

## TITLE XVI.

## THE MILITIA.

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- SEC. 1625. Every able-bodied male citizen of the respective States, resident therein, who is of the age of eighteen years, and under the age of forty-five years, shall be enrolled in the militia.
- SEC. 1626. It shall be the duty of every captain or commanding officer of a company to enroll every such citizen residing within the bounds of his company, and all those who may, from to time, arrive at the age of eighteen years, or who, being of the age of eighteen years and under the age of forty-five years, come to reside within his bounds.
- SEC. 1627. Each captain or commanding officer shall, without delay, notify every such citizen of his enrollment, by a proper non-commissioned officer of his company, who may prove the notice. And any notice or warning to a citizen enrolled, to attend a company, battalion, or regimental muster, which is according to the laws of the State in which it is given for that purpose, shall be deemed a legal notice of his enrollment.
- SEC. 1628. Every citizen shall, after notice of his enrollment, be constantly provided with a good musket or firelock of a bore sufficient for balls of the eighteenth part of a pound, a sufficient bayonet and belt, two spare flints, and a knapsack, a pouch with a box therein to contain not less than twenty-four cartridges, suited to the bore of his musket or firelock, each cartridge to contain a proper quantity of powder and ball; or with a good rifle, knapsack, shot-pouch and powder-horn, twenty balls suited to the bore of his rifle, and a quarter of a pound of powder; and shall appear, so armed, accoutered, and provided when called out to exercise, or into service, except that when called out on company days to exercise only, he may appear without a knapsack. And all arms, ammunition, and accouterments so provided and required shall be held exempted from all suits, distresses, executions, or sales, for debt or for the payment of taxes. Each commissioned officer shall be armed with a sword or hanger and spontoon.
- SEC. 1629. The Vice-President of the United States; the officers judicial and executive of the Government of the United States; the members of both Houses of Congress, and their respective officers; all custom-house officers with their clerks; all postmasters and persons em-

30 April, 1810, c. 37, s. 33, v. 2, p. 603.

ployed in the transportation of the mail; all ferrymen employed at any ferry on post-roads; all inspectors of exports; all artificers and workmen employed in the armories and arsenals of the United States; all pilots; all mariners actually employed in the sea-service of any citizen or merchant within the United States; and all persons who now are or may hereafter be exempted by the laws of the respective States, shall be exempted from militia duty, notwithstanding their being above the age of eighteen, and under the age of forty-five years.

Arrangement into divisions, brigades, &c.

8 May, 1792, c. 33, s. 3, v. 1, p. 272.

SEC. 1630. The militia of each State shall be arranged into divisions, brigades, regiments, battalions, and companies, as the legislature of the State may direct. Each brigade may consist of four regiments; each regiment of two battalions; each battalion of five companies; each company of sixty-four privates. Each division, brigade, and regiment shall be numbered at the formation thereof; and a record of such numbers shall be made in the adjutant-general's office of the State. When in the field, or in service in the State, each division, brigade, and regiment shall respectively take rank according to its number, reckoning the first or lowest number highest in rank.

Militia, how officered.

8 May, 1792, c. 33, s. 3, v. 1, p. 272.  
2 Mar., 1803, c. 15, s. 3, v. 2, p. 207.  
18 April, 1814, c. 80, v. 3, p. 134.  
20 April, 1816, c. 64, v. 3, p. 295.

SEC. 1631. The militia shall be officered by the respective States as follows: To the militia of each State, one quartermaster-general; to each division, one major-general, two aids-de-camp with the rank of major, one division-inspector with the rank of lieutenant-colonel, and one division-quartermaster with the rank of major; to each brigade, one brigadier-general, one brigade-inspector, to serve also as brigade-major with the rank of major, one quartermaster of brigade with the rank of captain, and one aid-de-camp with the rank of captain; to each regiment of two battalions, one colonel, one lieutenant-colonel, one major, and one chaplain; to only one battalion, a major, who shall command the same; to each company, one captain, one lieutenant, one ensign, four sergeants, four corporals, one drummer, and one fifer or bugler. And there shall be a regimental staff, to consist of one adjutant and one quartermaster, to rank as lieutenants, one paymaster, one surgeon, one surgeon's mate, one sergeant-major, one drum-major, and one fife-major.

Artillery and cavalry.

8 May, 1792, c. 33, s. 4, v. 1, p. 272.  
2 Mar., 1803, c. 15, s. 2, v. 2, p. 207.

SEC. 1632. There shall be formed for each battalion at least one company of grenadiers, light infantry, or riflemen, and for each division at least one company of artillery and one troop of horse. For each company of artillery there shall be one captain, two lieutenants, four sergeants, four corporals, six gunners, six bombardiers, one drummer, and one fifer. The officers shall be armed with a sword or hanger, a fusée, bayonet, and belt, with a cartridge-box to contain twelve cartridges; and each private shall furnish himself with all the equipments of a private in the infantry, until proper ordnance and field artillery is provided. For each troop of horse there shall be one captain, two lieutenants, one cornet, four sergeants, four corporals, one saddler, one farrier, and one trumpeter. The commissioned officers shall furnish themselves with good horses of at least fourteen hands and a half high, and shall be armed with a sword and pair of pistols, the holsters to be covered with bearskin caps. Each dragoon shall furnish himself with a serviceable horse, at least fourteen hands and a half high, a good saddle, bridle, mail-pillion, and valise, holsters, and a breast-plate and crupper, a pair of boots and spurs, a pair of pistols, a saber, and a cartridge-box, to contain twelve cartridges for pistols. Each company of artillery and troop of horse shall be formed of volunteers from the brigade, at the discretion of the commander-in-chief of the State, not exceeding one company of each to a regiment, nor more in number than one-eleventh part of the infantry, and shall be uniformly clothed in regimentals, to be furnished at their own expense; the color and fashion to be determined by the brigadier commanding the brigade to which they belong.

Regimental colors.

8 May, 1792, c. 33, s. 5, v. 1, p. 273.

SEC. 1633. Each battalion and regiment shall be provided with the State and regimental colors by the field-officers, and each company with a drum and fife, or bugle-horn, by the commissioned officers of the company, in such manner as the legislature of the respective States may direct.

**SEC. 1634.** There shall be appointed in each State an adjutant-general, whose duty it shall be to distribute all orders from the commander-in-chief of the State to the several corps; to attend all musters when the commander-in-chief of the State reviews the militia, or any part thereof; to obey all orders from him relative to carrying into execution and perfecting the system of military discipline established by law; to furnish blank forms of returns that may be required, and to explain the principles on which they should be made; to receive from the several officers of the different corps throughout the State returns of the militia, under their command; and to make proper abstracts from such returns, and lay the same annually before the commander-in-chief of the State.

Adjutant-general in each State, his duty.

8 May, 1792, c. 33, s. 6, v. 1, p. 273.

**SEC. 1635.** The several officers of the divisions, brigades, regiments, and battalions, shall report, in their returns of the corps under their command, the actual condition of their arms, accouterments, and ammunition, their delinquencies, and every other particular relating to the general advancement of good order and discipline, and shall make the same in the usual manner.

Returns.

8 May, 1792, c. 33, s. 6, v. 1, p. 273.

**SEC. 1636.** It shall be the duty of the adjutant-general in each State to make return of the militia of the State, with their arms, accouterments, and ammunition, agreeably to the provisions of law, to the President of the United States, annually, on or before the first Monday in January; and it shall be the duty of the Secretary of War, from time to time, to give such directions to the adjutant-generals of the militia as may, in his opinion, be necessary to produce a uniformity in such returns.

Returns to the President.

2 Mar., 1803, c. 15, s. 1, v. 2, p. 207.

**SEC. 1637.** The system of discipline and field exercise which is ordered to be observed in the different corps of infantry, artillery, and riflemen of the Regular Army, shall also be observed in such corps, respectively, of the militia.

Discipline.

12 May, 1820, c. 97, s. 1, v. 3, p. 577.

**SEC. 1638.** All commissioned officers shall take rank according to the date of their commissions; and when two of the same grade bear an equal date, their rank shall be determined by lot to be drawn by them before the commanding officer of the brigade, regiment, battalion, company, or detachment.

Officers, how to take rank.

8 May, 1792, c. 33, s. 8, v. 1, p. 273.

**SEC. 1639.** If any person, whether officer or soldier, belonging to the militia of any State, and called out into the service of the United States, be wounded or disabled while in actual service, he shall be taken care of and provided for at the public expense.

Care of the wounded.

8 May, 1792, c. 33, s. 9, v. 1, p. 273.

**SEC. 1640.** It shall be the duty of the brigade-inspector to attend the regimental and battalion meetings of the militia composing the several brigades, during the time when they are under arms, to inspect their arms, ammunition, and accouterments; to superintend their exercise and maneuvers, and introduce throughout the brigade the system of military discipline prescribed by law, and such orders as they receive from the commander-in-chief of the State; and to make returns to the adjutant-general of the State, at least once in every year, of the militia of the brigade to which he belongs, reporting therein the actual condition of the arms, accouterments, and ammunition of the several corps, and every other particular which, in his judgment, may relate to their government and the general advancement of good order and military discipline.

Brigade-inspector's duty.

8 May, 1792, c. 33, s. 10, v. 1, p. 273.

**SEC. 1641.** All corps of artillery, cavalry, and infantry, now existing in any State, which, by any law, custom, or usage thereof, have not been incorporated with the militia, or are not governed by the general regulations thereof, shall be allowed to retain their accustomed privileges, subject, nevertheless, to all other duties required by law in like manner as the other militia.

Privileges of certain corps.

8 May, 1792, c. 33, s. 11, v. 1, p. 274.

**SEC. 1642.** Whenever the United States are invaded, or are in imminent danger of invasion from any foreign nation or Indian tribe, or of rebellion against the authority of the Government of the United States, it shall be lawful for the President to call forth such number of the militia of the State or States, most convenient to the place of danger, or scene of action, as he may deem necessary to repel such invasion, or to suppress such rebellion, and to issue his orders for that purpose to such officers of the militia as he may think proper.

Orders of President in case of invasion.

28 Feb., 1795, c. 36, s. 1, v. 1, p. 424.

Martin v. Mott, 12 Wh., 19.  
McCall's Case, 5 Phila., 259.

Militia, how apportioned.

17 July, 1862, c. 201, s. 1, v. 12, p. 597.

Subject to rules of war.

28 Feb., 1795, c. 36, s. 4, v. 1, p. 424.

29 July, 1861, c.

Organization.

17 July, 1862, c. 201, s. 2, v. 12, p. 598.

How formed.

22 July, 1861, c. 9, s. 2, v. 12, p. 269.

2 July, 1862, c. 127, s. 3, v. 12, p. 502.

17 July, 1862, c. 200, s. 5, v. 12, p. 594.

How composed.

22 July, 1861, c. 9, s. 3, v. 12, p. 269.

17 July, 1862, c. 200, s. 6, v. 12, p. 594.

When called forth, term of service to be specified.

17 July, 1862, c. 201, s. 1, v. 12, p. 597.

Disobedience of orders, penalty.

28 Feb., 1795, c. 36, s. 5, v. 1, p. 424.

29 July, 1861, c. 25, s. 4, v. 12, p. 282.

Wise v. Withers, 2 Cr., 331; Houston v. Moore, 5 Wh., 1; Martin v. Mott, 12 Wh., 19; Meade's Case, 1 Brock., 324.

Pay, rations, &c.

19 Mar., 1836, c. 44, s. 1, v. 5, p. 7.

29 July, 1861, c. 25, s. 3, v. 12, p. 282.

When pay to commence.

2 Jan., 1795, c. 9, s. 3, v. 1, p. 408.

Traveling allowance.

19 Mar., 1836, c. 44, s. 3, v. 5, p. 7.

SEC. 1643. When the militia of more than one State is called into the actual service of the United States by the President, he shall apportion them among such States according to representative population.

SEC. 1644. The militia, when called into the actual service of the United States for the suppression of rebellion against and resistance to the laws of the United States, shall be subject to the same rules and articles of war as the regular troops of the United States.

25, s. 3, v. 12, p. 282. *Martin v. Mott*, 12 Wh., 19.

SEC. 1645. The militia, when called into actual service, shall be organized as prescribed in the two sections following.

SEC. 1646. They shall be formed, by the President, into regiments of infantry, with the exception of such numbers for cavalry and artillery as he may direct, not to exceed the proportion of one company of each of those arms to every regiment of infantry, and to be organized as in the regular service. Each regiment of infantry shall have one colonel, one lieutenant-colonel, one major, one adjutant, (a lieutenant,) one quartermaster, (a lieutenant,) one surgeon and two assistant surgeons, one sergeant-major, one regimental quartermaster-sergeant, one regimental commissary-sergeant, one hospital-steward, and two principal musicians, and shall be composed of ten companies, each company to consist of one captain, one first lieutenant, one second lieutenant, one first sergeant, four sergeants, eight corporals, two musicians, one wagoner, and from sixty-four to eighty-two privates.

SEC. 1647. They shall be further organized into divisions of three or more brigades each; and each division shall have a major-general, three aids-de-camp, and one assistant adjutant-general with the rank of major. Each brigade shall be composed of four or more regiments, and shall have one brigadier-general, two aids-de-camp, one assistant adjutant-general with the rank of captain, one surgeon, one assistant-quartermaster, one commissary of subsistence, and sixteen musicians as a band.

SEC. 1648. Whenever the President calls forth the militia of the States, to be employed in the service of the United States, he may specify in his call the period for which such service will be required, not exceeding nine months, and the militia so called shall be mustered in and continued to serve during the term so specified, unless sooner discharged by command of the President.

SEC. 1649. Every officer, non-commissioned officer, or private of the militia, who fails to obey the orders of the President when he calls out the militia into the actual service of the United States, shall forfeit of his pay a sum not exceeding one year's pay, and not less than one month's pay, to be determined and adjudged by a court-martial; and such officer shall be liable to be cashiered by a sentence of court-martial, and be incapacitated from holding a commission in the militia for a term not exceeding twelve months; and such non-commissioned officer and private shall be liable to imprisonment, by a like sentence, on failure to pay the fines adjudged against him, for one calendar month for every twenty-five dollars of such fine.

SEC. 1650. The militia when called into the actual service of the United States, shall, during their time of service, be entitled to the same pay, rations, clothing, and camp equipage as may be provided by law for the Army of the United States.

SEC. 1651. Whenever the militia is called into the actual service of the United States, their pay shall be deemed to commence from the day of their appearing at the place of battalion, regimental, or brigade rendezvous.

SEC. 1652. The officers, non-commissioned officers, musicians, artificers, and privates shall be entitled to one day's pay, subsistence, and allowances for every twenty miles' travel from their places of residence to the place of general rendezvous, and from the place of discharge back to their residence.

SEC. 1653. The officers of all mounted companies in the militia called into the service of the United States shall each be entitled to receive forage, or money in lieu thereof, for two horses when they actually keep private servants, and for one horse when without private servants, and forty cents per day shall be allowed for the use and risk of each horse, except horses killed in battle or dying of wounds received in battle. Each non-commissioned officer, musician, artificer, and private of such mounted companies shall be entitled to receive forage in kind for one horse, with forty cents per day for the use and risk thereof, except horses killed in battle, or dying of wounds received in battle, and twenty-five cents per day in lieu of forage and subsistence, when the same is furnished by himself, or twelve and a half cents per day for either, as the case may be.

Forage and use of horses.

2 Jan., 1795, c. 9, s. 2, v. 1, p. 408.  
19 Mar., 1836, c. 44, s. 2, v. 5, p. 7.

SEC. 1654. The expenses incurred by marching the militia of any State or Territory to their places of rendezvous, in pursuance of a requisition of the President, or of a call made by the authority of any State or Territory and approved by him, shall be adjusted and paid in like manner as the expenses incurred after their arrival at such places of rendezvous, on the requisition of the President; but this provision does not authorize any species of expenditure, previous to arriving at the place of rendezvous, which is not provided by existing laws to be paid for after their arrival at such place of rendezvous.

Expenses of march to rendezvous.

28 Feb., 1795, c. 36, v. 1, p. 424.  
20 April, 1818, c. 84, v. 3, p. 444.

SEC. 1655. When the militia in the military service of the United States are employed on the western frontiers, there shall be allowed two ounces of flour or bread, and two ounces of beef or pork, in addition to each of their rations, and half a pint of salt, in addition to every hundred of their rations.

Addition to ration.

2 Jan., 1795, c. 9, s. 6, v. 1, p. 409.

SEC. 1656. When any officer, non-commissioned officer, artificer, or private of the militia or volunteer corps dies in the service of the United States, or in returning to his place of residence after being mustered out of service, or at any time in consequence of wounds received in service, and leaves a widow, or if no widow, a child or children under sixteen years of age, such widow, or if no widow, such child or children, shall be entitled to receive half the monthly pay to which the deceased was entitled, at the time of his death, during the term of five years; and in case of the death or intermarriage of such widow before the expiration of five years, the half-pay for the remainder of the time shall go to the child or children of the decedent. And the Secretary of the Interior shall adopt such forms of evidence, in applications under this section as the President may prescribe.

Provision for widows, &c., of those who die in the service.

19 Mar., 1836, c. 44, s. 5, v. 5, p. 7.

SEC. 1657. The volunteers or militia, who have been received into the service of the United States, to suppress Indian depredations in Florida, shall be entitled to all the benefits which are conferred on persons wounded or otherwise disabled in the service of the United States.

Volunteers, &c., to suppress Indian depredations in Florida; benefits to.

19 Mar., 1836, c. 44, s. 4, v. 5, p. 7.

SEC. 1658. Courts-martial for the trial of militia shall be composed of militia officers only.

Courts-martial, how composed.

28 Feb., 1795, c. 36, s. 6, v. 1, p. 424. 29 July, 1861, c. 25, s. 5, v. 12, p. 282.

SEC. 1659. All fines assessed under the provisions of law concerning the militia or volunteer corps, when called into the actual service of the United States, shall be certified by the presiding officer of the court-martial, before whom they are assessed, to the marshal of the district in which the delinquent resides, or to one of his deputies, and to the Comptroller of the Treasury, who shall record the certificate in a book to be kept for that purpose. The marshal or his deputy shall forthwith proceed to levy the fines with costs, by distress and sale of the goods and chattels of the delinquent, which costs and the manner of proceeding, with respect to the sale of the goods distrained, shall be agreeable to the laws of the State in which the same may be in other cases of distress. And where any non-commissioned officer or private is adjudged to suffer imprisonment, there being no goods or chattels to be found whereof to levy the fines, the marshal of the district or his deputy shall commit such delinquent to jail, during the term for which he is so adjudged to imprisonment, or until the fine is paid, in the same manner as other persons con-

Fines assessed, how to be levied.

28 Feb., 1795, c. 36, s. 7, v. 1, p. 424.  
2 Feb., 1813, c. 18, s. 1, v. 2, p. 797.  
29 July, 1861, c. 25, s. 6, v. 12, p. 282.

demned to fine and imprisonment at the suit of the United States may be committed.

To be paid into the Treasury of the United States.

28 Feb., 1795, c. 36, s. 8, v. 1, p. 425.  
2 Feb., 1813, c. 18, s. 2, v. 2, p. 797.  
29 July, 1861, c. 25, s. 6, v. 12, p. 282.

Appropriation for arms and equipments.

23 April, 1808, c. 55, s. 1, v. 2, p. 490.  
29 April, 1816, c. 135, s. 1, v. 3, p. 320.

SEC. 1660. The marshal shall pay all fines collected by him or his deputy, under the authority of the preceding section, into the Treasury of the United States, within two months after he has received the same, deducting five per centum for his compensation; and in case of failure, it shall be the duty of the Comptroller of the Treasury to give notice to the district attorney of the United States, who shall proceed against the marshal in the district court, by attachment, for the recovery of the same. [See § 269.]

SEC. 1661. The annual sum of two hundred thousand dollars is appropriated, to be paid out of any money in the Treasury not otherwise appropriated, for the purpose of providing arms and equipments for the whole body of the militia, either by purchase or manufacture, by and on account of the United States.

3 Mar., 1875, c. 133, s. 3, v. 18, p. 455.