defense counsel and must be filed within ten days after the action under subdivision (c) of section 130.60 of this article is served on the accused or on defense counsel. The convening authority or other person taking such action, for good cause, may extend the period for such filing by not more than thirty days.

(b) The accused may withdraw an appeal at any time.

(c) A waiver of the right to appellate review or the withdrawal of an appeal under this section bars review under section 130.65 or 130.68 of this article.

§ 130.62. Rehearings. Each rehearing under this chapter shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be imposed, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings. If the sentence approved after the first court-martial was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with the pretrial agreement, the sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first court-martial.

§ 130.63. Review by a judge advocate. (a) Each case in which there has been a finding of guilt that is not reviewed under section 130.65 or 130.68 of this article shall be reviewed by a judge advocate under regulations of the adjutant general. A judge advocate may not review a case under this subdivision if he has acted in the same case as an accuser, investigating officer, member of the court, military judge, or counsel or has otherwise acted on behalf of the prosecution or defense. The judge advocate's review shall be in writing and shall contain the

following:

(1) Conclusions as to whether:

(A) the court had jurisdiction over the accused and the offense;

(B) the charge and specification stated an offense; and

(C) the sentence was within the limits prescribed as a matter of law.

(2) A response to each allegation of error made in writing by the accused.

(3) If the case is sent for action under subdivision (b) of this section, a recommendation as to the appropriate action to be taken and an opinion as to whether corrective action is required as a matter of law.

(b) The record of trial and related documents in each case reviewed under subdivision (a) of this section shall be sent for action to the person exercising general court-martial jurisdiction over the accused at the time the court was convened (or to that person's successor in command) if:

(1) the judge advocate who reviewed the case recommends corrective action;

(2) the sentence approved under subdivision (c) of section 130.60 of this article extends to dismissal, a bad-conduct or dishonorable discharge or any confinement; or

(3) such action is otherwise required by regulations of the adjutant general.

(c) (1) The person to whom the record of trial and related documents are sent under subdivision (b) of this section may:

(A) disapprove or approve the findings or sentence, in whole or in part;

(B) remit, commute, or suspend the sentence in whole or in part;

(C) except where the evidence was insufficient at the trial to support the findings, order a rehearing on the findings, on the sentence, or on both; or

(D) dismiss the charges.

(2) If a rehearing is ordered but the convening authority finds a rehearing impracticable, he shall dismiss the charges.

(3) If the opinion of the judge advocate's review under subdivision (a) of this section is that corrective action is required as a matter of law and if the person required to take action under subdivision (b) of

this section does not take action that is at least as favorable to the accused as that recommended by the judge advocate, the record of trial and action thereon shall be sent to the state judge advocate for review under section 130.68 of this article.

§ 130.64. Disposition of records. (a) In a case subject to appellate review under section 130.65 of this article in which the right to such review is not waived, or an appeal is not withdrawn under section 130.61 of this article, the record of trial and action thereon shall be transmitted to the state judge advocate for appropriate action.

(b) Except as otherwise required by this chapter, all other records of trial and related documents shall be transmitted and disposed of as the adjutant general may prescribe by regulation.

§ 130.65. Review by board of military review and approval by the adjutant general. (a) The state judge advocate shall establish a board of military review which shall be composed of not less than three officers of the organized militia or on the state reserve list or state retired list, each of whom shall be a member of the bar of the state.

(b) The state judge advocate shall refer to a board of military review the record in each case of trial by court-martial:

(1) in which the sentence, as approved, extends to, dismissal of a commissioned officer, dishonorable or bad-conduct discharge, or any confinement; and

(2) the right to appellate review has not been waived or an appeal has not been withdrawn under section 130.61 of this article.

(c) In a case referred to it, the board of military review may act only with respect to the findings and sentence as approved by the convening authority. It may affirm only such findings of guilty and the sentence or such part or amount of the sentence, as it finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, it may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses.

(d) If the board of military review sets aside the findings and

sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed.

(e) The action taken by the board of review shall be subject to the approval of the adjutant general. If the adjutant general disapproves the action taken by the board of review, he may take any action on the sentence or findings that could be taken by the convening authority under section 130.60 of this article.

(f) The state judge advocate shall, unless there is to be further action by the governor, instruct the convening authority to take action in accordance with the decision of the board of military review as approved by the adjutant general. If the board of military review has ordered a rehearing but the convening authority finds a rehearing impracticable, he may dismiss the charges.

(g) No member of a board of military review shall be eligible to review the record of any trial if such member served as investigating officer in the case or served as a member of the court-martial before which such trial was conducted, or served as military judge, trial or defense counsel, or reviewing officer of such trial.

§ 130.66. Review by the governor. (a) The governor shall review the record in all cases reviewed by a board of military review and approved by the adjutant general in which, upon petition of the accused and on good cause shown, the governor grants such review.

(b) The accused may petition the governor for a review of a decision of the board of military review within sixty days from the earlier of:

(1) the date on which the accused is notified of the decision of the board of military review and the approval of the adjutant general; or

(2) the date on which a copy of the decision of the board of military review and the approval of the adjutant general, after being served on counsel of record for the accused (if any), is deposited in the United States mail for delivery by first class, certified mail to the accused, at an address provided by the accused or, if no such address has been provided by the accused, at the latest address listed for the accused in his official service record.

(c) In any case reviewed by him, the governor may act only with respect to the findings and sentences as approved by the convening authority and as affirmed or set aside as incorrect in law by the board of military review. He may affirm only such findings of guilty in the sentence or such part or amount of the sentence, as he finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, he may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses. If the governor sets aside the findings and sentence, he may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If he sets aside the findings and sentence, and does not order a rehearing, he shall order that the charges be dismissed. If the governor has ordered a rehearing, but the convening authority finds a rehearing impracticable, he may dismiss the charges.

§ 130.67. Review counsel. (a) Upon the final review of a sentence of a general court-martial or of a sentence to a bad-conduct discharge or of a sentence to any confinement the accused shall have the right to be represented by counsel before the reviewing authority, the staff judge advocate or legal officer, as the case may be, and before the state judge advocate.

(b) Upon the request of an accused entitled to be so represented, the state judge advocate shall appoint a lawyer who is a member of the organized militia or on the state reserve list or the state retired list, if available, to represent the accused before the reviewing authority, the staff judge advocate, or legal officer, as the case may be, and before the state judge advocate, in the review of cases specified in subdivision (a) of this section.

(c) An accused entitled to be so represented may be represented before the reviewing authority, the staff judge advocate or legal officer, as the case may be, and before the state judge advocate, by civilian counsel if provided by him.

§ 130.68. Review in the office of the state judge advocate. (a) The record of trial in each general court-martial that is not otherwise reviewed under section 130.65 of this article shall be examined in the office of the state judge advocate if there is a finding of guilty and the accused does not waive or withdraw his right to appellate review under section 130.61 of this article. If any part of the findings or sentence is found to be unsupported in law or if reassessment of the sentence is appropriate, the state judge advocate may modify or set aside the findings or sentence or both. If the state judge advocate so directs, the record shall be reviewed by a board of military review under section 130.65 of this article.

(b) The findings or sentence, or both, in a court-martial case not reviewed under subdivision (a) of this section or under section 130.65 of this article may be modified or set aside, in whole or in part, by the state judge advocate on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or the offense, error prejudicial to the substantial rights of the accused, or the appropriateness of the sentence. If such a case is considered upon application of the accused, the application must be filed in the division of military and naval affairs legal office by the accused on or before the last day of the two-year period beginning on the date the sentence is approved under subdivision (c) of section 130.60 of this article, unless the accused established good cause for failure to file within that time.

§ 130.69. Execution of sentence; suspension of sentence. (a) If in the case of a commissioned officer, the sentence of a court-martial extends to dismissal, that part of the sentence providing for dismissal may not be executed until approved by the adjutant general. In such a case, the adjutant general may commute, remit, or suspend the sentence, or any part of the sentence, as he sees fit.

(b) (1) If a sentence extends to dismissal, or a dishonorable or bad-conduct discharge or any confinement and if the right of the accused to appellate review is not waived, and an appeal is not withdrawn under section 130.61 of this article, that part of the sentence extending to dismissal, or a dishonorable or bad-conduct discharge or any confinement

may not be executed until there is a final judgment as to the legality of the proceedings (and with respect to dismissal, approval under subdivision (a) of this section). A judgment as to legality of the proceedings is final in such cases when review is completed by the board of military review with the approval of the adjutant general and:

(A) the time for the accused to file a petition for review by the governor has expired and the accused has not filed a timely petition for such review and the case is not otherwise under review by the governor;

(B) such a petition is rejected by the governor; or

(C) review is completed in accordance with the judgment of the governor.

(2) If a sentence extends to dismissal or a dishonorable or bad-conduct discharge or any confinement and if the right of the accused to appellate review is waived, or an appeal is withdrawn, under section 130.61 of this article, that part of the sentence extending to dismissal or a bad-conduct or dishonorable discharge or confinement may not be executed until review of the case by a judge advocate (and any action on that review) under section 130.63 of this article is completed. Any other part of a court-martial sentence may be ordered executed by the convening authority or other person acting on the case under section 130.60 of this article when approved by him under such section.

(c) The convening authority or other person acting on the case under section 130.64 of this article may suspend the execution of sentence or part thereof.

§ 130.70. Vacation of suspension. (a) Before the vacation of the suspension of a special court-martial sentence which as approved includes a bad-conduct discharge or any court-martial sentence which includes confinement or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The probationer shall be represented at the hearing by counsel if he so desires.

(b) The record of the hearing and the recommendations of the officer having special court-martial jurisdiction shall be sent for action to the officer exercising general court-martial jurisdiction over the

probationer. If he vacates the suspension, any unexecuted part of the sentence, except a dismissal, shall be executed, subject to applicable restrictions in subdivision (b) of section 130.68 of this article. The vacation of the suspension of a dismissal is not effective until approved by the adjutant general.

(c) The suspension of any other sentence may be vacated by the authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

§ 130.71. Petition for a new trial. At any time within two years after approval by the convening authority of a court-martial sentence, the accused may petition the state judge advocate for a new trial on the grounds of newly discovered evidence or fraud on the court. If the accused's case is pending before a board of military review or before the governor, the state judge advocate shall refer the petition to the board of military review or governor for action. Otherwise the state judge advocate shall act upon the petition.

§ 130.72. Remission and suspension. (a) The adjutant general and, when designated by him, the deputy adjutant general, chief of staff, state judge advocate, or commanding officer may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures other than a sentence approved by the governor.

(b) The adjutant general, for good cause, may substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

§ 130.72-a. Restoration. (a) Under such regulations as the adjutant general may prescribe, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon the new trial or rehearing.

(b) If a previously executed sentence of dishonorable or bad-conduct

discharge is not imposed on a new trial, the adjutant general shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

(c) If a previously executed sentence of dismissal is not imposed on a new trial, the adjutant general shall substitute therefor a form of discharge authorized for administrative issue, and the commissioned officer dismissed by the sentence may be reappointed by the governor alone to such commissioned grade and with such rank as in the opinion of the governor that former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be consistent with federal regulations.

§ 130.72-b. Finality of proceedings, findings and sentences. The appellate review of records of trial provided by this chapter, the proceedings, findings, and sentences of courts-martial as approved, reviewed, or affirmed as required by this chapter, and all dismissals and discharges carried into execution under sentences by courts-martial following approval, review, or affirmation as required by this chapter, are final and conclusive. Orders publishing the proceedings of courts-martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the state of New York subject only to action upon a petition for a new trial as provided in section 130.71 of this article and to action by the adjutant general as provided in section 130.72 of this article, and the authority of the governor.

§ 130.72-c. Leave required to be taken pending review of certain court-martial convictions. Under regulations prescribed by the adjutant general, an accused who has been sentenced by a court-martial will be carried in a leave status and will not participate in any training pending completion of action under this chapter if the sentence, as approved under section 130.60 of this article, includes an unsuspended dismissal or an unsuspended dishonorable or bad-conduct discharge. The accused may be required to begin such leave on the date on which the

sentence is approved under section 130.60 of this article or at any time after such date, and such leave may be continued until the date on which action under this chapter is completed or may be terminated at any earlier time.

PART X
PUNITIVE ARTICLES

- Section 130.73. Principals.
- 130.74. Accessory after the fact.
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- 130.77. Conspiracy.
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- 130.91. Arrest and confinement.
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- 130.95. Misbehavior before the enemy.
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- 130.108. Dueling.
- 130.109. Malingering.
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- 130.111. Provoking speeches or gestures.
- 130.112. Perjury.
- 130.113. Frauds against the government.
- 130.114. Conduct unbecoming an officer and gentleman.
- 130.115. General section.

§ 130.73. Principals. Any person subject to this code who--

(1) commits an offense punishable by this code, or aids, abets, counsels, commands, or procures its commission; or

(2) causes an act to be done which if directly performed by him would be punishable by this code;
is a principal.

§ 130.74. Accessory after the fact. Any person subject to this code who, knowing that an offense punishable by this code has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a court-martial may direct.

§ 130.75. Conviction of lesser included offense. An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or of an offense

necessarily included therein.

§ 130.76. Attempts. (a) An act, done with specific intent to commit an offense under this code, amounting to more than mere preparation and tending but failing to effect its commission, is an attempt to commit that offense.

(b) Any person subject to this code who attempts to commit any offense punishable by this code shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

(c) Any person subject to this code may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

§ 130.77. Conspiracy. Any person subject to this code who conspires with any other person or persons to commit an offense under this code shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

§ 130.78. Solicitation. (a) Any person subject to this code who solicits or advises another or others to desert in violation of section 130.81 or mutiny in violation of section 130.90 shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but if the offense solicited or advised is not committed or attempted, he shall be punished as a court-martial may direct.

(b) Any person subject to this code who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of section 130.95 or sedition in violation of section 130.90 shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but if the offense solicited or advised is not committed, he shall be punished as a court-martial may direct.

§ 130.79. Fraudulent enlistment, appointment, or separation. Any person who--(1) procures his own enlistment or appointment in the organized militia by means of knowingly false representations or deliberate concealment as to his qualifications for such enlistment or appointment and receives pay or allowances thereunder; or

(2) procures his own separation from the organized militia by means of knowingly false representations or deliberate concealment as to his eligibility for such separation;
shall be punished as a court-martial may direct.

§ 130.80. Unlawful enlistment, appointment, or separation. Any person subject to this code who effects an enlistment or appointment in or a separation from the organized militia of any person who is known to him to be ineligible for such enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.

§ 130.81. Desertion. (a) Any member of the organized militia who--

(1) without proper authority goes or remains absent from his place of service, organization, or place of duty with intent to remain away therefrom permanently; or

(2) quits his unit or organization or place of duty with intent to avoid hazardous duty or to shirk important service; or

(3) without being regularly separated from one of the forces of the organized militia enlists or accepts an appointment in the same or another one of the forces of the organized militia without fully disclosing the fact he has not been so regularly separated;
is guilty of desertion.

(b) Any officer of the organized militia who, having tendered his resignation and prior to due notice of the acceptance of the same, quits his post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

(c) Any person found guilty of desertion or attempted desertion shall be punished as a court-martial may direct.

§ 130.82. Absence without leave. Any person subject to this code who, without proper authority--

(1) fails to go to his appointed place of duty at the time prescribed; or

(2) goes from that place; or

(3) absents himself or remains absent from his unit, organization, or other place of duty at which he is required to be at the time prescribed;

shall be punished as a court-martial may direct.

§ 130.83. Missing movement. Any person subject to this code who through neglect or design misses the movement of a ship, aircraft, or unit with which he is required in the course of duty to move shall be punished as a court-martial may direct.

§ 130.84. Contempt towards officials. Any person subject to this code who uses contemptuous words against the president, the governor or the legislature shall be punished as a court-martial may direct.

§ 130.85. Disrespect towards superior officer. Any person subject to this code who behaves with disrespect towards his superior officer shall be punished as a court-martial may direct.

§ 130.86. Assaulting or willfully disobeying officer. Any person subject to this code who--

(1) strikes his superior officer or draws or lifts up any weapon or offers any violence against him while he is in the execution of his office; or

(2) wilfully disobeys a lawful command of his superior officer; shall be punished as a court-martial may direct.

§ 130.87. Insubordinate conduct toward noncommissioned officer or warrant officer. Any warrant officer or enlisted person who--

(1) strikes or assaults a warrant officer, noncommissioned officer, or petty officer, while such officer is in the execution of his office; or

(2) willfully disobeys the lawful order of a warrant officer, noncommissioned officer, or petty officer; or

(3) treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer, or petty officer while such officer is in the execution of his office;
shall be punished as a court-martial may direct.

§ 130.88. Failure to obey order or regulations. Any person subject to this code who--

(1) violates or fails to obey any lawful general order or regulation;
or

(2) having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the same;
or

(3) is derelict in the performance of his duties;
shall be punished as a court-martial may direct.

§ 130.89 Cruelty and maltreatment. Any person subject to this code who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his order shall be punished as a court-martial may direct.

§ 130.90. Mutiny or sedition. (a) Any person subject to this code--

(1) who with intent to usurp or override lawful military authority refuses, in concert with any other person or persons, to obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny;

(2) who with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person or persons, revolt, violence, or other disturbance against such authority is guilty

of sedition;

(3) who fails to do his utmost to prevent and suppress an offense of mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior or commanding officer of an offense of mutiny or sedition which he knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

(b) A person who is found guilty of attempted mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished as a court-martial may direct.

§ 130.91. Arrest and confinement. Any person subject to this code who resists apprehension or breaks arrest or who escapes from custody or confinement shall be punished as a court-martial may direct.

§ 130.92. Releasing prisoner without proper authority. Any person subject to this code who, without proper authority, releases any prisoner duly committed to his charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial may direct.

§ 130.93. Unlawful detention of another. Any person subject to this code who, except as provided by law or regulations, apprehends, arrests, or confines any person shall be punished as a court-martial may direct.

§ 130.94. Noncompliance with procedural rules. Any person subject to this code who--

(1) is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this code; or

(2) knowingly and intentionally fails to enforce or comply with any provision of this code regulating the proceedings before, during, or after trial of an accused;
shall be punished as a court-martial may direct.

§ 130.95. Misbehavior before the enemy. Any person subject to this code who before or in the presence of the enemy--

- (1) runs away; or
 - (2) shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is his duty to defend; or
 - (3) through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property; or
 - (4) casts away his arms or ammunition; or
 - (5) is guilty of cowardly conduct; or
 - (6) quits his place of duty to plunder or pillage; or
 - (7) causes false alarms in any command, unit, or place under control of the armed forces of the United States or the organized militia; or
 - (8) willfully fails to do his utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or any other thing, which it is his duty so to encounter, engage, capture, or destroy; or
 - (9) does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies, or to any other state or to the organized militia when engaged in battle;
- shall be punished as a court-martial may direct.

§ 130.96. Subordinate compelling surrender. Any person subject to this code who compels or attempts to compel a commander of any place, vessel, aircraft, or other military property, or of any body of members of the armed forces of the United States or of any other state, or of the organized militia to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished as a court-martial may direct.

§ 130.97. Improper use of countersign. Any person subject to this code who in time of war discloses the parole or countersign to any person not entitled to receive it, or who gives to another who is

entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authorized and required to give, shall be punished as a court-martial may direct.

§ 130.98. Forcing a safeguard. Any person subject to this code who forces a safeguard shall be punished as a court-martial may direct.

§ 130.99. Captured or abandoned property. (a) All persons subject to this code shall secure all public property taken from the enemy for the service of the United States, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(b) Any person subject to this code who--

(1) fails to carry out the duties prescribed in subdivision (a) of this section; or

(2) buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he shall receive or expect any profit, benefit, or advantage to himself or another directly or indirectly connected with himself; or

(3) engages in looting or pillaging;
shall be punished as a court-martial may direct.

§ 130.100. Aiding the enemy. Any person subject to this code who--

(1) aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other thing; or

(2) without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly;
shall be punished as a court-martial may direct.

§ 130.101. Misconduct as a prisoner. Any person subject to this code who, while in the hands of the enemy in time of war--

(1) for the purpose of securing favorable treatment by his captors

acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or

(2) while in a position of authority over such persons maltreats them without justifiable cause;
shall be punished as a court-martial may direct.

§ 130.102. False official statements. Any person subject to this code who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing the same to be false, or makes any other false official statement knowing the same to be false, shall be punished as a court-martial may direct.

§ 130.103. Military property--loss, damage, destruction, or wrongful disposition. Any person subject to this code who, without proper authority--

(1) sells or otherwise disposes of; or

(2) willfully or through neglect damages, destroys, or loses; or

(3) willfully or through neglect suffers to be lost, damaged, destroyed, sold or wrongfully disposed of;
any military property of the United States or of the state, shall be punished as a court-martial may direct.

§ 130.104. Property other than military property-- waste, spoil, or destruction. Any person subject to this code who, while on active state duty or in a duty status other than active state duty, willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States or of the state shall be punished as a court-martial may direct.

§ 130.105. Improper hazarding of vessel. (a) Any person subject to this code who willfully and wrongfully hazards or suffers to be hazarded

any vessel of the armed forces of the United States or of the organized militia shall be punished as a court-martial may direct.

(b) Any person subject to this code who negligently hazards or suffers to be hazarded any vessel of the armed forces of the United States or of the organized militia shall be punished as a court-martial may direct.

§ 130.106. Drunken or reckless driving. Any person subject to this code who, while on active state duty or in a duty status other than active state duty, operates any vehicle while drunk, or in a reckless or wanton manner, shall be punished as a court-martial may direct.

§ 130.107. Drunk on duty--misbehavior. Any person subject to this code who is found drunk on duty or drunk or sleeping upon his post, or who leaves his post before he is regularly relieved, shall be punished as a court-martial may direct.

§ 130.108. Dueling. Any person subject to this code who, while on active state duty or in a duty status other than active state duty, fights or promotes, or is concerned in or connives at fighting a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report the fact promptly or the proper authority, shall be punished as a court-martial may direct.

§ 130.109. Malingering. Any person subject to this code who for the purpose of avoiding work, duty, or service in the militia--

(1) feigns illness, physical disablement, mental lapse or derangement;
or

(2) intentionally inflicts self-injury;
shall be punished as a court-martial may direct.

§ 130.110. Riot or breach of peace. Any person subject to this code

who, while on active state duty or in a duty status other than active state duty, causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.

§ 130.111. Provoking speeches or gestures. Any person subject to this code who, while on active state duty or in a duty status other than active state duty, uses provoking or reproachful words or gestures towards any other person subject to this code shall be punished as a court-martial may direct.

§ 130.112. Perjury. Any person subject to this code who, in a judicial proceeding or course of justice conducted pursuant to this code, willfully and corruptly (1) gives, upon a lawful oath or in any form allowed by law to be substituted for an oath, any false testimony material to the issue or matter of inquiry; or, (2) in any declaration, certificate, verification, or statement under penalty of perjury, serves any false statement material to the issue or matter of inquiry is guilty of perjury and shall be punished as a court-martial may direct.

§ 130.113. Frauds against the government. Any person subject to this code-- (1) who, knowing it to be false or fraudulent--

(A) makes any claim against the United States, the state or any officer thereof; or

(B) presents to any person in the civil or military service thereof, for approval or payment, any claim against the United States, the state or any officer thereof; or

(2) who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States, the state or any officer thereof--

(A) makes or uses any writing or other paper knowing the same to contain any false or fraudulent statements; or

(B) makes any oath to any fact or to any writing or other paper knowing such oath to be false; or

(C) forges or counterfeits any signature upon any writing or other

paper, or uses any such signature knowing the same to be forged or counterfeited; or

(3) who, having charge, possession, custody, or control of any money or other property of the United States, or the state, furnished or intended for the armed forces of the United States or the organized militia or any force thereof, knowingly delivers to any person having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or

(4) who, being authorized to make or deliver any paper certifying the receipt of any property of the United States or the state, furnished or intended for the armed forces of the United States or the organized militia or any force thereof, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States or the state;

shall, upon conviction, be punished as a court-martial may direct.

§ 130.114. Conduct unbecoming an officer and gentleman. Any officer who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct.

§ 130.115. General section. Though not specifically mentioned in this code, all disorders and neglects to the prejudice of good order and discipline in the organized militia and all conduct of a nature to bring discredit upon the organized militia or a force thereof, of which persons subject to this code may be guilty, shall be taken cognizance of by a general or special or summary court-martial, according to the nature and degree of the offense, and punished at the discretion of such court.

PART XI

MISCELLANEOUS PROVISIONS

Section 131.1. Courts of inquiry.

131.2. Authority to administer oaths.

- 131.3. Articles to be explained.
- 131.4. Complaints of wrongs.
- 131.5. Redress of injuries to property.
- 131.6. Marshals.
- 131.7. Process of military courts.
- 131.8. Payment of fines and disposition thereof.
- 131.9. Immunity for action of military courts or boards.
- 131.10. Presumption of jurisdiction.
- 131.11. Delegation by the governor.
- 131.12. Short title.

§ 131.1. Courts of inquiry. (a) Courts of inquiry to investigate any matter may be convened by the governor or by any other person designated by the governor for that purpose whether or not the persons involved have requested such an inquiry.

(b) A court of inquiry shall consist of three or more officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

(c) Any person subject to this code whose conduct is subject to inquiry shall be designated as a party. Any person subject to this code or employed in the division of military and naval affairs who has a direct interest in the subject of inquiry shall have the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and shall have the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(d) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(e) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath or affirmation to faithfully perform their duties.

(f) Witnesses may be summoned to appear and testify and be examined before courts of inquiry as provided for courts-martial.

(g) Courts of inquiry shall make findings of fact but shall not express opinions or make recommendations unless required to do so by the convening authority.

(h) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. In case the record cannot be authenticated by the president it shall be signed by a member in lieu of the president and in case the record cannot be authenticated by the counsel for the court it shall be signed by a member in lieu of the counsel.

§ 131.2. Authority to administer oaths. (a) The following officers of the organized militia shall have power to administer oaths for the purposes of military administration, including military justice, and affidavits may be taken for such purposes before such officers:

- (1) All judge advocates of the organized militia;
- (2) All directors, deputy directors and chiefs of administrative services and administrative officers;
- (3) All summary courts-martial;
- (4) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants;
- (5) All commanding officers of the New York naval militia;
- (6) All staff judge advocates and legal officers and acting or assistant staff judge advocates and legal officers; and
- (7) All other persons designated by regulations issued pursuant to this chapter.

(b) The following officers of the organized militia shall have power to administer oaths necessary in the performance of their duties, and affidavits may be taken for such purposes before such officers:

- (1) The president, military judge, trial counsel, and assistant trial counsel for all general and special courts-martial;
- (2) The president and the counsel for the court of any court of inquiry;
- (3) All officers designated to take a deposition;
- (4) All persons detailed to conduct an investigation; and
- (5) All other persons designated by regulations issued pursuant to this chapter.

(c) Officers on the state reserve list and state retired list shall not be authorized to administer oaths as provided in this section unless

they are on active duty in or with the organized militia under orders of the governor as prescribed in this chapter.

(d) As used in this section the term "officer" shall mean a commissioned officer, commissioned warrant officer or warrant officer.

(e) The signature without seal of any such person, together with the title of his office, shall be prima facie evidence of his authority.

§ 131.3. Articles to be explained. Sections 130.2, 130.3, 130.7 through 130.15, 130.25, 130.27, 130.31, 130.37, 130.38, 130.55, 130.73 through 130.115 and 131.3 through 131.5 of this code shall be carefully explained to every enlisted person at the time of his enlistment or transfer or induction into or when ordered to duty in or with any of the forces of the organized militia or within thirty days thereafter. They shall also be explained annually to each unit of the organized militia. A complete text of this code and of the regulations prescribed by the governor thereunder shall be made available to any member or the organized militia, upon his request, for his personal examination.

§ 131.4. Complaints of wrongs. Any member of the organized militia who believes himself wronged by his commanding officer, and, upon due application to such commander, is refused redress, may complain to any superior officer who shall forward the complaint to the adjutant general, who shall examine into said complaint and, if justified shall take proper measures for redressing the wrong complained of. If the adjutant general finds the complaint not to be justified and refuses redress, the member who initiated the complaint may appeal to the governor for redress, in accordance with regulations issued pursuant to this chapter.

§ 131.5. Redress of injuries to property. (a) Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that his property has been wrongfully taken by members of the organized militia he may, subject to such regulations as may be prescribed pursuant to this chapter, convene a board to

investigate the complaint. The board shall consist of from one to three officers and shall have, for the purpose of such investigation, power to summon witnesses and examine them upon oath or affirmation, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by such board shall be subject to the approval of the commanding officer, and in the amount approved by him shall be charged against the pay of the offenders. The order of such commanding officer directing charges herein authorized shall be conclusive on any disbursing officer for the payment by him to the injured parties of the damages so assessed and approved.

(b) Where the offenders cannot be ascertained, but the organization or detachment to which they belong is known, the adjutant general may direct that the amount of damages assessed and approved be paid to the injured parties from the military fund of the unit or units of the organized militia to which such offenders belong.

§ 131.6. Marshals. (a) Summary courts-martial and the military judges or presidents of other courts-martial and of courts of inquiry may each appoint and, at any time, remove one or more marshals.

(b) Each marshal shall perform the usual duties of such marshals and shall execute any process, mandate or order issued by such military judge or president or court or officer.

(c) A bond given as herein provided may be prosecuted for breach of the conditions thereof, in the name of the people, by the attorney general or a judge advocate and all moneys recovered shall be paid to the military fund injured.

§ 131.7. Process of military courts. (a) Military courts are empowered to issue all process and mandates necessary and proper to carry into full effect the powers vested in said courts. Such courts shall have power to issue subpoenae and subpoenae duces tecum and to enforce by attachment attendance of witnesses and production of books and records.

(b) Such process and mandates may be issued by summary courts-martial,

provost courts and the military judge or president of other military courts and may be directed to and may be executed by the marshals of the military court or any peace officer as defined in section 2.10 of the criminal procedure law, when acting pursuant to his special duties, or any police officer and shall be in such form as may be prescribed by regulations issued pursuant to this chapter.

(c) It shall be the duty of all officers to whom such process or mandate may be so directed to execute the same and make return of their acts thereunder according to the requirements of the same. Except as otherwise specifically provided in this chapter, no such officer shall demand, or require payment of any fee or charge of any nature for receiving, executing or returning any such process or mandate or for any services in connection therewith.

§ 131.8. Payment of fines and disposition thereof. Fines may be paid to a military court or to an officer executing its process. The amount of any such fine may be noted upon any state roll or account for pay of the delinquent and deducted from any pay or allowance due or thereafter to become due him, until said fine is liquidated. Any sum so deducted from any state pay or allowance shall be turned into the military court which imposed the fine and shall be paid over by the officer receiving the same in like manner as provided for other fines and moneys collected under a sentence of a summary court-martial. Notwithstanding the provisions of any other law, a fine or penalty imposed by a military court upon an officer or enlisted man shall be paid by the officer collecting the same within thirty days to the chief of staff of the state and shall form a part of, be credited to and expended from the military fund of the unit of which the person paying the same is a member or to which he is detailed or attached.

§ 131.9. Immunity for action of military courts or boards. No action or proceeding shall be prosecuted or maintained against the convening authority or a member of a military court or board 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 findings or

the imposition or collection of a fine or penalty, or the execution of any process or mandate of a military court or board.

§ 131.10. Presumption of jurisdiction. The jurisdiction of the military 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.

§ 131.11. Delegation by the governor. The governor is authorized to delegate any authority vested in him under this code, and to provide for the subdelegation of any such authority, except with respect to the power vested in him under section 130.22 of this code.

§ 131.12. Short title. This article shall be known and may be cited and referred to as the "New York Code of Military Justice".

ARTICLE VIII

THE NEW YORK GUARD

Section 165. Organization, order to and relief from active duty or active service.

166. Organization, composition and strength of the New York guard.

167. Assignment and transfer of officers to the New York guard.

168. Assignment and transfer of enlisted personnel to the New York guard.

169. Resumption of membership in organized militia by national guardsmen on return from active federal service.

170. Duties, privileges and immunities.

§ 165. Organization, order to and relief from active duty or active service. 1. The New York guard may be created, organized, established and maintained in the discretion of the governor at any time when such

action is not prohibited under the laws of the United States. Except when on active duty or active service or when converted into an active force, as provided in this chapter, the units, commands, headquarters, staffs, cadres and members of the New York guard shall be organized and maintained in an inactive status.

2. The units, commands, headquarters, staffs, cadres or members of the New York guard may be ordered to active duty by the governor for such period and purposes, to such extent and under such conditions as he may deem necessary. They may be ordered into the active service of the state pursuant to the provisions of section six of this chapter. When any such member is ordered to active duty or active service, he shall rank in his grade from the date of such order. Such units, commands, headquarters, staffs, cadres or members may be relieved from active duty or active service or inactivated in the discretion of the governor.

3. The New York guard may be converted into an active force, and it may be reconverted into a reserve force in the discretion of the governor.

4. The units, commands, headquarters, staffs, cadres and members of the New York guard shall be organized, armed, equipped, disciplined, governed, administered and trained as prescribed by this chapter and the regulations issued hereunder and in conformance with applicable laws of the United States.

5. In his discretion, the New York guard or any unit, command, headquarters, staff or cadre thereof may be disbanded by the governor.

(6) There shall be no restriction to the appointment of females as officers or warrant officers or the enlisting of females in the New York Guard provided such female personnel are qualified under the provisions of this chapter.

§ 166. Organization, composition and strength of the New York guard. Notwithstanding any contrary provision of law, whenever in his judgment the effectiveness of the New York guard will be thereby increased or in

order to conform the organization of the New York guard to the organization of such state military forces as may be prescribed by the laws of the United States and regulations issued thereunder, the governor may organize, activate, increase, change, divide, consolidate, disband, reactivate or reorganize any unit, headquarters, staff or cadre of the New York guard and may prescribe the composition and types of units, the type of organization and the system of drill or instruction to be used in training such units; and for such purposes the governor is authorized to fix, increase or decrease the strength of any unit, headquarters, staff or cadre of the New York guard including the number of commissioned officers, warrant officers, non-commissioned officers and other enlisted personnel of any grade in any such unit, headquarters, staff or cadre, and to alter the grades of officers, warrant officers and non-commissioned officers.

§ 167. Assignment and transfer of officers to the New York guard.

Notwithstanding any contrary provision of law, upon the recommendation of the adjutant general:

1. The governor may order any person on the state reserve list or on the state retired list to duty with the New York guard in an inactive status, in which case such person shall rank in his grade from the date of such order; such person may be relieved from such duty and may be returned to the state reserve list or state retired list in the discretion of the governor; such person may be ordered to active duty or active service with any unit, command, headquarters, staff or cadre of the New York guard which is on active duty or active service, in which case he shall rank in his grade from the date of such order.

2. The governor may assign, transfer or detail in his grade in addition to his other duties, any person holding a commission or appointment as a commissioned officer or warrant officer in the New York army national guard or New York air national guard to duty with the New York guard or any unit, command, headquarters, staff or cadre thereof and such persons may be relieved or transferred from such assignment, duty or detail in the discretion of the governor.

§ 168. Assignment and transfer of enlisted personnel to the New York guard. Notwithstanding any contrary provision of law, enlisted persons of other forces of the organized militia may be assigned, transferred or detailed to duty with the New York guard or any unit, headquarters, staff or cadre thereof and such persons may be relieved or transferred from such assignment, duty or detail.

§ 169. Resumption of membership in organized militia by national guardsmen on return from active federal service. Upon their release from the service of the United States, the commissioned officers, warrant officers and enlisted personnel of the New York national guard who have been in the active military service of the United States under a call or order into such service, shall resume their membership in the organized militia subject to the provisions of this section. Such commissioned officers and warrant officers shall thereupon resume their status as commissioned officers or warrant officers in the New York national guard in the grades held by them when ordered or called into the active military service of the United States or in any higher grade which they may have attained while in such service, provided such grades are available under the tables of organization prescribed by federal regulations. If no vacancies are available under federal tables of organizations, such officers, if qualified, may be transferred to the inactive national guard, or to the state reserve list in the grade which they may have held or attained in the active military service of the United States. Such enlisted personnel shall continue to serve in the New York national guard until the dates upon which their enlistments entered into prior to their order or call would have expired if uninterrupted by such federal service. Enlisted personnel shall resume the grades held by them when ordered or called into the active military service of the United States or any higher grade which they may have attained while in such service. So far as practicable the personnel thus released from the active military service of the United States shall be returned to their former organizations. Upon the return of such personnel to their former organizations, the personnel of the New

York guard rendered surplus by corresponding reductions in the size of their units may, in the discretion of the governor, be discharged or placed upon the state reserve list or state retired list.

§ 170. Duties, privileges and immunities. All duties imposed by the military law or other statute of the state or by regulations issued hereunder, upon units, commissioned officers, warrant officers and enlisted personnel, respectively, of the organized militia are hereby imposed upon the units, commands, headquarters, staffs, cadres, commissioned officers, warrant officers and enlisted personnel, respectively, of the New York guard, and all rights, privileges and immunities conferred by the military law or other statute of the state or by regulations issued hereunder, upon the units, commissioned officers, warrant officers and enlisted personnel, respectively, of the New York national guard or of the organized militia are hereby conferred upon the units, commands, headquarters, staffs, cadres, commissioned officers, warrant officers and enlisted personnel, respectively, of the New York guard when on active duty or active service, except as otherwise prescribed in this article, including relief from civil or criminal liability for acts done while on such duty or service, rights to pay, allowances, pensions and other compensations; expenses and subsistence; arms, uniforms and equipment; provision, maintenance, use and control of armories; eligibility to appointment on the military staff of the governor; exemption from civil process and from jury duty; right of way; right to wear the uniform and parade with firearms; and all other rights, privileges and immunities created by statute or custom not hereinbefore specifically enumerated.

ARTICLE IX

ARMORIES

Section 175. Definition of an armory.

176. Dock facilities for the New York naval militia.

177. Acquisition of real property for armories and other military facilities of the state.

177-a. Authorization of municipal corporations to convey or

lease to the state real property for armories and other military purposes and to acquire real property for such purposes.

- 178. Construction, leasing, equipping and maintenance of armories.
- 179. Costs of construction, repair, maintenance and operation of armories, camps, ranges and other facilities, a charge upon the state.
- 180. Armories and other facilities in the city of New York.
- 180-a. Lease and operation of seventh regiment armory.
- 181. Procurement of federal funds for construction, et cetera.
- 182. Control of armories and other facilities.
- 183. Use of armories.
- 185. Disposal of useless property.
- 186. Disposition of real property of the state devoted to the use of the organized militia.
- 187. Armory employees; grades, employment, duties and compensation.
- 188. Annual increments; compensation on promotion, demotion, transfer, reclassification, reinstatement or reallocation.
- 189. Qualifications of armory employees; membership in New York state employees' retirement system.

§ 175. Definition of an armory. The word "armory" whenever used in this chapter shall include any building, buildings, vessel, vessels, quarters or other facilities and real property devoted to the use of the organized militia and designated as an armory by the adjutant general. In no case shall one building which is wholly devoted to the use of the organized militia be designated as or constitute more than one armory.

§ 176. Dock facilities for the New York naval militia. 1. The adjutant general is hereby authorized and empowered to furnish dock facilities including wharves, piers, bulkheads, slips, basins, docks and water fronts for the use of the New York naval militia and to determine

their suitability and adequateness.

2. The department, bureau, officer or authority having charge or control of docks within the limits of a city, upon the requisition of the chief of staff when requested to do so by the commanding officer of the New York naval militia shall furnish to the state and the New York naval militia without charge or expense suitable and adequate dock, berthing and mooring facilities for vessels used by any unit of the New York naval militia located in said city and shall provide free access thereto at all times for the members of such naval militia.

§ 177. Acquisition of real property for armories and other military facilities of the state. 1. The adjutant general, provided that funds have been appropriated or provided by the state or by the United States or by both for such purposes, is authorized to acquire by purchase or gifts or, pursuant to the provisions of the eminent domain procedure law, any real property which he may deem necessary for the purposes of armories, camps, ranges, bases, or facilities for the use of the organized militia, the title to all such property to be taken in the name of and be vested in the people of the state; provided, however, that no such property shall be acquired by purchase or gift unless the title thereto shall be approved by the attorney general.

2. Whenever real property is to be acquired pursuant to the provisions of the eminent domain procedure law, the adjutant general shall cause to be made by the state department of transportation an accurate acquisition map prepared from an accurate survey, of the property to be so acquired or in or to which any easement is to be acquired and, in the case of an easement, specifying the particular nature and the duration thereof. The adjutant general and the state commissioner of transportation and their respective duly authorized agents and employees may enter upon such real property or, when necessary, upon any adjacent real property for the purpose of making such survey.

3. On the approval of such map by the adjutant general, the original

tracing of such map shall be filed in the main office of the division of military and naval affairs, pursuant to the provisions of the eminent domain procedure law.

4. If the adjutant general shall determine, prior to the filing of such map in the office of the clerk or register of the county, that changes, alterations or modifications of such map as filed in the office of the division should be made, he or she shall, subject to the provisions of article two of the eminent domain procedure law, if applicable, direct the preparation by the department of transportation of an amended map. On the approval of such amended map by the adjutant general, it shall be filed in the main office of the division and the amended map shall thereupon in all respects and for all purposes supersede the map previously filed.

5. If the adjutant general shall determine prior to the filing of a copy of such acquisition map in the office of the county clerk or register as provided in section four hundred two of the eminent domain procedure law, that such map should be withdrawn, he or she may file a certificate of withdrawal in the offices of the division and of the department of law. Upon the filing of such certificate of withdrawal, the map to which it refers shall be cancelled and all rights thereunder shall cease and determine.

6. The adjutant general shall deliver to the attorney general a copy of such acquisition map, whereupon it shall be the duty of the attorney general to advise and certify to the adjutant general the names of the owners of the property, easements, interest or rights described in the said acquisition map, including the owners of any right, title or interest therein, pursuant to the requirements of section four hundred three of the eminent domain procedure law.

7. If, at or after the vesting of title to such property in the people of the state of New York as provided for in the eminent domain procedure law, the adjutant general shall deem it necessary to cause the removal of an owner or occupant from any real property so acquired, he may cause such owner or occupant to be removed therefrom by proceeding in

accordance with section four hundred five of the eminent domain procedure law. The proceeding shall be brought in the name of the adjutant general as agent of the state and the attorney general shall represent the petitioner in the proceedings. No execution shall issue for costs, if any, awarded against the state or the adjutant general, but they shall be part of the costs of the acquisition of the real property and be paid in like manner. Proceedings may be brought separately against one or more of the owners or occupants of any such property, or one proceeding may be brought against all or several of the owners or occupants of any or all such property within the territorial jurisdiction of the same court, justice or judge; and in any case judgement shall be made for immediate removal of persons defaulting in appearance or in answering, or withdrawing their answers, if any, without awaiting the trial or decision of issues raised by contestants, if any.

8. Upon making any agreement provided for in section three hundred four of the eminent domain procedure law, the adjutant general shall deliver to the comptroller such agreement and a certificate stating the amount due such owner or owners thereunder on account of such acquisition of his or their property and the amounts so fixed shall be paid out of the state treasury after audit by the comptroller from moneys appropriated for the acquisition of such property, but not until there shall have been filed with the comptroller a certificate of the attorney general showing the person or persons claiming the amount so agreed upon to be legally entitled thereto.

9. Application for reimbursement of incidental expenses as provided in section seven hundred two of the eminent domain procedure law shall be made to the adjutant general upon forms prescribed by him and shall be accompanied by such information and evidence as the adjutant general may require. Upon approval of such application, the adjutant general shall deliver a copy thereof to the comptroller together with a certificate stating the amount due thereof, and the amount so fixed shall be paid out of the state treasury after audit by the comptroller from monies appropriated for the acquisition of property under this section.

10. The adjutant general, with the approval of the director of the budget, shall establish and may from time to time amend rules and regulations authorizing the payment of actual reasonable and necessary moving expenses of occupants of property acquired pursuant to this section; of actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not exceeding an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the adjutant general; and actual reasonable expenses in searching for a replacement business or farm; or in hardship cases for the advance payment of such expenses and losses. For the purposes of making payment of such expenses and losses only the term "business" means any lawful activity conducted primarily for assisting in the purchase, sale, resale, manufacture, processing or marketing of products, commodities, personal property or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted. Such rules and regulations may further define the terms used in this subdivision. In lieu of such actual reasonable and necessary moving expenses, any such displaced owner or tenant of residential property may elect to accept a moving expense allowance, plus a dislocation allowance, determined in accordance with a schedule prepared by the adjutant general and made a part of such rules and regulations. In lieu of such actual reasonable and necessary moving expenses, any such displaced owner or tenant of commercial property who relocates or discontinues his business or farm operation may elect to accept a fixed relocation payment in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall be not less than two thousand five hundred dollars nor more than ten thousand dollars. In the case of a business, no such fixed relocation payment shall be made unless the adjutant general finds and determines that the business cannot be relocated without a substantial loss of its existing patronage, and that the business is not part of a commercial enterprise having at least one other establishment, which is not being acquired by the state or the United States, which is engaged in the same or similar business. In the case of a business which is to be discontinued but for

which the findings and determinations set forth above cannot be made, the adjutant general may prepare an estimate of what the actual reasonable and necessary moving expenses, exclusive of any storage charges, would be if the business were to be relocated and enter into an agreed settlement with the owner of such business for an amount not to exceed such estimate in lieu of such actual reasonable and necessary moving expenses. Application for payment under this subdivision shall be made to the adjutant general upon forms prescribed by him and shall be accompanied by such information and evidence as the adjutant general may require. Upon approval of such application, the adjutant general shall deliver a copy thereof to the comptroller together with a certificate stating the amount due thereunder, and the amount so fixed shall be paid out of the state treasury after audit by the comptroller from moneys appropriated for the acquisition of property under this section. As used in this subdivision the term "commercial property" shall include property owned by an individual, family, partnership, corporation, association or a nonprofit organization and includes a farm operation. As used in this subdivision the term "business" means any lawful activity, except a farm operation, conducted primarily for the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property; for the sale of services to the public; or by a nonprofit organization.

11. Authorization is hereby given to the adjutant general to make supplemental relocation payments, separately computed and stated, to displaced owners and tenants of residential property acquired pursuant to this section who are entitled thereto, as determined by him. The adjutant general, with the approval of the director of the budget, may establish and from time to time amend rules and regulations providing for such supplemental relocation payments. Such rules and regulations may further define the terms used in this subdivision. In the case of property acquired pursuant to this section which is improved by a dwelling actually owned and occupied by the displaced owner for not less than one hundred eighty days immediately prior to initiation of negotiations for the acquisition of such property, such payment to such owner shall not exceed fifteen thousand dollars. Such payment shall be

the amount, if any, which when added to the acquisition payment equals the average price, established by the adjutant general on a class, group or individual basis, required to obtain a comparable replacement dwelling that is decent, safe and sanitary to accommodate the displaced owner, reasonably accessible to public services and places of employment and available on the private market, but in no event shall such payment exceed the difference between acquisition payment and the actual purchase price of the replacement dwelling. Such payment shall include an amount which will compensate such displaced owner for any increased interest costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired pursuant to this section was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than one hundred eighty days prior to the initiation of negotiations for the acquisition of such dwelling. Such amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located. Any such mortgage interest differential payment shall, notwithstanding the provisions of section twenty-six-b of the general construction law, be in lieu of and in full satisfaction of the requirements of such section. Such payment shall include reasonable expenses incurred by such displaced owner for evidence of title, recording fees and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses. Such payment shall be made only to a displaced owner who purchases and occupies a replacement dwelling which is decent, safe and sanitary within one year subsequent to the date on which he is required to move from the dwelling acquired pursuant to this section or the date on which he receives from the state final payment of all costs of the acquired dwelling, whichever occurs later, except advance payment of such amount may be made in hardship cases. In the case of property acquired pursuant to this section from which an individual or family,

not otherwise eligible to receive a payment pursuant to the above provisions of this subdivision, is displaced from any dwelling thereon which has been actually and lawfully occupied by such individual or family for not less than ninety days immediately prior to the initiation of negotiations for the acquisition of such property, such payment to such individual or family shall not exceed four thousand dollars. Such payment shall be the amount which is necessary to enable such individual or family to lease or rent for a period not to exceed four years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such individual or family in areas not generally less desirable in regard to public utilities and public and commercial facilities and reasonably accessible to his place of employment, but shall not exceed four thousand dollars, or to make the down payment, including reasonable expenses incurred by such individual or family for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses, on the purchase of a decent, safe and sanitary dwelling of standards adequate to accommodate such individual or family in areas not generally less desirable in regard to public utilities and public and commercial facilities, but shall not exceed four thousand dollars, except if such amount exceeds two thousand dollars, such person must equally match any such amount in excess of two thousand dollars, in making the down payment. Such payments may be made in installments as determined by the adjutant general. Application for payment under this subdivision shall be made to the adjutant general upon forms prescribed by him and shall be accompanied by such information and evidence as the adjutant general may require. Upon approval of such application, the adjutant general shall deliver a copy thereof to the comptroller, together with a certificate stating the amount due thereunder, and the amount so fixed shall be paid out of the state treasury after audit by the comptroller from moneys appropriated for the acquisition of property under this section.

12. The owner of any real property so acquired may present to the court of claims, pursuant to section five hundred three of the eminent domain procedure law, a claim for the value of such property acquired, and for legal damages caused by such acquisition, as provided by law for

the filing of claims with the court of claims. Awards and judgments of the court of claims shall be paid in the same manner as awards and judgments of that court for the acquisition of lands generally and shall be paid out of the state treasury after audit by the comptroller from moneys appropriated for the acquisition of such real property.

13. If the adjutant general shall determine subsequent to the acquisition of a temporary easement in any real property that the purposes for which such easement right was acquired have been accomplished and that the exercise of such easement is no longer necessary, he shall make his certificate that the exercise of such easement is no longer necessary and that such easement right is therefore terminated, released and extinguished. The adjutant general shall cause such certificate to be filed in the office of the department of state and upon such filing all rights acquired by the state in such property shall cease and determine. The adjutant general shall cause a certified copy of such certificate as so filed in the office of the department of state to be mailed to the owner of the property affected, as certified by the attorney general, if the place of residence of such owner is known or can be ascertained by a reasonable effort and such adjutant general shall cause a further certified copy of such certificate to be filed in the office of the recording officer of each county in which the property affected or any part thereof is situated. On the filing of such certified copy of such certificate with such recording officer, it shall be his duty to record the same in his office in the books used for recording deeds and to index the same against the name of the people of the state of New York as grantor.

§ 177-a. Authorization of municipal corporations to convey or lease to the state real property for armories and other military purposes and to acquire real property for such purposes. Whenever the title to any real property required for an armory, camp, range, base, building, structure or other facility or purpose for the organized militia, is vested in a county, city, town or village, such county, city, town or village may grant, convey, lease and release such real property, together with any buildings thereon, to the state, with or without consideration, and

without prior notice, public sale or referendum, notwithstanding any inconsistent provision of this chapter or of any general, special or local law or of any city charter; provided, however, that any lease to the state under this section for the purpose of armory construction shall be without cost to the state. Notwithstanding any inconsistent provision of this chapter or of any general, special or local law or of any city charter, and without prior notice or referendum, any county, city, town or village is hereby specifically authorized to acquire any property for the purpose of conveying or leasing the same to the state in accordance with the provisions of this section.

§ 178. Construction, leasing, equipping and maintenance of armories.

1. The adjutant general, whenever he shall deem it necessary and provided that funds have been appropriated or provided by the state or by the United States or by both for such purposes, is authorized to construct, reconstruct, expand, convert, lease, repair, alter, rehabilitate, improve, demolish, equip, furnish, maintain and operate all armories, camps, ranges, bases, buildings, structures and other facilities for the organized militia.

2. The size and suitability of such armories, camps, ranges, bases, buildings, structures and other facilities and the necessity for expenditures for all work to be done for all materials, articles and equipment to be furnished or installed and for all services to be performed pursuant to authority granted in subdivision one of this section shall be determined by the adjutant general.

3. The necessity for expenditures for repairs, alterations, materials, articles, equipment and services shall be certified to the adjutant general by the officer in charge and control of the armory or facility concerned.

4. Plans and specifications for the construction, reconstruction, expansion, conversion, repair, alteration, rehabilitation, improvement, installation of equipment and demolition of military facilities under the jurisdiction of the adjutant general shall be prepared by the office

of general services. No such plans and specifications shall be prepared by the office of general services, however, until so requested by the adjutant general. The adjutant general shall approve or reject such plans and specifications, and no work shall begin until they have been approved. The appropriate office or bureau of the division of military and naval affairs, when directed by the adjutant general, may prepare estimates, plans and specifications for such work which, before approval by the adjutant general shall be approved by the office of general services. All such work shall be done in accordance with the public buildings law.

5. All work done and all materials, articles and equipment furnished or installed under authority granted in subdivision one of this section shall be inspected by a person designated by the adjutant general. Payment therefor shall not be made until the adjutant general shall certify in writing that such work has been performed and that such materials, articles and equipment have been furnished or installed in accordance with the provisions of the agreement or contract. Expenditures which do not exceed five thousand dollars shall be made only upon a like certificate of the inspector or of the officer in charge and control of the armory or other military facility where the work is performed or materials, articles or equipment furnished or installed.

6. Copies of all agreements and contracts made for work to be done or for materials, articles or equipment to be furnished or installed under authority granted in subdivision one of this section shall be filed immediately in the office of the comptroller of the state.

§ 179. Costs of construction, repair, maintenance and operation of armories, camps, ranges and other facilities, a charge upon the state.

1. The costs of construction, reconstruction, repair, rehabilitation and improvement of armories, camps, ranges, bases, buildings, structures and other facilities under the jurisdiction of the division of military and naval affairs, including armories and armory property located in the city of New York the title to which is vested in the corporation of the

city of New York, and the costs of maintenance and operation including personal service, furniture and furnishings, equipment and supplies for the same and the costs of repairing, renewing, replacing or maintaining the pavement of streets, gutters, curbing, flagging of sidewalks, fences, sewers and water pipes in their connection in, on or with the site of any such armory, camp, range, base, building, structure or other facility shall be a charge upon the state, except to the extent that payment of such costs in whole or in part may be otherwise provided for.

2. All such costs which are a charge upon the state shall be paid out of any moneys of the state available therefor, upon certification, audit and approval in the manner provided by law, and subject to all applicable provisions of law relating to expenditure of moneys of the state.

§ 180. Armories and other facilities in the city of New York. 1. All armories and other facilities located in the city of New York and devoted to the use of the organized militia, title to which is vested in the corporation of the city of New York, and all armory equipment, furnishings, materials and other property furnished or supplied to armories in the city of New York by such city or otherwise pursuant to the provisions of this chapter as existing prior to July first, nineteen hundred forty-two shall continue to be available, used and applied to and for armory or other military purposes in accordance with the provisions of this chapter, without charge by the city of New York to the state notwithstanding any provision of this chapter or other law.

2. The state or the United States or the state and the United States acting jointly is or are hereby authorized, as the adjutant general shall determine to be necessary and provided that funds have been appropriated or provided by the state or by the United States or by both for such purposes, to construct or demolish an armory or building, structure or facility for the use of the organized militia and to reconstruct, repair, rehabilitate, improve, equip, furnish, maintain and operate such armory, building, structure or facility on land owned by the city of New York and available, used and applied to and for armory

purposes or other military purposes. Such armory, building, structure or facility shall be available, used and applied to and for armory or other military purposes without charge by the city of New York to the state or to the United States. The cost of such construction, demolition, reconstruction, repair, rehabilitation, improvement, equipping, furnishing, maintenance and operation of such armory, building, structure or facility shall be borne by the state or by the United States or jointly by both and not by the city of New York.

3. Notwithstanding the provisions of subdivision one of this section, any armory located in the city of New York and devoted to the use of the organized militia, title to which is vested in the corporation of the city of New York, may be released to the city of New York by the adjutant general, acting for and on behalf and in the name of the people of the state of New York, upon such terms and conditions and for such consideration arrived at after an appraisal, as may be agreed upon between such city and the adjutant general and approved by the director of the budget. A release hereby authorized shall be executed by the adjutant general under his official seal and, upon being duly acknowledged by him and such acknowledgment duly certified, may be recorded in the office of the clerk or register of the county where such armory is situated; provided, however, that such release shall not be valid without the approval thereof by the attorney general, as to its form and manner of execution, endorsed thereon or annexed thereto. All moneys paid by the city of New York for the release herein authorized shall be received by the state comptroller and deposited by him to the credit of the capital projects fund established by section ninety-three of the state finance law and shall be available, after appropriation by the legislature, only for construction, reconstruction or improvement of armory facilities, including acquisition of real property, if required.

§ 180-a. Lease and operation of seventh regiment armory. 1.

Definitions. (a) "Adjutant general" shall mean adjutant general of the state of New York.

(b) "Armory" shall mean the seventh regiment armory located at 101-129 East 66th street, 100-126 East 67th street, 888-898 Lexington avenue and

641-649 Park avenue, in the county of New York, state of New York and identified as Block 1401, Lot 1 on the tax map of the city of New York bounded by Park and Lexington avenues and Sixty-sixth and Sixty-seventh streets.

(c) "City lease" shall mean collectively, the leases dated September 23, 1874 and April 23, 1879 by and between the mayor, aldermen and commonality of the city of New York to the field officers of the seventh regiment.

(d) "Division" shall mean the state division of military and naval affairs, established by article nine of the executive law.

(e) "Lease" shall mean a lease for a term of up to ninety-nine years to be entered into between the state, acting through the urban development corporation, as lessor, and the lessee, as tenant, leasing the armory or portions thereof.

(f) "Lessee" shall mean the tenant, a not-for-profit corporation dedicated to the preservation of the armory as a historical, civic and cultural facility for the community, which is party to a lease with the state, acting through the urban development corporation as landlord, leasing the armory or portions thereof.

(g) "Management agreement" shall mean an agreement to be entered into by the state, acting through the urban development corporation, providing for the management of the armory on a short-term basis on behalf of the state as part of the routine or continuing administration and management of the armory.

(h) "Military use" shall mean during periods which are not periods of civil or military emergency, use of a portion of the armory containing approximately twenty-one hundred square feet, or such lesser area as the division may determine, located in the portion of the armory which is not a designated New York city landmark (i.e., not in the historic rooms located on the first and second floors or the drill hall), for offices or administrative functions of the division, and use by the division during any periods of civil or military emergency.

(i) "Periods of civil or military emergency" shall mean any period during which an order of the adjutant general directing a response to a civil or military emergency is in effect. Said order shall have effect in relation to this section only in the event of an order by the adjutant general specifically asserting control of areas within the

armory.

(j) "Shelter use" shall mean use during periods which are not periods of civil or military emergency, the city of New York shall have the right to access and use sufficient and suitable space for the current and uninterrupted operation of the shelter by the city of New York, as well as usual and customary building services and utilities, including but not limited to heat, water and electric, for use as a shelter for homeless persons.

(k) "Urban development corporation" shall mean the New York state urban development corporation, a public benefit corporation of the state, doing business as the empire state development corporation.

(l) "Legacy cadet corps program" shall mean a cadet corps or organized militia program that has accessed or used a regimental armory located within a city that has a population of over one million people for over one hundred years during periods which are not periods of civil or military emergency.

2. State ownership of facility and fixtures. (a) The state, acting through the division, is and shall be recognized as and declared to be the lawful successor to the interest of the lessee under the city lease. No other person or party, whether through claims or entitlements of past or continuing use, occupancy, improvement or otherwise, is or shall be recognized as having any lawful rights in respect of the armory other than as may be expressly granted by, and subject to, the applicable subdivisions of section one hundred eighty-three of this article.

(b) All improvements, betterments, fixtures, equipment, ornaments, decorative elements, and similar items affixed or attached to the armory building (i.e., all items other than moveable personal property which is not affixed to the walls or other parts of the building) are hereby recognized and declared to be an integral part of the armory and property of the state, and any and all persons who have heretofore installed or paid for the installation of any of the foregoing items are deemed to have donated such items to the state as of the time of the installation of such items in the armory.

3. Lease and operation of armory; certain provisions of this chapter not applicable. (a) Except with respect to expenditures made by the

state or the division in connection with military use or the operation of the armory during a period of civil or military emergency, the following provisions of this article shall not apply to the repair, restoration, refurbishment or operation of the armory pursuant to the lease or the management agreement: section one hundred seventy-eight, subdivisions two and three of section one hundred eighty and section one hundred eighty-one.

(b) The provisions of section one hundred eighty-two of this article shall apply only with respect to military use of the portions of the armory not demised under the lease, and with respect to periods of civil or military emergency, and shall not apply to the operations of the armory under the lease or the management agreement.

(c) Except with respect to military use and during periods of civil or military emergency, section one hundred eighty-three of this article shall not apply to the operations of the armory pursuant to the lease or the management agreement. The following provisions shall apply in lieu of such section one hundred eighty-three:

(i) On application of any of the associations of veterans or cadet corps programs, including a legacy cadet corps program, described in paragraphs a and b of subdivision one of such section one hundred eighty-three, the lessee or the manager pursuant to the terms of the management agreement shall provide a proper and convenient room or rooms or other appropriate space in the armory where such posts or chapters may hold regular and special meetings and organizational social events of a private nature, without the payment of any charge or expense therefor, provided that such use does not interfere with the use by the lessee or the manager pursuant to the terms of the management agreement, including any use by third parties contracted for under subparagraph (ii) of this paragraph.

(ii) The armory may be used by any person, firm, association, corporation, or municipal entity, provided that such person, firm, association or corporation enters into an agreement with the lessee or the manager pursuant to the terms of the management agreement permitting such use. The terms of any agreement entered into between the lessee or the manager pursuant to the terms of the management agreement and a user shall provide for such usage to cease during any periods of civil or military emergency.

(d) The provisions of sections one hundred eighty-five, one hundred eighty-six and one hundred eighty-seven of this article shall not apply to the armory.

(e) The management agreement and lease shall not apply to shelter use or to a legacy cadet corps program. Shelter use shall be governed by a separate agreement between the city of New York, the lessee and the state of New York; such separate agreement shall be executed prior to the execution of the lease. A legacy cadet corps program use shall be governed by a separate agreement between the division and the state of New York; such separate agreement shall be executed once a cadet corps program is determined to be a legacy cadet corps program.

(f) A cadet corps program shall qualify as a legacy cadet corps program if such program can sufficiently demonstrate to the urban development corporation that the cadet corps program has used or occupied a regimental armory for over one hundred years. Methods of sufficiently proving use or occupancy shall include, but not be limited to, photos, notarized statements, letters addressed to the program, bank statements, and utility bills. If a cadet corps program qualifies as a legacy cadet corps program, the urban development corporation shall designate them as such and immediately begin to enter into a separate agreement with such program.

§ 181. Procurement of federal funds for construction, et cetera. 1. The division of military and naval affairs is hereby designated as the agency of the state (a) to take such steps, not inconsistent with law, as may be necessary to develop programs for the expenditure of federal funds and to procure the allotment of such funds as may be provided by or pursuant to any act of congress for the construction, demolition, reconstruction, expansion, conversion, purchase, lease, repair, rehabilitation, improvement, equipping, furnishing, maintenance and operation of armories, camps, ranges, bases or any building, structure or facility for the organized militia, and (b) to execute and administer such programs and to cooperate with the federal authorities responsible therefor.

2. The adjutant general is hereby authorized and empowered to

negotiate for, accept and approve projects, proposals, contracts and agreements for the construction, reconstruction, expansion, conversion, purchase, lease, repair, rehabilitation, improvement, equipping, furnishing, maintenance and operation, in whole or in part with federal funds, of armories, camps, ranges, bases or any building, structure or facility for the organized militia.

3. When federal funds are made available or provided by the United States to the state either directly or by way of reimbursement in whole or in part for any moneys expended by the state for the construction, demolition, reconstruction, expansion, conversion, purchase, lease, repair, rehabilitation, improvement, equipping, furnishing, maintenance and operation of any armory, camp, range, base, building, structure or facility for the organized militia, the comptroller of the state is hereby authorized to receive such funds in behalf of the state.

§ 182. Control of armories and other facilities. 1. All armories, arsenals, camps, ranges, bases and other facilities owned, leased or maintained by the state or by the United States for the use of the organized militia and all activities conducted therein shall be under the general charge and control of and shall be regulated by the adjutant general. He shall be responsible to the governor for the proper expenditure of all moneys appropriated therefor.

2. When two or more units of different forces of the organized militia are stationed in one armory, arsenal, camp, range, base or other facility, the adjutant general shall designate the officer to be in direct charge and control thereof, shall apportion the quarters and facilities therein to be occupied by each unit and shall regulate the military use and the care thereof. The adjutant general shall also designate the officer to be in direct charge and control of any armory, arsenal, camp, range, base or other facility which the adjutant general may retain under his sole jurisdiction.

3. Except as provided in subdivision two hereof, the commander of the force concerned shall designate the officer to be in direct charge and

control of each armory, arsenal, camp, range, base or other facility. All officers so designated pursuant to this subdivision and subdivision two hereof shall observe and enforce all laws, orders and regulations applicable to such armory, arsenal, camp, range, base or other facility, their furnishings, equipment, contents and all activities conducted therein and to the persons employed therein. They shall perform such other duties and functions as may be prescribed by the adjutant general.

4. Subject to the regulations of the adjutant general, officers in charge and control so designated may establish and conduct stores, restaurants, messes and places of recreation in the armory, arsenal, camp, range, base or other facility under their charge and control or they may enter into agreements with responsible parties for establishing and conducting the same.

5. The adjutant general and any officer designated by him, shall have access to all parts of all armories and other facilities at all times.

§ 183. Use of armories. 1. Armories may be used as follows:

a. By members and units of the organized militia and cadet corps of such units.

b. On application of one or more posts or chapters of the United Spanish War Veterans, the American Legion, the Veterans of Foreign Wars of the United States, the Disabled American Veterans, the AMVETS, American Veterans of World War II, the Jewish War Veterans of the United States, Inc., the Catholic War Veterans, Inc., the Italian American War Veterans of the United States, Incorporated, the Polish Legion of American Veterans, Inc., the Army and Navy Union of the United States of America, Vietnam Veterans of America, posts of the Masonic War Veterans of the state of New York, Incorporated, or groups or squadrons of New York Wing, Civil Air Patrol, or of incorporated associations of veterans of units of the organized militia, or one or more posts or chapters of organizations of sons of veterans of any war of the United States or of the Reserve Officers Association of the United States, or those historic

military commands set forth in section two hundred forty-a of this chapter, approved by the officer in charge and control of the armory, and by his military superiors as prescribed by regulations issued pursuant to this chapter and under such restrictions as may be prescribed by the adjutant general, the officer in charge and control of an armory shall provide a proper and convenient room or rooms or other appropriate space in such armory where such posts or chapters may hold regular and special meetings and organizational social events of a private nature without the payment of any charge or expense therefor, provided that such use does not interfere with the members and units of the organized militia stationed in such armory.

c. By a civil association existing under the provisions of this chapter and located in the armory, for the purpose of holding athletic, military or social events of a private nature conducted solely and exclusively by and for such civil association, provided that the same is approved by the officer in charge and control of the armory and by his military superior as prescribed by regulations issued pursuant to this chapter.

d. Subject to the provisions of this section, by any federal, state, county and municipal bureau, agency or department or by the armed forces of the United States or by the reserve components thereof for their official business, provided that such use does not interfere with the members and units of the organized militia stationed in such armory and provided that such use is approved by the officer in charge and control thereof and by his military superiors as prescribed by regulations issued pursuant to this chapter. Armories shall be made available to boards of election for designation as places for registry and voting as provided by section sixty-six of the election law.

e. (1) By a person, firm, association or corporation, not specified in subdivisions a to d both inclusive of this section, actually using the same, for such purposes and upon such terms as may be approved by the officer in charge and control of the armory and by his military superiors as prescribed by regulations issued pursuant to this chapter and provided that such use will not, and only so long as such use does

not interfere with the use of the armory by the members and units of the organized militia stationed therein.

(2) The person, firm, association or corporation applying for such use of space within an armory shall execute and deliver a written agreement which shall include among its provisions his or its full name and address, the purpose for which such use is desired, the nature and manner of the intended use of such space, the full amount of compensation of any kind or nature whatsoever to be paid as rent for such use, the amounts to be paid for heating, lighting, janitorial and other services connected with such use. The rental terms and other provisions of such agreement shall be governed by regulations issued pursuant to this chapter, which regulations shall include provisions designed to prevent unfair competition with privately owned property and business.

(3) No such agreement shall be effective and no armory may be so used unless and until such agreement shall have been approved and executed by the officer in charge and control of the armory and shall have been approved by his military superiors as prescribed by regulations issued pursuant to this chapter.

(4) No such agreement may be assigned in whole or in part nor may the said space or any part thereof be sublet to or used by any person, firm, association or corporation not a party to such agreement, unless each such assignment, subletting or use first approved in writing by the officer in charge and control of the armory as may be provided specifically therein.

(5) All moneys paid or given, directly or indirectly, for the use of an armory or to obtain an agreement or permission to use the same, shall be deemed rentals within the meaning of this section and shall be paid to the officer in charge and control of the armory. Any person other than the officer in charge and control of the armory who receives any such moneys shall forthwith pay over the same to the officer in charge and control of the armory, who shall within thirty days after receiving the same distribute such moneys in the manner prescribed in this section and make report of such distribution to his military superiors as prescribed by regulation issued pursuant to this chapter.

f. Notwithstanding any of the provisions of this section, when such

use of an armory is by a federal, state, county or municipal bureau, agency or department, or by any of the armed forces of the United States or any of the reserve components thereof, or by any reserve officers training corps unit, the adjutant general, in his discretion, may require the execution of a contract or agreement for such use, upon such terms and conditions as he may prescribe. A surety bond or public liability and property damage insurance policy shall not be required of the United States or of any department or officer thereof, and, in the discretion of the adjutant general, they may be dispensed with in connection with any other use of an armory under this paragraph.

g. Subject to the provisions of this section, by any city, town or village in the county wherein located or by any department, board, bureau or other agency thereof, or by any voluntary agency directly or indirectly under contractual arrangement with any such municipal corporation, without charge for the use thereof, for the purposes of any program designed to reduce juvenile delinquency including, but not limited to social and athletic events and club work, provided that such use does not interfere with the members and units of the organized militia stationed in such armory, and provided that such use is approved by the officer in charge and control thereof and by his military superiors, as prescribed by regulations issued pursuant to this chapter.

h. On application of a secondary school, the officer in charge and control of an armory shall provide appropriate space in such armory where an athletic team of such school may hold practice sessions without the payment of any charge or expense therefor, provided that such use does not interfere with the members and units of the organized militia stationed in such armory.

i. On application of a representative of an organization sponsoring amateur athletic activities, the officer in charge and control of an armory shall provide appropriate space in such armory where an athletic team of such organization may hold practice sessions and such officer in charge may charge such organization a fee for such use only to the extent of additional expenses incurred by the division as a result of such use, provided that such use does not interfere with the members and

units of the organized militia stationed in such armory.

2. a. A surety bond to the people of the state shall be executed by the person, firm, association or corporation applying to use any space in an armory pursuant to subdivision 1e of this section and by a surety company. Such bond shall be conditioned to indemnify and save harmless severally the state, the city and the county in which the armory is situated, the members and units of the organized militia stationed therein and the civil associations existing under the provisions of this chapter and located in the armory from any loss, damage or expense to the armory or to any property of the said state, county, city, members, units or civil associations or of the United States therein, accruing from or incident to such use, and the expense of heating, lighting and janitorial and other services connected with such use. Such bond shall be approved as to form and sufficiency by the officers who approved the agreement for the use of the armory.

b. An action for breach of such agreement and an action on such bond may be brought in the name of the people of the state by the attorney general or by a judge advocate and all moneys recovered in any such action or actions shall be paid to the treasurer or other appropriate financial officer of the state, county, city or civil association or to the member or unit of the organized militia as the case requires.

3. In the discretion of the officer in charge and control of the armory, the person, firm, association or corporation applying to use any space in an armory may be required to furnish a public liability and property damage insurance policy in amounts, to be fixed by such officer in charge and control, as will protect the officer in charge and control, the United States of America, the state of New York, the city and county in which the armory is located, the members and units of the organized militia stationed therein and the civil associations located in such armory and all persons employed therein from any and all claims, demands, damages, expenses, liability or obligation for damages, loss or injury to or of person or property arising out of acts of, or the use or occupation of the armory and surrounding premises by such person, firm, association or corporation and his or its agents, servants, employees,

and those acting for or in his or its behalf.

4. An armory shall not be used for political or religious purposes, except that an armory may be used for the purpose of holding the national or state convention of a political party with the prior approval of the officers mentioned in subdivision 1e of this section and upon the execution and delivery of an agreement, bond and public liability and property damage insurance policy as provided in this section.

5. All moneys paid as rent as provided in this section, together with all sums paid to cover expenses of heating and lighting, shall be transmitted by the officer in charge and control of the armory through the adjutant general to the state treasury for deposit to the miscellaneous special revenue fund - 339 armory rental account.

§ 185. Disposal of useless property. Whenever state property issued for the use of the organized militia shall become obsolete, useless or superfluous, the adjutant general may cause the same to be sold or otherwise disposed of in accordance with the provisions of the state finance law.

§ 186. Disposition of real property of the state devoted to the use of the organized militia. Whenever the adjutant general shall determine that any real property owned by the state and devoted to the use of the organized militia is no longer needed or adapted for such use, he may, with the approval of the director of the budget, make and file with the commissioner of general services a certificate in writing of such determination and a consent that such real property be sold or exchanged by the commissioner of general services in accordance with the provisions of section twenty-five of the public lands law. Such certificate shall be accompanied by, annexed to, or endorsed upon, an accurate map and description of such real property.

§ 187. Armory employees; grades, employment, duties and compensation.

1. Positions created to provide for the security, maintenance and operation of armories, including the surrounding premises and public property located therein, notwithstanding the provisions of any other law, shall be classified and allocated to salary grades for comparable positions in the classified service of the state as set forth in section one hundred thirty of the civil service law.

2. Subject to the provisions of this chapter and within the appropriation therefor, the adjutant general shall employ, assign, transfer and discharge as many employees of each classification or grade as may be necessary. Subject to the approval of the director of the budget, the adjutant general may classify or reclassify, allocate or reallocate any position established under subdivision one of this section for the purpose of providing appropriate title, salary grade and rate of compensation which may be descriptive of duties and responsibilities. Notwithstanding any other law or any general or special statute to the contrary, when salary grades or rates of compensation for the comparable classified service positions of the state as contained in section one hundred thirty of the civil service law are amended, the salary grades or rates of compensation of positions authorized by subdivision one of this section shall be adjusted correspondingly.

3. Armory employees shall perform duties as prescribed by the adjutant general and by the officer in charge and control of the armory in which they are employed.

4. The adjutant general is hereby authorized to employ any incumbent armory employee appointed pursuant to former section one hundred eighty-seven of this chapter as it existed on March thirty-first, nineteen hundred sixty-one, in a position created pursuant to this section but no such employee shall thereby suffer any diminution in the annual amount of compensation received by him on such date.

§ 188. Annual increments; compensation on promotion, demotion,

transfer, reclassification, reinstatement or reallocation. 1. Any employee holding a position or employed pursuant to provisions of section one hundred eighty-seven of this chapter shall receive the minimum compensation of the classification or grade to which his position is allocated, plus the number of increments which corresponds with the number of his years of service in such position, unless his service during the year immediately preceding shall have been found to be inefficient and unsatisfactory under regulations issued pursuant to this chapter.

2. Annual increments shall take effect on the first day of each fiscal year, subject, however, to the provisions of section forty-four of the state finance law. The eligibility of an employee to receive such an increment shall be determined in the same manner as the eligibility of an employee in the classified service would be determined under the provisions of subdivision six of section one hundred thirty-one of the civil service law. No employee shall receive an increment which will result in an annual compensation in excess of the maximum established for his position under this article.

3. If any such employee is promoted, demoted, transferred or reinstated, to or in a position included in section one hundred eighty-seven of this chapter, his compensation in the new position shall be determined in the same manner as the salary of an employee in the classified service of the state would be determined under the provisions of section one hundred thirty-one of the civil service law.

4. If the position of any such employee is reallocated, his compensation in the new title shall be adjusted in the same manner as the salary of an employee in the classified service of the state would be adjusted under the provisions of section one hundred thirty-two of the civil service law.

5. If the position of any incumbent armory employee appointed pursuant to section one hundred eighty-seven of this chapter, is allocated to a salary grade for a position comparable to one in the classified service of the state as set forth in section one hundred thirty of the civil

service law, such incumbent shall be paid the minimum salary of the new grade and shall be eligible to receive the increments for such grade based on the number of his years of service in the position as it existed on March thirty-first, nineteen hundred sixty-one.

§ 189. Qualifications of armory employees; membership in New York state employees' retirement system. 1. The employees authorized by this section shall be residents of the state who shall be employed by the adjutant general upon the recommendation of the officer in charge and control of the armory.

2. All persons employed under this article on or after the twelfth day of April, nineteen hundred twenty-four, will be required to become members of the New York state employees' retirement system in the same manner as if such employees were in the competitive class of the civil service, provided that the foregoing shall not apply to persons who are eligible to retirement with compensation under this chapter upon reaching the required age and having the required service.

ARTICLE X PAY AND ALLOWANCES

Section 210. Pay and allowances.

- 211. Salaries, office and traveling expenses of certain personnel.
- 212. Pay of troops when used in civil disorders.
- 213. Uniform allowance for officers.
- 214. Retired officers; compensation.
- 215. Retirement of and pensions for certain veterans.
- 216. Pay and care when injured or disabled in service.
- 217. Pensions.
- 218. Pension examining boards.
- 219. Rehearings.
- 220. Expenses of military courts.
- 221. Military funds.
- 222. Headquarters allowances.

223. Definitions.

§ 210. Pay and allowances. 1. Each member of the militia ordered into the active service of the state pursuant to sections six and seven of this chapter, shall receive for each day or part thereof of such duty the same pay and allowances as are received by members of the appropriate force of the armed forces of the United States of corresponding grade, rating and length of service, or one hundred twenty-five dollars per day, whichever is greater.

2. Within the amount appropriated therefor, pay for the type of duty described in subdivision two of section forty-six of this chapter of not less than two hours duration for each day of such duty shall be one-thirtieth of the monthly basic pay prescribed for the members of the appropriate force of the armed forces of the United States of corresponding grade, rating and length of service.

3. Within the amount appropriated therefor, pay and allowances for the type of duty described in subdivision three of section forty-six of this chapter during each day or part thereof of such duty shall be the same as the pay and allowances prescribed for members of the appropriate force of the armed forces of the United States of corresponding grade, rating and length of service.

4. Pay and allowances for each day or part thereof of special duty described in subdivision four of section forty-six of this chapter shall be the same as the pay and allowances prescribed for members of the appropriate force of the armed forces of the United States of corresponding grade, rating and length of service.

5. In lieu of the provisions of subdivision four of this section, a medical examiner may be paid for his services and necessary disbursements and a judge advocate may be paid for legal services and necessary disbursements in any suit, action or proceeding, such amounts as shall be approved by the governor.

6. Members of the militia shall not receive from the state the pay or the pay and allowances provided for by this section when such pay or such pay and allowances are paid from federal funds.

7. Notwithstanding any of the provisions of this chapter, members of the organized militia may with their consent perform without pay or without pay and allowances any of the types of military duty described in section forty-six of this chapter pursuant to orders issued by competent military authority, provided that necessary traveling expenses, subsistence and per diem allowances may be furnished such members within the discretion of the adjutant general and within the amount appropriated therefor.

8. Notwithstanding any other provisions of this chapter, members of the organized militia ordered into the active service for military duty in a foreign area shall be paid by electronic fund transfer. Each organized militia member shall designate one or more financial institutions or other authorized payment agents and provide the payment certifying or authorizing agency with information necessary for the recipient to receive electronic funds transfer payments through each institution so designated. The adjutant general shall waive the requirements of this subdivision for a member of the organized militia upon written request by such organized militia member or where such member fails to designate one or more financial institutions or other authorized payment agent within thirty days of the request for such information by the division of military and naval affairs. This subdivision shall not apply to payments made pursuant to section two hundred twelve of this article.

9. Notwithstanding any provision of law to the contrary, each member of the force of the organized militia, as that term is defined in subdivision nine of section one of this chapter, who is eligible for and has not elected to decline service member's group life insurance through the provisions of 38 U.S.C. § 1965 et seq., shall, during periods of military service, as that term is defined in subdivision one of section three hundred one of this chapter, or whenever ordered to active duty, other than for training, pursuant to Title 32 of the United States Code,

be reimbursed by the state for certain service member's group life insurance premium costs actually incurred during such periods. Said reimbursement payments shall be sufficient to assume the costs for up to four hundred thousand dollars worth of term life insurance through the service member's group life insurance program (38 U.S.C. § 1965 et.seq.) and shall be made pursuant to regulations promulgated pursuant to this section by the adjutant general in consultation with the state comptroller. The state shall not, by the terms of this subdivision, be responsible for the procurement of service member's group life insurance, or any other form of insurance. Premiums reimbursed for the provision of service member's group life insurance shall be paid only to provide coverage which is not paid for or reimbursed by any other governmental entity; however, in no event shall the premium amounts paid pursuant to this subdivision exceed the amount necessary to provide a four hundred thousand dollar portion of any service member's group life insurance in effect. In no event shall a service member who declines service member's group life insurance be entitled to any direct payment pursuant to the terms of this section.

§ 211. Salaries, office and traveling expenses of certain personnel.

1. There shall be allowed annually such sum, not exceeding the amount appropriated therefor, as may be necessary for the salaries of the officers and enlisted personnel of the organized militia on permanent duty in the offices, bureaus, arsenals, camps, headquarters and other facilities of the forces and commands of the organized militia and of the division of military and naval affairs.

2. There shall be allowed annually such sum, not exceeding the amount appropriated therefor, as may be necessary for the office expenses, expenses for personal services, and other expenses of the offices, bureaus, arsenals, camps, headquarters, courts, boards and other facilities of the forces and commands of the organized militia and of the division of military and naval affairs.

3. There shall be allowed annually such sum, not exceeding the amount appropriated therefor, as may be necessary for necessary traveling

expenses, subsistence or per diem allowances of persons in the military service of the state when traveling on duty and under orders.

4. The amounts allowed under subdivisions one, two and three of this section shall be expended as the adjutant general may direct, subject to the provisions of sections one hundred eighty-seven, one hundred eighty-eight and one hundred eighty-nine of this chapter with respect to armory employees.

§ 212. Pay of troops when used in civil disorders. All officers and enlisted men while on duty, or assembled therefor, by order of the governor, upon the request of the sheriff of a county, or in the county of Nassau the county executive or mayor of a city, in aid of the civil authorities, in case of breach of the peace, riot, resistance to process of this state, disaster, or imminent danger thereof, shall receive the pay set forth in subdivision one of section two hundred ten of this chapter. Fifty percent of such compensation and expenses incurred in connection with such duty or as a result thereof including quartering, caring for, transporting and subsisting the troops, and other expenses including the expense 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 two hundred sixteen of this chapter, shall be paid by the county or city at the request of whose sheriff, or in the county of Nassau the county executive, or mayor, as the case may be, the military or naval forces of the state have been heretofore or may hereafter be ordered out. The balance shall be paid by the state. If troops on duty in aid of the civil authorities render service in more than one county or city, fifty percent of the expenses and compensation of such troops shall be apportioned among the counties or cities in which such service is rendered by the officer who approves the vouchers and payrolls of such troops. The balance shall be paid by the state. Upon presentation to the county treasurer of such county or the chief fiscal officer of such city where the service was rendered, of appropriate evidence certified by the state comptroller, that payment of expenses including payment of troops, has been consummated, provision shall forthwith be made by the county or city to make available the

money required to reimburse the state for its share of expenses already paid. In the city of New York, upon similar presentation to the comptroller of said city, the money necessary to comply with the provisions of this section shall forthwith be raised. Such expenses and compensation may be paid in the first instance by the state comptroller as an advance subject to subsequent reimbursement by the county or city or counties or cities in which such service is rendered. In the event a county or city shall fail to pay its share of such expenses and compensation within six months of the certification to the county or city by the state comptroller of such cost, the state comptroller shall cause to be withheld from local assistance moneys to which such county or city would otherwise be entitled, a sum sufficient to reimburse the state for any amount remaining unpaid. Any public officer, who shall neglect or refuse to perform any of the duties required by this section including such duties as may arise in connection with the financing of payments required to be made pursuant to the provisions of this section, shall be personally charged with the costs 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.

§ 213. Uniform allowance for officers. To assist in uniforming and equipping themselves, officers who have been on active duty or active service as such and who have performed eighty per centum of all ordered duty during a calendar year of twelve months shall receive annually fifty dollars. Officers who have been on active duty or active service as such during a period of less than a calendar year and who have performed eighty per centum of all ordered duty during such period of service shall receive such proportion of the uniform allowance for the year as the period of duty or service performed by them bears to a calendar year of twelve months. The allowance herein prescribed shall not be granted to any officer in respect to any period for which he shall have received pay or pay and allowances or uniform allowance from federal funds.

§ 214. Retired officers; compensation. 1. An officer of the organized militia who:

a. has been a commissioned officer in active service for at least twenty years in the organized militia of the state of New York or in the army, air force, space force, navy or marine corps of the United States for at least twenty years and

b. has received an annual compensation from the state for the performance of military or naval duty

(1) during fifteen consecutive years of such service immediately preceding his retirement and transfer to the state retired list as provided in this chapter or

(2) for ten consecutive years of such service immediately preceding such officer's retirement and transfer to the state retired list as provided in this chapter, if such officer has had actual combat experience in time of war while in the army, air force, space force, navy or marine corps of the United States or if such officer has served on the active list of a force or forces of the organized militia for at least ten years as an enlisted person and at least thirty years as a commissioned officer, shall receive annually from the date of such officer's retirement and transfer to the state retired list as provided in this chapter and during the time such officer remains on the state retired list seventy-five per centum of the highest annual rate of compensation paid to such officer by the state for the performance of military or naval duty.

2. Any time spent in the service of the national guard or naval militia of the state of New York on inactive service, during the ten years immediately preceding his retirement, for which he received compensation from the state, and during which he shall have performed the same duties required of him after transfer to active service, shall be deemed, for the purposes of this section, to have been spent in active service.

3. The time spent by an officer in the military or naval service of

the United States while he is a state employee shall be counted in computing the time during which such officer has received an annual compensation from the state and in computing the period of service on the active list of a force or forces of the organized militia notwithstanding the fact that such officer may not have received compensation from the state or may not have been an officer of the organized militia during such period.

4. A commissioned officer of the national guard of the state of New York in active service or upon the state reserve list, who has served in the active national guard of New York and in the federal military service for an aggregate period of twenty-five years, of which period twenty years shall have been as a commissioned officer, and who during such period of service has served as a major general commanding a tactical division in the army of the United States, made up of units or troops of the New York national guard and which participated under his command in actual combat service in time of war, shall receive annually from funds appropriated for the support of this military establishment of the state or for the national guard and naval militia of the state, from the date of his retirement upon reaching the age of sixty-four years and during the time he remains on the retired list, seventy-five per centum of the annual pay of a major general on the active list of the regular army of the United States.

5. If an officer entitled to be retired and to receive the compensation provided by this section dies before his retirement and transfer to the state retired list as provided in this chapter, his widow shall receive annually during her life one-half of the amount which her husband would have received if he had been retired and on the state retired list at the time of his death.

6. The provisions of this section shall not apply in the case of any person who on or after July first, nineteen hundred fifty-four, enters or re-enters service at an annual compensation from the state for the performance of military or naval duty. For the purposes of this subdivision, a person who entered or re-entered such service before such date shall be deemed to continue therein during the time he performs

military duty under a leave of absence therefor pursuant to section two hundred forty-two or section two hundred forty-three of this chapter.

§ 215. Retirement of and pensions for certain veterans. 1. Any soldier, sailor or marine of the army or navy of the United States in the civil war, Spanish-American war, or world war I, honorably discharged from service, and any member of the organized militia of the state having performed active service as such with his organization in aid of federal or civil authorities, for a period of not less than ten consecutive days, who shall have been employed for a period of twenty years or more in the military or naval service of the state of New York under pay from funds raised as provided for in this chapter for the pay of such employees, may, upon reaching the age of sixty-four years upon his own request and the approval of the adjutant general, or shall, upon being discharged or released from such employment without fault on his part after reaching the age of fifty years after serving as aforesaid, or upon being incapacitated from performing the duties of his position after twenty years of such service, be retired from such employment with the approval of the adjutant general, and thereafter during his life there shall be paid to him, in the same manner and by the same agency and from the same source that the compensation of his former position was customarily paid to him, an annual sum equal in amount to one-half of the compensation paid to him in the last year of his employment.

2. The provisions of this section shall not apply in the case of any person who, on or after July first, nineteen hundred fifty-four, enters or re-enters military or naval service of the state under pay from funds raised as provided for in this chapter. For the purposes of this subdivision, a person who entered or re-entered such service before such date shall be deemed to continue therein during the time he performs military duty under a leave of absence therefor pursuant to section two hundred forty-two or section two hundred forty-three of this chapter.

§ 216. Pay and care when injured or disabled in service. 1. Any member of the organized militia who shall, when on duty or assembled

therefor, in case of riot, tumult, breach of peace, insurrection or invasion, or whenever ordered by the governor, the commanding general of the New York army national guard, the commander of the New York air national guard, the commanding officer of the naval militia, or the commanding general of the New York guard, or called in aid of civil authorities, receive any wound or injury or shall 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 incapacitate him from pursuing his usual business or occupation shall receive the pay and allowances provided by this chapter and the actual necessary expenses for care and medical attendance during the period of such incapacity not exceeding ninety days. If authority therefor is granted by the chief of staff of the state, pay and allowances provided by this chapter may be allowed for an additional period not exceeding ninety days and expenses for such care and medical attendance as are necessary for the appropriate treatment of the wound, injury, disease or disability may be allowed until the incapacity resulting from such wound, injury, disease, or disability can not be materially improved by further care or treatment. The determination of whether such injury or disease was incurred while performing such lawfully ordered duty shall be in accordance with this section and such regulations as may be prescribed by the adjutant general.

2. None of the benefits provided by subdivision one of this section shall be paid or allowed unless a claim therefor is presented to the chief of staff within one year after the date when such wound, injury, disease or disability was incurred or contracted. None of the benefits provided by subdivision one of this section and by section two hundred nineteen of this article shall be paid or allowed by the state for any period during which such a member of the organized militia is entitled to receive the same as a charge against federal funds.

3. a. Where a claim is made under this section the chief of staff may cause examinations of the claimant to be made from time to time by a physician, surgeon or dentist designated for the purpose by the chief of staff, and he may direct the removal of a claimant to, and his treatment

in, a hospital designated by the chief of staff, and if the claimant refuses to permit any such examination or if he refuses to go to such hospital or to follow the advice given or treatment prescribed for him therein, he shall thereby forfeit and be barred from all right to any claim or allowance under this section.

b. The chief of staff may appoint a medical examiner or a board of three officers, at least one of whom shall be a medical officer, to inquire into the merits of any claim presented under this section, and to recommend the amount or amounts, if any, to be paid or allowed under this section, or he may, in his discretion, determine any claim without appointing a medical examiner or board and fix the amount to be paid or allowed under this section. If no medical officer is available, such medical examiner or medical officer on such board may be a civilian physician, surgeon or dentist.

c. A medical examiner or board appointed under this section shall have the same power to take evidence, administer oaths, issue subpoenas and compel witnesses to attend and testify and to produce books and papers and to punish their failure to do so as is possessed by military courts.

d. The findings and recommendations of the medical examiner or board shall be submitted to the chief of staff who may return the proceedings to such examiner or board for reconsideration or for taking further testimony and who shall approve or disapprove the claim and fix the amount, if any, to be paid or allowed under this section. The amount so fixed by the chief of staff shall be a charge against and be paid in the manner provided by this chapter, by the county or city in which such duty was rendered, in every case where a county or city is by this chapter made liable to pay for the performance of military duty. In all other cases such amount shall be paid by the state in like manner as other military accounts are paid.

§ 217. Pensions. 1. Any member of the organized militia who (a) shall be disabled or has been so disabled in the performance of any actual service of this state within three years preceding the application for a

pension under this chapter, in case 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 disability retired roll of the state and shall receive out of any moneys in the treasury of the state, not otherwise appropriated, upon the approval of the chief of staff and approval of the governor, the same pension or reward that persons under similar circumstances receive from the United States, or

(b) was activated on state active duty on or after September eleventh, two thousand one, to participate in World Trade Center site rescue, recovery, or cleanup operations as part of such state active duty, and who is determined to have incurred a qualifying World Trade Center condition, as hereinafter provided, shall be entitled to a performance of duty disability pension equivalent to three-quarters of the member's final annual pay as provided for under this chapter. The deadline for submitting any qualifying claim under this paragraph shall be on or before September eleventh, two thousand thirty. The adjutant general of the division of military and naval affairs is authorized to promulgate regulations to implement the provisions of this section.

2. In case any such member of the organized militia (a) shall die as the result of any such wound, injury or disease within one year after it has been incurred or contracted, the surviving spouse, children under twenty-one years of age or dependent parent of such member of the organized militia shall receive such pension and reward as persons under similar circumstances receive from the United States, or

(b) was activated on state active duty on or after September eleventh, two thousand one, to participate in World Trade Center site rescue, recovery, or cleanup operations as part of such state active duty, and whose death is determined to be the result of incurring a qualifying World Trade Center condition, as hereinafter provided, the surviving spouse, children under twenty-one years of age or dependent parent of such member of the organized militia shall be entitled to an accidental death benefit equivalent to one-half of the member's final annual pay as provided under this chapter. The deadline for submitting any qualifying

claim under this paragraph shall be on or before September eleventh, two thousand thirty. The adjutant general of the division of military and naval affairs is authorized to promulgate regulations to implement the provisions of this section.

3. None of the benefits provided by subdivision two of this section shall be paid or allowed unless a claim therefor is presented to the chief of staff within one year after the date of death of the member of the organized militia. None of the benefits provided by subdivision one of this section or on a rehearing of a pension claim under section two hundred nineteen of this article shall be paid or allowed while the applicant is on the active list.

4. If any member of the militia shall die while in the active service of the state, his reasonable funeral expenses, in the same amount as is paid under similar circumstances by the United States shall be paid by the state, in such manner as the governor may direct.

5. None of the benefits provided by this section and by section two hundred nineteen of this article shall be allowed or paid by the state when such benefits are paid from federal funds. Nothing contained in this article shall be deemed to make applicable any of the provisions of the war risk insurance law of the United States. The pension or reward to be allowed under this section shall be that provided for by the appropriate retirement or pension laws of the United States so far as the same may be applicable in substance, without regard to form.

6. Before the name of any person is placed upon the disability retired roll of the state under this section, proof shall be made under regulations issued pursuant to this chapter that the applicant is entitled to such pension or reward; provided, however, that in the case of the death or disability of a member of the organized militia who participated in World Trade Center rescue, recovery, or cleanup operations, and in which such death or disability is determined, pursuant to regulations issued under this chapter, to have been the result of a qualifying World Trade Center condition, then unless the contrary is proved by competent evidence, it shall be presumed that such

death or disability was the natural and proximate result of an accident sustained in the performance of actual service of this state and not as a result of willful negligence on the part of such member. The chief of staff, with the approval of the governor, shall cause to be stricken from such 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 chief of staff, with the approval of the governor, may increase, reduce or withdraw any pension or reward according to the right and justice and the practice under the laws and regulations of the United States.

7. Any member of the organized militia who on or after the effective date of this article is awarded a pension under the provisions of this section and who subsequent to such award requires further care and medical attendance by reason of such wound, injury, disease or disability, may, upon application to and upon approval by the chief of staff, be allowed, in addition to such pension, actual and necessary expenses for care and medical attendance resulting from such wound, injury, disease or disability until such time as the disability upon which the pension was awarded cannot be materially improved by such further care or treatment.

8. For the purposes of this section:

(a) "Qualifying World Trade Center condition" shall mean a qualifying condition or impairment of health resulting in disability to a member of the organized militia who participated in World Trade Center rescue, recovery, or cleanup operations for a qualifying period.

(b) "Qualifying condition or impairment of health" shall mean a qualifying physical condition, or a qualifying psychological condition, or both.

(c) "Qualifying physical condition" and "qualifying psychological condition" shall have the same meaning as such terms are defined in subdivision thirty-six of section two of the retirement and social security law.

(d) "Participated in World Trade Center rescue, recovery, or cleanup operations" shall mean any member of the organized militia who: (i) participated in the rescue, recovery, or cleanup operations at the World

Trade Center site; (ii) worked at the Fresh Kills Land Fill in New York; (iii) worked at the New York city morgue or the temporary morgue on pier locations on the west side of Manhattan; (iv) manned the barges between the west side of Manhattan and the Fresh Kills Land Fill in New York; or (v) repaired, cleaned or rehabilitated vehicles or equipment, including emergency vehicle radio equipment owned by the city of New York that were contaminated by debris in the World Trade Center site, regardless of whether the work on the repair, cleaning or rehabilitation of said vehicles and equipment was performed within the World Trade Center site, provided such work was performed prior to decontamination of such vehicles or equipment.

(e) "World Trade Center site" shall mean anywhere below a line starting from the Hudson River and Canal Street; east on Canal Street to Pike Street; south on Pike Street to the East River; and extending to the lower tip of Manhattan.

(f) "Qualifying period" shall mean: (i) any period of time within the forty-eight hours after the first airplane hit the towers; or (ii) a total of forty hours accumulated any time between September eleventh, two thousand one and September twelfth, two thousand two.

§ 218. Pension examining boards. 1. The chief of staff shall appoint a pension examining board of three officers, at least one of whom shall be a medical officer, to inquire into the merits of any claim presented under section two hundred seventeen of this chapter and to recommend the amount or amounts, if any, to be paid or allowed under the provisions of said section. If no medical officer is available, the medical officer on such board may be a civilian physician, surgeon or dentist.

2. A pension examining board appointed pursuant to this section shall have the same power to take evidence, administer oaths, issue subpoenas and compel witnesses to attend and testify and to produce books and papers and to punish for failure to do so as is possessed by military courts.

3. The finding and recommendations of the pension examining board shall be submitted to the chief of staff, who may return the proceedings

to such board for reconsideration or for taking further testimony and who shall approve or disapprove the claim and fix the amount, if any, to be paid or allowed under section two hundred seventeen of this chapter. The amount so fixed by the chief of staff shall be a charge against and be paid in the manner provided by this chapter, by the county or city in which such duty was rendered, in every case where a county or city is by this chapter made liable to pay for the performance of military duty. In all other cases, such amount shall be paid by the state in like manner as other military accounts are paid.

4. The chief of staff, with the approval of the governor and with the consent of the applicant, may commute any pension or reward by payment of a lump sum to be accepted by the applicant in full satisfaction of all claims under section two hundred seventeen of this chapter.

§ 219. Rehearings. 1. Whenever a claim under sections two hundred sixteen or two hundred seventeen of this article is disapproved or disallowed, in whole or in part, the chief of staff shall cause notice thereof to be served by mail upon the claimant or his attorney. Within six months after the service of such notice the claimant may apply to the chief of staff for a rehearing of his claim. The chief of staff may deny or grant such an application. If granted, the chief of staff may appoint, as appropriate, another medical examiner or board as provided by section two hundred sixteen of this chapter or another pension examining board as provided by section two hundred seventeen of this chapter.

2. The provisions of subdivision three of section two hundred sixteen and of subdivisions two, three and four of section two hundred eighteen of this chapter shall be applicable with respect to claims reheard pursuant of this section.

§ 220. Expenses of military courts. 1. While engaged in the execution of the duties imposed upon him or authorized to be performed by him by a military court, a marshal, police officer or peace officer shall be paid

two dollars for each day actually employed in the execution of such duties and mileage or actual necessary traveling expenses. 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.

2. In addition to the compensation provided in subdivision one hereof, a marshal of a military court, police officer or a peace officer as defined in section 2.10 of the criminal procedure law to whom a warrant is delivered for the collection of a fine imposed by the sentence of a military court shall be paid by retaining to his own use twenty-five per centum of the fines collected by him under such warrant. Said percentage shall be taxed by the officer issuing such warrant and shall be endorsed thereon and added to the amount of the fine collectible to satisfy the sentence of the military court.

3. The compensation and necessary expenses of a summary court-martial and of the clerk thereof and the compensation and necessary expenses payable to marshals, police officers and peace officers pursuant to subdivision two of this section shall be paid from the military fund of the unit of the organized militia whose commanding officer appointed the military court in the same manner as other accounts are paid from such fund.

§ 221. Military funds. * 1. The military fund of a unit of the organized militia shall consist of the sums paid to the adjutant general as prescribed in this section, the fines paid pursuant to the sentence of a military court and the moneys recovered from property losses and paid as provided by this chapter. Such fund may be created by the receipt of moneys from any of the above sources.

* NB Effective until September 1, 2027

* 1. The military fund of a unit of the organized militia shall consist of the sums paid to the adjutant general as prescribed in this section, the fines paid pursuant to the sentence of a military court and the moneys recovered from property losses and paid as provided by this

chapter and the share of armory rentals credited to such fund as provided by this chapter. Such fund may be created by the receipt of moneys from any of the above sources.

* NB Effective September 1, 2027

2. On the certificate of the adjutant general, the comptroller of the state shall annually from funds appropriated therefor draw his warrant in favor of the adjutant general for the units of the organized militia mentioned therein to defray necessary military expenses prescribed by regulations issued pursuant to this chapter, as follows:

a. For each separate division or separate company of the New York naval militia and each separate company or separate detachment or separate corresponding unit of the other forces of the organized militia, as designated and prescribed by regulations issued pursuant to this chapter, two hundred fifty dollars.

b. For each unit of the organized militia, as designated and prescribed by regulations issued pursuant to this chapter, a sum apportioned by the adjutant general in proportion to the enlisted personnel assigned strength in each such unit on the preceding March thirty-one. The adjutant general shall by regulation establish a formula for determination of enlisted personnel assigned strength to be used in computing the entitlement of any unit to funds under this section. Said formula shall require attendance at a specified number of compulsory drills or assemblies in the preceding fiscal year.

3. a. Except as to collections made from the fund for property losses pursuant to section fifty-two of this chapter, the military fund of a unit shall be expended upon approval of an auditing board composed as prescribed by regulations issued pursuant to this chapter.

b. Each claim examined and found correct by the auditing board and each collection for property losses assessed by the adjutant general pursuant to section fifty-two of this chapter, shall be paid from the military fund of a unit after the vouchers in support thereof have been approved as provided in regulations issued pursuant to this chapter and

by the comptroller of the state.

4. The adjutant general is hereby authorized and empowered to draw, use and apply or place in escrow to the benefit of any unit of the organized militia and of units of the organized militia in the active military service of the United States or otherwise to direct the disposition of any and all moneys and balances remaining in his hands to the credit of any unit of the organized militia which has been disbanded, inactivated, ordered or called into the active military service of the United States or to pay audited bills of disbanded or inactivated units or of units ordered or called into the active military service of the United States from such funds, or from unexpended appropriations for the division of military and naval affairs where balances remain.

All unexpended and unobligated balances of unit funds remaining to the credit of any unit of the organized militia or of any disbanded or deactivated unit and of any unit ordered or called into the active military service of the United States shall at the end of each fiscal year be turned over to the adjutant general and transmitted by him to the state treasury. The use or appropriation by a county treasurer or by the commissioner of finance of the city of New York of any money belonging to the military fund of a unit of the organized militia to any use or purpose not authorized by this chapter shall constitute the crime of larceny and be punished accordingly.

5. Any moneys which may have accrued or which may hereafter accrue and be on deposit with the adjutant general, as interest upon moneys constituting a military fund of a unit of the organized militia shall, except as otherwise provided in this chapter, be subject to the draft of the adjutant general and shall be transmitted by him to the state treasury.

§ 222. Headquarters allowances. 1. On the certificate of the adjutant general, the comptroller shall draw his warrant upon the treasurer in favor of the commanding officer of any unit to which an allowance is

made for the headquarters thereof in a sum not exceeding two thousand dollars. Such allowances in specified amounts shall be available for the headquarters of units as designated by the adjutant general in a schedule filed by him and approved by the director of the budget within the amount of annual appropriations therefor.

2. The funds thus allowed shall only be expended by the respective commanding officers of the organizations to which the fund is allowed in accordance with regulations approved by the adjutant general.

3. The adjutant general is hereby authorized and empowered to draw, use, apply or place in escrow to the benefit of any unit of the organized militia and of units of the organized militia in the active military service of the United States, or otherwise to direct the disposition of any and all moneys and balances remaining on deposit to the credit of the custodian of any headquarters allowance of any unit of the organized militia which has been disbanded, deactivated, or ordered or called into the active military service of the United States, or to pay bills chargeable against such headquarters allowance of disbanded or deactivated units or of units ordered or called into the active military service of the United States from such moneys. The custodian of any headquarters allowance shall pay to the adjutant general, upon his order, all moneys remaining in his hands to the credit of any disbanded or deactivated unit of the organized militia or of a unit ordered or called into the active military service of the United States.

All unexpended and unobligated balances of headquarters allowances remaining to the credit of any unit of the organized militia or of any disbanded or deactivated unit, and of any unit ordered or called into the active military service of the United States shall at the end of each fiscal year be turned over to the adjutant general and transmitted by him to the state treasurer.

§ 223. Definitions. The word "officer", as used in this article, means a commissioned officer, a commissioned warrant officer or a warrant officer.

The term "military court", as used in this article, means a court-martial, a court of inquiry or a provost court.

ARTICLE XI

PRIVILEGES, PROHIBITIONS AND PENALTIES

- Section 235. Relief from civil or criminal liability; exemption from civil process; security for costs.
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- to active military duty on or after August first, nineteen hundred ninety.
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- 253. Military service by parent; effect on child custody proceedings.
- 254. Video teleconferencing for families of persons ordered to active duty.
- 255. Benefit information for national guard members and families.
- 256. State military immigrant family legacy program support.

§ 235. Relief from civil or criminal liability; exemption from civil process; security for costs. 1. Members of the militia ordered into the active service of the state pursuant to sections six and seven of this chapter, shall not be liable civilly or criminally, for any act or acts done by them in the performance of their duty. When an action or proceeding of any nature shall be commenced in any court by any person against any officer of the militia for any act done by him in his official capacity in the discharge of any duty under this chapter, or an alleged omission by him to do an act which it was his duty to perform, 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 instituting or prosecuting the action or proceeding to file security for the payment of 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. A defendant, in whose favor a final judgment is rendered in an action or a final order is made in a special proceeding, shall recover treble costs.

2. No person belonging to the organized 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.

§ 235-a. Income and resources not to include agent orange benefits. Notwithstanding any inconsistent provision of law, the terms "income" and "resources" for the purpose of determining eligibility for or the amount of benefits under any means-tested state or state assisted or federally assisted program including but not limited to programs of public assistance and care, including family assistance, safety net assistance, medical assistance, title XX of the social security act, food stamp program, the program of additional state payments to persons eligible for supplemental security income, the low income home energy assistance program and grants, loans and scholarships and other means-tested programs for educational assistance, shall not include payments received from the agent orange settlement fund or any other fund established pursuant to the settlement in the in re agent orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.) and/or any

payments received from court proceedings brought for personal injuries sustained by veterans resulting from exposure to dioxin or phenoxy herbicides in connection with the war in Indochina in the period January first, nineteen hundred sixty-two through May seventh, nineteen hundred seventy-five.

§ 236. Right of way. The commanding officer of any unit of the organized 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 ambulances, fire engines, fire departments and apparatus of the insurance patrol shall not be interfered with thereby. All others who shall hinder, delay, or obstruct any unit of the organized militia wherever parading or performing any military duty, or who shall attempt so to do, shall be guilty of a misdemeanor.

§ 237. Free passage through toll-gates and tunnels and over toll-bridges and ferries. Any person belonging to the organized militia shall, together with the conveyance in his charge and property of the state or of the United States in his charge, be allowed to pass free through all toll-gates and tunnels and over all toll-bridges and also over all ferries if he is in uniform or presents an order for duty or certificate of an order for duty.

§ 238. Converting military property; unlawful wearing of uniforms and devices indicating rank; unlawful use of name of military or naval organization, or unit thereof. 1. Any person who shall secrete, sell, dispose of, offer for sale, purchase, retain after demand by a commissioned officer of the organized militia, or in any manner pawn or pledge any arms, uniforms, equipments, or other military property, issued under the provisions of this chapter; or,

2. Any person, except members of the armed forces of the United States, members of the organized militia of this or any other state, personnel of the independent military organizations designated in section two hundred forty of this article, members of associations wholly composed of persons who (a) were honorably discharged from the armed forces of the United States, or (b) have a qualifying condition, as defined in section three hundred fifty of the executive law, and have received a discharge other than bad conduct or dishonorable from the armed forces of the United States, or (c) are discharged LGBT veterans, as defined in section three hundred fifty of the executive law, and have received a discharge other than bad conduct or dishonorable from the armed forces of the United States, and members of associations wholly composed of sons of veterans of any war of the United States, who shall wear any uniform or any device, strap, knot or insignia of any design or character used as a designation of grade, rank or office, such as are by law or by regulation, duly promulgated, prescribed for the use of the organized militia or similar thereto; or,

3. Any person, society or corporation who shall, with intent to acquire or obtain for personal or business purposes a benefit or advantage, assume, adopt or in any manner use the name of a regiment, battalion, battery, squad, troop, division, company or other unit of any military or naval organization constituting a part of the organized militia of the state of New York, or of any society, association or other organization, or a part thereof, whether incorporated or unincorporated, that has been recognized by the commanding officer of such military or naval organization as a society or association of its veterans or ex-members, or who shall assume or adopt a name so nearly resembling it as to be calculated to deceive the public with respect to any such military or naval organization, or any such society, association or other organization, or a part thereof, of its veterans or ex-members, without first having obtained the written consent of the commanding officer of such military or naval organization; or,

4. Any person who shall fraudulently wear any badge, insignia, clasp, rosette or button issued by the government of the United States or the state of New York or any foreign government to which the United States

was allied in any war,

Is guilty of a misdemeanor.

Whenever there shall be an actual or threatened violation of any of the subdivisions of this section, an application may be made to a court or justice having jurisdiction to issue an injunction, upon notice to the defendant of not less than five days, for an injunction to enjoin and restrain said actual or threatened violations; and if it shall appear to the satisfaction of the court or justice that the defendant is in fact violating any of the subdivisions of this section, or is threatening to do so, an injunction may be issued by such court or justice enjoining and restraining such action or threatened violation without requiring proof that any person has in fact been misled or deceived or otherwise injured thereby.

§ 238-a. Damaging military or naval equipment, supplies or stores. A person who, wilfully or maliciously:

1. Injures or destroys any article of equipment or supplies or military or naval stores of or for the military or naval forces of the United States or of or for the state of New York or of or for any foreign government with which the United States maintains diplomatic relations, or any article used or intended for use in the production or manufacture of any such article; or

2. Injures or destroys any building, structure, or vessel used or occupied by the military or naval forces of the United States or of the state of New York or of any foreign government with which the United States maintains diplomatic relations, or any article used or intended for use in the construction or operation of any such building, structure or vessel; or

3. Injures or destroys any building, structure, or vessel used or occupied in the production of any article mentioned in subdivision one of this section or any article used or intended for use in the

construction or operation of any such building, structure, or vessel; or

4. Injures or destroys any machine, tool, implement, plan, fuel, fuel line, power line, generator or transformer used or intended for use in the production of any article mentioned in subdivisions one, two or three of this section or used or intended to be used in the construction or operation of any building, structure, or vessel mentioned in subdivision two or three of this section; or tampers with any such machine, tool, implement, plan, fuel, fuel line, power line, generator or transformer with intent to lessen its efficiency in the production of any such article; or

5. Injures or destroys any railroad engine or car, or any vehicle, or any vessel used or intended for use in the transportation of any article or machine mentioned in subdivision one, two, three or four of this section, or tampers with any such engine, car, vehicle, or vessel with intent to lessen its efficiency in the transportation of any such article, or with intent to hinder, delay, or obstruct any military or naval operation or defense preparation of the United States or the state of New York or of any foreign government with which the United States maintains diplomatic relations; or

6. Injures, destroys, obstructs, or tampers with any railroad, highway, bridge, canal or river with intent to interfere with or delay the transportation of any article or machine mentioned in subdivisions one, two, three, four or five of this section, or with intent to hinder, obstruct, or delay any military or naval operation or defense preparation of the United States or the state of New York or of any foreign government with which the United States maintains diplomatic relations; or

7. Unlawfully seizes or carries away or injures or destroys or tampers with any property with intent to hinder, obstruct, or delay any military or naval operation or defense preparation of the United States or the state of New York or of any foreign government with which the United States maintains diplomatic relations; or

8. Injuries, alters, defaces, mutilates or in any manner or by any means changes any plans, drawings, designs or specifications intended to be used or useful in constructing, manufacturing or assembling ordnance, instruments, equipment, implements, devices or any material needed for or intended to be used in the defense of the United States or this state by the military or naval forces of the United States or any foreign government with which the United States maintains diplomatic relations, with intent to hinder, delay, obstruct, impair, destroy or interfere with the use of such ordnance, instruments, equipment, implements, devices or material or the efficiency or effectiveness thereof;

Is guilty of a felony and whoever attempts to commit any of the crimes defined by this section shall be guilty of a felony and shall be liable to one-half the maximum punishment prescribed for the completed crime.

9. In any criminal proceeding before any court, magistrate or grand jury for a violation of this section, the court or grand jury may confer immunity in accordance with the provisions of section 50.20 or 190.40 of the criminal procedure law.

§ 238-b. Seizing military stores belonging to the state. A person who enters any fort, magazine, arsenal, armory, arsenal yard or encampment, and seizes or takes away any arms, ammunition, military stores or supplies belonging to the people of this state, is guilty of a felony.

§ 238-c. Wearing of uniforms; prohibited. a. It shall be unlawful for any person to appear in any public place or in the public view attired in any uniform similar to that worn by the military, semi-military, naval, police, storm troop or other official or semi-official forces of any foreign state, nation or government, or attired in any distinctive part or parts of such a uniform, or to assemble with other persons similarly attired in any camp, drill ground or other place for the purpose of engaging in military drill or training or other military practices.

b. It shall be unlawful for any person to appear in any public place, or in the public view attired in any uniform similar to that worn by the members of the storm troop of Nazi Germany, or attired in any distinctive part or parts of such a uniform, or to assemble with other persons similarly attired in any camp, drill ground or other place.

c. It shall be unlawful for any person to appear in any public place or in the public view attired in the uniform or wearing the distinctive garment of any association of persons of whatsoever nature or form which engages in, adopts, or imitates the drill formations, salutes or other methods or practices or the symbols of any foreign military, semi-military, naval, police, storm troop or similar foreign organization, or to assemble with other persons similarly attired in any camp, drill ground or other place for the purpose of engaging in military drill or training or other military practices.

d. It shall be unlawful for the proprietor, manager or keeper of a public hall, public garden, theatre or any other place of public meeting, resort or amusement to permit therein any assemblage of persons attired as prohibited in this section.

e. It shall be unlawful for any person to appear in any public place or in the public view attired in the uniform or wearing the distinctive garment of any association of persons of whatsoever nature or form which engages in, adopts, or imitates the drill formations, salutes or other methods or practices or the symbols of the members of the storm troop of Nazi Germany or similar foreign organization, or to assemble with other persons similarly attired in any camp, drill ground or other place for the purpose of engaging in military drill or training or other military practices.

f. This section shall not apply to the officers or members of the military, semi-military, naval, police or other official or semi-official forces of any foreign state, nation or government lawfully within the state of New York, the Knights of Columbus, the Boy Scouts of America, any student of any school or academy recognized by the board of regents of the state of New York, nor to the members of the cast of any

stage or motion picture production characterizing the officials of a foreign state, nation or government; provided, however, that in any prosecution hereunder it shall be presumed that a person wearing the uniform of a foreign state, nation or government or of any of its official or semi-official forces or attired in any distinctive part or parts of such a uniform, was not at the time of the alleged violation of this section a member of any of the organizations excepted herein.

g. A violation of any of the provisions of this section shall be a class A misdemeanor.

§ 239. Trespassers and disturbers to be placed in arrest; sales and gambling prohibited. 1. Any person who shall trespass upon any armory, arsenal, camp, range, base or other facility of the organized militia or other place where any unit of the organized militia is performing military duty, or who shall in any way or manner interrupt or molest the discharge of his military duties by any member of the organized militia or of the armed forces of the United States or who shall trespass or prevent the passage of troops of the organized militia or of the armed forces of the United States in the performance of their military duties may be placed in arrest by the commanding officer of the unit performing such military duty at the place where the offense is committed and may be held in arrest during the continuance of the performance of such military duty.

2. The commanding officer of any unit of the organized militia performing military duty in or at any armory, arsenal, camp, range, base or other facility of the organized militia or other place where such unit is performing military duty may prohibit persons who hawk, peddle, vend or sell goods, wares, merchandise, food products or beverages upon the streets and highways from conducting sales or auctions, and may prohibit all gambling within the limits of such armory, arsenal, camp, range, base or other facility of the organized militia or other place where such unit is performing military duty or within such limits not exceeding one mile therefrom as he may prescribe. Such commanding officer may in his discretion abate as common nuisances all such sales,

auctions and gambling.

3. Any person who trespasses upon any missile site under the control or jurisdiction of the New York army national guard, or who, in any way interrupts or molests the performance of duty by any person assigned to such site, may be apprehended and detained in custody at the site, by any member of the New York army national guard or any person performing duty at such site. Any person so apprehended and detained shall be delivered, without delay, to a police officer, as defined in subdivision thirty-four of section 1.20 of the criminal procedure law.

§ 240. Military parades and organizations by unauthorized bodies prohibited. 1. No body of men other than the organized militia and the armed forces of the United States except such independent military organizations as were on the twenty-third day of April, eighteen eighty-three and now are in existence and such other organizations as may be formed under the provisions of this chapter, shall associate themselves together as a military company or other unit or parade in public with firearms in any city or town of this state.

2. No municipal corporation 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.

3. No body of men shall be granted a certificate of incorporation under any corporate name which shall mislead, or tend to mislead, any person into believing that such corporation is connected with or attached to the organized militia or any unit thereof in any capacity or way whatsoever. In case any such certificate has been heretofore or may hereafter be granted, which in the judgment of the adjutant general, misleads or tends to mislead anyone into believing that such corporation is so connected or attached in any capacity or way whatsoever, the adjutant general shall notify such corporation, in writing, to forthwith discontinue the use of its said corporate name and forthwith take the necessary steps to change its name pursuant to the statute in such case

made and provided, to some name not so calculated to mislead. In the event such proceedings are not forthwith taken and completed within six months from the service of said notice, the attorney general shall bring an action to procure a judgment vacating or annulling the act of incorporation of such corporation, or any act renewing the corporation, or continuing its corporate existence or annulling the existence of such corporation.

4. 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 Memorial day, or on May first, known as Dewey day, or upon the reception of any unit of the organized militia or of the armed forces of the United States returning from duty or from the active military service of the United States, and for the purpose of escort duty at the burial of deceased members or former members of the organized militia or the armed forces of the United States. Students in educational institutions where military science is a prescribed part of the course of instruction, and cadet organizations composed of youths under eighteen years of age, under responsible instructors, may, with the consent of the adjutant general, drill and parade with firearms in public under the superintendence of their instructors.

5. Any person violating any provision of subdivisions one through four of this section shall be guilty of a misdemeanor.

6. (a) Any person who assembles or conspires to assemble with one or more persons as a paramilitary organization and has knowledge of its purpose is guilty of a class C felony when he, with one or more other members of such organization, practices with a military weapon in order to further the purpose of such organization.

(b) As used in this subdivision: (i) "paramilitary organization" means an organization of two or more persons who engage or conspire to engage in military instruction or training in warfare or sabotage for the purpose of unlawfully causing physical injury to any person or unlawfully damaging the property of any person.

(ii) "Military weapon" means any device capable of discharging a

projectile by means of a gas generated from an explosive compound, or any explosive or incendiary bomb, grenade, rocket, missile, or similar device or launching device therefor; or any device that simulates any of the foregoing.

7. This section shall not be construed to prevent any organization authorized to do so by law from parading with firearms, nor to prevent parades by the organized militia of any other state.

§ 240-a. Historic military commands. 1. Historic military commands are those independent military organizations located within the state as were on the twenty-third day of April, eighteen hundred eighty-three and are now in existence, and whose members associate themselves together at regular meetings and elect their officers in accordance with their respective rules and regulations or constitutions and by-laws.

2. The Old Guard of the City of New York, the Troy Citizens Corps, the Utica Citizens Corps, the One Hundred Twenty-fourth New York State Volunteers and the Veteran Corps of Artillery of the state of New York, are designated as historic military commands.

3. The adjutant general may issue a certificate of election under the seal of the chief of staff to officers of historic military commands elected pursuant to the rules and regulations or constitutions and by-laws of their respective commands. Such certificate of election shall be in a format approved by the adjutant general and shall be provided by the command at no cost to the state. Elected officers of historic military commands may take their oath of office before any officer of the organized militia of the state.

4. Historic military commands and independent military organizations defined in section two hundred forty of this chapter are not units of the militia of the state.

§ 241. Devises and bequests. Any unit of the organized militia may

take by devise and bequest real and personal property for its uses and purposes as a military organization, and may hold, mortgage, sell or otherwise dispose of the same. The title to such property shall vest in the commissioned officer or officers of the unit and if there be three or more of such officers the property shall be managed by their majority vote and disposed of by their two-thirds vote. Organizations of the veterans of such units and/or their predecessor units in the organized militia, in cases where the designation of the corresponding unit in the organized militia has been changed by proper authority, incorporated under general laws or special charter of the state, as associations of the veterans of such units now or as heretofore constituted and designated and associations organized pursuant to section two hundred sixty of this chapter shall, in addition to the powers and authority heretofore granted, possess the same authority herein granted to each unit of the organized militia to take by devise and bequest real and personal property for the appropriate uses and purposes of such organizations and associations and may hold, mortgage, sell or otherwise dispose of the same, and use and apply the proceeds thereof and the income thereof to its appropriate purposes. The title to such property shall vest in such corporations or associations and shall be managed and/or disposed of as provided in and by the constitution, by-laws, rules and regulations now in force or hereafter adopted in respect thereto.

§ 242. Rights of public officers and employees absent on military duty as members of the organized militia or of reserve forces or reserve components of the armed forces of the United States. 1. Definitions. (a) Public officer or employee. The term "public officer or employee", as used in this section, shall include every person, by whatsoever title, description or designation known, who receives any pay, salary or compensation of any kind from the state or a municipal corporation or any other political subdivision thereof, or who is in any department of the state or in the service of any public authority, but shall not include a person holding a position in the exempt class of the civil service whose appointment is terminated or whose position is filled by other than a substitute appointee.

(b) Ordered military duty. The term "ordered military duty", as used in this section, shall mean:

Any military duty performed in the service of the state or of the United States, including but not limited to attendance at any service school or schools conducted by the armed forces of the United States, by a public officer or employee as a member of any force of the organized militia or of any reserve force or reserve component of the armed forces of the United States, pursuant to orders issued by competent state or federal authority, with or without the consent of such public officer or employee. Participation in routine reserve officer training corps training is not considered to be military duty except when performing advanced training duty as a member of a reserve component of the armed forces.

2. Leave of absence while engaged in performance of ordered military duty. Every public officer or employee shall be entitled to absent himself and shall be deemed to have a leave of absence from his duties or service as such public officer or employee while engaged in the performance of ordered military duty and while going to and returning from such duty.

3. Leave of absence while attending service schools. Every public officer or employee who is or becomes a voluntary member of any force of the organized militia or of any reserve force or reserve component of the armed forces of the United States shall be entitled to absent himself and shall be deemed to have a leave of absence from his duties or service as such public officer or employee while in attendance, as a member of such force or reserve components, at any service school or schools conducted by the armed forces of the United States, and while going to and returning from such school or schools, notwithstanding that orders for such attendance are or may be issued with the consent of such public officer or employee.

3-a. Leave of absence while performing full-time training duty or active duty for training with or in an armed force of the United States. Every public officer or employee who is or becomes a member of any force

of the organized militia or of any reserve force or reserve component of the armed forces of the United States shall be entitled to absent himself and shall be deemed to have a leave of absence from his duties or service as such public officer or employee while performing, as a member of such force or reserve component, initial full-time training duty or initial active duty for training with or in an armed force of the United States under the provisions of this chapter or the laws of the United States or both, and while going to and returning from such full-time training duty or active duty for training, notwithstanding that orders for such duty are or may be issued with the consent of such public officer or employee.

4. Employment rights. Time during which a public officer or employee is absent pursuant to the provisions of subdivisions two, three and three-a of this section shall not constitute an interruption of continuous employment and, notwithstanding the provisions of any general, special or local law or the provisions of any city charter, no such officer or employee shall be subjected, directly or indirectly, to any loss or diminution of time service, increment, vacation or holiday privileges, or any other right or privilege, by reason of such absence, or be prejudiced, by reason of such absence, with reference to continuance in office or employment, reappointment to office, re-employment, reinstatement, transfer or promotion.

5. Pay for military duty. (a) Every public officer or employee shall be paid his or her salary or other compensation as such public officer or employee for any and all periods of absence while engaged in the performance of ordered military duty, and while going to and returning from such duty, not exceeding a total of thirty days or twenty-two working days, whichever is greater, in any one calendar year and not exceeding thirty days or twenty-two working days, whichever is greater, in any one continuous period of such absence.

(b) Every public officer or employee employed by the state of New York who served in a combat theater or combat zone of operations as documented by a copy of his or her DD214, certificate of release or discharge from active duty, or other applicable department of defense documentation, shall be paid his or her salary or other compensation as

such public officer or employee for any and all periods of absence while utilizing any healthcare related services related to such duty, not exceeding five working days, in any one calendar year.

(c) Public officers or employees, as defined by paragraph (a) of subdivision one of this section, who are not employees of the state of New York and therefore not entitled to the benefits contained in paragraph (b) of this subdivision, who have served in a combat theater or combat zone of operations as documented by a copy of his or her DD214, certificate of release or discharge from active duty, or other applicable department of defense documentation, may be entitled to additional paid leave for health related services related to duty in a combat theater or combat zone of operations. The governing body of a municipal corporation may, in its sole discretion, adopt a resolution or local law providing for the payment of the salary or other compensation of such public officers or employees for any and all periods of absence while utilizing healthcare related services related to duty in a combat theater or combat zone of operations, not exceeding five working days, in any one calendar year. Any such local law or resolution adopted must apply to both combat theater veterans and combat zone of operations veterans employed by such public employer. Nothing in this paragraph shall be construed to diminish the rights, privileges, or remedies of any employee under any collective bargaining agreement.

5-a. Pay for employees of a city with a population of one million or more. This subdivision shall govern the calculation of compensation and, where applicable, repayment of same by public officers or employees of a city with a population of one million or more who are engaged in the performance of ordered military duty, including time spent traveling to and returning from such duty. In any conflict between this subdivision and any other provision of law with respect to such public servant soldiers, this subdivision shall be controlling.

(a) Definitions. As used in this subdivision:

(i) "Base pay of city salary" means the base pay received by a public officer or employee from employment by a city. For public officers and employees who, prior to the effective date of this subdivision, elected to participate in a "full pay/repayment plan", have returned to city employment from ordered military duty as of the effective date of this

subdivision and are, on the effective date of this subdivision, public officers or employees, the base pay of city salary shall be calculated by the implementing agency as the salary received by the public servant soldier as of the effective date of this subdivision or the date of return to city service, whichever is later.

For public officers and employees who, prior to the effective date of this subdivision, elected to participate in a "full pay/repayment plan" and who return to city employment from ordered military duty after the effective date of this subdivision, the base pay of city salary shall be calculated on the date of return to city employment.

For public officers and employees who, prior to the effective date of this subdivision, elected to participate in a "full pay/repayment plan" and who have, by the effective date of this subdivision, already separated from city employment in a manner other than by retirement, and except where the implementing agency shall determine the existence of hardship, the base pay of city salary shall be calculated as the salary received by the public servant soldier as of the date of separation from city service.

For public officers and employees who, prior to the effective date of this subdivision, elected to participate in a "full pay/repayment plan" and who separate from city employment in a manner other than retirement after the effective date of this subdivision, and except where the implementing agency shall determine the existence of hardship, the base pay of city salary shall be calculated as the salary received by the public servant soldier as of the date of return to city service.

(ii) "Balloon payment" means the payment required for full satisfaction of any remaining outstanding repayment obligation after ten years from the date of return from ordered military duty pursuant to paragraph (e) of this subdivision.

(iii) "City" means a city with a population of one million or more.

(iv) "City salary" means the gross salary received by a public officer or employee from employment by a city, before taxes, deductions, or court-ordered payments, required or voluntary; but excluding payments by a city as employer for health, pension, and other benefits.

(v) "Covered operation" means those military operations designated by the federal government of the United States, in support of "Operation Enduring Freedom", "Operation Iraqi Freedom", "Operation Noble Eagle", or successors thereto, or operations specifically connected by federal designation, action or implication with homeland security. The implementing agency may make such additional designations on a case-by-case basis as it shall deem, in its discretion, to be in keeping with the spirit and intent of this subdivision.

(vi) "Differential pay" means the pay calculated as the difference between a public servant soldier's military salary and city salary, where the military salary is less than the city salary.

(vii) "Full pay/repayment plan" means a salary and benefits plan in effect in a city prior to the effective date of this subdivision whereby a public servant soldier elected to receive city salary while on military duty, but is required to repay the lesser of such city salary or military salary to a city upon return from military duty.

(viii) "Implementing agency" means an agency of a city, as designated by the mayor of such city in writing, that is authorized to implement the provisions of this subdivision.

(ix) "Military salary" means the gross salary paid by the government of the United States to a public servant soldier for ordered military duty in the armed forces of the United States in a covered operation, as further defined by the implementing agency, provided that such military pay shall be calculated without regard to such extra or additional stipends as hazard pay, housing or food allowances, or other similar additions.

(x) "Public officer" or "employee" means a public officer or an employee of a city.

(xi) "Public servant soldier" means a public officer or employee of a city performing ordered military duty in connection with a covered operation.

(b) The mayor of a city shall designate an agency of such city to be the implementing agency that will administer and implement this subdivision. The implementing agency is hereby authorized to and shall:

(i) provide for the continuation of health insurance benefits, to the public servant soldier and to such public servant soldier's family, if the family had been included in such coverage prior to the public

servant soldier beginning ordered military duty, under the same terms and conditions as applied to such public servant soldier prior to leaving city employment for ordered military duty; and

(ii) provide for hardship under certain conditions determined by the implementing agency for public servant soldiers who elected to participate in a "full pay/repayment plan". Such conditions shall include, but shall not be limited to, any material unforeseen or compelling changes in circumstances affecting a public servant soldier's ability to repay that occurred since such public servant soldier elected to participate in the "full pay/repayment plan," including but not limited to injuries sustained while on ordered military duty, or a determination by the implementing agency that the public servant soldier is or will be experiencing severe economic hardship due to a change in circumstances. Relief may include an extension of the repayment term or a reduction in the percentage of salary dedicated to repayment, or a modification to the requirement for a balloon payment. Such determinations of economic hardship may be made on a case-by-case basis, and the implementing agency may require the provision of such information by the public servant soldier as it deems necessary to make such determination.

(c) Subdivision five of this section or any other law to the contrary notwithstanding, until August first, two thousand ten, unless the mayor of a city, in his or her discretion, extends such date, a public officer or employee shall be paid city salary as such public officer or employee for any and all periods of absence while engaged in the performance of ordered military duty, and while going to and returning from such duty, not exceeding thirty working days in any one calendar year and not exceeding thirty working days in any one continuous period of such absence.

(d) Subdivision five of this section or any other law to the contrary notwithstanding, until August first, two thousand ten, unless the mayor of a city, in his or her discretion, extends such date, a public servant soldier shall, after having received the city salary to which he or she is entitled pursuant to paragraph (c) of this subdivision, be paid differential pay thereafter on his or her regularly scheduled pay period for the duration of such ordered military duty, if such ordered military duty is in connection with a covered operation. No repayment shall be

required to the city for such differential pay received by a public servant soldier, provided that this prohibition on repayment shall not apply in the case of a material error in calculation that results in an unwarranted increase to the public servant soldier. Repayment of any such overage shall be governed by the terms of paragraph (e) of this subdivision.

(e) A public officer or employee who, prior to the effective date of this subdivision, elected to participate in a "full pay/repayment plan" and, in having done so, incurred a repayment obligation, shall make repayments in accordance with terms adopted by the implementing agency, except that, with respect to such repayment obligations, such officer or employee shall have satisfied the obligation to repay when he or she has repaid eighty-five percent of the amount of city salary or military salary, whichever is less, less other such discounts implemented by the implementing agency as of the effective date of this subdivision and such incentives as may be implemented by the implementing agency to encourage payment, and no such term shall:

(i) require a public officer or employee, while employed by such city, to pay in any pay period more than seven and one-half percent of his or her base pay of city salary toward satisfying his or her repayment obligation, except that a term may provide for full satisfaction of any remaining outstanding repayment obligation after ten years from the date of return from ordered military duty; or

(ii) require a retired public officer or employee to pay, in any month, an amount more than seven and one-half percent of his or her monthly pension payment, except that a term may provide for full satisfaction of any remaining outstanding repayment obligation after ten years from the date of return from ordered military duty; or

(iii) require a public officer or employee separated from employment by such city in a manner other than by retirement, to pay, in any year, an amount more than seven and one-half percent of the base pay of city salary, except that a term may provide for full satisfaction of any remaining outstanding repayment obligation after ten years from the date of return from ordered military duty.

(f) Notwithstanding paragraph (e) of this subdivision, a city shall not require the satisfaction of any repayment obligation in the event that a public servant soldier is killed in the performance of ordered

military duty.

6. Rights and contributions under retirement systems. (a) The amount of required contributions to any pension or retirement system of which a public officer or employee absent while engaged in the performance of ordered military duty is a member shall be deducted from the salary or other compensation paid to him as such public officer or employee as provided in this section. If such required contributions exceed the amount of such salary or other compensation to which a public officer or employee is entitled while engaged in the performance of military duty, the amount of such salary or other compensation shall be applied upon such required contributions and such public officer or employee shall have the right to pay to such pension or retirement system the amount by which such contributions exceed such salary or other compensation. Such public officer or employee shall also have the right to pay to such system, for any period of such absence during which he shall receive no salary or other compensation as such public officer or employee, the amount that he would have contributed to such system if he had been present and continuously engaged in the performance of the duties of his position during such period.

(b) Such payments, other than those deducted from his salary or other compensation as such officer or employee, may be paid from time to time at any time while engaged in such ordered military duty or within five years after the date of termination of such ordered military duty, or, in the event of the death of such public officer or employee while engaged in ordered military duty, such payments, or any part thereof, may be made by the named beneficiary or the legal representative of such public officer's or employee's estate within one year following proof of such death.

(c) To the extent that such contributions are paid, absence while engaged in the performance of military duty shall be counted in determining the length of total service under such pension or retirement system.

(d) Any such public officer or employee, while engaged in the performance of ordered military duty, or his beneficiary, as the case may be, shall be entitled to all the benefits of the pension or retirement system of which he is a member except accidental disability

retirement and accidental death benefit.

§ 243. Provisions applicable to public employees who are absent on military duty. 1. Definitions. As used in this section:

(a) The term "public employee" shall mean an officer or employee holding a position by appointment or employment in the state of New York or in the cities, counties, towns, villages or school districts thereof, or in any other political or civil division of the state or of a municipality, or in any public or special district, or in the service of any public authority, public benefit corporation, commission or board, or in any other branch of the public service.

(b) The term "military duty" shall mean military service in the military, naval, aviation, space or marine service of the United States subsequent to July first, nineteen hundred forty, or service under the selective training and service act of nineteen hundred forty, or the national guard and reserve officers mobilization act of nineteen hundred forty, or any other act of congress supplementary or amendatory thereto, or any similar act of congress hereafter enacted and irrespective of the fact that such service was entered upon following a voluntary enlistment therefor or was required under one of the foregoing acts of congress, or service with the United States public health service as a commissioned officer, or service with the national oceanic and atmospheric administration as a commissioned officer, or service with the American Red Cross while with the armed forces of the United States on foreign service, or service with the special services section of the armed forces of the United States on foreign service, or service in the merchant marine which shall consist of service as an officer or member of the crew on or in connection with a vessel documented under the laws of the United States or a vessel owned by, chartered to, or operated by or for the account or use of the government of the United States, or service by one who was employed by the War Shipping Administration or Office of Defense Transportation or their agents as a merchant seaman documented by the United States Coast Guard or Department of Commerce, or as a civil servant employed by the United States Army Transport Service (later redesignated as the United States Army Transportation Corps, Water Division) or the Naval Transportation Service; and who

served satisfactorily as a crew member during the period of armed conflict, December seventh, nineteen hundred forty-one, to August fifteenth, nineteen hundred forty-five, aboard merchant vessels in oceangoing, i.e., foreign, intercoastal, or coastwise service as such terms are defined under federal law (46 USCA 10301 & 10501) and further to include "near foreign" voyages between the United States and Canada, Mexico, or the West Indies via ocean routes, or public vessels in oceangoing service or foreign waters and who has received a Certificate of Release or Discharge from Active Duty and a discharge certificate, or an Honorable Service Certificate/Report of Casualty, from the Department of Defense, or who served as a United States civilian employed by the American Field Service and served overseas under United States Armies and United States Army Groups in world war II during the period of armed conflict, December seventh, nineteen hundred forty-one through May eighth, nineteen hundred forty-five, and who (i) was discharged or released therefrom under honorable conditions, or (ii) has a qualifying condition, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service, or (iii) is a discharged LGBT veteran, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service, or who served as a United States civilian Flight Crew and Aviation Ground Support Employee of Pan American World Airways or one of its subsidiaries or its affiliates and served overseas as a result of Pan American's contract with Air Transport Command or Naval Air Transport Service during the period of armed conflict, December fourteenth, nineteen hundred forty-one through August fourteenth, nineteen hundred forty-five, and who (iv) was discharged or released therefrom under honorable conditions, or (v) has a qualifying condition, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service, or (vi) is a discharged LGBT veteran, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service; or service in police duty on behalf of the United States government in a foreign country, if such person is a police officer, as defined by section 1.20 of the criminal procedure law, and if such police officer obtained the prior consent of their public employer to

absent themselves from such police officer's their position to engage in the performance of such service; or as an enrollee in the United States maritime service on active duty and, to such extent as may be prescribed by or under the laws of the United States, any period awaiting assignment to such service and any period of education or training for such service in any school or institution under the jurisdiction of the United States government, but shall not include temporary and intermittent gratuitous service in any reserve or auxiliary force. It shall include time spent in reporting for and returning from military duty and shall be deemed to commence when the public employee leaves their position and to end when such public employee they are reinstated to their position, provided such reinstatement is within ninety days after the termination of military duty, as hereinafter defined.

Notwithstanding the foregoing provisions of this paragraph, the term "military duty" shall not include any of the foregoing services entered upon voluntarily on or after January first, nineteen hundred forty-seven and before June twenty-fifth, nineteen hundred fifty; and, on or after July first, nineteen hundred seventy, the term "military duty" shall not include any voluntary service in excess of four years performed after that date, or the total of any voluntary services, additional or otherwise, in excess of four years performed after that date, shall not exceed five years, if the service in excess of four years is at the request and for the convenience of the federal government, except if such voluntary service is performed during a period of war, or national emergency declared by the president.

(c) The term "termination of military duty" shall mean the date of a certificate of honorable discharge or a certificate of completion of training and service as set forth in the selective training and service act of nineteen hundred forty, and the national guard and reserve officers mobilization act of nineteen hundred forty or, or a certificate of release or discharge from active duty where an employee (i) has a qualifying condition, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service, or (ii) is a discharged LGBT veteran, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service, or in the event of the incurrence of a temporary disability arising out of

and in the course of such military duty, the date of termination of such disability. The existence and termination of such temporary disability, in the case of a public employee occupying a position in the classified civil service or of a person on an eligible list for a position in such service, shall be determined by the civil service commission having jurisdiction over such position and, in the case of a public employee occupying a position not in the classified civil service, shall be determined by the officer or body having the power of appointment.

(d) The term "position" shall mean the office or position held by a public employee at the time of his entrance upon military duty.

2. Leave of absence and re-employment. (a) Every public employee shall be entitled to absent himself or herself from his or her position while engaged in the performance of military duty, except for those police officers who are required by paragraph (b) of subdivision one of this section to obtain the prior consent of their public employers before absenting themselves from their positions for military service, who accordingly shall be entitled to absent themselves from their positions only after obtaining such prior consent, and shall be deemed to have a leave of absence for the duration of such military duty. Such public employee shall be reinstated to his position as soon as possible provided he makes application for such reinstatement within ninety days after the termination of his military duty, or at any time during his terminal leave. Thereafter, he may be so reinstated, at any time after such ninety-day period and within one year after the termination of his military duty, in the discretion of the appointing officer or body.

(b) A public employee who resigned from his position during his military duty, or within six months prior to the commencement of such military duty, may, in the discretion of the appointing officer or body, be reinstated to his position within one year after the date of his resignation, excluding from said period the time he was on military duty. Every public employee reinstated under the provisions of this subdivision or pursuant to subdivision one-a of rule sixteen of the rules for the classified civil service for the state or pursuant to any comparable rule of a municipal civil service commission, shall be deemed to have been on a leave of absence for the duration of his military duty.

3. Substitutes. A position held by a public employee who is absent on military duty shall, so far as practicable, be continued in existence but shall be deemed temporarily vacant and shall be filled only when the public interest so requires. Any appointment to fill such vacancy shall be designated as a substitute appointment and the request for certification, the certification and the indicia of appointment shall show that the person is being appointed as a substitute. Any public employee, who accepts appointment as a substitute shall be granted a leave of absence from his former position until the termination of such appointment and the temporary vacancy resulting from such leave of absence shall be filled in like manner only when the public interest so requires and any appointment to such position shall also be designated as a substitute appointment and the request for certification, the certification and the indicia of appointment shall show that the person is being appointed to such position as a substitute. Every such substitute appointment shall be for a period not exceeding the leave of absence of the former incumbent and shall be made in accordance with the provisions of law applicable to such position, provided, however, that such substitute appointment may be continued for a period in excess of one year, notwithstanding the provisions of section fifteen of the civil service law. Such substitute employee shall acquire no right to permanent appointment or tenure by virtue of his service as a substitute and such service may be terminated at any time in the discretion of the appointing officer or body. His rights, if any, with respect to appointment or tenure, shall not, however, be impaired in any way by his acceptance of an appointment as a substitute and his name shall remain on any eligible or other list and he shall be certified as eligible for any other appointment authorized by law during the existence of such list.

The appointment of a substitute shall terminate (a) upon the return of the former incumbent to his position or (b) upon the death or permanent total disability of the former incumbent or (c) upon failure of the former incumbent to return to said position within ninety days after the termination of his military duty or (d) upon the appointment or promotion of the former incumbent to another position as authorized by

subdivision six of this section, and, upon the happening of any of such events, said position may then be filled in the manner provided by law.

4. Pensions. Any public employee who is a member of any pension or retirement system may elect, while on military duty, to contribute to such pension or retirement system the amount which he would have contributed had his employment been continuous and upon making such contribution he shall have the same rights in respect to membership in the retirement system as he would have had if he had been present and continuously engaged in the performance of the duties of his position.

Time during which a member is absent on military duty shall not constitute an interruption of continuous employment, but such time shall not be counted or included in determining the length of total service unless such member contributes to the retirement system the amount he or she would have been required to contribute if he or she had been continuously employed during such period. Such contribution, or any part thereof, may be paid at any time and from time to time, while in military duty, or within five years after the date of his or her restoration to his or her position or before December thirty-first, nineteen hundred sixty-two, whichever date is later, or in the event of the death of the member while in military duty such contribution, or any part thereof, may be paid by the named beneficiary or the legal representative of the member's estate within one year following proof of such death. A member of the New York state employees' retirement system or of the New York state and local police and fire retirement system, other than a member of the state police in a collective negotiating unit established pursuant to article fourteen of the civil service law, who is in the employ of the state on March thirty-first, nineteen hundred seventy, who failed to make such contributions during the prescribed period of time may nonetheless obtain credit for time during which he or she was on military duty by depositing with such retirement system an amount equal to the contribution he or she would have made had he or she made a timely election, with regular interest, on or before March thirty-first, nineteen hundred seventy-two, provided, however, such member may elect to deposit such amount over a period of time no greater than the period for which credit is being claimed, in which case such

payments must commence no later than March thirty-first, nineteen hundred seventy-two. If the full amount of such payments is not paid to the retirement system, the amount of service credited shall be proportional to the total amount of the payments made. A member of the New York state and local police and fire retirement system who is a member of the state police in a collective negotiating unit established pursuant to article fourteen of the civil service law, who is in the employ of the state on March thirty-first, nineteen hundred seventy-one, who failed to make such contributions during the prescribed period of time may nonetheless obtain credit for time during which he or she was on military duty by depositing with such retirement system an amount equal to the contribution he or she would have made had he or she made a timely election, with regular interest, on or before March thirty-first, nineteen hundred seventy-two, provided, however, such member may elect to deposit such amount over a period of time no greater than the period for which credit is being claimed, in which case such payments must commence no later than March thirty-first, nineteen hundred seventy-two. If the full amount of such payments is not paid to the retirement system, the amount of service credited shall be proportional to the total amount of the payments made.

A member of the New York state teachers' retirement system, whose service terminates on the expiration of his contract, and for whom there is no employer to cover the cost of his accruing pension rights while in military service following the cessation of his contract, may pay in addition to his own contributions, an amount equal to the percentage of his salary which his employer would have paid had he remained under contract, which contributions shall be paid into the pension accumulation fund of the aforementioned retirement system and be treated as if they had been continued by his employer except that in the event of his death as a member prior to retirement or on his withdrawal of his accumulated contributions from the system, the amounts so paid by him shall be returnable, with regular interest, as if they were a part of his accumulated contributions. Such contributions or any parts thereof may be paid at any time and from time to time while in military duty or within five years after the member has returned to public school teaching in New York state or before December thirty-first, nineteen

hundred sixty-two, whichever date is later.

Any such member, while on military duty, or his beneficiary, as the case may be, shall be entitled to all benefits of the retirement system of which he is a member except accidental disability retirement and accidental death benefit.

Any public employee holding a position by appointment who is or was a member of any pension or retirement system and who, while such member and while on military duty, applied for retirement as a member of such system to take effect within thirty days prior to the date of expiration of his appointment and who shall accordingly have been retired pursuant to such application but thereafter and within thirty days after the effective date of such retirement shall have been reappointed to his said position and shall have applied thereafter, before or upon his release from military duty, for membership in such pension or retirement system, shall be deemed to have had continuous membership in such pension or retirement system and shall be entitled to all the rights, benefits and privileges under his contract of membership as it existed at the time of such retirement, provided he shall (1) return any pension, annuity and retirement allowance payments received by him during the period of such retirement, (2) consent to the termination of his right to receive pension, annuity or retirement allowance payments on the basis of such retirement, (3) pay into the appropriate fund of such pension or retirement system the amount he would have contributed thereto, if he had not so retired, on the basis of the salary he was receiving when he so retired, and (4) pay into the appropriate fund of such pension or retirement system the amount which his employer would have paid thereto on his account if he had continued as a member during such period of retirement.

4-a. Notwithstanding the provisions of subdivision four of this section, in any case where any member of any pension or retirement system maintained under any provision of the administrative code of the city of New York, or under section twenty-five hundred seventy-five of the education law, did not, within five years after the date of the restoration of such member to his position, pay the contribution

required by such subdivision four to be paid within such period, as a prerequisite to obtaining service credit in such system for the period of his military duty, such contribution, or any part thereof remaining due, may be paid on or before June thirtieth, nineteen hundred fifty-seven, provided that any such member who, on or before such last-mentioned date, retires or is retired, without having paid such contribution, shall not be entitled to make such payment.

4-b. (a) As used in this subdivision, the following terms shall mean and include:

(1) "New York city veteran of world war II". Any member of the New York city employees' retirement system in city-service who, after his or her last membership in such system began, served as a member of the armed forces of the United States during the period beginning on December seventh, nineteen hundred forty-one and ending on December thirty-first, nineteen hundred forty-six, and (i) was honorably discharged or released under honorable circumstances from such service, or (ii) has a qualifying condition, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service, or (iii) is a discharged LGBT veteran, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service.

(2) "New York city veteran of the Korean conflict." Any member of the New York city employees' retirement system in city-service who, after his or her last membership in such system began, served as a member of the armed forces of the United States during the period beginning on the twenty-seventh of June, nineteen hundred fifty and ending on the thirty-first day of January, nineteen hundred fifty-five, and (i) was honorably discharged or released under honorable circumstances from such service, or (ii) has a qualifying condition, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service, or (iii) is a discharged LGBT veteran, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service.

(b) Notwithstanding any provision of subdivision four of this section

to the contrary, any New York city veteran of World War II or New York city veteran of the Korean conflict who did not, within the applicable period of time prescribed by subdivision four of this section, comply with the requirements of such subdivision for obtaining service credit in the New York city employees' retirement system for the period of his military duty, may, by a written application duly executed and filed with the board of estimate of the city of New York, prior to July first, nineteen hundred sixty-nine, elect to purchase such service credit. If such veteran shall pay to such retirement system, prior to July first, nineteen hundred sixty-nine, the amount which he would have contributed thereto if he had been continuously employed during such period of military duty, he shall have in such retirement system the service credit which he could have obtained for such period of military duty if he had complied with the requirements of such subdivision four within the period of time therein prescribed.

5. Rights upon restoration to position. A public employee restored to his position after the termination of his military duty or after the termination of his substitute appointment shall thereafter be entitled to the rate of compensation he would have received had he remained in his position continuously during such period of military duty or during such period of service as a substitute and shall be deemed to have rendered satisfactory and efficient service in such position during the period of his leave of absence and shall not be subjected directly or indirectly to any loss of time service, increment, or any other right or privilege, or be prejudiced in any way with reference to promotion, transfer, reinstatement or continuance in office. If a public employee, by reason of injuries sustained or disease contracted while on military duty, as hereinbefore defined, is incapable of efficiently performing the duties of his position after the termination of his military duty, he may, with the approval of the civil service commission having jurisdiction of such position, be transferred to any vacant position in the same jurisdictional classification and in the same governmental unit for which he has applied in writing and for which he has been found qualified, after such tests as the commission may deem appropriate, provided the rate of compensation for such position is not greater than the rate of compensation for the position to which such public employee

was restored. If a promotion examination is held while a public employee entitled to participate therein is on military duty, such public employee shall be given a comparable examination, provided he makes request therefor within sixty days after restoration to his position. If he passes such examination his name shall be placed upon a special eligible list provided that his name would have been reached for certification between the date when he entered upon such military duty and the date that he was officially notified that he had passed such examination. Such special eligible list shall remain in existence for a period of two years from the date that the name of such person is placed thereon and such special eligible list shall be certified before certification shall be made from any subsequent or eligible list, whether open competitive, promotion or preferred which has been established for the same position, or from the original eligible list for such position. A public employee thus appointed after passing a comparable examination as herein provided, shall, for the purpose of computing seniority credit and training and experience credit upon promotion and seniority in the event of suspension or demotion, be deemed to have been appointed on the earliest date upon which any eligible, who was lower on the regular promotion eligible list, was appointed.

6. Appointment while on military duty. Any appointing officer or body may, in his or its discretion, fill a vacancy by the appointment or promotion of a public employee or any other person legally eligible for such appointment or promotion, notwithstanding the absence of such person or employee in military duty but such appointment or promotion shall not serve to increase in any degree any civil compensation which he may have been receiving pursuant to section six of chapter six hundred eight of the laws of nineteen hundred fifty-two. Such employee, upon the termination of his military duty shall have the same rights, privileges and obligations as if he had served continuously in such position from the date of his appointment thereto.

7. Status of existing lists. Any person whose name is on any eligible list shall, while in military duty, retain his rights and status on such list. If the name of any such person is reached for certification during

his military duty, it shall be placed on a special eligible list in the order of his original standing, provided he makes request therefor following termination of his military duty and during the period of his eligibility on such list. Such list shall be certified before certification shall be made from a subsequent open competitive or promotion eligible list for the same position or from the original eligible list for such position. Such names shall remain on such special eligible list for a period of two years after the termination of such military duty. Any such person thus appointed shall, for the purpose of computing seniority credit and training and experience credit for promotion and date of membership in the retirement system and seniority in the event of suspension or demotion, be deemed to have been appointed on the earliest date upon which any eligible, who was the lower on such original eligible list, was appointed, provided, however that service credit shall be computed from the actual date of appointment. The retirement system contributions of any such person who made any contribution to the retirement system pursuant to article fourteen or fifteen of the retirement and social security law, and who was appointed on or after July twenty-seventh, nineteen hundred seventy-six shall not be refunded.

7-b. Status of applicants called for military duty before taking all parts of an examination. Any person who has passed one or more of several parts of an examination for a position for which competitive examinations are required, and who has been prevented from taking or completing the remaining part or parts of the examination for such position by reason of his service in military duty shall be afforded an opportunity to take a comparable examination as to such remaining part or parts, provided he makes request therefor during the period of ninety days following termination of his military duty. If he passes such examination his name shall be placed upon a special eligible list provided that his name would have been reached for certification between the date when he entered upon such military duty and the date that he was officially notified that he had passed such examination. Such special eligible list shall remain in existence for a period of two years from the date that the name of such person is placed thereon. Such special eligible list shall be certified before certification shall be

made from a subsequent eligible list whether open competitive, promotion or preferred for the same position or from the original eligible list for such position. Any such person thus appointed shall, for the purpose of computing seniority credit and training and experience credit for promotion and seniority in the event of suspension or demotion, be deemed to have been appointed on the earliest date upon which any eligible was appointed who was lower on such original eligible list or lower in relative order of rating thereon than such person would have been had his name been entered thereon.

8. Service and efficiency ratings. A public employee who is absent on military duty shall be credited with the average of the efficiency ratings which he received for the three periods immediately prior to his absence on military duty but such rating shall not be less than a passing grade for the period of such absence, nor shall it be less than the rating which he received for the period immediately prior to his absence on military duty. In computing seniority and service requirements for promotion eligibility, such period of military duty shall be counted as service in the position held by such employee.

9. Probationary service. If a public employee or other person enters military duty before the expiration of the probationary period in any position to which he may have theretofore been appointed, or to which he may thereafter be appointed or promoted pursuant to subdivision six of this section, the time he is absent on military duty shall be credited as satisfactory service during such probationary period.

9-a. Probationary service of teachers. Notwithstanding the provisions of subdivision five of this section and subdivision four of section two hundred forty-two of this chapter, in any case where a teacher, as defined in section thirty-one hundred one of the education law, enters military duty before the expiration of the probationary period to which he may have theretofore been appointed, the time he is absent on military duty shall be credited as satisfactory service during such probationary period. If the end of such probationary service occurs while the teacher is on military duty or within one year following the termination of such military duty, the period of such probationary

service may be extended by the local board of education for a period of not to exceed one year from the date of termination of such military duty, but in no event for a period of probationary service in the actual performance of teaching services, exclusive of such military service, beyond that required by the school district at the time of his entry into military service.

10. Physical examination. If a physical examination is required for employment in or promotion to any position in the public service, the physical disability of a candidate incurred by reason of injury sustained or disease contracted while in military duty, as hereinbefore defined, or during the world war shall not be deemed to disqualify him for such position unless the disability is of such a nature as to prevent him from efficiently performing the duties of such position.

10-a. Age requirements. If maximum age requirements are established by law, or rule or by action of a civil commission for examination for, or for appointment or promotion to, any position in the public service, the period of military duty as hereinbefore defined, the period of service after June twenty-seventh, nineteen hundred fifty, voluntarily entered upon between January first, nineteen hundred forty-seven, and June twenty-seventh, nineteen hundred fifty, if such service otherwise falls within the definition of military duty, and the period of terminal leave granted by the military authorities of a candidate or eligible shall not be included in computing the age of such candidate or eligible for the purposes of such examination or appointment or promotion; provided, however, that neither shall the total time deducted hereunder in computing the age of a candidate or eligible exceed seven years for any position including, but not limited to, in cities with a population of one million or more.

10-b. If a public employer consolidates, abolishes, displaces, or demotes a position, in accordance with section eighty or eighty-five of the civil service law, which is occupied by a public employee currently on active duty with the armed forces of the United States, as pursuant to title ten, fourteen or thirty-two of the United States code, such employer shall comply with subdivisions eleven and twelve of this

section and, upon the termination of the public employee's active duty, as defined in title ten, fourteen or thirty-two of the United States code, such public employer shall provide full re-employment rights warranted to such employee under the Federal Uniformed Services Employment and Reemployment Rights Act of 1994, provided, however, the right of re-employment under this subdivision does not entitle such employee to displacement rights over any person with greater seniority. Such public employer shall not abolish any position or positions solely based upon the fact that the position or positions are currently filled by an individual or individuals engaged in military duty.

11. Preferred lists. If the position occupied by a public employee is abolished prior to the termination of his military duty his name shall be placed forthwith upon a preferred list, as herein provided. Public employees in the competitive class of the civil service shall have their names placed upon a preferred eligible list, pursuant to the provisions of section eighty-one of the civil service law and public employees subject to sections twenty-five hundred ten, twenty-five hundred eighty-five and twenty-five hundred eighty-eight of the education law shall have their names placed upon a preferred list as provided in such section.

12. Military re-employment lists. If the position occupied by a public employee, who is not included in the provisions of subdivision eleven of this section, has been abolished or is no longer in existence upon the termination of his military duty such employee, upon filing a written request within ninety days after the termination of his military duty, shall have his name placed forthwith, upon a military re-employment list, as herein provided, for the position last held by him or any similar position. The military re-employment list for public employees in the classified civil service, other than in the competitive class, shall be established by the civil service commission having jurisdiction of such position and such list for public employees who are not in the classified civil service shall be established by the officer who makes payment of the wages or salary for such position. Separate lists shall be established for positions in the non-competitive and the labor class of the classified civil service. After the establishment of a military

re-employment list, it shall be made available to appointing officers and bodies and no position shall be filled until the appointing officer or body certifies to the civil service commission or to the disbursing officer, as the case may be, that no person on such military re-employment list, who formerly held the same or a similar position, is qualified to fill and willing to accept appointment to such vacancy. The civil service commission or the disbursing officer, as the case may be, shall refuse to approve the payroll for such position until such certificate is filed. Appointments from a military re-employment list may be made without regard to the order of standing on said list. Eligibility for appointment from such military re-employment list shall not continue for a period longer than four years from the date of termination of military duty. Refusal to accept an offer of appointment to a position similar to the last held by such public employee shall cause the removal of his name from such list. Upon a failure or refusal to comply with the provisions of subdivisions eleven and twelve of this section, the supreme court is empowered, upon the filing of a petition or other appropriate pleading, by the public employee entitled to the benefits of such provisions, to specifically require compliance therewith, and may, as an incident thereto, compensate such employee for any loss of wages suffered by reason of such unlawful action. The court shall order a speedy hearing in any such case and shall advance it on the calendar. Nothing in this subdivision shall be construed to apply to positions in the exempt class of the classified civil service.

13. Temporary positions. The provisions of subdivisions three and five of this section shall not be applicable to a public employee holding a temporary position, but such employee shall, nevertheless, be placed upon a military re-employment list, as provided in subdivision twelve of this section and, so far as practicable, shall be restored to a position similar to that held at the time such employee entered military duty.

14. Public employees appointed for a definite term. A public employee appointed for a definite term shall be deemed to have a leave of absence until the end of his term of office and until his successor has been appointed, but not thereafter, for the purpose of determining his rights under this section.

15. Elective officers. The provisions of subdivision four of this section shall be applicable to an elective officer and he shall be deemed to continue in his office until his successor has been elected, but not thereafter, for the purpose of determining his rights under such subdivision. No other provisions of this section shall be applicable to elective officers.

16. Salaries. Nothing in this section shall be construed to give any public employee any claim for salary or compensation during his absence on military duty.

17. Certificates as to service. A certificate signed by the commander, total army personnel center as to persons in the army or in any branch of the United States service while serving pursuant to law with the army of the United States, signed by the commander, naval military personnel as to persons in the United States service while serving pursuant to law with the United States navy, and signed by the commandant, United States marine corps, as to persons in the marine corps, or in any other branch of the United States service while serving pursuant to law with the marine corps, signed by the chief, air force military personnel center as to persons in the United States service while serving pursuant to law with the United States air force or with the United States space force, or signed by an officer designated by any of them, respectively, for the purpose, shall when produced be prima facie evidence as to any of the following facts stated in such certificate: That a person named has not been, or is, or has been in military service; the time when and the place where such person entered military service, such person's residence at that time, and the rank, branch, and unit of such service that such person entered, the dates within which such person was in military service, the monthly pay received by such person at the date of issuing the certificate, the time when and the place where such person died in or was discharged from such service. It is the duty of the foregoing officers to furnish such certificate on application, and any such certificate when purporting to be signed by any one of such officers, or by any person purporting upon the face of the certificate to have been so authorized, shall be prima facie evidence of its

contents and of the authority of the signer to issue the same.

18. Rights and privileges of public employees and other persons while engaged in essential war work. Every public employee, or other person to whom this section is applicable, who has been or may be discharged or relieved from military duty on condition that he engage in work essential to the prosecution of the war, shall be entitled, while engaged in such work, to all the rights and privileges to which he would have been entitled, under the provisions of this section, had he continued to perform military duty. A certificate of the war manpower commission, or of the United States employment service, or of the proper authorities in the armed forces of the United States, or of any other authorized federal agency, that any such public employee, or other person to whom this section is applicable, is or has been, for the period stated in such certificate, engaged in such work, shall be required in order to confer upon such employee or person the rights and privileges accorded by this subdivision, and such certificate shall be presumptive evidence of such facts.

19. Leaves of absence and re-employment of certain teachers and school supervisors. A member of the teaching or supervising staff in a school district other than a school district employing a superintendent of schools shall be entitled to absent himself from his position while engaged in the performance of military duty and shall be deemed to have a leave of absence for the duration of such military duty. Such person shall be reinstated to his position provided he makes application for such reinstatement within ninety days after the termination of his military duty, notwithstanding that his contract with the school district shall have expired.

20. Payment of pension contributions by city of New York. A. As used in this subdivision:

(1) the term "New York city member" shall mean any public employee (a) who was granted a leave of absence for the period of his military duty pursuant to the provisions of subdivision two of this section and who was on April eleventh, nineteen hundred forty-seven, or shall become prior to January first, nineteen hundred fifty-two, a member of any

pension or retirement system to which the city of New York, the Triborough bridge and tunnel authority, or the New York city housing authority is required by law to make contributions on account of such employee, or (b) who was on April eleventh, nineteen hundred forty-seven, or shall thereafter become a member of any such system and who is or shall be entitled to seniority credit and training and experience credit under the provisions of subdivision seven, seven-a or seven-b of this section by reason of appointment from an eligible list or special eligible list, but such term shall not include any public employee whose rights as to civil compensation are or were governed by section six of chapter six hundred eight of the laws of nineteen hundred fifty-two;

(2) the term "system" shall mean any pension or retirement system referred to in subsection (1) of paragraph A of this subdivision.

B. Except as otherwise provided in paragraphs C, D and E of this subdivision, any New York city member shall have as to any period of military duty performed by him the same rights and shall be entitled to the same benefits in respect to his membership in any system as he would have had if he had been present and continuously engaged in the performance of the duties

(1) of the position from which he was granted a leave of absence pursuant to the provisions of subdivision two of this section, if he is not entitled to seniority and training and experience credit as provided by subdivision seven, seven-a or seven-b of this section, and was not appointed to a position while on military duty as provided by subdivision six of this section, or

(2) if he was granted such leave and received an appointment as provided by subdivision six of this section, of the position from which he received such leave of absence, up to the date of such appointment, and thereafter as if he had been present and continuously engaged in the performance of the duties of such position to which he was appointed, or

(3) if granted such leave of absence and entitled to credit as provided by subdivision seven, seven-a or seven-b of this section, of the position from which he was granted such leave of absence, up to the date upon which he is deemed to have been appointed as provided in such subdivision seven, seven-a or seven-b and thereafter as if he had been

present and continuously engaged in the performance of the duties of the position with respect to which the date on which he is deemed to have been appointed is specified by such subdivision seven, seven-a or seven-b, or

(4) if he did not receive such leave, but is entitled to credit under such subdivision seven, seven-a or seven-b, of the position to which he is deemed to have been appointed on the date specified therein, and as if he had actually been appointed and had entered upon the performance of the duties of such position upon such date.

C. No New York city member shall be entitled to any of the rights, benefits or credit conferred by this subdivision with respect to

(1) any period of military duty, or portion thereof, during which the military base pay of such member or his compensation for military duty performed other than as a member of the armed forces, exceeded the civil compensation of the position or positions with respect to which his rights and benefits for the corresponding period or portion thereof are determined by the provisions of paragraph B of this subdivision, or

(2) any period of military duty or portion thereof prior to the date upon which any member, who was not granted a leave of absence pursuant to the provisions of subdivision two of this section, is deemed to have been appointed by virtue of the provisions of subdivision seven, seven-a or seven-b of this section.

As to any period of military duty or portion thereof referred to in subsection (1) of this paragraph, the rights of any such member with respect to membership in any system shall be governed by the provisions of subdivision four of this section.

D. Time during which any New York city member was absent on military duty shall not constitute an interruption of continuous employment and, except as provided in paragraph C of this subdivision, such time shall be counted and included in determining the length of total service.

E. Upon the death or retirement of a New York city member, but not otherwise, the city of New York, the Triborough bridge and tunnel authority, or the New York city housing authority (whichever shall have

first employed such member after the termination of his military duty) shall pay into the appropriate fund of the system in which such member held membership at the time of his death or retirement, the amount of all contributions which such member would have been required to make if, during the period of his military duty, he had been present and had continuously performed the duties of the position or positions with respect to which his rights and benefits during the corresponding period or portion thereof are determined by the provisions of paragraph B of this subdivision; provided that such city or authority shall not pay into any such fund any contributions payable or accruing for any period of military duty or portion thereof, referred to in paragraph C of this subdivision. Each such member shall be credited with such contributions paid in his behalf by such city or authority for all pension or retirement purposes; provided that (1) any portion of any retirement allowance, pension, death benefit or other benefit or right derived from such contributions paid in behalf of such member by such city or authority, shall be such amount as the payment required by this paragraph, made at the time herein specified, shall provide, (2) such member shall not under any circumstances have the right to withdraw the amount of such contributions, or any interest thereon, as a part of his accumulated deductions or otherwise, and (3) such contributions shall be excluded in determining the amount of any loan which any such member shall be entitled to make.

F. In any case where any New York city member has heretofore paid or shall hereafter pay to any system any contributions which the city of New York, the Triborough bridge and tunnel authority, or the New York city housing authority is required to pay to such system by the provisions of this subdivision, such contributions shall be regarded as excess contributions which are (1) creditable in lieu of regular contributions (a) upon the return of such member to his position after the termination of his military duty, or (b) upon his becoming a member of such system, if he did not become a member thereof until after the termination of such duty, or (2) payable in addition to other benefits upon separation meanwhile with benefit.

§ 243-a. Non-contributory retirement service credit for members of the New York state and local retirement systems or the New York state teachers' retirement system called to active military duty on or after August first, nineteen hundred ninety. Notwithstanding any other provision of law, any member of the New York state and local employees' retirement system, the New York state and local police and fire retirement system, or the New York state teachers' retirement system who is called to active military duty on or after August first, nineteen hundred ninety and prior to January first, nineteen hundred ninety-three, who is not receiving full salary from a participating employer and is otherwise eligible to receive retirement service credit in such system for such active military duty pursuant to section two hundred forty-two or two hundred forty-three of this article, shall not be required to make member contributions to receive such credit.

*** § 243-b. Civil service examinations by military personnel. 1.** Notwithstanding any other provision of this chapter or any other law, any member of the armed forces of the United States of America who having duly filed an application to compete in a scheduled competitive examination for civil service employment by the state of New York or any of its subdivisions and who due to active military duty is deprived of the opportunity to compete in such examination shall be provided with an opportunity to compete, under terms and conditions deemed appropriate by the state department of civil service or municipal commission, by way of a special military make-up examination.

2. Notwithstanding any other provision of this chapter or any other law, any member of the force of the organized militia, as the term is defined in subdivision nine of section one of this chapter or reserve armed forces, as that term is defined in subdivision twenty-nine of section two hundred ninety-two of the executive law or any member of the armed forces of the United States who missed the application deadline for a scheduled competitive examination for civil service employment by the state of New York or any of its subdivisions due to military service, as defined in subdivision one of section three hundred one of this chapter or due to a call to active duty, pursuant to 10 USC 101 (d)

(1), and is deprived of the opportunity to compete in such examination due to military service, as defined in subdivision one of section three hundred one of this chapter or due to a call to active duty, pursuant to 10 USC 101 (d) (1), shall be provided with an opportunity to compete, under terms and conditions deemed appropriate by the state department of civil service or municipal commission, by way of a special military make-up examination.

3. Notwithstanding any other provision of this chapter or any other law, any member of the force of the organized militia, as the term is defined in subdivision nine of section one of this chapter or reserve armed forces, as that term is defined in subdivision twenty-nine of section two hundred ninety-two of the executive law or any member of the armed forces of the United States who missed the application deadline for a scheduled competitive examination for civil service employment by the state of New York or any of its subdivisions due to military service, as defined in subdivision one of section three hundred one of this chapter or due to a call to active duty, pursuant to 10 USC 101 (d) (1), and who returns from such duty prior to the administration of such competitive examination shall be granted a waiver of the application requirement and allowed to compete in such upcoming examination.

* NB There are 2 § 243-b's

*** § 243-b. Payment of certain pension contributions by the city of New York.** As used in this section, the term New York city veteran of the Persian Gulf emergency means a member of the New York city employees' retirement system, the teachers' retirement system of the city of New York, the New York city police pension fund, the New York city fire department pension fund, or the board of education retirement system of the city of New York, who is a member of a reserve component of the armed forces of the United States ordered to active duty on or after August first, nineteen hundred ninety and prior to January first, nineteen hundred ninety-three, in response to the nation's military mission in the Persian Gulf, who is not receiving full salary from a participating employer, and who is otherwise eligible to receive retirement service credit in any of such systems or funds for active

duty pursuant to section two hundred forty-two or two hundred forty-three of this article, or pursuant to the federal Veterans' Reemployment Rights Act.

Notwithstanding any other provision of law, all benefits payable by a retirement system or pension fund to a New York city veteran of the Persian Gulf emergency due to the retirement or death of such member shall be calculated as though such member had actually paid the amount of all contributions, together with applicable interest thereon, which such member would have been required to make if, during the period of active duty, because of such Persian Gulf emergency, such member had been present and continuously performed the duties of the position held at the time of his or her entry into active duty.

Each such member shall be credited with such contributions made on his or her behalf. The applicable interest thereon shall be calculated as to each such member under the applicable provisions of law governing the crediting of interest to employee contributions for each such member.

Notwithstanding any other provision of law, any additional liability attributable to this section shall be paid into the retirement system or pension fund by participating employers at such times and in such amounts as determined by the actuary in a manner consistent with appropriate actuarial methodology.

* NB There are 2 § 243-b's

§ 243-c. Application period for civil service examinations for military personnel. Notwithstanding any provision of this chapter, any general or special law, rule or regulation to the contrary, a person serving on active duty in the armed forces of the United States during the filing period for a civil service examination, or a person who has been discharged therefrom with other than a dishonorable discharge after the filing period for a civil service examination has commenced, shall be permitted to file an application for such examination no later than ten business days prior to the scheduled date of such examination or the last date to file for such examination, whichever is later, and if

qualified shall be provided with an opportunity to compete in such examination under terms and conditions deemed appropriate by the state department of civil service or municipal commission.

§ 243-d. Non-contributory retirement service credit for members of the New York state and local retirement systems, the New York city retirement systems or the New York state teachers' retirement system called to active military duty on or after September eleventh, two thousand one. Notwithstanding any other provision of law, any member of the New York state and local employees' retirement system, the New York city retirement systems, the New York state and local police and fire retirement system, or the New York state teachers' retirement system who is called to active military duty on or after September eleventh, two thousand one and prior to January first, two thousand six, who is not receiving his or her full salary from a participating employer and is otherwise eligible to receive retirement service credit in such system for such active military duty pursuant to section two hundred forty-two or two hundred forty-three of this article, shall not be required to make member contributions to receive such credit.

§ 244. Members of pension system absent on military duty. Where any duly elected office holder, or any officer or employee of the state or any municipality or political subdivision thereof, who is a member of any pension or retirement system, entered or enters the armed forces of the United States before his term of office expired or expires, and prior to the date when he first would be eligible for pension benefits or payments provided for under such pension or retirement system of which he is a member had he continued in the office or employment of the state or such municipality or political subdivision, he may, during the period he is in the armed forces of the United States, remain a member of such pension or retirement system provided he paid or pays into such system monthly, until the date his term of office expired or expires, such amount as he would have paid if he had been present and continuously engaged in the performance of his regular duties as such office holder, officer or employee and provided that after his term of

office expired or expires he paid or pays into such pension or retirement system monthly, such full and entire amount as he individually would have paid, together with such amount as would have been paid on his behalf by the state or such municipality or political subdivision of which he was an office holder, officer or employee, had he continued as such office holder, officer, or employee and had been present and continuously engaged in the regular performance of his duties, and he shall have and be entitled to the same rights in respect to membership in such pension or retirement system and the rights and obligations provided thereunder, as he would have had if he had continued as such office holder, officer or employee and had been present and continuously engaged in the regular performance of his duties except that a disability or injury occurred or an accidental death occurring while a member of the armed forces of the United States shall not entitle such office holder, officer or employee, his beneficiaries or representatives to any disability or accidental death benefits.

The provisions of this section shall be construed to include all elected office holders, officers or employees of the state or of a municipality or political subdivision thereof, whose term of office expired since January first, nineteen hundred forty-one, and who since January first, nineteen hundred forty-one, entered the armed forces of the United States, provided such office holder, officer or employee shall on or before July first, nineteen hundred forty-eight notify the fiscal officer of such pension or retirement system in writing that he has determined to take advantage of the rights and privileges afforded him hereunder and provided further that he pays within five years the full amount required to be paid into such system by him as provided for under this section and not already paid by him.

§ 244-a. Credit to members of public retirement systems for military service performed during war. 1. Notwithstanding any other provision of law, a member of a public retirement system of the state, as defined in subdivision twenty-three of section five hundred one of the retirement and social security law, shall be eligible for credit for military

service performed during a period of war upon attainment of no less than ten years of service and may obtain, upon application to such retirement system, a total not to exceed three years of service credit within three years prior to retirement for up to three years of military service as a member of the armed forces of the United States if such service was rendered during a period of war. For purposes of the New York state and local employees' retirement system and the New York state and local police and fire retirement system all such service shall be credible in all plans specified in the retirement and social security law.

2. In order to purchase credit pursuant to this subdivision, the member shall pay into the pension accumulation fund the contribution amount as determined by the comptroller, either in a lump sum or in installments, necessary to pay in full the cost of such previous service. If such payment be made in installments, the same shall be paid within a period no greater than the number of months of such member service granted.

3. In no event shall the credit granted pursuant to this section, when added to credit granted for military service with any retirement system pursuant to this section or any other provision of law, exceed a total of three years.

§ 245. Retirement allowances of certain war veterans. 1. Any member of a teachers' retirement system to which the city of New York is required by law to make contributions on account of such member who (i) is an honorably discharged member of any branch of the armed forces of the United States, or (ii) has a qualifying condition, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable, or (iii) is a discharged LGBT veteran, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable, having served as such during the time of war and who has attained the age of fifty years, may retire upon his or her own request upon written application to the board setting forth at what time not less than thirty days subsequent to the execution and filing thereof he or she desires to

be retired, provided that such member at the time so specified for his or her retirement shall have completed at least twenty-five years of allowable service. Upon retirement such member shall receive an annuity of equivalent actuarial value to his or her accumulated deductions, and, in addition, a pension beginning immediately, having a value equal to the present value of the pension that would have become payable had he or she continued at his or her current salary to the age at which he or she would have first become eligible for service retirement, provided, however, that the said member on making application for retirement shall pay into the retirement fund a sum of money which calculated on an actuarial basis, together with his or her prior contributions and other accumulations in said fund then to his or her credit, shall be sufficient to entitle the said member to the same annuity and pension that he or she would have received had he or she remained in the service of the city until he or she had attained the age at which he or she otherwise would have first become eligible for service retirement.

2. Notwithstanding any other provision of this section or of any general, special or local law or code to the contrary, a member of any such teachers' retirement system who (i) is separated or discharged under honorable conditions from any branch of the armed forces of the United States, or (ii) has a qualifying condition, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable, or (iii) is a discharged LGBT veteran, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable, having served as such during the time of war and who has attained the age of fifty years, may retire upon his or her own request upon written application to the board setting forth at what time, not less than thirty days subsequent to the execution and filing thereof, he or she desires to be retired, provided that such member at that time so specified for his or her retirement shall have completed at least twenty-five years of allowable service. Upon reaching his or her previously selected minimum retirement age, such member shall receive an annuity of equivalent actuarial value, at that time, to his or her accumulated deductions, and, in addition, a pension based upon his or her credited years of allowable service, plus the

pension-for-increased-take-home-pay, if any. Should such member die before reaching his or her retirement age, then any beneficiary under a selected option shall be eligible for benefits under such option at the date upon which the member would have reached his or her selected retirement age.

§ 246. Leave of absence for public employees who are war veterans to continue study. Notwithstanding the provisions of any law to the contrary, every public officer and employee, who served in the armed forces of the United States on or after September sixteenth, nineteen hundred forty, and prior to the termination of hostilities in world war II, or during the period of hostilities engaged in by the armed forces of the United States on and after June twenty-fifth, nineteen hundred fifty, or who served in the armed forces of the United States after January thirty-first, nineteen hundred fifty-five, and who is eligible under the provisions enacted by the congress of the United States known as "Servicemen's Readjustment Act of nineteen hundred forty-four," or "Veterans' Readjustment Assistance Act of nineteen hundred fifty-two," or "Veterans' Readjustment Benefits Act of nineteen hundred sixty-six," to continue the pursuit of studies or to take a refresher or retraining course shall be granted a leave of absence from his position for the period of such course of study, not to exceed four years. Such public officer or employee shall be reinstated to his position provided he makes application for such reinstatement within sixty days after the termination of such course of study.

§ 247. Medals and decorations. 1. The governor is hereby authorized to present in the name of the legislature of the state of New York, a military cross, to be known as the conspicuous service cross, bearing a suitable inscription and ribbon, all of which shall be of suitable design, to any person (i) who is a citizen of the state of New York or (ii) who was a citizen of the state of New York while serving in the armed forces of the United States, and who, while serving in the United States Armed Forces, defined as army, air force, navy, marine corps, or coast guard, since the sixth day of April, nineteen hundred seventeen,

has been a prisoner of war, has served at Pearl Harbor on December seventh, nineteen hundred forty-one, has directly participated in the D-Day Invasion of Normandy on June sixth, nineteen hundred forty-four, has been reported missing in action, has been killed in action, or has, or shall have received a citation published in order issued from a headquarters of a brigade or higher military unit, or equivalent naval unit, or has, or shall have received the purple heart. The governor is further authorized to present the conspicuous service cross to New York troops, or to citizens of this state who while serving with the allied armies received citations as provided in this section. Not more than one military cross shall be issued to any one person; nor shall any medal be awarded or presented, under the provisions of this section, to any person whose entire service subsequent to the time of the receipt of such citation shall not have been honorable. For each succeeding citation as provided herein, such person shall be entitled to wear, as the chief of staff of the state may direct, a metal device not more than three-sixteenths of an inch in diameter, attached to the ribbon of such military cross. In the event of the death of any person during or subsequent to the receipt of such citation the military cross shall be presented to such representative of the deceased as may be designated. The chief of staff shall make such rules and regulations as may be deemed necessary for the proper presentation and distribution of such decorations. In addition, the governor is authorized to present the conspicuous service cross for placement at the Tomb of the Unknown Soldier in Arlington National Cemetery.

1-a. The governor is hereby authorized to present in the name of the legislature of the state of New York, a military decoration, to be known as the "conspicuous service star", bearing a suitable inscription, device, and ribbon, all of which shall be of suitable design, to any person (i) who is a citizen of the state of New York or (ii) who was a citizen of the state of New York while serving in the armed forces of the United States, and who, while serving in the United States Armed Forces, defined as army, air force, navy, marine corps, or coast guard, has, or shall have received a United States unit level decoration denoting combat participation and foreign unit awards, issued from a company, regimental, brigade, or division commander, or equivalent naval

unit, or issued by the President of the United States, the Congress of the United States, the United States Defense Department or the joint chiefs of staff, such as, but not limited to, a presidential unit citation or a joint meritorious unit award. Not more than one conspicuous service star shall be issued to any one person; nor shall any citation be awarded or presented, under the provisions of this subdivision, to any person whose entire service subsequent to the time of the receipt of such star shall not have been honorable. For each succeeding star as provided herein, such person shall be entitled to wear, as the chief of staff of the state may direct, a ribbon whose color and design shall be selected by the division of military and naval affairs. In the event of the death of any person during or subsequent to the receipt of such citation the conspicuous service star shall be presented to such representative of the deceased as may be designated. The chief of staff shall make such rules and regulations as may be deemed necessary for the proper presentation and distribution of such decorations.

1-b. The adjutant general is hereby authorized to present in the name of the legislature of the state of New York, a certificate, to be known as the "Cold War Certificate", bearing a suitable inscription, to any person: (i) who is a citizen of the state of New York or (ii) who was a citizen of the state of New York while serving in the armed forces of the United States; (iii) who served in the United States Armed Forces during the period of time from September second, nineteen hundred forty-five through December twenty-sixth, nineteen hundred ninety-one, commonly known as the Cold War Era; and (iv) who was honorably discharged or released under honorable circumstances during the Cold War Era, or has a qualifying condition, as defined in section one of the veterans' services law, and received a discharge other than bad conduct or dishonorable during the Cold War Era, or is a discharged LGBT veteran, as defined in section one of the veterans' services law, and received a discharge other than bad conduct or dishonorable during the Cold War Era. Not more than one Cold War Certificate shall be awarded or presented, under the provisions of this subdivision, to any person whose entire service subsequent to the time of the receipt of such medal shall not have been honorable. In the event of the death of any person during

or subsequent to the receipt of such certificate it shall be presented to such representative of the deceased as may be designated. The adjutant general, in consultation with the commissioner of the department of veterans' services, shall make such rules and regulations as may be deemed necessary for the proper presentation and distribution of the certificate.

1-d. The governor is hereby authorized to present in the name of the legislature of the state of New York, a medal, to be known as the "New York State Vietnam War Commemorative Medal", bearing a suitable inscription, to any person: (i) who is a resident of the state of New York; or (ii) who was a resident of the state of New York while serving in the armed forces of the United States; (iii) who served in the United States Armed Forces, defined as army, air force, navy, marine corps, or coast guard, or the organized militia defined as the army national guard, the air national guard, the New York naval militia, or the New York guard, on active duty abroad in Vietnam, Thailand, Laos, Cambodia, or in the contiguous waters or air space thereof during the period of time from November first, nineteen hundred fifty-five through May seventh, nineteen hundred seventy-five; and (iv) who was honorably discharged or released under honorable circumstances or who has a qualifying condition, as defined in section three hundred fifty of the executive law, and received a discharge other than bad conduct or dishonorable discharge, or is a discharged LGBT veteran, as defined in section three hundred fifty of the executive law, and received a discharge other than bad conduct or dishonorable discharge. No person shall receive more than one New York State Vietnam War Commemorative Medal. In the event of the death of any eligible person prior to the receipt of such commemorative medal, such commemorative medal shall be presented to the designated representative of the deceased. The adjutant general, in consultation with the director of the division of veterans' services, shall make such rules and regulations as may be deemed necessary for the proper presentation and distribution of such medals.

1-e. The governor is hereby authorized to present in the name of the legislature of the state of New York, a medal, to be known as the "New York State Korean War Commemorative Medal", bearing a suitable

inscription, to any person: (i) who is a resident of the state of New York, or (ii) who was a resident of the state of New York while serving in the armed forces of the United States; (iii) who served in the United States Armed Forces, defined as army, air force, navy, marine corps, or coast guard, or the organized militia defined as the army national guard, the air national guard, the New York naval militia or the New York guard, on active duty on the Korean peninsula, its contiguous waters, or its airspace in the Korean War defined as the period of time from June twenty-seventh, nineteen hundred fifty through January thirty-first, nineteen hundred fifty-five; and (iv) who was honorably discharged or released under honorable circumstances or who has a qualifying condition, as defined in section three hundred fifty of the executive law, and received a discharge other than bad conduct or dishonorable discharge, or is a discharged LGBT veteran, as defined in section three hundred fifty of the executive law, and received a discharge other than bad conduct or dishonorable discharge. No person shall receive more than one New York State Korean War Commemorative Medal. In the event of the death of any person prior to the receipt of such commemorative medal, such commemorative medal shall be presented to the designated representative of the deceased. The adjutant general, in consultation with the director of the division of veterans' services, shall make such rules and regulations as may be deemed necessary for the proper presentation and distribution of such medals.

* 1-f. The governor is hereby authorized to present in the name of the legislature of the state of New York, a medal, to be known as the "New York State Iraq War Commemorative Medal", bearing a suitable inscription, to any person: (i) who is a resident of the state of New York or who was a resident of the state of New York while serving in the armed forces of the United States; (ii) who served in the United States Armed Forces, defined as army, air force, navy, marine corps or coast guard, on active duty in Iraq at any time during the period of March twentieth, two thousand three through December thirty-first, two thousand twenty-one; and (iii) who was discharged under honorable conditions or who has a qualifying condition, as defined in section one of the veterans' services law, and received a discharge other than bad conduct or dishonorable discharge, or is a discharged LGBT veteran, as defined in section one of the veterans' services law and received a

discharge other than bad conduct or dishonorable discharge. No person shall receive more than one New York State Iraq War Commemorative Medal. In the event of the death of any eligible person prior to the receipt of such commemorative medal, such commemorative medal shall be presented to the designated representative of the deceased. The adjutant general, in consultation with the commissioner of the department of veterans' services, shall make such rules and regulations as may be deemed necessary for the proper presentation and distribution of such medals.

* NB There are 2 sb 1-f's

* 1-f. The governor is hereby authorized to present in the name of the legislature of the state of New York, a medal, to be known as the "New York State Afghanistan War Commemorative Medal", bearing a suitable inscription, to any person: (i) who is a resident of the state of New York; or who was a resident of the state of New York while serving in the armed forces of the United States; (ii) who served in the United States Armed Forces, defined as army, air force, navy, marine corps, or coast guard, on active duty in Afghanistan at any time during the period from October seventh, two thousand one through August thirtieth, two thousand twenty-one; and (iii) who was discharged under honorable conditions or who has a qualifying condition, as defined in section one of the veterans' services law, and received a discharge other than bad conduct or dishonorable discharge, or is a discharged LGBT veteran, as defined in section one of the veterans' services law, and received a discharge other than bad conduct or dishonorable discharge. No person shall receive more than one New York State Afghanistan War Commemorative Medal. In the event of the death of any eligible person prior to the receipt of such commemorative medal, such commemorative medal shall be presented to the designated representative of the deceased. The adjutant general, in consultation with the commissioner of the department of veterans' services, shall make such rules and regulations as may be deemed necessary for the proper presentation and distribution of such medals.

* NB There are 2 sb 1-f's

2. Other state decorations, medals, badges, ribbons and awards may be awarded and issued as prescribed by regulations issued pursuant to this chapter.

3. Whenever it shall appear to the satisfaction of the chief of staff that any medal duly issued by the state of New York, in accordance with the provisions of this chapter or regulations issued pursuant thereto, to a member of the organized militia of the state of New York, has been lost or stolen, he may, in his discretion, and upon such terms as he may impose, upon written application of the person originally entitled to such medal, issue a duplicate thereof.

4. This section shall not be construed to require that a recipient of the conspicuous service cross, the conspicuous service star, the Cold War Certificate, the New York State Silver Rose Veterans Service Certificate, the New York State Iraq War Commemorative Medal, the New York State Afghanistan War Commemorative Medal or the New York State Vietnam War Commemorative Medal or the New York State Korean War Commemorative Medal has been a resident of the state of New York at the time of his or her entry into the United States army, air force, navy, or marine corps.

§ 248. Oaths. 1. Any officer of any force of the organized militia and any officer in the active military service of the United States is hereby authorized to administer the oath required for the enlistment of any person, the oath required for the appointment of any person to commissioned or warrant officer grade and any other oath required by the laws of the United States and by this chapter and by the regulations issued thereunder in connection with the enlistment or appointment of any person in any of such forces.

2. As used in this section the term "officer" shall mean a commissioned officer, commissioned warrant officer or warrant officer.

§ 249. State and municipal officers and employees granted leaves of absence on July fourth in certain cases. Each officer and employee of the state or of a municipal corporation or of any other political subdivision thereof who was a member of the national guard or naval

militia or a member of the reserve corps at a time when the United States was not at war and who (i) has been honorably discharged therefrom, or (ii) has a qualifying condition, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service, or (iii) is a discharged LGBT veteran, as defined in section one of the veterans' services law, and has received a discharge other than bad conduct or dishonorable from such service, shall, in so far as practicable, be entitled to absent himself or herself from duties or service, with pay, on July fourth of each year. Notwithstanding the provisions of any general, special or local law or the provisions of any city charter, no such officer or employee shall be subjected by any person whatever directly or indirectly by reason of such absence to any loss or diminution of vacation or holiday privilege or be prejudiced by reason of such absence with reference to promotion or continuance in office or employment or to reappointment to office or to re-employment.

§ 250. Recording certificates of honorable discharge. Any certificate issued after April sixth, nineteen hundred seventeen, of the honorable separation from or service in the armed forces of the United States of any veteran, may be recorded in any one county, in the office of the county clerk, and when so recorded shall constitute notice to all public officials of the facts set forth therein. It shall be the duty of the county clerk to record the certificate upon presentation thereof without the payment of any fee. For any purpose for which the original certificate may be required in the state of New York, a certified copy of the record shall be deemed sufficient and shall be accepted in lieu thereof. Notwithstanding any inconsistent provisions of law, it shall be the duty of the county clerk of each county, to furnish without charge to any veteran, or parent, spouse, dependent or child of the veteran, a certified copy of the certificate of the veteran so recorded in the office of the county clerk. No filed certificate or any information contained therein, shall be disclosed to any person except the veteran or parent, spouse, dependent or child of the veteran, representative of the estate of the deceased veteran or a public official, acting within the scope of his or her employment, unless such disclosure is authorized

in writing by the veteran. The provisions of this section also apply to the counties within the city of New York.

§ 250-a. Lt. Colonel Todd Clark Memorial Flag Presentment Program. 1. There shall be established within the division of military and naval affairs, by the adjutant general, the Lt. Colonel Todd Clark Memorial Flag Presentment Program. Pursuant to such program:

a. The adjutant general upon request, may, in his discretion, authorize the purchase and presentation of a flag of the United States, where such flag is not provided by the United States, to the person designated to dispose of the remains of a member of the organized militia who dies while on the active list, and whose service up to the date of death was honorable.

b. In the event the governor orders the flags of the United States and the State of New York, to be lowered to half staff, in memorial of the death of any service member of the army, navy, marine corps, air force, space force, or coast guard of the United States, or any service member of the army national guard, air national guard, state guard or naval militia, the adjutant general, shall, in cooperation with the office of general services, arrange for the procurement of a flag of the United States and a flag of the State of New York, which were flying over the capitol building at the time such flags were lowered to half staff in compliance with the governor's order. Upon the procurement of such flags, the adjutant general, or their representative, shall offer the presentment of such flags, without cost, to the person designated to dispose of the remains of the service member, in whose honor such flags were lowered in memorial.

2. For the purposes of this section only, the following persons in the order named shall be designated to dispose of the remains of a decedent:

a. Surviving spouse of decedent

b. Blood relatives of the decedent

c. Adoptive relatives of the decedent

d. Person standing in loco parentis to decedent

§ 251. Depriving members of organized militia of employment. A person who, either by himself or with another, wilfully deprives a member of the organized militia of his employment, or prevents his being employed by himself or another, or obstructs or annoys said member of said organized militia, or his employer, in respect of his trade, business, or employment, because, said member of said organized militia is such member, or dissuades any person from enlistment in the said organized militia by threat of injury to him in case he shall so enlist, in respect of his employment, trade, or business, is guilty of a misdemeanor.

§ 252. Discrimination against members of organized militia. No association or corporation, constituted or organized for the purpose of promoting the success of the trade, employment, or business of the members thereof, shall by any constitution, rule, by-law, resolution, vote, or regulation, discriminate against any member of the organized militia of the state of New York, because of such membership in respect of the eligibility of such member of the said organized militia to membership in such association or corporation, or in respect of his right to retain said last mentioned membership; it being the purpose of this section and the section immediately preceding to protect a member of the said organized militia from disadvantage in his means of livelihood and liberty therein but not to give him any preference or advantage on account of his membership of said organized militia. A person who aids in enforcing any such provisions against a member of the said organized militia with the intent to discriminate against him because of such membership, is guilty of a misdemeanor.

§ 253. Military service by parent; effect on child custody

proceedings. Notwithstanding any law, rule or regulation to the contrary, child custody proceedings filed in a court of competent jurisdiction in this state, involving a parent who is activated, deployed, or temporarily assigned to military service shall be governed by subdivision (f) of section six hundred fifty-one of the family court act, section seventy-five-1 or paragraph (a-2) of subdivision one of section two hundred forty of the domestic relations law.

§ 254. Video teleconferencing for families of persons ordered to active duty. 1. Definition. For the purposes of this section, "military service" shall mean military duty in the active military service of the United States, as defined in section three hundred one of this chapter.

2. The division of military and naval affairs shall make available teleconferencing facilities to the families, which shall include spouses, domestic partners, children, and parents and such others as meet criteria established by the division of every person in military service who is a resident of this state so as to facilitate, in cooperation with the department of defense and the armed forces of the United States, communications between such persons in military service and their families.

§ 255. Benefit information for national guard members and families.

1. For the purpose of this section, "military service" shall have the same meaning as defined in section three hundred one of this chapter.

2. The division of military and naval affairs shall make available state and federal benefit information for national guard members and their spouses, domestic partners, children, and parents, including but not limited to, information from the state family support services program. Such benefit information shall be made available in a printed version and posted electronically on such division's website.

§ 256. State military immigrant family legacy program support. The adjutant general shall encourage the development of and provide for the establishment of a state military immigrant family legacy program liaison, as provided in section twenty-nine-b of the veterans' services law.

ARTICLE XII

MISCELLANEOUS PROVISIONS

Section 260. Formation of association; by-laws; inspection and disposition of funds.

261. Formation of state association.

262. Customs and usage of the armed forces of the United States.

263. Amendatory and repealing statutes.

265. Name of this chapter.

266. When to take effect.

§ 260. Formation of association; by-laws; inspection and disposition of funds. 1. The officers, non-commissioned officers, petty officers or members of any unit or units of the organized militia may organize themselves into an association or associations of which the senior officer, senior non-commissioned officer or senior petty officer, as the case may be, shall be president; provided, however, that such associations shall by an affirmative vote of two-thirds of all their members adopt by-laws not inconsistent with this chapter, and which shall conform to regulations issued pursuant to this chapter and be submitted to the adjutant general for his approval; and which by-laws shall provide that the treasurer of such association shall furnish proper security for the faithful performance of his duties; that all funds of the association shall be kept in a bank of deposit in a separate account in the name of the association; that checks upon such funds shall be signed both by the treasurer and the president of such association; and that the books and accounts of such associations shall at all times be open to the inspection of any member of the association, the commanding officer of the unit concerned and any officer whose duty it is to inspect the organized militia. Such by-laws may contain such

other provisions as are not inconsistent with the provisions of this chapter and of regulations issued pursuant thereto, and when approved by the adjutant general such by-laws shall be binding upon all members of such association; but they may be altered in the manner provided for their adoption from time to time as may be found necessary, provided, however, that the essential provisions hereinabove set forth shall in no case be omitted or qualified. Every association already formed which has not adopted by-laws as herein provided and every association heretofore formed which has adopted by-laws that do not contain the essential requirements hereinabove set forth, shall adopt revised by-laws containing such requirements and submit the same for approval to the adjutant general, except that the adjutant general may direct the revision of by-laws heretofore approved by the commanding officer of any force of the organized militia to conform with any of the requirements of this section and it shall not be necessary to submit such revised by-laws to the adjutant general for his approval unless he expressly requires such action.

2. Any funds used for the benefit of units of the organized militia, other than those of associations referred to in this section or funds derived from the state pursuant to the provisions of this chapter, will be administered by the commanding officer of the unit concerned and a treasurer appointed by him and will be kept, expended, accounted for and subject to inspection in the manner prescribed by regulations issued pursuant to this chapter.

3. In case a unit of the organized militia is disbanded, deactivated or ordered into the active military service of the United States, the adjutant general is authorized and empowered to direct the disposition of any moneys and other property remaining in the hands of its associations referred to in this section, and of other funds remaining in the hands of or used for the benefit of the unit, other than funds of such associations or funds derived from the state pursuant to this chapter.

4. The officers, noncommissioned officers, petty officers or members of any unit or units of the organized militia may organize themselves

into a not-for-profit corporation or not-for-profit corporations pursuant to the not-for-profit corporation law for the purposes of promoting the esprit de corps, morale and welfare of such personnel and for such other lawful purposes as the adjutant general shall promulgate by rules and regulations. Such not-for-profit corporation may dispense liquor, beer and wine to be consumed on the premises provided a retail license for on-premises consumption is obtained therefor. Notwithstanding the provisions of any other law to the contrary, there shall be no fees paid to the department of state for filing a certificate of incorporation as provided herein; provided however that such certificate of incorporation shall have endorsed thereon or annexed thereto the approval of the adjutant general.

§ 261. Formation of state association. The officers of the organized militia may organize themselves into an association. Such association may adopt by-laws not inconsistent with the statutes of the state and regulations issued pursuant to this chapter and may alter and amend the same and may take and hold such real and personal property as may be necessary for the purposes of the association.

§ 262. Customs and usage of the armed forces of the United States. All matters relating to the organization, discipline and government of the organized militia, not otherwise provided for in this chapter or in regulations issued pursuant thereto, shall be decided by the customs and usage of the appropriate force or forces of the armed forces of the United States.

§ 263. 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 law, 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.

§ 265. Name of this chapter. This chapter shall be known as the "Military Law".

§ 266. When to take effect. This chapter shall take effect immediately.

ARTICLE XIII

NEW YORK STATE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT

- Section 300. Findings and declaration of emergency.
301. Definitions.
- 301-a. Notice of benefits to persons in and persons enlisting in the state organized militia.
- 301-b. Extension of benefits to dependents.
- 301-c. Accident prevention course information.
302. Stay, et cetera, to persons secondarily liable.
303. Representation; opening judgment; default.
304. Proceedings to be stayed unless interest unaffected by military service.
305. Relief against fines and penalties, et cetera.
306. Actions against persons in service.
307. Continuance of stay, et cetera.
308. Statutes of limitations and statutes of a similar nature; time of military service not included.
- 308-a. Waiver of professional continuing education requirements.
- 308-b. Extension of license, certificate or registration.
309. Evictions; restraint.
310. Liability for rent accruing after induction; termination of lease.
311. Installment purchases.
- 311-a. Termination of motor vehicle lease contracts.
- 311-b. Cancellation without penalty of certain additional rental contracts.
- 311-c. Termination without penalty of certain service contracts.
312. Mortgages.

- 313. Settlement of cases involving stayed proceeding in foreclosure or repossession of personal property.
- 313-a. Exercise of rights under this article not to affect certain future financial transactions.
- 314. Taxes; taxes on real property, et cetera.
- 315. Taxes; income taxes.
- 316. Policies of insurance; policies not to lapse or be forfeited.
- 316-a. Protection of assignor of life insurance policy; enforcement of storage liens.
- 316-b. Professional liability protection for certain persons ordered to active duty in armed forces.
- 317. Reemployment in private industry.
- 318. Policy of the state.
- 319. Evasive transfers of interest.
- 321. Certificates of service.
- 322. Interlocutory orders.
- 323. Further relief.
- 323-a. Maximum rate of interest.
- 323-b. Filing fees waiver; civil actions.
- 324. Separability.
- 325. Inconsistent provisions in other acts.
- 326. Article thirteen of military law, added by laws of nineteen hundred forty-one, chapter six hundred eighty-six.
- 327. Duration of the emergency.
- 328. Short title.

§ 300. Findings and declaration of emergency. It has been nationally recognized that because of the emergent conditions which are threatening the peace and imperiling the security of the nation, there is imperative need to augment and strengthen the national defense. It is further recognized that the emergent conditions which endanger the national well-being likewise constitute an imminent threat and hazard to the peace and security of the people of the state. Moreover, it is acknowledged that the exigencies of national defense require that the

people of the state, in large numbers, be called into military service, and as a consequence, the health, prosperity and welfare of all of the people of the state is inevitably affected.

In these circumstances, and in order to promote and to assist the national defense, and thereby to protect the peace, prosperity and health of the people of the state, it is necessary that citizens and residents of the state in the military service as well as those who are members of the organized militia or of a reserve component of the armed forces of the United States should be free to devote their entire energy and effort to the defense needs of the nation and of the state. To assist in this end, it is essential to provide in certain cases for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in the military service. It is further essential in the interests of the prosperity and well-being of the people of the state, that such persons, upon completion of military service, be restored to their former employment.

The legislature finds, further, that citizens and residents of the state, not in military service, who are members of the organized militia or of a reserve component of the armed forces of the United States are being discriminated against by certain employers who either refuse to employ them because of such membership or, if employed, discharge or otherwise discriminate against them because of such membership and that such acts of discrimination jeopardize the recruiting of citizens and residents of the state into the organized militia and the reserve components of the armed forces of the United States and otherwise affect the security of the state.

The legislature finds, further, that citizens and residents of the state, not in military service and not members of the organized militia or of the reserve components of the armed forces of the United States, are discriminated against by certain employers who refuse to employ them because they are subject to military service in the armed forces of the United States under the selective service act of nineteen hundred forty-eight, as amended.

In the interpretation and application of this article, it is hereby declared to be the public policy of the state to maintain, secure and protect the civil and property rights of persons in the military service, as hereinafter defined, and of employees who are members of the organized militia or members of a reserve component of the armed forces of the United States.

The legislature hereby declares the existence of a public emergency affecting the health, safety and comfort of the people, requiring the enactment of the provisions of this act to protect the vital interests of the state.

All the provisions of this article shall be liberally construed for the accomplishment of this purpose.

This article shall be deemed an exercise of the police power of the state, for the protection of the public welfare, prosperity, health and peace of the people of the state.

§ 301. Definitions. As used in this article:

1. The term "military service" means duty by a person, male or female, in the active military service of the United States as defined in section one of this chapter; active duty in the military service of the state pursuant to an order of the governor issued pursuant to section six or seven of this chapter; and state active duty by members of the national guard who are activated pursuant to a call of the governor of this state or of any other state as provided for by law.

2. The term "person" when used herein with reference to the holder of any right alleged to exist against a person in military service, or against a person secondarily liable under such right, shall include individuals, partnerships, corporations, and any other forms of business association.

3. The term "court" as used herein, shall include any state court of

competent jurisdiction, whether or not a court of record.

§ 301-a. Notice of benefits to persons in and persons enlisting in the state organized militia. The adjutant general shall ensure the giving of notice of the benefits accorded by this article and accorded by the laws of this state to persons in and to persons enlisting in the state organized militia.

§ 301-b. Extension of benefits to dependents. 1. Dependents of a person in military service shall be entitled to the benefits accorded to persons in military service under the provisions of this article upon application to a court therefor, unless in the opinion of the court the ability of such dependents to comply with the terms of the obligation, contract, lease, or bailment has not been materially impaired by reason of the military service of the person upon whom the applicants are dependent.

2. If no court proceeding is pending, the dependent claiming entitlement may initially apply to any agency, private party, business or other entity to whom the claim for benefit is made. Such agency, private party, business or other entity shall grant such entitlement unless the ability of such dependents to comply with the terms of the obligation, contract, lease, or bailment has not been materially impaired by reason of the military service of the person upon whom the applicants are dependent. Such initial application in accordance with this subdivision shall in no way affect the ability of such dependents to apply to a court as authorized by subdivision one of this section.

§ 301-c. Accident prevention course information. The division of military and naval affairs shall provide returning servicemen and women who have returned from a combat theater or combat zone of operations with information about accident prevention courses approved by the commissioner of motor vehicles pursuant to article twelve-B of the vehicle and traffic law. This information may be provided in written

form to be available at Yellow Ribbon Reintegration programs or any other reintegration programs offered by the division or may be made available online on the division's website. The division shall also provide a link to the department of motor vehicles website pages containing information about the accident prevention courses.

§ 302. Stay, et cetera, to persons secondarily liable. 1. Whenever, pursuant to any of the provisions of this article, the enforcement of any obligation or liability, the prosecution of any suit or proceeding, the entry or enforcement of any order, writ, judgment or decree, or the performance of any act, may be stayed, postponed or suspended, such stay, postponement or suspension may, in the discretion of the court, likewise be granted to sureties, guarantors, endorsers and others subject to the obligation or liability, the performance or enforcement of which is stayed, postponed or suspended.

2. When a judgment or decree is vacated or set aside, in whole or in part, as provided in this article, the same may, in the discretion of the court, likewise be set aside and vacated as to any surety, guarantor, endorsers, accommodation maker or other person whether primarily or secondarily liable upon the contract or liability for the enforcement of which the judgment or decree was entered.

3. Nothing contained in this article shall prevent a waiver in writing of the benefits afforded by subdivisions one and two of this section by any surety, guarantor, endorser, accommodation maker, or other person whether primarily or secondarily liable upon the obligation or liability except that after the date of enactment of this subdivision no such waiver shall be valid unless it is executed as an instrument separate from the obligation or liability in respect of which it applies, and no such waiver shall be valid after the beginning of the period of military service if executed by an individual who, subsequent to the execution of such waiver becomes a person in military service.

§ 303. Representation; opening judgment; default. 1. In any action or

proceeding in which a person in military service is a party, if such party does not personally appear therein or is not represented by an authorized attorney, the court may appoint an attorney to represent him; and in such case a bond, approved by the court, conditioned to indemnify the defendant, if in military service, against any loss or damage that he may suffer by reason of any judgment, should the judgment be thereafter set aside in whole or in part, may be required and an order made to protect the rights of such person. But no attorney appointed under this act to protect a person in military service shall have power to waive any right of the person for whom he is appointed or bind him by his acts.

2. If any judgment shall be rendered in any action or proceeding against any person in military service during the period of such service, or within thirty days thereafter, and it appears that such person was prejudiced by reason of his military service in making his defense thereto, such judgment may, upon application, made by such person or his legal representative, not later than ninety days after the termination of such service, be opened by the court rendering the same and such defendant or his legal representative let in to defend; provided it is made to appear that the defendant has a meritorious or legal defense to the action or proceeding, or to some part thereof. Vacating, setting aside, or reversing any judgment because of any of the provisions of this act shall not impair any right or title acquired by any bona fide purchaser for value under such judgment.

3. Where a default judgment may properly be rendered in any action or proceeding in any court, the court shall not require the attorney for the plaintiff or petitioner to submit an affidavit or affirmation that the defendant or respondent is not in military service, provided that the court may impose such requirement where authorized by federal law. For purposes of this subdivision, the term "military service" shall have the meaning ascribed by the provisions of the Federal Soldiers' and Sailors' Civil Relief Act of 1940, as amended.

§ 304. Proceedings to be stayed unless interest unaffected by military

service. At any stage thereof, any action or proceeding in any court or in any adjudicatory or licensing proceeding before any state agency, including any public benefit corporation or public authority, or any political subdivision of the state, in which a person in military service is involved as a party, during the period of such service or within sixty days thereafter may, in the discretion of the court or adjudicatory or licensing agency before which it is pending, on its own motion, and shall, on application to it by such person or some person on his behalf, be stayed as provided in this act, unless, in the opinion of the court or adjudicatory or licensing agency, the ability of plaintiff to prosecute the action, or the defendant to conduct his defense, or in any adjudicatory or licensing proceeding the ability of the party to represent his interest, is not materially affected by reason of his military service.

§ 305. Relief against fines and penalties, et cetera. When an action for compliance with the terms of any contract is stayed pursuant to this act no fine or penalty shall accrue by reason of failure to comply with the terms of such contract during the period of such stay, and in any case where a person fails to perform any obligation and a fine or penalty for such non-performance is incurred a court may, on such terms as may be just, relieve against the enforcement of such fine or penalty if it shall appear that the person who would suffer by such fine or penalty was in the military service when the penalty was incurred, and that by reason of such service the ability of such person to pay or perform was thereby materially impaired.

§ 306. Actions against persons in service. In any action or proceeding commenced in any court or in any adjudicatory or licensing proceeding before any state agency, including any public benefit corporation or public authority, or any political subdivision of the state, against a person in military service: before or during the period of such service, or within sixty days thereafter, the court or adjudicatory or licensing agency may, in its discretion, on its own motion, or on application to it by such person or some person on his

behalf shall, unless in the opinion of the court or adjudicatory or licensing agency the ability of the party to comply with the judgment or order entered or sought is not materially affected by reason of his military service:

1. Stay the execution of any judgment or order entered against such person, as provided in this act; and

2. Vacate or stay any attachment or garnishment of property, money, or debts in the hands of another, whether before or after judgment as provided in this act.

§ 307. Continuance of stay, et cetera. Any stay of any action, proceeding, attachment, or execution ordered by any court or adjudicatory or licensing agency under the provisions of this act may, except as otherwise provided, be ordered for the period of military service and three months thereafter or any part of such period, and subject to such terms as may be just, whether as to payment in installments of such amounts and at such times as the court or adjudicatory or licensing agency may fix or otherwise determine. Where the person in military service is a codefendant with others the plaintiff may nevertheless, by leave of court, proceed against the others.

§ 308. Statutes of limitations and statutes of a similar nature; time of military service not included. The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation or order for the bringing of any action or proceeding in any court, board, bureau, commission, department or other agency of government of this state or any of its governmental subdivisions by or against any person in military service, or by or against his heirs, executors, administrators, or assigns, whether such cause of action or the right or privilege to institute such an action or proceeding shall have accrued prior to or during the period of such service, nor shall any part of such period which occurs after the date

of enactment of this act be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax or assessment.

§ 308-a. Waiver of professional continuing education requirements.

Notwithstanding any provision of general, special or local law, code or ordinance, or rule or regulation to the contrary, no person in military service, as defined in section three hundred one of this article, who was licensed, registered or certified to engage in a profession or occupation prior to entering into military service, shall be required to complete the continuing education requirements for such profession or occupation for any entire licensing, registration or certification period during which such military service occurs, and where such military service is partially within a licensing, registration or certification period, such continuing education requirements shall be reduced proportionately so that such individual is not required to complete such requirements while in military service.

§ 308-b. Extension of license, certificate or registration.

Notwithstanding any other provision of general, special or local law, code or ordinance, or rule or regulation to the contrary, military personnel serving on active duty, who were licensed, certified or registered to engage in a profession or occupation prior to being called to active duty, and whose license, certificate or registration shall expire during such period of active duty, shall have such license, certificate or registration automatically extended for the period of active duty and for twelve months after such military personnel have been released from active duty, provided that with regard to professions subject to title VIII of the education law, this section shall not apply to limited permits or other credentials issued for a period of two months or less and shall not extend the term of a limited permit that expires for reasons other than the passage of time, including but not limited to failure on a licensure examination, and further provided that this section shall not be construed to permit any individual whose authority to engage in a profession or occupation has been revoked or

suspended to engage in such profession or occupation.

§ 309. Evictions; restraint. 1. No eviction or distress shall be made during the period of military service in respect of any premises occupied chiefly for dwelling purposes by a person in military service or the spouse, children, or other dependents of a person in military service, except upon leave of court granted upon application therefor or granted in any action or proceeding affecting the right of possession.

2. On any such application or in any such action the court may, in its discretion, on its own motion, and shall, on application, unless in the opinion of the court the ability of the tenant to pay the agreed rent is not materially affected by reason of military service, stay the proceedings for not longer than six months, as provided in this article, or it may make such other order as may be just.

3. Any person who shall knowingly take part in any eviction or distress otherwise than as provided in subdivision one of this section, or attempts so to do, shall be guilty of a misdemeanor, and shall be punishable by imprisonment not to exceed one year or by fine not to exceed one thousand dollars, or both.

§ 310. Liability for rent accruing after induction; termination of lease. 1. The provisions of this section shall apply to any lease covering premises occupied for dwelling, professional, business, agricultural, or similar purposes in any case in which (a) such lease was executed by or on the behalf of a person who, after the execution of such lease, entered military service, and (b) the premises so leased have been occupied for such purposes, or for a combination of such purposes by such person or by him and his dependents.

The provisions of this section shall also apply to any lease covering premises occupied for dwelling purposes where such lease was executed by or on the behalf of a person who, after the execution of such lease, entered military service where such lease was also executed by or on the

behalf of the spouse of such a person.

2. Any such lease may be terminated by notice in writing delivered to the lessor (or his grantee) or to the lessor's (or his grantee's) agent by a lessee at any time following the date of the beginning of such military service. Delivery of such notice may be accomplished by placing it in an envelope properly stamped and duly addressed to the lessor (or his grantee) or to the lessor's (or his grantee's) agent and depositing the notice in the United States mails. Termination of any such lease providing for monthly payment of rent shall not be effective until thirty days after the first date on which the next rental payment is due and payable subsequent to the date when such notice is delivered or mailed. In the case of all other leases, termination shall be effected on the last day of the month following the month in which such notice is delivered or mailed and in such case any unpaid rental for a period preceding termination shall be proratably computed and any rental paid in advance for a period succeeding termination shall be refunded by the lessor (or his assignee). Upon application by the lessor to the appropriate court prior to the termination period provided for in the notice, any relief granted in this subdivision shall be subject to such modifications or restrictions as in the opinion of the court justice and equity may in the circumstances require.

3. Any person who shall knowingly seize, hold or detain the personal effects, clothing, furniture or other property of any person who has lawfully terminated a lease covered by this section or the spouse or dependent of any such person, or in any manner interfere with the removal of such property from the premises covered by such lease, for the purpose of subjecting or attempting to subject any of such property to a claim for rent accruing subsequent to the date of termination of such lease, or attempts so to do, shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed one year or by fine not to exceed one thousand dollars, or both.

§ 311. Installment purchases. 1. No person who has received, or whose assignor has received, under a contract for the purchase of real or

personal property, or of lease or bailment with a view to purchase of such property, a deposit or installment of the purchase price or a deposit or installment under the contract, lease or bailment from a person or from the assignor of a person who, after the date of payment of such deposit or installment, has entered military service, shall exercise any right or option under such contract to rescind or terminate the contract or resume possession of the property for nonpayment of any installment thereunder due or for any other breach of the terms thereof occurring prior to or during the period of such military service, except by action in a court of competent jurisdiction; provided, that nothing contained in this section shall prevent the modification, termination, or cancellation of any such contract, or prevent the repossession, retention, foreclosure, sale or taking possession of property purchased or received or which is security for any obligation under such contract, pursuant to a mutual agreement of the parties thereto, or their assignees, if such agreement is executed in writing subsequent to the making of such contract and during or after the period of military service of the person concerned.

2. Any person who shall knowingly resume possession of property which is the subject of this section otherwise than as provided in subdivision one hereof or attempt so to do, shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed one year, or by fine not to exceed one thousand dollars, or both.

3. Upon the hearing of such action the court may order the repayment of prior installments or deposits or any part thereof, as a condition of terminating the contract and resuming possession of the property, or may, in its discretion, on its own motion, and shall, except as provided in section three hundred and thirteen, on application to it by such person in military service or some person on his behalf, order a stay of proceedings as provided in this act except that such stay under this section may be ordered for the period of military service and six months thereafter or any part of such period, unless, in the opinion of the court, the ability of the defendant to comply with the terms of the contract is not materially affected by reason of such service; or it may make such other disposition of the case as may be equitable to conserve

the interests of all parties.

§ 311-a. Termination of motor vehicle lease contracts. 1. The provisions of this section shall apply to every lease of a motor vehicle for personal, professional, business, agricultural or similar purposes in any case in which (a) such lease was executed by or on behalf of a person who, after the execution of such lease, entered active military service, and (b) the motor vehicle so leased has been used for such purposes, or for a combination of such purposes by such person or his or her legal dependents.

The provision of this section shall also apply to any lease covering a motor vehicle used for personal purposes where such lease was executed by or on the behalf of a person, who, after the execution of such lease, entered active military service where such lease was also executed by or on the behalf of the spouse of such a person.

2. All leases described in subdivision one of this section may be terminated by notice in writing delivered to the lessor or to the lessor's agent by a lessee at any time following the date of the beginning of such active military service. Delivery of such notice shall be accomplished by certified mail duly addressed to the lessor or to the lessor's agent. Termination of any such lease providing for monthly lease payments shall not be effective until: (a) thirty days after the first date on which the next lease payment is due and payable subsequent to the date when such notice is delivered; or (b) the motor vehicle subject to the lease is returned to the custody or the control of the lessor, whichever is later. In the case of all motor vehicle leases, any unpaid lease payments for a period preceding termination shall be proratably computed and any lease payments made in advance for a period succeeding termination shall be refunded by the lessor. Upon application by the lessor to a court of competent jurisdiction prior to the termination period provided for in the notice, any relief granted in this subdivision shall be subject to such modifications or restrictions as in the opinion of such court may be appropriate in the interest of justice.

§ 311-b. Cancellation without penalty of certain additional rental contracts. 1. The provision of this section shall apply to any rental contracts in which (a) such a contract was executed by or on the behalf of a person, who, after the execution of such contract, entered active military service, and (b) where such entry into military service now renders it impossible for such person to abide by the terms and conditions of the rental contract.

2. A person who enters into a rental contract for goods or services not otherwise addressed by the provisions of this article, who enters into active military service subsequent to the execution of such contract, and where his or her military activation causes it to be impossible for him or her to abide by the terms and conditions of the rental contract, is entitled to cancel such contract at no penalty and with a full refund of any moneys which may have been placed on deposit.

3. Any such contract may be terminated by notice in writing delivered to the contractor by such person in active military service canceling his or her rental contract within one week of his or her receipt of orders to report for military service, and such notice shall include a copy of the orders in question. Delivery of such notice shall be accomplished by certified mail duly addressed to the contractor.

§ 311-c. Termination without penalty of certain service contracts. 1. The provisions of this section shall apply to every contract for services from a telecommunications service provider, an internet service provider, a health club as defined in section six hundred twenty-one of the general business law, a health spa, or a provider of television services, including but not limited to cable television, direct satellite and other television-like services, in any case in which: (a) such contract was executed on or after the effective date of this section by or on behalf of a person who, after the execution of such contract, entered active military service for ninety days or longer; and (b) the person's military service is at a location where the service

provider cannot provide the services covered by the contract.

2. (a) Any contract described in subdivision one of this section may be terminated without penalty by written notice delivered to the service provider by such person in active military service canceling his or her contract within fourteen days of his or her receipt of orders to report for military service. Such notice shall include a copy of the orders in question.

(b) Delivery of such notice shall be in accordance with industry standards for notification of terminations, together with the future date on which the service is to be terminated.

§ 312. Mortgages. 1. The provisions of this section shall apply only to obligation and secured by mortgage, trust deed, or other security in the nature of a mortgage upon real or personal property owned by a person in military service at the commencement of the period of his military service and still so owned by him which obligations originated prior to such person's period of military service.

2. In any proceeding commenced in any court during the period of military service to enforce such obligation arising out of nonpayment of any sum thereunder due or out of any other breach of the terms thereof occurring prior to or during the period of such service the court may, after hearing, in its discretion, on its own motion, and shall, except as hereinafter provided in this act, on application to it by such person in military service or some person on his behalf, unless in the opinion of the court the ability of the defendant to comply with the terms of the obligation is not materially affected by reason of his military service

(a) stay the proceedings as provided in this act; or

(b) make such other disposition of the case as may be equitable to conserve the interests of all parties.

3. No sale, foreclosure, or seizure of property for nonpayment of any sum due under any such obligation, or for any other breach of the terms thereof, whether under a power of sale, under a judgment entered upon

warrant of attorney to confess judgment contained therein, or otherwise, shall be valid if made during the period of military service, or within six months thereafter, unless upon an order of sale previously granted by the court and a return thereto made and approved by the court.

4. Any person who shall knowingly cause to be made any sale, foreclosure or seizure of property defined as invalid by subdivision three hereof, or attempts so to do, shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed one year, or by fine not to exceed one thousand dollars, or both.

§ 313. Settlement of cases involving stayed proceeding in foreclosure or repossession of personal property. Where a proceeding to foreclose a mortgage upon or to resume possession of personal property, or to rescind or terminate a contract for the purchase thereof, has been stayed as provided in this act, the court may, unless in its opinion an undue hardship would result to the dependents of the person in military service, appoint three disinterested parties to appraise the property and, based upon the report of the appraisers, order such sum, if any, as may be just, paid to the person in military service or his dependent, as the case may be, as a condition of foreclosing the mortgage, resuming possession of the property, or rescinding or terminating the contract.

§ 313-a. Exercise of rights under this article not to affect certain future financial transactions. Application by a person in military service for, or receipt by a person in military service of, a stay, postponement or suspension pursuant to the provisions of this article in the payment of any tax, fine, penalty, insurance premium, or other civil obligation or liability of that person shall not itself, without regard to other considerations, provide the basis for any of the following:

1. A determination by any lender or other person that such person in military service is unable to pay such civil obligation or liability in accordance with its terms.

2. With respect to a credit transaction between a creditor and such person in military service: (a) a denial or revocation of credit by the creditor; (b) a change by the creditor in the terms of an existing credit arrangement; or (c) a refusal by the creditor to grant credit to such person in substantially the amount or on substantially the terms requested.

3. An adverse report relating to the creditworthiness of such person in military service by or to any person or entity engaged in the practice of assembling or evaluating consumer credit information.

4. A refusal by an insurer to insure such person.

§ 314. Taxes; taxes on real property, et cetera. 1. The provisions of this section shall apply when any taxes or assessments, whether general or special, other than taxes on income, whether falling due prior or during the period of military service in respect of personal property, money or credits or real property owned and occupied for dwelling, agricultural, or business purposes by a person in military service, or his dependents, at the commencement of his period of military service and still so occupied by his dependents or employees, are not paid.

2. No sale of such property shall be made to enforce the collection of such tax or assessment, or any proceeding or action for such purpose commenced, except upon leave of court granted upon application made therefor by the collector of taxes or other officer whose duty it is to enforce the collection of taxes or assessments. The court thereupon, unless in its opinion the ability of the person in military service to pay such taxes or assessments is not materially affected by reason of such service, may stay such proceedings or such sale, as provided in this act, for a period extending not more than six months after the termination of the period of military service of such person.

3. When by law such property may be sold or forfeited to enforce the collection of such tax or assessment, such person in military service shall have the right to redeem or commence an action to redeem such

property, at any time not later than six months after the termination of such service, but in no case later than six months after the date when this act ceases to be in force; but this shall not be taken to shorten any period, now or hereafter provided by the laws of the state, or any political subdivision thereof, for such redemption.

4. (a) Except as provided in paragraph (b) of this subdivision, whenever any tax or assessment shall not be paid when due, such tax or assessment due and unpaid shall bear interest until paid at the rate of six per centum per annum from the date when such tax first became a lien, and no other penalty or interest shall be incurred by reason of such nonpayment, whether such penalty or interest shall have accrued prior or shall accrue subsequent to the commencement of the period of military service of such person. Any lien for such unpaid taxes or assessment shall also include such interest thereon.

(b) A municipal corporation is hereby authorized and empowered to adopt a local law or, in the case of a school district, a resolution providing that the rate of interest pursuant to this section on unpaid taxes or assessment shall be at a rate less than six per centum per annum.

§ 315. Taxes; income taxes. The collection from any person in the military service of any tax on the income of such person, whether falling due prior to or during his period of military service, shall be deferred for a period extending not more than six months after the termination of his period of military service, if such person's ability to pay such tax is materially impaired by reason of such service. No interest on any amount of tax, collection of which is deferred for any period under this section, shall accrue for such period of deferment, by reason of such non-payment. The running of any statute of limitations against collection of such tax, by distraint or otherwise, shall be suspended for the period of military service, of any individual, the collection of whose tax is deferred under this section, and for an additional period of nine months beginning with the day following the termination of his period of military service.

§ 316. Policies of insurance; policies not to lapse or be forfeited.

1. No policy which insures the life of a member of a reserve component of the armed forces of the United States, including the National Guard, who is called to active duty, or no policy which has been brought within the benefits of the federal "soldiers' and sailors' civil relief act" shall lapse or be forfeited for the nonpayment of premium during the period of such service, or during two years after the expiration of such period; provided that any such policy has not lapsed for the nonpayment of premium before the commencement of the period of military service of the insured, provided that in no case shall this prohibition extend for more than one year after this article ceases to be in force.

2. For the purposes of this section, the term "policy" shall include any contract of life insurance as defined in paragraph one of subsection (a) of section one thousand one hundred thirteen of the insurance law. It shall also include any benefit in the nature of life insurance arising out of membership in any fraternal benefit society as defined in subsection (a) of section four thousand five hundred one of the insurance law. In no case, however, shall the term "policy" include insurance exceeding a total face value of one hundred thousand dollars whether in one or more companies, but shall not include a policy insured under Servicemen's Group Life Insurance. The term "premium" shall include membership dues or assessments in such society, and the date of issuance of policy as herein limited shall refer to the date of admission to membership in such association; the term "insured" shall include any person who is the holder of a policy as defined in this section; the term "insurer" shall include any corporation, partnership, or other form of association which secures or provides insurance under any policy as defined herein.

3. No individual accident and health insurance policy, defined in paragraph three of subsection (a) of section one thousand one hundred thirteen of the insurance law, which policy insures a member of the organized militia of the state, and has not lapsed for the non-payment of premiums before the commencement of a period of active duty in the military service of the state of New York by such member, pursuant to an

order of the governor issued under the authority of section six or seven of this chapter, shall lapse or be forfeited for the non-payment of premiums during a period of sixty days from the date that said member begins such active duty provided the insurer is furnished with written notice of said duty within thirty days after the commencement thereof. An insurer shall have the right to deduct the amount of due and unpaid premiums from any benefit that may become payable as a result of this subdivision.

§ 316-a. Protection of assignor of life insurance policy; enforcement of storage liens. 1. Where any life insurance policy on the life of a person in military service has been assigned prior to such person's period of military service to secure the payment of any obligation of such person, no assignee of such policy, except the insurer in connection with a policy loan, shall, during the period of military service of the insured or within one year thereafter, except upon the consent in writing of the insured made during such period or when the premiums thereon are due and unpaid or upon the death of the insured, exercise any right or option by virtue of such assignment unless upon leave of court granted upon an application made therefor by such assignee. The court may thereupon refuse to grant such leave unless in the opinion of the court the ability of the obligor to comply with the terms of the obligation is not materially affected by reason of his or her military service.

2. No person shall exercise any right to foreclose or enforce any lien for storage of household goods, furniture, or personal effects of a person in military service during such person's period of military service and for three months thereafter except upon an order previously granted by a court upon application therefor and a return thereto made and approved by the court; provided, however, within thirty days of such person's return from military service, he or she shall provide notice to the individual or entity providing for the storage of his or her household goods, furniture or personal effects. In such proceeding the court may, after a hearing, in its discretion, on its own motion, and shall, on application to it by such person in military service or some

person on his or her behalf, unless in the opinion of the court the ability of the defendant to pay the storage charges due is not materially affected by reason of his or her military service:

- (a) stay the proceedings as provided in this article; or
- (b) make such other disposition of the case as may be equitable to conserve the interest of all parties.

§ 316-b. Professional liability protection for certain persons ordered to active duty in armed forces. 1. Definitions. As used in this section:

(a) The term "active duty in state military service" means full-time status (other than for training) with a force of the state organized militia as defined in subdivision one of section two of this chapter.

(b) The term "active duty in military service of the United States" means full-time status (other than for training) in the United States armed forces as defined in subdivision eight of section one of this chapter.

(c) The term "profession" includes occupation.

(d) The term "professional" includes occupational.

2. Applicability. This section applies to any person who:

(a) is ordered to active duty (other than for training) in either state military service pursuant to subdivision one of section six of this chapter, or in the military service of the United States pursuant to title 10 of the United States Code; and

(b) immediately before receiving the order to active duty:

(i) was engaged in the furnishing of health-care services or other services determined by the secretary of state to be professional services; and

(ii) had in effect a professional liability insurance policy that does not continue to cover claims filed with respect to such person during the period of the person's active duty unless the premiums are paid for such coverage for such period.

3. Suspension of coverage. (a) Coverage of a person referred to in subdivision two of this section by a professional liability insurance policy shall be suspended in accordance with this subdivision if the

insured requests such suspension in writing and delivers it to the insurance carrier by certified mail. The request shall be effective upon mailing.

(b) A professional liability insurance carrier:

(i) shall not require that premiums be paid by or on behalf of a person for any professional liability insurance coverage suspended pursuant to paragraph (a) of this subdivision; and

(ii) shall refund any amount paid for coverage for the period of such suspension or, upon the election of such person, apply such amount for the payment of any premium becoming due upon the reinstatement of such coverage.

(c) A professional liability insurance carrier shall not be liable with respect to any claim that is based on professional conduct (including any failure to take any action in a professional capacity) of a person that occurs during a period of suspension of that person's professional liability insurance under this subdivision. For the purposes of the preceding sentence, a claim based upon the failure of a professional to make adequate provision for patients to be cared for during the period of the professional's active duty service shall be considered to be based on an action or failure to take action before the beginning of the period of suspension of professional liability insurance under this section, except in a case in which professional services were provided after the date of the beginning of such period.

4. Reinstatement of coverage. (a) Professional liability insurance coverage suspended in the case of any person pursuant to subdivision three of this section shall be reinstated by the insurance carrier on the date on which that person sends by certified mail to the insurance carrier a written request for reinstatement.

(b) The request of a person for reinstatement shall be effective upon mailing only if the person mails the request to the insurance carrier by certified mail within thirty days after the date on which the person is released from active duty. The insurance carrier shall notify the person of the due date for payment of the premium of such insurance. Such premium shall be paid by the person within thirty days after the effective date of that notice.

(c) The period for which professional liability insurance coverage

shall be reinstated for a person under this subdivision shall not be less than the balance of the period for which coverage would have continued under the insurance policy if the coverage had not been suspended.

5. Increase in premium. An insurance carrier shall not increase the amount of the premium charged for professional liability insurance coverage of any person for the minimum period of the reinstatement of such coverage required under paragraph (c) of subdivision four of this section to an amount greater than the amount chargeable for such coverage for such period before the suspension, except to the extent of any general increase in the premium amounts charged by that carrier for the same professional liability coverage for persons similarly covered by such insurance during the period of the suspension.

6. Continuation of coverage of unaffected persons. This section does not:

(a) require a suspension of professional liability insurance coverage for any person who is not a person referred to in subdivision two of this section and who is covered by the same professional liability insurance as a person referred to in such subdivision; or

(b) relieve any person of the obligation to pay premiums for the coverage not required to be suspended.

7. Stay of civil or administrative actions. (a) A civil or administrative action for damages on the basis of the alleged professional negligence or other professional liability of a person whose professional liability insurance coverage has been suspended under subdivision three of this section shall be stayed until the end of the period of the suspension if:

(i) the action was commenced during that period;

(ii) the action is based on an act or omission that occurred before the date on which the suspension became effective; and

(iii) the suspended professional liability insurance would, except for the suspension, on its face cover the alleged professional negligence or other professional liability negligence or other professional liability of the person.

(b) Whenever a civil or administrative action for damages is stayed pursuant to subparagraph (i) of paragraph (a) of this subdivision in the case of any person, the action shall be deemed to have been filed on the date on which the professional liability insurance coverage of such person is reinstated under subdivision four of this section.

8. Effect of suspension upon limitations period. In the case of a civil or administrative action for which a stay could have been granted under subdivision seven of this section by reason of the suspension of professional liability insurance coverage of the defendant under this subdivision, the period of the suspension of the coverage shall be excluded from the computation of any statutory period of limitation on the commencement of such action.

9. Death during period of suspension. If a person whose professional liability insurance coverage is suspended pursuant to subdivision three of this section dies during the period of the suspension:

(a) the requirement for the grant or continuance of a stay in any civil or administrative action against such person pursuant to paragraph (a) of subdivision seven of this section shall terminate on the date of the death of such person; and

(b) the carrier of the professional liability insurance so suspended shall be liable for any claim for damages for professional negligence or other professional liability of the deceased person in the same manner and to the same extent as such carrier would be liable if the person had died while covered by such insurance but before the claim was filed.

§ 317. Reemployment in private industry. 1. In the case of any person who, in order to perform military service, has left or leaves a position, other than a temporary position, in the employ of any employer, and who

(a) receives a certificate of completion of military service duly executed by an officer of the applicable force of the armed forces of the United States or by an officer of the applicable force of the organized militia of this state or of any other state as provided for by law;

(b) is still qualified to perform the duties of such position; and

(c) makes application for reemployment within ninety days after he or she is relieved from such service, if such position was in the employ of a private employer, such employer shall restore such person to such position, or to a position of like seniority, status and pay, unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so.

2. The benefits, rights and privileges granted to persons in the military service by this section shall be extended to and be applicable to any person who, in order to participate in assemblies for drill or other equivalent training, reserve duty training, instruction or duties, or annual full-time training duty, active duty for training or other annual training pursuant to any law of the United States or section forty-six of this chapter or the regulations issued thereunder, or in order to attend service schools conducted by the armed forces of the United States, temporarily leaves or has left his or her position, other than a temporary position, in the employ of any employer and who, being qualified to perform the duties of such position, makes application for reemployment within ten days after completion of such temporary period of service.

2-a. The benefits, rights and privileges granted to persons in the military service by this section shall be extended to and be applicable to any person who, in order to perform initial full-time training duty or initial active duty for training with or in an armed force of the United States under the provisions of this chapter or the laws of the United States or both, temporarily leaves or has left his or her position, other than a temporary position, in the employ of any employer and who, being qualified to perform the duties of such position, makes application for re-employment within sixty days after completion of such period of full-time training duty or active duty for training.

3. The benefits, rights and privileges granted to persons in the military service by this section shall be extended to and be applicable to any person who is or becomes a member of the organized militia of this state or of any other state as provided for by law, or of a reserve

component of the armed forces of the United States and who, because of such membership is discharged by his or her employer or whose employment is suspended by his or her employer because of such membership and who, being qualified to perform the duties of such position, makes application for reemployment or termination of the period of his or her suspension within ten days after such discharge or suspension. These benefits, rights and privileges are not applicable to persons participating in routine reserve officer training corps training except when performing advanced training duty as a member of a reserve component of the armed forces.

4. Any person who is restored to a position in accordance with the provisions of this section shall be considered as having been on furlough or leave of absence during his or her period of military service, temporary service under subdivision two or subdivision two-a of this section, or of discharge or suspension under subdivision three of this section, shall be so restored without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person entered the military service or commenced such temporary service or was so discharged or suspended, and shall not be discharged from such position without cause, within one year after such restoration.

5. In case any private employer fails or refuses to comply with the provisions of this section, the supreme court of the state within the county in which such private employer maintains a place of business, shall have the power, upon the filing of a motion, petition or other appropriate pleading, by the person entitled to the benefits of such provisions, to specifically require such employer to comply with such provisions, and may, as an incident thereto, compensate such person for any loss of wages or benefits suffered by reason of such employer's unlawful action. The court shall order a speedy hearing in any such case, and shall advance it on the calendar. Any person claiming to be entitled to the benefits of the provisions of this section may appear and be represented by counsel, or, upon application to the attorney

general of the state, may request that the attorney general appear and act on his or her behalf. If the attorney general is reasonably satisfied that the person so applying is entitled to such benefits, he or she shall appear and act as attorney for such person in the amicable adjustment of the claim, or in the filing of any motion, petition or other appropriate pleading and the prosecution thereof. In the hearing and determination of such applications under this section no fees or court costs shall be assessed against a person so applying for such benefits.

§ 318. Policy of the state. 1. It is hereby declared to be the policy of the state that citizens and residents of the state should not be discriminated against because they are subject to military duty pursuant to this chapter or the laws of the United States or both; and that persons doing business in the state should not refuse to employ such persons because they are so subject to military duty.

2. (a) No person shall solicit, require, demand or otherwise request that a person waive any of his or her rights under this article, whether existing at that time or thereafter to accrue.

(b) Any person who shall knowingly violate paragraph (a) of this subdivision shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed one year, or by fine not to exceed one thousand dollars, or both such imprisonment and fine, and shall be further subject to a civil penalty in an amount not to exceed five thousand dollars for each occurrence. Such penalty may be recovered in an action brought by the attorney general in any court of competent jurisdiction.

(c) Any waiver entered into in violation of this subdivision shall not be deemed to be binding on any person in military service who executed such waiver.

§ 319. Evasive transfers of interest. Where in any proceeding to enforce a civil right in any court it is made to appear to the satisfaction of the court that any interest, property, or contract has

since the date of the approval of this act been transferred or acquired with intent to delay the just enforcement of such right by taking advantage of this act, the court shall enter such judgment or make such order as might lawfully be entered or made, the provisions of this act to the contrary notwithstanding.

§ 321. Certificates of service. 1. In any proceeding under this act a certificate executed by an officer of the applicable force of the armed forces of the United States or by an officer of the applicable force of the organized militia shall, when produced, be prima facie evidence of the facts therein certified and of the authority of the signer to issue the same.

2. When a person in military service has been reported missing he shall be presumed to continue in such service until accounted for, and no period herein limited which begins or ends with the death of such person shall begin or end until the death of such person is in fact reported to or proved by the applicable force of the armed forces of the United States or of the organized militia, or until such death is proved by a court of competent jurisdiction; provided, that no period herein limited which begins or ends with the death of such person shall be extended beyond a period of six months after the time when this act ceases to be in force.

§ 322. Interlocutory orders. Any interlocutory order made by any court under the provisions of this act may, upon the court's own motion or otherwise, be revoked, modified, or extended by it upon such notice to the parties affected as it may require.

§ 323. Further relief. 1. A person may, at any time during his period of military service or within six months thereafter, apply to a court for relief in respect of any obligation or liability incurred by such person prior to his period of military service or in respect of any tax or assessment whether falling due prior to or during his period of

military service. The court, after appropriate notice and hearing, unless in its opinion the ability of the applicant to comply with the terms of such obligation or liability or to pay such tax or assessment has not been materially affected by reason of his military service, may grant the following relief:

(a) In the case of an obligation payable under its terms in installments under a contract for the purchase of real estate, or secured by a mortgage or other instrument in the nature of a mortgage upon real estate, a stay of the enforcement of such obligation during the applicant's period of military service and, from the date of termination of such period of military service or from the date of application if made after such service, for a period equal to the period of the remaining life of the installment contract or other instrument plus a period of time equal to the period of military service of the applicant, or any part of such combined period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of the period of military service or from the date of application, as the case may be, in equal installments during such combined period at such rate of interest on the unpaid balance as is prescribed in such contract, or other instrument evidencing the obligation, for installments paid when due, and subject to such other terms as may be just.

(b) In the case of any other obligation, liability, tax, or assessment, a stay of the enforcement thereof during the applicant's period of military service and, from the date of termination of such period of military service or from the date of application if made after such service, for a period of time equal to the period of military service of the applicant or any part of such period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of the termination of such period of military service or the date of application, as the case may be, in equal periodic installments during such extended period at such rate of interest as may be prescribed for such obligation, liability, tax, or assessment, if paid when due, and subject to such other terms as may be just.

2. When any court has granted a stay as provided in this section no fine or penalty shall accrue during the period the terms and conditions

of such stay are complied with by reason of failure to comply with the terms or conditions of the obligation, liability, tax, or assessment in respect of which such stay was granted.

§ 323-a. Maximum rate of interest. No obligation or liability bearing interest at a rate in excess of six percent per year incurred by a person in active military service in the armed forces of the United States or in active military service of the organized militia of the state before that person's entry into such service shall, during any part of the period active military service, bear interest at a rate in excess of six percent per year unless, in the opinion of the court, upon application thereto by the obligee, the ability of such person in military service to pay interest upon such obligation or liability at a rate in excess of six percent per year is not materially affected by reason of such service, in which case the court may make such order as in its opinion may be just. As used in this section the term "interest" includes service charges, renewal charges, fees and any other charges (except bona fide insurance) with respect to such obligation or liability.

§ 323-b. Filing fees waiver; civil actions. In any civil action or proceeding commenced in any court by a person who is an active member of the force of the organized militia, as defined by subdivision nine of section one of this chapter, where the dispute or controversy is related to such person's service in the organized militia or the reserves, and the claims are based in whole or in part on this chapter, or on the human rights law relating to military status, or on title 38 or title 50 of the United States code, all court costs or filing fees for the commencement of the civil action or proceeding shall be waived.

§ 324. Separability. If any clause, sentence, paragraph, or part of this article or the application thereof to any person or circumstances, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the

remainder of this article, and the application thereof to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person or circumstances involved. It is hereby declared to be the legislative intent that this article would have been adopted had such invalid provisions not been included.

§ 325. Inconsistent provisions in other acts. Insofar as the provisions of this act are inconsistent with the provisions of any other act, general or special, or of any local law, the provisions of this act shall be controlling.

§ 326. Article thirteen of military law, added by laws of nineteen hundred forty-one, chapter six hundred eighty-six. Wherever in any section or provision of Article thirteen of the military law, added by laws of nineteen hundred forty-one, chapter six hundred eighty-six, as last amended by laws of nineteen hundred forty-seven, chapter three hundred fifty-six, a proceeding, remedy, privilege, stay, limitation, accounting or other transaction has been authorized or provided with respect to military service performed prior to April first, nineteen hundred forty-eight, such section or provision shall be deemed to continue in full force and effect so long as may be necessary for the exercise or enjoyment of such proceeding, remedy, privilege, stay, limitation, accounting or other transaction.

§ 327. Duration of the emergency. This act shall remain in force and effect until repealed or otherwise terminated by subsequent act of the legislature.

§ 328. Short title. This article shall be known and may be cited and referred to as the "New York Soldiers' and Sailors' Civil Relief Act of 1951".

