Chapter 397

1955 REPLACEMENT PART

National Guard

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GENERAL PROVISIONS

397.005 "National guard" explained; composition. The organized militia of the state is the national guard and shall consist of all persons enlisted, appointed or commissioned therein, and all staffs, corps and departments necessary to its administration. In time of peace the national guard shall be composed of such organizations as may be authorized and prescribed under the National Defense Act.

397.010 Persons composing guard. The national guard shall consist of the regularly enlisted militia, between the ages of 18 and 45 years, organized, armed and equipped as provided in this chapter, and of commissioned officers between the ages of 21 and 64 years.

397.015 Assignment of unorganized militia to national guard; organization. The Oregon unorganized militia, when called into service, shall be assigned to the national guard or organized into such units as the commander in chief may direct, according to the number called out, and shall conform to similar organizations of the national guard.

397.020 National guard reserve. (1) In addition to the federally recognized Oregon National Guard subject to call to federal service under the provisions of the National Defense Act, there may be organized within the state a national guard reserve force, at such places, in such numbers and under such regulations as the General Staff may prescribe. Until otherwise ordered by the General Staff, such reserve force shall be known as the Oregon National Guard, Limited Service, and shall be composed principally of officers and enlisted men not eligible for a general service under federal selective service laws.

(2) Whenever the United States Congress authorizes the organization of such state forces under federal recognition, the General Staff shall promulgate such regulations as are necessary to comply with such federal laws and obtain federal recognition for the force authorized by this section.

397.025 Laws and regulations governing national guard. The Articles of War, rules and regulations of the Army of the United States, so far as applicable, and the rules and regulations prescribed by the General Staff in compliance with the military laws of this state constitute the laws, rules and regulations of the national guard and shall have the same force and effect as the provisions of this chapter.

397.030 Plan of organization; authority of President. Except as otherwise specifically provided, the organization of the national guard, including the composition of all units thereof, shall be the same as that prescribed for the Regular Army, subject in time of peace to such general exceptions as may be authorized by the Secretary of the Army. The President of the United States may prescribe the particular unit or units, as to branch or arm of service, to be maintained, in order to secure a force which, when combined, shall form complete higher tactical units.

397.035 Call to active service; effect; resumption of membership in guard. (1) All commissioned officers and all militia organizations are at all times subject to be called into active service by the commander in chief and by the President of the United States.

(2) When Congress has authorized the use of the armed land forces of the United States for any purpose requiring the use of troops in excess of those of the Regular Army, and the President has drafted into the military service of the United States any or all members of the National Guard of the United States under the National Defense Act, all persons so drafted shall, from the date of their draft, stand discharged from the militia. They shall from said date be subject to such laws and regulations for the government of the Army of the United States as apply to members of the volunteer army, and shall be embodied in organizations corresponding as far as practicable to those of the Regular Army or otherwise assigned as the President may direct.

(3) Upon termination of the emergency, all persons so drafted into the service of the United States, after discharge therefrom, shall resume their membership in the militia of this state, and shall continue to serve in the national guard until the dates upon which their enlistments entered into prior to their draft would have expired if uninterrupted.

397.040 Martial law; call for armed forces by Governor or other officers. In case of invasion, insurrection, forcible obstruction to the execution of the law, or reason-

able apprehension thereof, breaches of peace, tumult or riot, or imminent danger thereof, the Governor may declare martial law, call out an armed force in aid of the civil authorities, or order into the service of the state the national guard, or any part thereof; or, if a further or greater force is required, he may call out such portion of the unorganized militia as he deems proper and place it under the command of such officer as he shall designate. The county judge or board of county commissioners may, upon application of the sheriff, or the mayor of any city in the county, report any such condition or danger to the Governor and call for the aid of the militia.

397.045 Designation of armed force objectives; execution. When an armed force is called out in aid of the civil authorities, the latter will designate in general terms the particular object to be accomplished. The mode and means of execution shall be left to the discretion of the commanding officer of the troops present.

397.050 Duty to attempt to disperse rioters before attack. Every reasonable endeavor must be made, both by the civil officers and the officer commanding the troops, which can be consistent with the preservation of life and property, to induce or force the rioters to disperse, before an attack is made upon them by which their lives may be endangered.

397.055 Liability for death or injury in dispersing riotous assembly. If, in the effort to suppress or disperse any unlawful riotous assembly, or to arrest or detain any of the persons engaged therein, any rioters or other persons present are killed or wounded, the officers and persons acting in their aid are guiltless thereof; but if any such officers, or persons acting in their aid are killed or wounded, all persons engaged in such assembly are guilty thereof.

397.060 General Staff; composition; term. There shall be a General Staff, which shall be an advisory board to the commander in chief in all military interests of the state, to be appointed by the Governor. It shall consist of the Adjutant General and six officers of the national guard above the grade of first lieutenant, to be selected for their knowledge of their arm of the service, four of whom shall be detailed from the line. All such details shall be for a period of two years, unless reappointed.

397.065 Composition when guard is in active federal service. (1) Whenever the President of the United States orders all or part of the Oregon National Guard into active federal service the Governor may appoint as members of the General Staff persons qualified in one of the following classifications:

(a) Inactive or retired officers of the Oregon National Guard.

(b) Officers of the Armed Forces of the United States who are stationed within the state.

(c) Regular Army officers who have retired and are citizens of the State of Oregon.

(2) The Adjutant General or acting Adjutant General of the State of Oregon shall be ex officio a member of the staff appointed under this section.

(3) Appointments made under this section may be terminated at the will of the commander in chief and shall be automatically vacated when the national guard reverts to state control following release from active federal service.

397.070 Vacancies. All General Staff details made to fill vacancies shall be for the unexpired term only and shall not create any vacancy in the organization from which they are made.

397.075 General Staff meetings; secretary's records. (1) The senior officer present shall preside at General Staff meetings.

(2) The General Staff shall meet at least quarterly in the Adjutant General's office, where all records shall be kept for the transaction of such business as may require their attention. Four members shall constitute a quorum to do business. They may adjourn to such time and place as is required by the performance of their duties.

(3) The secretary shall keep, in a book prepared for the purpose, an accurate record of all proceedings of the General Staff. He shall record all bills presented and allowed, a statement of all contracts for supplies entered into, and all rules and regulations adopted for the government of state troops. The book shall be open to inspection of the Governor or any committee of the legislature.

397.080 Power to make rules and regulations. The General Staff may prepare and promulgate all necessary rules and regulations for the organization, government, ar-

mament, equipment, instruction and compensation of the national guard and unorganized militia required by but not provided for by this chapter and ORS chapter 396, in conformity with the National Defense Act, including provisions for pay for attendance at drills or any other duly ordered military duty. Rules and regulations made by the General Staff in conformity with this chapter and ORS chapter 396 and not in conflict with the National Defense Act, when approved by the commander in chief, shall be in force from the date of their publication in general orders.

397.085 Powers concerning guard organization and location. (1) The General Staff may make such changes in the military organization of the national guard as are necessary to conform to the requirements of the National Defense Act and the Department of the Army. It may transfer, attach and consolidate or disband any companies or other organizations of the national guard mentioned or provided for in this chapter, for good and sufficient cause, or whenever in its judgment the efficiency of the present organization or of the state force will thereby be increased, when approved by the Secretary of the Army. It shall fix the location of the units and headquarters of the national guard.

(2) No organizations of the national guard, members of which are entitled to and have received compensation under the provisions of the National Defense Act, 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 such organization be reduced below the minimum prescribed by the President.

397.090 Powers concerning audits, bonds, procurement of supplies, and over military districts. The General Staff shall audit all claims and accounts of a military nature against the state, and contracts for military supplies or purchases shall be authorized and approved by it before being valid against the state. It shall, except as otherwise provided in this chapter, designate the amount of bonds required to be given with good and sufficient sureties, by all officers who have state or United States property or public money in their charge or possession, such bonds to be filed with the Adjutant General. It shall cause to be procured the uniforms, arms, equipment, supplies and camp and garrison equipage necessary for the use of the national guard or other state troops. It may divide the state into military districts, which may be changed as circumstances require.

397.095 Power concerning marksmanship awards. The General Staff, upon the approval of the commander in chief, when sufficient funds are available and in order to create greater interest in marksmanship throughout the state, is authorized through the quartermaster general to purchase such decorations, cups and trophies as may be deemed necessary.

397.100 State staff and state detachment; internal security section. (1) There shall be a state staff and state detachment which shall conform to that prescribed in tables of organization promulgated for the national guard by the United States Department of Defense or Department of the Army. It shall consist of officers and enlisted men of such grades and branches of the service as may be allocated to the State of Oregon by the Department of Defense or Department of the Army. When branches of the service are not prescribed in such allocations, such branches shall be designated by the General Staff in accordance with the requirements of the national guard.

(2) There shall be organized within the state staff and state detachment a section to be known as the internal security section. It shall be composed of such officers and enlisted men as are prescribed by the General Staff. The section shall be responsible for planning for the internal security of the state under directives issued by the Governor.

397.105 Commanding general; responsibilities. The senior general officer of the line shall command the Oregon National Guard. He shall be responsible for the recruitment, training of units, tactical and professional training of officers of the national guard in accordance with the standard of training provided for and required by the Federal Government and for the maintenance of the command at all times in accordance with the standard provided for and required by the Federal Government.

397.110 Adjutant General; appointment and tenure; qualifications. The Governor shall appoint one Adjutant General, of the rank of brigadier general, who shall be chief of staff, and who shall hold his office

until relieved according to the provisions of this chapter, or by reason of resignation, disability or for cause to be determined by a court-martial. No person shall be eligible to, or hold such office, who is not, at the time of his appointment, a member of the national guard, or national guard reserve, above the rank of first lieutenant, federally recognized as such, and who has not had at least six years' service in the national guard of this state as a commissioned officer.

397.115 Bond; traveling expenses. The Adjutant General shall give a bond of $5,000 to the state for the proper discharge of his duty. The bond shall be filed with the Secretary of State. The Adjutant General shall be reimbursed for his necessary traveling expenses.

397.120 Record of commissions; biennial report. (1) The Adjutant General shall attest and record all commissions issued by the Governor and keep a register of all commissioned officers, with dates of commission and all changes occurring in the commissioned forces.

(2) He shall, on or before November 1 of each year prior to the assembling of the state legislature, make a report to the commander in chief of the transactions, expenditures and condition of the national guard. The report shall include the report of the property officer.

397.125 General administrative duties. The Adjutant General shall cause to be prepared and issued to the different organizations of the national guard all necessary books and blanks for reports, records and returns, and general administration. He shall, at state expense, cause the military laws, military codes and rules and regulations in force to be printed, bound in proper form and distributed, one copy to each commissioned officer and one to each county judge. He shall procure all necessary textbooks of drills and instructions. He shall keep on file in his office all official bonds, the reports and returns of the troops and heads of military departments, and all other writings and papers which are required to be transmitted to and preserved at the general headquarters of the state militia.

397.130 Duty as quartermaster general and chief of ordnance; detail or employment of personnel. (1) In time of peace the Adjutant General shall perform the duties of quartermaster general and chief of ordnance.

(2) He shall detail such officers from the members of the national guard as may be necessary to assist him in the official duties of the Adjutant General's department, quartermaster corps and ordnance department and to assist the property and disbursing officer in the performance of his duties and shall employ such clerical and other forces as may be required. Persons so employed shall be paid such rates of compensation as may be authorized by the General Staff.

397.135 Duties relating to war veterans and war records and relics. (1) The Adjutant General shall keep all records of Oregon volunteers, commissioned or enlisted, for the war of the rebellion, Indian wars, Spanish-American war, world war and all other wars or insurrections, or organized militia called into the service of the United States, and all individual claims of citizens of Oregon for service rendered in those wars or insurrections. He shall assist all persons residing in Oregon having claims against the United States for pensions, bounty or back pay, where such claims have arisen out of or by reason of service in any of said wars or insurrections. To this end he shall cooperate with the agents or attorneys of claimants, shall advise upon legality of claims, furnish to claimants only all necessary certificates or certified abstracts from, and copies of, records and documents in his office, and shall in all practicable ways seek to secure speedy and just action upon all claims. Services under this section shall be performed without charge to the claimant.

(2) The Adjutant General shall establish and maintain as a part of his office a bureau of records of the services of the Oregon troops during said wars. He shall be the custodian of all records, relics, trophies, colors, standards and histories relating to such wars now in the possession of, or which may be acquired by, the State of Oregon. All such records, relics, trophies, colors, standards and histories shall be catalogued and arranged or filed for general reference and protection.

397.140 Enrollment of volunteers in Indian wars; proof of service; false swearing prohibited. (1) The Adjutant General shall enroll as a soldier of the particular Indian engagement, battle or war to which such

party is entitled, upon proof of service as provided in subsection (2), any male person now resident of Oregon, who makes proof to the satisfaction of the Adjutant General that such person served or participated in any manner as a volunteer in behalf of the State of Oregon, and within the boundaries of said state, in any skirmish, engagement, battle or war between the State of Oregon and any Indian people, tribe or tribes, and who was honorably released or discharged from such service, or who after such voluntary service was mustered into any state militia or other organized body which participated in any such skirmish, engagement, battle or war, and was honorably discharged therefrom.

(2) Any person entitled to be enrolled under subsection (1), may establish such fact by affidavits of himself and not less than two persons who shall state that they have personal knowledge of the fact of the service having been rendered in behalf of the State of Oregon, and within said state, by the party mentioned in said affidavits, in one or more skirmish, engagement, battle or war between the State of Oregon and any Indian people, tribe or tribes.

(3) Any person swearing falsely to such affidavit shall be deemed guilty of perjury and shall be punished accordingly.

397.145 Reports required by Secretary of the Army. The Adjutant General and other officers of the militia shall make such returns and reports to the Secretary of the Army, or to such officers as he may designate, at such times and in such form as the Secretary of the Army may from time to time prescribe.

397.150 Quartermaster general's powers and duties. (1) The quartermaster general shall keep a record of all means of transportation available for mobilizing the national guard. The transportation of all troops, civil employes, arms, accouterments, stores and other property and the appropriation for encampments shall be contracted for by him under direction of the commander in chief. Subject to approval of the General Staff, he may issue transportation at state expense to officers of the national guard when in attendance upon camps, maneuvers, military courts, target practice, small arms competitions, schools of instruction, boards of survey and examination, the annual convention of officers of the national guard, or on tours of inspection and instruction, and for national guard members when traveling solely on official business.

(2) He shall procure all ammunition and target material, and provide for procuring and fitting up target ranges and the details of target ranges as directed by the General Staff. The quartermaster general may contract for the purchase and transportation of supplies provided for in this section.

(3) He shall provide for procuring subsistence required for the national guard and unorganized militia, when called into active service for the state or when ordered on camp or field duty, and the appliances for cooking and serving the rations.

(4) He shall pay all accounts of the state for services of troops and civilians employed in actual service, on camp or field duty. He shall cause to be prepared vouchers and payrolls for all such accounts, which, when approved by the General Staff and the commander in chief, shall be filed with the Secretary of State, who shall thereupon draw his warrant on the State Treasurer for the gross amount of such accounts, which amount shall be placed to the credit of the quartermaster general.

(5) He shall keep in a book provided for the purpose an itemized account of all moneys placed to his credit and expended for military purposes, and shall file with this account the original of all vouchers and payrolls.

(6) He shall furnish the property officer with necessary office space for transaction of his work as property officer and shall also furnish this officer with necessary storage space for safekeeping of all United States and state property.

397.155 Property and disbursing officer; appointment; powers and duties; bond; compensation. (1) The Governor shall appoint, designate or detail, subject to approval of the Secretary of the Army, an officer of the national guard who shall be regarded as property and disbursing officer of the United States, and who shall also be the state property officer.

(2) The property officer shall receipt for, safely keep or disburse, and keep an account of all property and funds, United States or state, entrusted to him or provided for the national guard. He shall be accountable for and have the custody of all records, returns and papers pertaining to such property, and on or before November 1 each year prior to the assembling of the

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state legislature he shall render a report to the Adjutant General, giving a detailed statement of all military property belonging to the state. By order of the Adjutant General he will issue to an officer entitled to receive the same, such arms, accouterments, equipment, uniforms, other quartermaster, signal or ordnance stores, supplies for rifle practice, drill regulations, textbooks, office furniture and blanks as may be authorized, taking receipt and causing proper returns to be made of the same. He shall annually make a physical count of all property so as to make complete returns by December 31 and perform any other services prescribed by the National Defense Act.

(3) Before entering upon the performance of his duties as property officer he shall give a bond to the state in the sum of $5,000 for the faithful performance of his duties to the state. For his services he shall receive such compensation from the state as the General Staff shall direct, and when traveling in the performance of his official duties he shall be reimbursed for his actual necessary traveling expenses.

397.160 Duties of judge advocate general. The judge advocate general is charged with the supervision, care and arrangement of all matters relating to the administration of justice among military forces of the state. He shall diligently scrutinize and examine the proceedings of all courts-martial referred to him, and report thereon to the commander in chief for his information. Under orders of the commander in chief he shall act as judge advocate of any court-martial when the public interests require it. He shall be the legal adviser of the several staff departments upon all legal questions which may arise therein, and shall, whenever required by proper authority, furnish the commanders of troops and all other officers with his legal opinion upon cases of military jurisprudence affecting the official action of said officers. He shall prosecute on behalf of the State of Oregon, for fees or fines certified to him by the president or judge advocate of any court-martial.

397.165 Qualifications of officers. (1) Commissioned officers must be citizens of the United States, not less than 21 years and not more than 64 years of age. No person who has been dishonorably discharged from any military organization shall be commissioned as an officer in the national guard. No person shall be commissioned unless he possesses the additional requirements for the particular office to which he is to be commissioned.

(2) A general officer or colonel of the line at the time of his appointment must be an officer in active service of the national guard or national guard reserve and federally recognized as such, and must have served in the national guard of this state as a commissioned officer for a period of not less than six years.

(3) A lieutenant colonel or major of the line at the time of his appointment must be an officer in active service, and for two consecutive years immediately preceding his commission must have been in active service at the time of his appointment in the national guard as a commissioned officer, or if not in active service, must have had prior service of at least six years in the national guard as a commissioned officer. If no officer having the foregoing qualifications is available, such appointment shall be made in accordance with such rules as may be promulgated by the General Staff in conformity with the provisions of section 74 of the National Defense Act.

(4) A judge advocate must be a counselor of law of the Supreme Court of this state of at least three years' standing if of the grade of colonel or lieutenant colonel, or at least two years' standing if of the grade of major. Surgeons and assistant surgeons must be regularly licensed practitioners of the state. An engineer officer of the national guard must have been educated as a military or civil engineer. A signal officer must have knowledge of signaling, telegraphy, topography and map making. A chaplain must be a regularly ordained minister or priest.

397.170 Appointment and selection of officers. (1) All staff officers of the state staff and state detachment, divisions, brigades, regiments, battalions, squadrons and other units shall be appointed by the Governor upon the recommendation of their immediate commanding officers.

(2) All staff officers must have had previous military experience and shall hold their positions until they shall have reached the age of 64 years, unless retired prior to that time by reason of resignation, disability or for cause to be determined by a court-martial legally convened for that purpose. All vacancies among said officers shall be

filled by appointments from the officers of the militia of the state.

(3) The field officers of the line, except colonels, the lieutenants of the line, officers of the signal corps, the extra officers allowed the regiments, coast defense commands, battalions and squadrons for staff duty, surgeons and assistant surgeons of regiments, coast defense commands and of battalions and squadrons not part of regiments, assistant surgeons of separate troops, batteries or companies, veterinary surgeons and chaplains, shall be appointed by the Governor upon the recommendation of their immediate commanding officers.

(4) All officers of the national guard and the national guard reserve shall be appointed, commissioned, detailed, relieved, transferred, discharged and dismissed in such manner only as provided in this chapter and by the Secretary of the Army, and resignations of officers and revocations of commissions shall be in accordance with the provisions thereof.

397.175 Election of certain officers; authority of President; prerequisites to commission. (1) Colonels of regiments, coast defense commands and majors of separate battalions or squadrons, shall be elected, respectively, by the field officers and captains of the regiment, coast defense commands, separate battalions or squadrons. Captains of troops, batteries or companies shall be elected by the members of these organizations.

(2) When for the purpose of maintaining appropriate organizations, or to assist in instruction and training, the President of the United States assigns the national guard to divisions, brigades and other tactical units, the President of the United States may detail officers, either from the national guard or the regular army, to command such units.

(3) No person shall be commissioned as an officer of the Oregon National Guard unless, in addition to the requirements and qualifications of ORS 397.165 to 397.175, he has been selected from the classes described and provided in section 74 of the National Defense Act, has taken and subscribed the oath of office prescribed by said Act, and unless he has successfully passed such physical, moral and professional fitness test as and in the manner prescribed by the Governor of this state and the President of the United States.

397.180 Appointment of other officers. The Governor, upon the recommendation of the General Staff, shall appoint all officers not otherwise provided for in this chapter.

397.185 Residence of certain officers. All company, troop or battery officers must be residents of the station or the vicinity where the organization is located, unless such company, troop or battery is divided into more than one part stationed at different locations. Except when specially authorized by the General Staff and approved by the commander in chief, all commanders of units shall reside at the place or station designated by the General Staff and allocated by the Department of the Army as the headquarters of the unit.

397.190 Limitation on officer's right to resign. No officer shall be allowed to resign his commission who is under arrest, suspension or returned to any military court for delinquency. No resignation shall be accepted unless the officer shows proper receipt for all state and United States property and all public money for which he is responsible, and a certificate from his commanding officer that he is not indebted to the state or to the organization to which he belongs.

397.195 Resignation procedure; leaves. (1) Any officer resigning his commission must do so in writing addressed to the proper authority and transmit the same through his immediate commanding officer, who will make his indorsement thereon. The resignation takes effect when properly accepted and announced in orders.

(2) Officers desiring to leave their commands for more than seven days must procure a leave of absence from the proper authority. No officer shall leave the state without permission from the commander in chief.

397.200 Effect of officer's removal from state. Any officer, on removing from the state, shall be considered to have resigned and, unless he is delinquent or responsible for property or money, the vacancy shall be announced.

397.205 Discharge of officers; vacation of commissions; entry into national guard reserve. (1) At any time upon complaint and notice thereof to the officer complained against and a hearing at which such officer and his witnesses may appear and testify,

the moral character, capacity and general fitness for the service of any national guard officer may be determined by an efficiency board appointed by the Governor and consisting of three commissioned officers, senior in rank to the officer whose fitness for service is under investigation. If the board findings are unfavorable to such officer and are approved by the Governor, the officer shall be discharged.

(2) Commissions of officers of the national guard may also be vacated upon resignation or absence without leave for three months, upon the recommendation of an efficiency board or pursuant to sentence of court-martial.

(3) Officers of the national guard rendered surplus by the disbandment of their organization shall be placed in the national guard reserve. Officers may upon their own application be placed in such reserve.

397.210 Computation of length of service. In computing length of commissioned service under this chapter for the purpose of appointment, promotion or retirement, credit shall be given for service as a temporary officer in the Army, Navy or Marine Corps of the United States.

397.215 Enlistment qualifications; federal service credit. (1) The period of enlistment in the national guard shall be for such period as may be prescribed by Act of Congress. If no period is prescribed by Congress, the period shall be for two years, and the qualifications for enlistment shall be the same as those prescribed for admission to the Regular Army.

(2) For all purposes under this chapter, any officer or enlisted man of the national guard, who entered the United States service in the Spanish-American war, Philippine insurrection, Mexican border expedition, or the world war or who hereafter enters the United States service in the event of the national guard being called into the service of the United States, shall, on reentering the national guard, be entitled to credit for the time so served in the forces of the United States.

397.220 Persons not entitled to enlist. The enlistment in the national guard of persons of any of the following classes is prohibited:

(1) Insane or intoxicated persons.

(2) Deserters from the military or naval service of the United States or State of Oregon.

(3) Persons who have been convicted of felony and imprisoned in a penitentiary.

(4) Persons under 17 years of age and, for original enlistment, persons over 45 years of age.

(5) For first enlistment in time of peace, any person, except an Indian, who is not a citizen of the United States or Puerto Rico, or who has not made legal declaration of his intention to become a citizen of the United States, or who cannot read, speak and write the English language.

(6) A former soldier of the Regular Army, the organized militia or the national guard whose service during the last preceding term of enlistment was not honest and faithful or whose discharge certificate from the last preceding enlistment bears the notation "is not recommended for reenlistment."

(7) Such other persons prohibited by Acts of Congress.

397.225 Enlistment contract and oath. All men enlisting for service in the national guard shall sign the contract and oath prescribed by Act of Congress. If Congress does not prescribe a contract or oath for the national guard, all men enlisting for service in the national guard shall sign such contract and oath as may be prescribed by the General Staff.

397.230 Discharge from service; form of discharge. An enlisted man discharged from service in the national guard shall receive a discharge in writing in such form and with such classification as is prescribed for the Regular Army at the time of such discharge. In time of peace, discharges may be given prior to the expiration of the term of enlistment under such regulations as the President of the United States may prescribe for the national guard.

397.235 Unit drills and other assemblies. Each company, battery and other unit or detachment in the national guard shall assemble for drill and instructions, including indoor target practice, and shall participate in encampments, maneuvers and other exercises, including outdoor target practice, at such times and places and under such rules and regulations as are prescribed therefor in the National Defense Act, or may be ordered by the President or Secretary of the Army under the provisions of said Act, or

by the Governor. In addition to these drills the commanding officer of any organization may require the officers and enlisted men of his command to meet for ceremonies, parade, drill or instruction at such times and places as he may appoint.

397.240 Musters and inspections. There shall be an annual muster and inspection of each organization by some officer designated by the Secretary of the Army for such purpose. There shall also be a quarterly muster of each regiment, coast defense command, separate battalion, squadron, independent company, troop, battery, state staff and state detachment, or other unit by the commanding officer thereof or some officer designated by the Adjutant General, the last week of March, June, September and December of each year.

397.245 Annual camp; target practice. The Governor may cause the national guard, or such portion thereof as he may select, to perform 15 consecutive days of camp or field duty in each year, under such regulations as he may prescribe, and such instructors as he may appoint. He may also cause the national guard, or such portion thereof as he may select, to assemble at such time and place annually as he may direct, to perform at least three days' target practice or for the purpose of holding state competition. The course of instruction prescribed in small arm firing regulations promulgated by the Department of the Army for the national guard shall govern the target practice. The field artillery and coast artillery shall follow the course of instruction in target practice prescribed for their respective arms of the service by the Department of the Army.

397.250 Per diem and mileage of members of General Staff. The members of the General Staff, if required to be absent from their stations or business, shall be paid a per diem of $3 and $1 per day commutation of rations, while in actual attendance at the meetings of the staff and in going to and returning from the same, and five cents per mile or the actual cost of transportation, when such cost of transportation exceeds the allowance for mileage, for the distance necessarily traveled.

397.255 Pay and allowances. (1) While on camp or field duty under competent authorization from the Department of the Army and in going to and returning therefrom, the members of the national guard shall receive such pay and allowances as are allotted by the Federal Government.

(2) When ordered into actual service by the commander in chief under circumstances where federal funds are not provided for pay and allowances for such service, members of the national guard, while on such duty, shall be paid by the state the same pay and receive the same allowances as prescribed for their corresponding grades in the United States Army.

(3) Whenever required and whenever authorized by the General Staff and approved by the commander in chief, officers of the national guard may be ordered to active duty, and while on such duty shall receive the base pay of their corresponding grades in the United States Army. While on courts-martial, courts of inquiry or special duty requiring absence from their stations, commissioned officers will be entitled to pay of officers of like grades in the Regular Army.

(4) While on courts-martial, courts of inquiry or special duty requiring absence from their stations or business, enlisted men will be paid the pay of their corresponding grade in the Regular Army for the time actually under orders, and actual expenses for travel, meals and lodgings while on duty and absent from their stations.

397.260 Deductions from pay and allowances. All allowances and pay provided for in this chapter and ORS 292.342 and 292.344 for officers and enlisted men, except for per diem, mileage and expenses while traveling under orders without troops, shall be subject to be applied to the payment of penalties and fines imposed by military courts, and to the payment of any shortage of, or injury to, state or United States property or funds, for which such officers or enlisted men are responsible or accountable.

397.265 Call of organized reserve officers for national guard duty. The commanding general of the Oregon National Guard, by and with the consent and approval of the General Staff and of the commander in chief, may call officers of the organized reserve created by the National Defense Act, or of the national guard reserve created by ORS 397.020, for duty with the national guard, when in the discretion of the commanding general and the General Staff and the commander in chief such services are required in connection with camps of field instruction or other military duty. When so

called, such officers shall be considered in the same status as to pay and allowances as officers of the national guard.

397.270 Mileage allowance. All officers and enlisted men on courts-martial, courts of inquiry or special duty requiring absence from their stations on business by order of the commander in chief, brigade or regimental commander, or president of a military court, shall, except when accompanying troops, receive five cents per mile from their place of residence to their posts of duty and return, or the actual cost of transportation when such cost of transportation exceeds the allowance for mileage.

397.275 Officers' clothing allowance; equipment and clothing of enlisted men. (1) All officers of the national guard shall receive from the state military fund annually the sum of $100 to assist in uniforming and equipping themselves, but not until they have served as such a calendar year and have furnished satisfactory evidence to the Adjutant General that they are properly uniformed and equipped. Any officer severing his connection with the national guard for any reason, after having served one year, shall be entitled to a part of the allowance for uniform and equipment made under this section proportionate to the time served.

(2) Every noncommissioned officer and private shall be uniformed, armed and equipped by the state or the United States.

397.280 Relief of injured guardsmen and dependents of deceased guardsmen; temporary allowances. (1) If any officer or enlisted man of the national guard is wounded, injured or otherwise disabled, or is killed or dies of wounds or injuries received while doing military duty under orders of competent authority and not as the result of his own misconduct, he, his widow, children or any dependent relative, shall receive from the state such just and reasonable relief as the legislature deems proper.

(2) In all cases in which any officer or enlisted man of the national guard is wounded, injured or otherwise disabled, or is killed or dies of wounds or injuries received while doing military duty under orders of competent authority and not as the result of his own misconduct, he, his widow, children or any dependent relative, upon the investigation, determination and certification of the General Staff to the Secretary of State, shall receive such temporary compensation from the State of Oregon, out of the funds appropriated for the maintenance of the national guard, as may be determined by the General Staff, in no case to exceed the rates provided by ORS 656.202, until the next regular session of the legislature.

397.285 Failure to respond to call to active service. Every member of the enrolled militia ordered into actual service by competent authority, or who volunteers for service, who does not appear at the time and place designated by the officer authorized or directed to make the call, or who does not produce a sworn certificate evidencing disability from a physician in good standing, shall be taken as a deserter and dealt with as prescribed in the Articles of War of the United States, or the articles for the government of the United States Navy.

397.290 Members of national guard exempt from military and road tax and service on posse comitatus. National guard members are exempt from all military or road tax and service on posse comitatus while they continue to be active members. The Adjutant General shall issue them a certificate as to their exemptions under this section and subsection (7) of ORS 10.040.

397.295 Nonliability of militiamen for official acts; costs. (1) Members of the militia ordered into actual service of the state by any proper authority shall not be liable civilly or criminally for any act done by them while on duty.

(2) When a suit or proceedings is commenced in any court, by any person against any officer of the militia for any act done by such officer in his official capacity, in the discharge of any duty under this chapter or ORS chapter 396, or against any person acting under authority or order of any such officer, or by virtue of any warrant issued by him pursuant to law, the defendant may require the person prosecuting or instituting the suit or proceeding to file security for the payment of costs that may be awarded to the defendant therein. The defendant in all such cases may make a general denial and give special matter in evidence. In case the plaintiff is nonsuited or a verdict or judgment is rendered against him, the defendant shall recover treble costs.

397.300 Freedom from civil arrest; right of way in streets; free passage through tollgates. (1) No person belonging to the military forces of this state shall be arrested on

any civil process while going to, remaining at, or returning from any place which he may be required to attend for military duty.

(2) Any portion of the national guard or unorganized militia parading or performing any duty according to law shall have the right of way in any street or highway through which it may pass; however, the carriage of the United States mails, the legitimate functions of the police, and the progress and operation of fire engines and fire departments are not to be interfered with thereby.

(3) Any person belonging to the military forces of the State of Oregon going to, or returning from any encampment, which he may be required by law or order to attend, shall, together with his conveyance and the military property of the state, be allowed to pass free through all tollgates, and over all bridges and ferries. [Amended by 1953 c.160 §3]

397.305 Exemption of arms, etc., from seizure. The uniform, arms, equipment and horses used in the service by each officer and soldier of the national guard shall be exempt from all suits, distresses, executions or sales for debts or for the payment of taxes.

397.310 Privileged military reports and communications. The reports and communications of all officers and members of the national guard in the line of their military duty are privileged communications and shall not be competent evidence against the writer in any civil or criminal action in the courts of this state. In case any suit or action is brought against any officer or member of the national guard because of such reports or communications, the judge advocate or the Attorney General of this state, or both of them, at the direction of the Governor, shall appear in behalf of such officer or member of the national guard and defend the suit or action without cost to him.

397.315 Retired list; rights on retirement. (1) All officers and enlisted men who have served 10 years in the Oregon National Guard, upon honorable retirement from service shall be carried on a roll maintained in the office of the Adjutant General. The roll shall be designated as the Oregon National Guard retired list. They shall be entitled to wear on occasions of ceremony the uniform of the highest rank which they held.

(2) The officers so carried on such roll may be eligible for detail or appointed by the commander in chief, if such detail is without prejudice to other officers and permissible under the National Defense Act. When so detailed or appointed, they shall be considered as of the rank to which they have been detailed or appointed, which rank they shall hold during the period of such detail or appointment. In case of a second retirement from active service, if the rank held by them at the time is higher than the one held by them on their first retirement from active service, they shall be entered in such list as of the highest rank held by them. No officer whose name appears on the retired list is entitled to receive any pay or emolument whatever from the state during the time he remains on said list; and in case he is reappointed, recommissioned or detailed therefrom, he is entitled to the pay and allowance provided by law for officers of the rank to which he may be detailed or appointed.

397.320 Retirement for age or disability. Any officer or enlisted man who has reached the age of 64 years shall be placed upon the retired list by order of the commander in chief. Any commissioned officer who becomes disabled and therefore incapable of performing the duties of his office shall, upon recommendation of a medical board, be withdrawn from active service and command and placed on the retired list.

397.325 National guard association. All commissioned officers of the national guard on the active or retired list, and all honorably discharged officers of the national guard, may organize themselves into an association, the name of which shall be the National Guard Association of the State of Oregon. The association may adopt bylaws not inconsistent with the statutes of this state and alter and amend the same. They may submit to the General Staff such petitions, recommendations and resolutions as in their judgment may be of benefit to the military interest of the state.

397.330 and 397.335 [Reserved for expansion]

397.340 Authority to administer certain oaths and affirmations. Oaths or affirmations required in any matter connected with the military service may be administered by any duly commissioned officer or other officer authorized to administer oaths under the laws of the state, and no charge shall be made for the same.

397.345 Unmilitary behavior; punishment. Any officer or enlisted man who disobeys the order of his superior, uses reproachful or abusive language to his superior, or misbehaves or demeans himself in any unmilitary manner while under orders, shall be placed under arrest; if an enlisted man, he must be disarmed and put under guard and tried and punished as a court-martial shall direct.

397.350 Repossession of military property by state. (1) When the commander in chief orders the return to the state of any arms, equipments, military stores, or other military property belonging to the state, such arms and military property shall be immediately delivered to the officer authorized in such order to receive it, he receipting for the same and describing their condition in such receipts. If the property mentioned in such order is not promptly delivered as directed, the officer named in such order may take immediate possession of the same in the the name of the state.

(2) No person shall resist such officer in the performance of this duty.

397.355 Interruption of guardsman in performance of duty prohibited. If any person interrupts or molests or insults by abusive words or behavior any officer or enlisted man while in the performance of military duty, he must be at once put under guard, and kept at the discretion of the commanding officer of the force for a period not exceeding 24 hours, and then may be turned over to the civil authorities to be tried for disorderly conduct.

397.360 Unauthorized entry on grounds designated for military uses. The commanding officer of any ceremonies, parade, review or drill, or in command of any rendezvous or encampment, shall cause the ground selected for that purpose to be marked or designated so as not to obstruct the passage of travelers on any public highway. If any person, during the occupation of such ground for military purposes, enters upon such ground without the permission of the officer commanding, he may be put and kept under guard, by the direction of such commander, for a period not exceeding 24 hours.

397.365 Unlawful disposition of equipment; unauthorized wearing of uniform; justice court jurisdiction. (1) No person shall secrete, sell, dispose of, offer for sale, or in any manner pledge or retain, or refuse to deliver to any officer entitled to take possession thereof, any uniform, arms or equipment, or any part or parts thereof, or other state property, which has been procured under the provisions of this chapter, or any United States property for which the state is responsible.

(2) No member of the national guard shall wear, when not on duty, any such uniform or equipment, or any part or parts thereof, without the permission of his commanding officer.

397.370 Control of armories; care of property; control of Camp Clatsop. (1) The General Staff shall have control of armories and shall prescribe the regulations governing the same. All state and United States property must, as far as possible, be kept in them, and the commanders of troops using the armories will be held responsible for the safekeeping and proper care of such property and its protection against damage, misappropriation or loss. Armories, while occupied by troops, shall be considered military posts under the exclusive control and jurisdiction of the officer commanding the post. The General Staff shall make provisions for the insuring of all state and United States property.

(2) The portions of the military reservation known as Camp Clatsop, purchased for the State of Oregon, shall be under the control of the state military authorities.

397.371 Definition of "armory" for ORS 397.371 to 397.374. The word "armory" as used in ORS 397.371 to 397.374 shall be understood to mean armory building or buildings and the grounds on which the same are situated, and in addition real property acquired or held for contemplated armory use. [1953 c.340 §1]

397.372 Sale or exchange of state armory property. (1) The General Staff of the Oregon National Guard hereby is authorized to sell any state-owned armory which is found to have become unsuitable for armory purposes or to exchange the same for other real property so located as to serve conveniently the unit or units of the national guard using or intending to use such armory. Determination of unsuitability of property for armory purposes and the advisability or necessity of sale or exchange of such property may be made by a majority of the General Staff.

(2) Title to any property so sold or exchanged shall be given in the name of the

State of Oregon, and the deed conveying the same shall be signed by the Adjutant General of the Oregon National Guard. Title to property received in exchange for armory property shall be taken in the name of the State of Oregon, and the control of such property shall be vested in the General Staff.

(3) Armory property owned jointly by the State of Oregon and the United States shall, with appropriate federal authorization, be subject to the provisions of ORS 397.371 to 397.374.

(4) Prior to such sale or other disposition of armory property as is herein authorized, the General Staff shall submit to the Legislative Assembly if in regular session or to the Emergency Board when the Legislature is not in regular session, the proposed sale or other disposition of armory property, for approval. [1953 c.340 §§2,3,5,6]

397.373 Applicability of laws governing sales and exchanges of state property generally. The sale or other disposition, as herein authorized, of armory property which the State of Oregon owns or in which it has an equitable interest or estate, shall be subject to applicable provisions of the laws of this state governing the sale or other disposition of state-owned property. [1953 c.340 §4]

397.374 Disposition of moneys received from sale of armory property. Moneys received by the State of Oregon in payment for armory property sold shall be deposited in the General Fund in the State Treasury to the credit of the Oregon National Guard, and the same hereby are appropriated for use by the General Staff for the acquisition, construction and equipment of armory properties to replace respectively those sold, and to the extent of the payment therefor received in each instance. [1953 c.340 §6]

397.375 Armory construction by county court. Each county court may erect armories, safe, suitable and of sufficient size for the drill of a company, battalion or large unit, in any county where one or more companies are fully organized under the laws of Oregon. If two or more companies are organized in one city, the companies shall each have the use of said armory. The purchasing of suitable locations and construction of such armories shall be upon the recommendation and under the supervision of the General Staff. The General Staff shall adopt such regulations for the maintenance and control of said armories as may be necessary, subject to the approval of the commander in chief.

397.380 Location of new armories; local armory tax; title to armories. Armories shall be constructed in such cities or towns not already provided with armories, where one or more companies of the national guard fully organized under the laws of Oregon may be located, and where, in the judgment of the General Staff, it will be most convenient to the companies, and where most necessary. But no part of the moneys hereby appropriated shall be available or paid out for the construction of any armory in any city or town, except upon the condition that the county court, city council, or the citizens in such locality, shall appropriate funds and pay one-half of the cost of such armory and grounds. The county courts of the several counties and the city councils of the various cities in the state are authorized to levy taxes for the purpose of raising funds for the construction and erection of armories as provided for in this section and ORS 397.375. The money hereby appropriated shall be available for use in the several counties of the state in the order in which such counties make application therefor and provide for the payment of half the expenses of such armories and grounds; provided, however, that all title to said armory and grounds upon which the same are situated shall vest in the State of Oregon.

397.383 Appropriation of moneys for construction, maintenance, alteration or equipping of armories. (1) There hereby is appropriated out of the General Fund in the State Treasury to the Oregon National Guard the sum of $200,000 for the construction, maintenance, alteration or equipping of armories in cooperation with the Federal Government. Such appropriation together with any moneys received by the State of Oregon or contributed by the Federal Government for such purposes shall upon receipt by the State Treasurer be placed to the credit of an account in the General Fund for use in the construction, maintenance, alteration or equipping of armories within this state by the Oregon National Guard, and for such purposes such funds hereby are appropriated.

(2) There hereby is appropriated out of the General Fund the sum of $200,000 for the construction, maintenance, alteration and equipping of armories in cooperation with the Federal Government. Such appro-

priation together with any moneys received by the State of Oregon or contributed by the Federal Government for such purposes shall upon receipt by the State Treasurer be placed to the credit of an account in the General Fund for use in the construction, maintenance, alteration and equipping of armories within this state by the Oregon National Guard, and for such purposes such funds hereby are appropriated. [1953 c.289 §2; subsection (2) enacted as 1955 c.351 §2]

397.385 Lease of property for military use. The General Staff shall be deemed a body corporate and shall have the powers of a corporation for the purpose of leasing or renting buildings or parts thereof, grounds, premises, offices, rooms, warehouses, garages, shops and storage areas for the use of the General Staff or any unit of the Oregon National Guard. For such purpose the General Staff may make and execute contracts and agreements approved as to legal form and sufficiency by the Attorney General.

397.390 Payment for use of property; termination of liability. Rentals, costs and charges in connection with the use of property authorized under ORS 397.385 shall be paid from funds appropriated by law or otherwise provided for the use of the Oregon National Guard and shall not be general obligations of the State of Oregon. If the Oregon National Guard is abolished, the agreements, contracts and commitments authorized by ORS 397.385 or validated by statute shall terminate upon the effective date of the Act abolishing it.

397.395 Organization, equipment, training and discipline of national guard. The organization, armament, equipment, training and discipline of the national guard, and the Oregon unorganized militia, when called into service, shall be as prescribed by the General Staff, but must be the same as that which is or may be prescribed for the regular and volunteer armies of the United States, or by the President or Secretary of the Army.

397.400 Flags, markers and guidons. The national flag, regimental markers and guidons carried by any organization shall be the same as prescribed for the same arm in the United States Army, with such variations as the Department of the Army may prescribe.

397.405 Sales of obsolete equipment; expenditure of proceeds. The General Staff may sell any obsolete ordnance, quartermaster property, equipage, other military stores, naval property, and any animals acquired by the Oregon National Guard, and may expend, for military purposes, all funds derived from such sales. All such expenditures shall be covered by duly accomplished vouchers and shall be audited by the General Staff.

397.410 Rental and routine expenses of headquarters and Adjutant General's office. Headquarters of divisions, brigades, regiments and separate battalions shall be allowed for rental and routine expenses such sum as the General Staff may determine to be reasonable and proper. Expenses of the Adjutant General's office and headquarters will be certified to by the Adjutant General or the headquarters commander and audited by the General Staff.

397.415 Drawing of warrants. Unless otherwise specially provided in this chapter, the Secretary of State shall draw warrants on the State Treasury for all duty authenticated bills, audited by the General Staff and approved by the commander in chief, in favor of the persons to whom the state is indebted for military purposes.

397.420 Annual allowance of state moneys to national guard units. (1) There shall be paid each unit authorized and established under the National Defense Act or by the General Staff, such amount within funds available as the General Staff may determine, not in excess of $2,000 per annum, for care of state and federal property or other necessary military expenses, including rent of armories, as follows: Upon the certificate of the Adjutant General that a company, troop or battery, other units or corps, is fully organized and has complied with the laws and regulations during the preceding three months, the Secretary of State shall, once in each quarter, commencing April 1, draw his warrant on the treasurer, to the commander designated in said certificate, for a sum amounting to one-fourth of said yearly allowance, or such proportion of same as may be certified to be due.

(2) Whenever any line company is divided into two separate parts and stationed at different localities under authority of the General Staff, the sum of $300 additional shall be paid annually to such line company,

and the total sum shall be divided and apportioned between the two parts by the General Staff, and the Secretary of State shall draw his warrants accordingly.

397.425 Attorney General as military legal adviser. The Attorney General, when so required of him, shall give the General Staff his opinion upon all legal questions pertaining to the military interests of the state.

397.430 Military Department Contingent Account. (1) The moneys received by the Adjutant General under ORS 397.595 and the moneys received by the Oregon National Guard from other miscellaneous sources shall be deposited in the State Treasury and be credited to an account in the General Fund to be known as the Military Department Contingent Account, which account hereby is established. The moneys in the Military Department Contingent Account hereby are appropriated continuously for the use of the Oregon National Guard. The provisions of ORS 291.232 to 291.260 do not apply to expenditures from the Military Department Contingent Account.

(2) On the first day of each month the Secretary of State shall determine whether the unexpended balance to the credit of the Military Department Contingent Account as of the close of business on the last day of the preceding calendar month exceeds $15,000. If the unexpended balance exceeds $15,000, the Secretary of State shall cause to be transferred the amount in excess of $15,000 to the General Fund to be available for general governmental expenses. [1955 c.350 §2]

397.435 Receipt and disposition of certain federal moneys. The Adjutant General may accept, receive and receipt for moneys made available from the Federal Government in connection with maintenance service contracts for federal property used by the state. All federal moneys received by the Adjutant General under this section shall be deposited in the State Treasury in the General Fund to be available for general governmental expenses. [1955 c.350 §3]

397.440 National Guard Revolving Fund. (1) A revolving fund in the sum of $10,000 for the use of the Oregon National Guard hereby is established for the purpose of providing funds to pay the expenses of the Oregon National Guard where it is desirable and necessary to make immediate cash payments in order to obtain trade discounts and for travel, postage, expressage, emergency advances and items which are payable immediately in cash upon presentation. The revolving fund shall be deposited with the State Treasurer. The Adjutant General, or the person designated by him in writing filed with the Secretary of State, may draw checks or orders upon the State Treasurer payable from the revolving fund in making disbursements for the purposes listed in this subsection.

(2) In order to reimburse the revolving fund, the Adjutant General, or the person designated by him, from time to time shall file with the Secretary of State verified vouchers covering disbursements from the revolving fund, accompanied by an itemized statement showing in detail the names of the persons to whom and the purposes for which such disbursements were made from the revolving fund pursuant to law. The verified vouchers covering such disbursements shall bear the approval of the Adjutant General or the person designated by him and shall indicate the fund or account from which the claim is to be paid. The Secretary of State shall issue his warrants on the State Treasurer, payable out of the fund or account indicated and available pursuant to law for the payment of such itemized expenses of the Oregon National Guard, in favor of the Adjutant General or the person designated by him for the amount of the vouchers and statement; but the total of the revolving fund shall never exceed $10,000. The warrants shall be deposited with the State Treasurer to be credited to the revolving fund. [1955 c.350 §4]

397.445 to 397.500 [Reserved for expansion]

MILITARY JUSTICE

397.505 Courts-martial; composition; jurisdictions; procedure. Except in organizations in the service of the United States, courts-martial in the national guard shall be of three kinds: General, special and summary. They shall be constituted like and have cognizance of the same subjects, and possess like powers, except as to punishment, as similar courts provided for by the laws and regulations governing the Army of the United States. The proceedings of courts-martial of the national guard shall follow the forms and modes of procedure prescribed for said similar courts.

397.510 General courts-martial; convocation; punishments imposable. General courts-martial may be convened by orders of the President or of the Governor. Such courts shall have power to impose fines not exceeding $200, sentence to forfeiture of pay and allowance, reprimand, dismiss or dishonorably discharged from the service, and reduce noncommissioned officers to ranks. Any two or more of such punishments may be combined in the sentence imposed by such courts.

397.515 Special courts-martial; appointment; punishments imposable. (1) The commanding officer of each garrison, fort, post, camp or other place, corps, brigade, regiment, detached battalion or other detached command, may appoint special courts-martial for his command; but such special courts-martial may in any case be appointed by superior authority when by the latter deemed desirable.

(2) Except that they have no power to try a commissioned officer or to impose a fine exceeding $100, special courts-martial shall have the same powers of punishment as do general courts-martial.

397.520 Summary courts; appointment; jurisdiction; procedure. The commanding officer of each garrison, fort, post, camp or other place, brigade, regiment, corps, detached battalion, company or other detachment of the national guard may appoint for such place or command a summary court or courts. A summary court shall consist of one officer, who shall have the power to administer oaths and to try the enlisted men of such place or command for breaches of discipline and violations of laws governing such organizations. When satisfied of the guilt of such soldier, a summary court may impose fines not exceeding $25 for any single offense, may sentence noncommissioned officers to reduction to the ranks, or may sentence to forfeiture of pay and allowances. The proceedings of the summary court shall be informal, and its minutes shall be the same as prescribed for summary courts of the Army of the United States.

397.525 Courts of inquiry; composition; jurisdiction. A court of inquiry to examine into the nature of any transaction or accusation or imputation against any officer or soldier of the national guard may be ordered by the President of the United States, the Governor of this state, or by any commanding officer of the national guard. A court of inquiry shall not be ordered by any commanding officer except upon the request of the officer or soldier whose conduct is to be inquired into. The court shall be constituted like and have cognizance of the same subjects and possess like powers as similar courts provided for by the laws and regulations governing the Army of the United States. The proceedings of courts of inquiry of the national guard shall follow the forms and modes of procedure prescribed for such similar courts. A court of inquiry and the recorder thereof shall have the same power to summon and examine witnesses as is given to courts-martial of the national guard and the trial judge advocate thereof.

397.530 Jurisdiction of courts-martial. Courts-martial for the national guard shall have power to try all officers and enlisted men of the national guard, all officers and enlisted men of the national guard reserve, whenever they are called out for service or are actually engaged in training with the national guard, and all other persons subject to the military laws of this state for any crime or offense made punishable by the military laws of the United States or of this state. Special courts-martial and summary courts-martial shall not have the power to try a commissioned officer.

397.535 Extension of authority during active service; application of Articles of War; death penalty. (1) The jurisdiction and procedure of all military courts when the national guard or unorganized militia, or any part thereof, is on duty under or pursuant to the order of the commander in chief, or is on duty or ordered to assemble for duty in time of war, insurrection, invasion, public danger, or to aid the civil authorities on account of any breach of the peace, tumult, riot, resistance to process of this state, or imminent danger thereof or for any other cause, shall be extended to the trial of all offenses. The Articles of War governing the Army of the United States, so far as not inconsistent with the military code and laws of this state, and regulations issued thereunder, shall be in force and regarded as a part of the military code and laws of this state, until such forces are duly relieved from such duty.

(2) As to offenses committed when the Articles of War are so in force, military courts shall possess, in addition to jurisdic-

tion and power of sentence and punishment vested in them in this chapter, all additional jurisdiction and power of sentence and punishment exercisable by like courts under such Articles of War or the regulations or laws governing the United States Army, or the customs and usages thereof. No punishment under such rules and articles, which extends to the infliction of a death penalty, shall in any case be inflicted, except in time of actual war, invasion or insurrection, declared by proclamation by the Governor to exist, and then only after the approval of the Governor of the sentence inflicting such punishment.

397.540 Presumption of jurisdiction. The jurisdiction of the court and boards established by ORS 397.205, 397.505 and 397.525 shall be presumed. The burden of proof shall rest on any person seeking to oust such court or boards of jurisdiction in any action or proceeding.

397.545 Officers competent to serve on military courts. All officers of the national guard and such officers of the national guard reserve as are detailed for service or engaged in training with the national guard by orders of the Governor of this state or President of the United States are competent to serve as members of a military court of this state.

397.550 Liability of persons serving on court or acting under its authority. No action or proceeding shall be prosecuted or maintained against a member of a military court, or officer, or persons acting under its authority or reviewing its proceedings, on account of the approval, or imposition, or execution of any sentence of any warrant, writ, execution, process or mandate of a military court.

397.555 Presidents of courts-martial; uniform; sessions of courts; vacancies. (1) The president of every military court shall be the member of the court highest in grade and rank. Whenever military courts consist of one person he shall be deemed the president thereof, within the meaning of this chapter. In the absence of a president of a military court, the senior officer present shall preside with all the powers of president.

(2) All members of such court shall, when on duty, be in uniform. The court may sit without regard to hours, and may adjourn from time to time as may be necessary for the transaction of business.

(3) Any vacancy in a military court may be filled by the officer who ordered the court, or his successor in command.

397.560 Appointment of trial judge advocate and defense counsel. For each general or special court-martial the authority appointing the court shall appoint a trial judge advocate and a defense counsel, and for each general court-martial one or more assistant trial judge advocates and one or more assistant defense counsels, when necessary.

397.565 Warrants and subpenas; execution of process. (1) Presidents of courts-martial shall have power to issue warrants to arrest accused persons and to bring them before the court for trial whenever such persons have disobeyed an order in writing from the convening authority to appear before such court and a copy of the charges was delivered to the accused with such order, to issue subpenas and subpenas duces tecum, to enforce by attachment attendance of witnesses and the production of books and papers and to sentence for a refusal to be sworn or to answer as provided in actions before civil courts.

(2) All processes and sentences of courts-martial and courts of inquiry shall be executed by such civil officers as may be prescribed by the laws of this state. If no such officer is prescribed such processes and sentences shall be executed by a United States marshal or his deputy, who shall make return thereof to the officer issuing or imposing same.

397.570 Marshals. The president of a court-martial or court of inquiry may appoint by warrant under his official signature, and at any time remove, one or more marshals. Each marshal shall perform the usual duties of such marshal, execute any process, mandate or order issued by such president or court, and perform all acts and duties by this chapter imposed on or authorized to be performed by a sheriff, marshal or constable. The marshal shall receive such compensation for such service as the General Staff may provide.

397.575 Proceedings on failure of accused to appear. If the accused is not present at the time and place appointed for his trial, the president of the court may issue an order to compel his attendance, to be

served in the same manner and by the same officers as bench warrants in civil cases in courts of record, or by the marshal of the court; or, the court may enter a plea of not guilty for the accused and proceed with the trial in his absence if satisfactory evidence is submitted to the court, and noted in or attached to its proceedings, that the accused has been duly notified of the time and place of his trial.

397.580 Dismissal or dishonorable discharge. No sentence of dismissal from the service or dishonorable discharge imposed by a national guard court-martial shall be executed until approved by the Governor.

397.585 Place of confinement; processes and mandates; duty to receive prisoners; fees. (1) Military courts are empowered to sentence to confinement in any guardhouse or military jail, or any city or county jail within the state and to issue all processes and mandates, including writs and warrants necessary and proper to carry into full effect the powers vested in said courts. Such processes and mandates may be directed to the marshals of the court, the sheriff of any county, and the constables or peace officers of any city, and shall be in such form as may be prescribed by the General Staff in the rules and regulations issued by them under this chapter, or by the military laws of the United States, or rules and regulations issued thereunder. All officers, to whom such process or mandate may be so directed shall execute the same and make return of their acts thereunder according to the requirements of the same.

(2) The keepers and wardens of all city and county jails shall receive persons committed by process or mandate of a military court and confine them in the manner prescribed by law.

(3) Except as otherwise specifically provided in this chapter, no fees or charges of any nature shall be demanded or required to be paid by the state, or any military court or member thereof, to any public officer or person for receiving, executing or returning any writ, order, process or mandate issued under this section, or for any service in connection therewith or for receiving or confining a person in jail or custody thereunder.

397.590 Confinement on nonpayment of fine; rate. All courts-martial shall have power to sentence to confinement in lieu of nonpayment of fines authorized to be imposed. The sentence of confinement shall not exceed one day for each dollar of fine authorized.

397.595 Fines and penalties; record of collection; disposition. Fines may be paid to the president of the court, or a marshal thereof. In summary court the president shall record the fact in the records of the court. All fines and penalties imposed by a military court upon any of the officers or enlisted men shall be turned over by the president of the court within 30 days from the collection thereof to the Adjutant General. [Amended by 1955 c.350 §1]

397.600 Record of proceedings; procedure after sentence. The records of the proceedings and sentence of every court-martial shall, without delay, be delivered to the officer ordering the court or his successor in command, who shall approve or disapprove thereof. The sentence of the court, except summary court, shall be published in order approved or modified.

397.605 Secrecy of proceedings and votes; announcement of acquittal. The members and judge advocate of military courts, except summary courts, shall keep secret the proceedings and sentences of the court until the same have been approved or disapproved by the proper officer, and shall always keep secret the vote and opinion of each member of the court, unless required to give evidence thereof by a court of justice. Whenever the court has acquitted the accused upon all specifications and charges, the court shall at once announce such result in open court.

397.610 Contempt of military court; punishment. Any person who is guilty of disorderly, contemptuous or insolent behavior in, or uses any insulting or contemptuous or indecorous language or expression to or before any military court, or member of such court, in open court, tending to interrupt its proceedings or to impair the respect due to its authority, or who commits any breach of the peace, or makes any noise or other disturbance directly tending to interrupt its proceedings, may be summarily, by and before the court, found guilty of contempt and committed by warrant under the hand of the president of the court to the jail of the city or county in which such court sits, there to remain without bail in close

confinement for a time not exceeding 10 days.

397.615 Neglect or refusal of civilian to obey subpena; justice court jurisdiction. No person not subject to military law who has been duly subpenaed to appear as a witness before any military court, commission, court of inquiry or board, or before any officer, military or civil, designated to take a deposition to be read in evidence before such court, commission, court of inquiry or board, shall wilfully neglect or refuse to appear or refuse to qualify as a witness or to testify or to produce documentary evidence which such person may have been legally subpenaed to produce.

397.620 to 397.980 [Reserved for expansion]

PENALTIES

397.990 Penalties. (1) Any person violating subsection (2) of ORS 397.350 shall be deemed guilty of a misdemeanor punishable by imprisonment in the county jail not to exceed six months and shall be subject to a fine not to exceed $500. The fine shall be recovered by an action brought by the district attorney in the name of the state and shall be paid into the treasury as a part of the military fund.

(2) Violation of any part of ORS 397.365 is punishable, upon conviction, by imprisonment in the county jail for not less than 10 days nor more than six months, or by a fine of not less than $10 nor more than $200, or both. Justice courts shall have jurisdiction of the offenses defined in ORS 397.365.

(3) Violation of ORS 397.615 is punishable, upon conviction, by a fine of not less than $25 nor more than $100 or by imprisonment in the county jail for not more than three months, or both. Justice courts shall have jurisdiction of the offense defined in this section.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on October 15, 1955.

Sam R. Haley
Legislative Counsel

CHAPTER 398

[Reserved for expansion]