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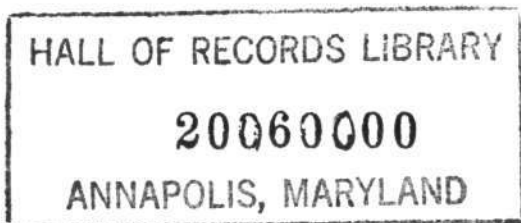
# THE MARYLAND STATE CONSTITUTION

## A Reference Guide

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Dan Friedman

Foreword by  
Judge Robert L. Karwacki



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MARYLAND STATE ARCHIVES

## Militia and Military Affairs

Article IX is the principal location for provisions concerning the state militia, but militia provisions are not confined to Article IX. Other state militia provisions may be found in the following locations. The *Maryland Declaration of Rights* in Articles 28 through 32, recognizes the importance of the state militia as “the proper and natural defence of a free Government,”<sup>1</sup> and asserts limitations upon its use.<sup>2</sup> Similarly, in Article II of the constitution, the Governor is made the Commander in Chief of the Militia,<sup>3</sup> and given the power to appoint<sup>4</sup> and remove its officers.<sup>5</sup>

### SECTION 1

**Powers of General Assembly.** The General Assembly shall make, from time to time, such provision for organizing, equipping and disciplining the Militia, as the exigency may require, and pass such Laws to promote Volunteer Militia organizations as may afford them effectual encouragement.

Article IX, §1 assigns to the General Assembly the responsibility for adopting legislation regulating the state militia. Those laws are compiled at MD. ANN. CODE, Art. 65.

This provision was initially adopted in the state constitution of 1851.<sup>6</sup> In 1864, during the height of the Civil War, the Union-controlled state constitutional convention revised this provision substantially. The rewritten provision, consistent with the war needs of the Union and its adherents, gave as the sole purposes of the militia “to repel invasion and suppress insurrection,” and that the

state militia must be used in a manner “not incompatible with the Constitution and laws of the United States. . .”<sup>7</sup> The 1867 constitutional convention removed these obvious vestiges of the Civil War and simplified the language substantially.<sup>8</sup> The provision is unchanged since its adoption in 1867.

### SECTION 2

**Adjutant-General.** There shall be an Adjutant General, appointed by the Governor, by and with the advice and consent of the Senate. He shall hold his office until the appointment and qualification of his successor, or until removed in pursuance of the sentence of a Court Martial. He shall perform such duties, and receive such compensation, or emoluments, as are now, or may be prescribed by Law. He shall discharge the duties of his office at the seat of Government, unless absent, under orders, on duty; and no other officer of the General Staff of the Militia shall receive salary or pay, except when on service, and mustered in with troops.

The Adjutant General is the head of the state militia. Section 2 provides four directives regarding the Adjutant General of the Militia and one, largely unrelated, provision regarding the general staff of the militia. The first provision provides that the Adjutant General is to be appointed by the Governor and subject to confirmation by the State Senate. This is unchanged since 1851 and is in accord with the Governor’s general power of appointment found in Article II, §10. The constitution provides no minimal qualifications for the office of Adjutant General, but the qualifications are supplied by law.<sup>9</sup> The second provision provides the two exclusive methods for removing an Adjutant General—replacement by a new Adjutant General, or Court Martial.<sup>10</sup> The third provision, which dates back to the 1864 constitution, requires that the Adjutant General perform the duties and receive the pay that are prescribed by law. The fourth provision, added in 1867, requires the Adjutant General to perform his duties “at the seat of Government,” in Annapolis. The final clause, directed not to the Adjutant General, but to the General Staff, prevents members of the General Staff from being paid unless on duty. The provision was added by the constitutional convention of 1867 and, from the convention record, appears to have been somewhat controversial. However, there is no record as to what this provision was intended to correct.<sup>11</sup>