

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 754

FINAL READING

Introduced by Crawford, 45; Craighead, 6; Garrett, 3; Hansen, 26; Krist,
10; Morfeld, 46; Bloomfield, 17.

Read first time January 06, 2016

Committee: Government, Military and Veterans Affairs

1 A BILL FOR AN ACT relating to the military; to amend sections 55-401,
2 55-402, 55-416, 55-418, 55-419, 55-427, 55-428, and 55-452, Reissue
3 Revised Statutes of Nebraska; to create the Commission on Military
4 and Veteran Affairs; to provide for membership, terms, duties,
5 expenses, and staff; to require a report; to authorize summary
6 discipline under the Nebraska Code of Military Justice for minor
7 offenses as prescribed; to change certain references to the code; to
8 harmonize provisions; and to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. (1) The Commission on Military and Veteran Affairs is
2 created. The commission shall consist of the following voting members:

3 (a) The Director of Economic Development;

4 (b) The Adjutant General or his or her designee;

5 (c) The Director of Veterans' Affairs; and

6 (d) Three residents of the State of Nebraska, one from each
7 congressional district. At least one of the three residents shall have
8 current or prior military experience and at least one shall have a
9 background in business.

10 (2) The commission shall have the following nonvoting, ex officio
11 members:

12 (a) The chair of the State Committee of Employer Support of the
13 Guard and Reserve;

14 (b) The commander of the 55th Wing of the Air Combat Command or his
15 or her designee;

16 (c) The commander of the United States Strategic Command or his or
17 her designee; and

18 (d) The commander of the 557th Weather Wing of the United States Air
19 Force or his or her designee.

20 (3) The members of the commission described in subdivision (1)(d) of
21 this section shall be appointed by the Governor. The Governor shall
22 designate the initial terms of the members described in subdivision (1)
23 (d) of this section so that one member serves for a term of two years,
24 one member serves for a term of three years, and one member serves for a
25 term of four years. Succeeding appointments shall be for terms of four
26 years and shall be made in the same manner as the original appointments.
27 The terms of the members shall begin on October 1 of the year in which
28 they are appointed unless appointed to fill a vacancy. Appointments to
29 fill a vacancy, occurring other than by the expiration of a term of
30 office, shall be made for the unexpired term of the member whose office
31 is vacated.

1 Sec. 2. The Commission on Military and Veteran Affairs shall have
2 the authority to receive and administer funds from state, federal, and
3 other sources. Additionally, the commission shall:

4 (1) Address matters of military significance to Nebraska;

5 (2) Maintain a cooperative and constructive relationship between
6 state agencies and the military and veteran entities in Nebraska as
7 necessary to ensure coordination and implementation of unified and
8 comprehensive statewide strategies involved with, or affected by, the
9 military;

10 (3) Focus on and, when designated, serve as lead agency on:

11 (a) Defense economic adjustment and transition information and
12 activities;

13 (b) Exploring operating costs, missions, and strategic value of
14 federal military installations located in the state;

15 (c) Employment issues for communities that depend on defense bases
16 and defense-related businesses; and

17 (d) Assistance provided to communities that have experienced a
18 defense-related closure or realignment;

19 (4) Advise the Governor, the Legislature, and other appropriate
20 governmental officials on all matters in which the military services and
21 the state have mutual interests, needs, and concerns;

22 (5) Promote and optimize state and United States Department of
23 Defense initiatives that will improve the military value of the Nebraska
24 National Guard, active and reserve military force structure and
25 installations, and the quality of life for military personnel residing in
26 Nebraska;

27 (6) Partner with local communities to conduct ongoing analyses of
28 current and proposed changes to the mission, military force structure,
29 and alignment of the United States Department of Defense;

30 (7) Recommend state, federal, and local economic development
31 projects to promote, foster, and support economic progress through a

1 military presence in Nebraska;

2 (8) Assist the private sector in developing derivative investments,
3 employment, and educational opportunities associated with high technology
4 programs and activities at Nebraska's military installations;

5 (9) Partner with local communities to develop methods to improve
6 private and public employment opportunities for former members of the
7 military and their families residing in this state; and

8 (10) Identify and support ways to provide sound infrastructure,
9 adequate housing, education, and transition support into Nebraska's
10 workforce for military members and their families, retired military
11 personnel, and veterans.

12 Sec. 3. The Commission on Military and Veteran Affairs shall elect
13 a chairperson, vice-chairperson, and secretary from among its members.

14 The commission shall meet two times each year at such times and
15 places as shall be determined by the chairperson and shall keep a record
16 of its proceedings. The chairperson may call special meetings at any time
17 he or she deems necessary. The secretary shall mail written notice of the
18 time and place of all meetings in advance to each voting and nonvoting,
19 ex officio member of the commission. The secretary shall also provide
20 notice of all meetings as provided under section 84-1411.

21 Sec. 4. (1) Members of the Commission on Military and Veteran
22 Affairs shall receive no compensation for their services as members of
23 the commission other than their salary, but shall be reimbursed for
24 actual and necessary expenses.

25 (2) Reimbursement for expenses shall be as provided in sections
26 81-1174 to 81-1177.

27 Sec. 5. (1) The Department of Veterans' Affairs shall hire a
28 military affairs liaison for the Commission on Military and Veteran
29 Affairs and fix his or her salary. The department shall provide
30 administrative support to the commission as needed. The liaison shall
31 have military experience and serve at the pleasure of the commission. The

1 liaison shall not be subject to Chapter 81, article 13.

2 (2) The liaison shall be responsible for the administrative
3 operations of the commission and shall perform such other duties as may
4 be delegated or assigned by the commission.

5 (3) The commission may obtain the services of experts and
6 consultants as necessary to carry out its duties.

7 Sec. 6. The Commission on Military and Veteran Affairs shall
8 prepare an annual report summarizing the military assets of Nebraska,
9 including installations and missions, and the economic impact of the
10 military assets in Nebraska. The report shall also include
11 recommendations for preserving and sustaining military assets and
12 missions existing in Nebraska and recommendations for actions which the
13 state can take to encourage expanding such assets and missions. The
14 commission shall submit the report electronically to the Legislature, the
15 Governor, and the commanding officer of every military base in Nebraska
16 on or before November 15 of each year.

17 Sec. 7. Section 55-401, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 55-401 Sections 55-401 to 55-480 and section 10 of this act shall be
20 known and may be cited as the Nebraska Code of Military Justice.

21 Sec. 8. Section 55-402, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 55-402 As used in the Nebraska Code of Military Justice sections
24 ~~55-401 to 55-480~~, unless the context otherwise requires:

25 (1) Military forces shall mean the National Guard, also called the
26 Nebraska National Guard and also hereinafter referred to as the Army
27 National Guard and Air National Guard, and in addition thereto, the
28 militia when called into active service of this state;

29 (2) Officer shall mean a commissioned officer including a
30 commissioned warrant officer;

31 (3) Superior officer shall mean an officer superior in rank or

1 command;

2 (4) Enlisted person shall mean any person who is serving in an
3 enlisted grade in any military force;

4 (5) Accuser shall mean a person who signs and swears to charges, to
5 any person who directs that charges nominally be signed and sworn by
6 another, and to any other person who has an interest other than an
7 official interest in prosecution of the accused;

8 (6) Military judge shall mean an official of court-martial detailed
9 in accordance with section 55-422; and

10 (7) Code shall mean the Nebraska Code of Military Justice provisions
11 ~~of sections 55-401 to 55-480.~~

12 Sec. 9. Section 55-416, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 55-416 (1) Under such regulations as the Governor may prescribe,
15 limitations may be placed on the powers granted by this section with
16 respect to the kind and amount of punishment authorized, the categories
17 of commanding officers and warrant officers exercising command authorized
18 to exercise those powers, the applicability of the code ~~sections 55-401~~
19 ~~to 55-480~~ to an accused who demands trial by court-martial, but
20 punishment may not be imposed upon any member of the military forces
21 under this section if the member has, before the imposition of such
22 punishment, demanded trial by court-martial in lieu of such punishment.
23 Under similar regulations, rules may be prescribed with respect to the
24 suspension of punishments authorized hereunder.

25 (2) Subject to subsection (1) of this section, any commanding
26 officer may, in addition to or in lieu of admonition or reprimand, impose
27 one or more of the following disciplinary punishments for minor offenses
28 without the intervention of a court-martial:

29 (a) Upon officers of his or her command:

30 (i) Restriction to certain specified limits, with or without
31 suspension from duty, for not more than ten consecutive days; or

1 (ii) If imposed by a general officer in command, arrest in quarters
2 for not more than fourteen consecutive days; forfeiture of not more than
3 one-half of one month's pay per month for two months; restriction to
4 certain specified limits, with or without suspension from duty, for not
5 more than fourteen consecutive days; or detention of not more than one-
6 half of one month's pay per month for three months; and

7 (b) Upon other personnel of his or her command:

8 (i) Correctional custody for not more than seven consecutive days;

9 (ii) Forfeiture of not more than seven days' pay;

10 (iii) Reduction to the next inferior pay grade, if the grade from
11 which demoted is within the promotion authority of the officer imposing
12 the reduction or any officer subordinate to the one who imposes the
13 reduction;

14 (iv) Extra duties, including fatigue or other duties, for not more
15 than ten consecutive days;

16 (v) Restriction to certain specified limits, with or without
17 suspension from duty, for not more than ten consecutive days;

18 (vi) Detention of not more than fourteen days' pay; or

19 (vii) If imposed by an officer of the grade of major or above,
20 correctional custody for not more than fourteen consecutive days;
21 forfeiture of not more than one-half of one month's pay per month for two
22 months; reduction to the lowest or any intermediate pay grade, if the
23 grade from which demoted is within the promotion authority of the officer
24 imposing the reduction or any officer subordinate to the one who imposes
25 the reduction, but an enlisted member in a pay grade above E-4 may not be
26 reduced more than two pay grades; extra duties, including fatigue or
27 other duties, for not more than fourteen consecutive days; restrictions
28 to certain specified limits, with or without suspension from duty, for
29 not more than fourteen consecutive days; or detention of not more than
30 one-half of one month's pay per month for three months.

31 Detention of pay shall be for a stated period, but if the offender's

1 term of service expires earlier, the detention shall terminate upon that
2 expiration. No two or more of the punishments of arrest in quarters,
3 correctional custody, extra duties, and restriction may be combined to
4 run consecutively in the maximum amount imposable for each. Whenever any
5 of those punishments are combined to run consecutively, there must be an
6 apportionment. In addition, forfeiture of pay may not be combined with
7 detention of pay without an apportionment. For the purposes of this
8 subsection, correctional custody is the physical restraint of a person
9 during duty or nonduty hours and may include extra duties, fatigue
10 duties, or hard labor. If practicable, correctional custody will not be
11 served in immediate association with persons awaiting trial or held in
12 confinement pursuant to trial by court-martial.

13 (3) An officer in charge may impose upon enlisted members assigned
14 to the unit of which he or she is in charge such of the punishments
15 authorized under subsection (2)(b) of this section as the Governor may
16 specifically prescribe by regulation.

17 (4) The officer who imposes the punishment authorized in subsection
18 (2) of this section, or his or her successor in command, may, at any
19 time, suspend probationally any part or amount of the unexecuted
20 punishment imposed and may suspend probationally a reduction in grade or
21 a forfeiture imposed under subsection (2) of this section, whether or not
22 executed. In addition, he or she may, at any time, remit or mitigate any
23 part or amount of the unexecuted punishment imposed and may set aside in
24 whole or in part the punishment, whether executed or unexecuted, and
25 restore all rights, privileges, and property affected. He or she may also
26 mitigate reduction in grade to forfeiture or detention of pay. When
27 mitigating:

28 (a) Arrest in quarters to restriction;

29 (b) Confinement on bread and water or diminished rations to
30 correctional custody;

31 (c) Correctional custody or confinement on bread and water or

1 diminished rations to extra duties or restriction, or both; or

2 (d) Extra duties to restriction, the mitigated punishment shall not
3 be for a greater period than the punishment mitigated. When mitigating
4 forfeiture of pay to detention of pay, the amount of the detention shall
5 not be greater than the amount of the forfeiture. When mitigating
6 reduction in grade to forfeiture or detention of pay, the amount of the
7 forfeiture or detention shall not be greater than the amount that could
8 have been imposed initially under this section by the officer who imposed
9 the punishment mitigated.

10 (5) A person punished under this section who considers his or her
11 punishment unjust or disproportionate to the offense may, through the
12 proper channel, appeal to the next superior authority. The appeal shall
13 be promptly forwarded and decided, but the person punished may in the
14 meantime be required to undergo the punishment adjudged. The superior
15 authority may exercise the same powers with respect to the punishment
16 imposed as may be exercised under subsection (4) of this section by the
17 officer who imposed the punishment. Before acting on an appeal from a
18 punishment of:

19 (a) Arrest in quarters for more than seven days;

20 (b) Correctional custody for more than seven days;

21 (c) Forfeiture of more than seven days' pay;

22 (d) Reduction of one or more pay grades from the fourth or a higher
23 pay grade;

24 (e) Extra duties for more than ten days;

25 (f) Restriction for more than ten days; or

26 (g) Detention of more than fourteen days' pay, the authority who is
27 to act on the appeal shall refer the case to a judge advocate for
28 consideration and advice, and may so refer the case upon appeal from any
29 punishment imposed under subsection (2) of this section.

30 (6) The imposition and enforcement of disciplinary punishment under
31 this section for any act or omission is not a bar to trial by court-

1 martial for a serious crime or offense growing out of the same act or
2 omission, and not properly punishable under this section; but the fact
3 that a disciplinary punishment has been enforced may be shown by the
4 accused upon trial, and when so shown shall be considered in determining
5 the measure of punishment to be adjudged in the event of a finding of
6 guilty.

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

10 (8) Any punishment authorized by this section which is measured in
11 terms of days shall, when served in a status other than annual field
12 training, be construed to mean consecutive active service days.

13 Sec. 10. (1) Any commanding officer, with regard to enlisted
14 members, and any general officer, with regard to officers, may issue
15 summarized administrative discipline for minor offenses. A minor offense
16 shall be any offense which, under the Uniform Code of Military Justice of
17 the United States, 10 U.S.C. chapter 47, or other military or civilian
18 law or military custom, has a maximum penalty of confinement for one year
19 or less.

20 (2) In accordance with subsection (1) of this section, any
21 commanding officer or general officer, after consultation with a duly
22 appointed judge advocate in the Nebraska National Guard, may impose one
23 or more of the following disciplinary actions for minor offenses without
24 the intervention of a court-martial:

25 (a) Upon officers:

26 (i) Restriction to certain specified limits, with or without
27 suspension from duty, for up to seven days; or

28 (ii) Forfeiture of pay for up to one day; and

29 (b) Upon enlisted personnel:

30 (i) Restriction to certain specified limits, with or without
31 suspension from duty, for not more than seven consecutive days;

1 (ii) Forfeiture of pay for up to one day; or

2 (iii) Extra duty not to exceed ten days.

3 (3) Consecutive summarized administrative discipline for the same
4 offense or incident is not authorized.

5 (4) The officer who imposes the summarized administrative discipline
6 as provided in subsection (2) of this section, or a successor in command,
7 may, at any time, suspend probationally any part or amount of the
8 unexecuted discipline imposed. In addition, the officer or successor in
9 command may, at any time, remit or mitigate any part or amount of the
10 unexecuted discipline imposed and may set aside in whole or in part the
11 discipline, whether executed or unexecuted, and restore all rights,
12 privileges, and property affected.

13 (5) A person disciplined under this section who considers his or her
14 discipline unjust or disproportionate to the offense may, within twenty-
15 four hours of the announcement of findings and through the proper
16 channel, appeal to the next superior authority or general officer. The
17 appeal and record of the hearing shall be promptly forwarded and decided,
18 but the person disciplined may in the meantime be required to undergo the
19 discipline adjudged. The superior authority or general officer may
20 exercise the same powers with respect to the discipline imposed as may be
21 exercised under subsection (4) of this section by the officer who imposed
22 the discipline. No appeal may be taken beyond the Adjutant General, and
23 if the Adjutant General proposed the discipline under this section, the
24 person may request reconsideration by the Adjutant General. Only one
25 appeal or request for reconsideration shall be permitted.

26 (6) The imposition and enforcement of summarized administrative
27 discipline under this section for any act or omission is not a bar to
28 trial by court-martial for a serious crime or offense growing out of the
29 same act or omission and not properly punishable under this section. The
30 fact that summarized administrative discipline has been enforced may be
31 shown by the accused upon trial, and when so shown shall be considered in

1 determining the measure of punishment to be adjudged in the event of a
2 finding of guilty.

3 (7) Any summarized administrative discipline authorized by this
4 section shall be executed within one year of the imposition of the
5 discipline during any one or more periods of military duty.

6 (8) The enlisted member or officer shall be given twenty-four hours
7 written notice of the intent to impose summarized administrative
8 discipline under this section. Such notice shall include:

9 (a) The offense committed;

10 (b) A brief, written summary of the information upon which the
11 allegations are based and notice that the enlisted member or officer may
12 examine the statements and evidence;

13 (c) The possible disciplinary actions;

14 (d) An explanation that the rules of evidence do not apply at the
15 hearing and that any testimony or evidence deemed relevant may be
16 considered;

17 (e) The date, time, and location of the hearing; and

18 (f) The enlisted member's or officer's rights, which shall include:

19 (i) Twenty-four hour notice of the hearing and twenty-four hours to
20 prepare for the hearing, which time shall run concurrently;

21 (ii) The right to appear personally before the officer proposing the
22 summarized administrative discipline or the officer's delegate if the
23 officer proposing the discipline is unavailable. The officer proposing
24 such discipline must render findings based upon the record prepared by
25 the delegate;

26 (iii) To be advised that he or she shall not be compelled to give
27 evidence against himself or herself;

28 (iv) Notice as prescribed in this subsection;

29 (v) Examining the evidence presented or considered by the officer
30 proposing the discipline;

31 (vi) Presenting matters in defense, extenuation, and mitigation

1 orally, in writing, or both;

2 (vii) Presenting witnesses that are reasonably available. A witness
3 is not reasonably available if his or her presence would unreasonably
4 delay the hearing, there is a cost to the government, or military duty
5 precludes a military member's participation in the opinion of such
6 military member's commander;

7 (viii) Consultation prior to the hearing with a trial defense
8 attorney appointed in the Nebraska National Guard, if he or she is
9 reasonably available. A trial defense attorney is not reasonably
10 available if his or her presence would unreasonably delay the hearing,
11 there is a cost to the government to make him or her available, or other
12 military duties or civilian employment precludes such trial defense
13 attorney's participation, in the opinion of such trial defense attorney.
14 Consultation with the trial defense attorney may be through personal
15 contact, telephonic communication, or other electronic means available at
16 no cost to the government;

17 (ix) To have an open hearing; and

18 (x) To waive in writing or at the hearing any or all of the enlisted
19 member's or officer's rights.

20 (9) After considering the evidence, the officer proposing the
21 discipline shall (a) announce the findings in writing with regard to each
22 allegation, (b) inform the enlisted member or officer of the discipline
23 imposed, if any, and (c) advise the enlisted member or officer of his or
24 her right to appeal.

25 (10) The Adjutant General may adopt and promulgate regulations or
26 policies to implement this section.

27 Sec. 11. Section 55-418, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 55-418 A court-martial as defined in the code sections 55-401 to
30 55-480 shall have jurisdiction to try persons subject to the this code
31 for any offense defined and made punishable by the code sections 55-401

1 to ~~55-480~~ and may, under such limitations and regulations as the Governor
2 may prescribe, adjudge any of the following penalties:

- 3 (1) Confinement at hard labor for not more than six months;
- 4 (2) Hard labor without confinement for not more than three months;
- 5 (3) Forfeitures or detentions of pay not exceeding two-thirds pay
6 per month for six months;
- 7 (4) Bad conduct discharge;
- 8 (5) Dishonorable discharge;
- 9 (6) Reprimand; or
- 10 (7) Reduction of noncommissioned officers to the ranks, and to
11 combine any two or more of such punishments in the sentence imposed.

12 Sec. 12. Section 55-419, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 55-419 The jurisdiction of a court-martial is limited to the trial
15 of persons accused of military offenses as described in the code sections
16 ~~55-401 to 55-480~~. Persons subject to the code sections ~~55-401 to 55-480~~
17 who are accused of offenses cognizable by the civil courts of this state
18 or any other state where the military forces are present in that state
19 may, upon accusation, be promptly surrendered to civil authorities for
20 disposition, urgencies of the service considered. If the person subject
21 to the code sections ~~55-401 to 55-480~~ is accused of both a military
22 offense under the code sections ~~55-401 to 55-480~~ and a civil offense by
23 the civil authorities, he or she shall be released to the civil
24 authorities if the crime for which he or she is accused by the civil
25 authorities carries a penalty in excess of the maximum penalty provided
26 by the code sections ~~55-401 to 55-480~~.

27 Sec. 13. Section 55-427, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 55-427 A person charged with any offense is not liable to be tried
30 by court-martial or punished under section 55-416 or section 10 of this
31 act if the offense was committed more than two years before the receipt

1 of sworn charges and specifications by an officer exercising court-
2 martial jurisdiction as set forth in the code sections 55-401 to 55-480.

3 Sec. 14. Section 55-428, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 55-428 (1) Any person not subject to the code sections 55-401 to
6 ~~55-480~~ who:

7 (a) Has been duly subpoenaed to appear as a witness before a court-
8 martial, military commission, court of inquiry, or any other military
9 court or board, or before any military or civil officer designated to
10 take a deposition to be read in evidence before such a court, commission,
11 or board;

12 (b) Has been duly paid or tendered the fees of a witness at the
13 rates allowed to witnesses attending the district courts of the State of
14 Nebraska and mileage at the rate provided in section 81-1176 for state
15 employees; and

16 (c) Willfully neglects or refuses to appear, or refuses to qualify
17 as a witness or to testify or to produce any evidence which that person
18 may have been legally subpoenaed to produce, is guilty of a Class II
19 misdemeanor.

20 (2) The Attorney General of Nebraska, upon the certification of the
21 facts to him or her by the military court, commission, or board shall
22 file an information against and prosecute any person violating this
23 section.

24 (3) The fees and mileage of witnesses shall be advanced or paid out
25 of the appropriations for the compensation of witnesses.

26 Sec. 15. Section 55-452, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 55-452 (1) An act done with specific intent to commit an offense
29 under the code sections 55-401 to 55-480, amounting to more than mere
30 preparation and tending, even though failing, to effect its commission is
31 an attempt to commit that offense.

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

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

7 Sec. 16. Original sections 55-401, 55-402, 55-416, 55-418, 55-419,
8 55-427, 55-428, and 55-452, Reissue Revised Statutes of Nebraska, are
9 repealed.