

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 764

Introduced by Garrett, 3; Bloomfield, 17; Craighead, 6; Crawford, 45;
Krist, 10; McCollister, 20.

Read first time January 06, 2016

Committee: Government, Military and Veterans Affairs

- 1 A BILL FOR AN ACT relating to the Nebraska Code of Military Justice; to
- 2 amend sections 55-401, 55-402, 55-416, 55-418, 55-419, 55-427,
- 3 55-428, and 55-452, Reissue Revised Statutes of Nebraska; to
- 4 authorize summary discipline for minor offenses as prescribed; to
- 5 change certain references to the code; to harmonize provisions; and
- 6 to repeal the original sections.
- 7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 55-401, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 55-401 Sections 55-401 to 55-480 and section 4 of this act shall be
4 known and may be cited as the Nebraska Code of Military Justice.

5 Sec. 2. Section 55-402, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 55-402 As used in the Nebraska Code of Military Justice sections
8 ~~55-401 to 55-480~~, unless the context otherwise requires:

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

13 (2) Officer shall mean a commissioned officer including a
14 commissioned warrant officer;

15 (3) Superior officer shall mean an officer superior in rank or
16 command;

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

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

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

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

27 Sec. 3. Section 55-416, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 55-416 (1) Under such regulations as the Governor may prescribe,
30 limitations may be placed on the powers granted by this section with
31 respect to the kind and amount of punishment authorized, the categories

1 of commanding officers and warrant officers exercising command authorized
2 to exercise those powers, the applicability of the code sections ~~55-401~~
3 ~~to 55-480~~ to an accused who demands trial by court-martial, but
4 punishment may not be imposed upon any member of the military forces
5 under this section if the member has, before the imposition of such
6 punishment, demanded trial by court-martial in lieu of such punishment.
7 Under similar regulations, rules may be prescribed with respect to the
8 suspension of punishments authorized hereunder.

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

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

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

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

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

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

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

25 (iii) Reduction to the next inferior pay grade, if the grade from
26 which demoted is within the promotion authority of the officer imposing
27 the reduction or any officer subordinate to the one who imposes the
28 reduction;

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

31 (v) Restriction to certain specified limits, with or without

1 suspension from duty, for not more than ten consecutive days;

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

3 (vii) If imposed by an officer of the grade of major or above,
4 correctional custody for not more than fourteen consecutive days;
5 forfeiture of not more than one-half of one month's pay per month for two
6 months; reduction to the lowest or any intermediate pay grade, if the
7 grade from which demoted is within the promotion authority of the officer
8 imposing the reduction or any officer subordinate to the one who imposes
9 the reduction, but an enlisted member in a pay grade above E-4 may not be
10 reduced more than two pay grades; extra duties, including fatigue or
11 other duties, for not more than fourteen consecutive days; restrictions
12 to certain specified limits, with or without suspension from duty, for
13 not more than fourteen consecutive days; or detention of not more than
14 one-half of one month's pay per month for three months.

15 Detention of pay shall be for a stated period, but if the offender's
16 term of service expires earlier, the detention shall terminate upon that
17 expiration. No two or more of the punishments of arrest in quarters,
18 correctional custody, extra duties, and restriction may be combined to
19 run consecutively in the maximum amount imposable for each. Whenever any
20 of those punishments are combined to run consecutively, there must be an
21 apportionment. In addition, forfeiture of pay may not be combined with
22 detention of pay without an apportionment. For the purposes of this
23 subsection, correctional custody is the physical restraint of a person
24 during duty or nonduty hours and may include extra duties, fatigue
25 duties, or hard labor. If practicable, correctional custody will not be
26 served in immediate association with persons awaiting trial or held in
27 confinement pursuant to trial by court-martial.

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

1 (4) The officer who imposes the punishment authorized in subsection
2 (2) of this section, or his or her successor in command, may, at any
3 time, suspend probationally any part or amount of the unexecuted
4 punishment imposed and may suspend probationally a reduction in grade or
5 a forfeiture imposed under subsection (2) of this section, whether or not
6 executed. In addition, he or she may, at any time, remit or mitigate any
7 part or amount of the unexecuted punishment imposed and may set aside in
8 whole or in part the punishment, whether executed or unexecuted, and
9 restore all rights, privileges, and property affected. He or she may also
10 mitigate reduction in grade to forfeiture or detention of pay. When
11 mitigating:

12 (a) Arrest in quarters to restriction;

13 (b) Confinement on bread and water or diminished rations to
14 correctional custody;

15 (c) Correctional custody or confinement on bread and water or
16 diminished rations to extra duties or restriction, or both; or

17 (d) Extra duties to restriction, the mitigated punishment shall not
18 be for a greater period than the punishment mitigated. When mitigating
19 forfeiture of pay to detention of pay, the amount of the detention shall
20 not be greater than the amount of the forfeiture. When mitigating
21 reduction in grade to forfeiture or detention of pay, the amount of the
22 forfeiture or detention shall not be greater than the amount that could
23 have been imposed initially under this section by the officer who imposed
24 the punishment mitigated.

25 (5) A person punished under this section who considers his or her
26 punishment unjust or disproportionate to the offense may, through the
27 proper channel, appeal to the next superior authority. The appeal shall
28 be promptly forwarded and decided, but the person punished may in the
29 meantime be required to undergo the punishment adjudged. The superior
30 authority may exercise the same powers with respect to the punishment
31 imposed as may be exercised under subsection (4) of this section by the

1 officer who imposed the punishment. Before acting on an appeal from a
2 punishment of:

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

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

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

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

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

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

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

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

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

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

28 Sec. 4. (1) Any commanding officer, with regard to enlisted
29 members, and any general officer, with regard to officers, may issue
30 summary discipline for minor offenses. A minor offense shall be any
31 offense which, under the Uniform Code of Military Justice of the United

1 States, 10 U.S.C. chapter 47, or other military or civilian law or
2 military custom, has a maximum penalty of confinement for one year or
3 less.

4 (2) In accordance with subsection (1) of this section, any
5 commanding officer or general officer, after consultation with a duly
6 appointed judge advocate regarding any procedural, but not factual
7 matter, may impose one or more of the following disciplinary actions for
8 minor offenses without the intervention of a court-martial:

9 (a) Upon officers:

10 (i) Arrest in quarters for not more than five consecutive days;

11 (ii) Restriction to certain specified limits, with or without
12 suspension from duty, for not more than seven consecutive days; or

13 (iii) Forfeiture of pay not to exceed the pay for one unit training
14 assembly or retention of one month's pay for a period of up to three
15 months; and

16 (b) Upon enlisted personnel:

17 (i) Arrest in quarters for not more than five consecutive days;

18 (ii) Restriction to certain specified limits, with or without
19 suspension from duty, for not more than seven consecutive days;

20 (iii) Forfeiture of pay not to exceed the pay for one unit training
21 assembly or retention of one month's pay for a period of up to three
22 months; or

23 (iv) Extra duty, including fatigue duty, not to exceed ten days.

24 (3) The provisions of section 55-416 regarding the forfeiture and
25 detention of pay and consecutive sentences shall apply to this section.
26 Consecutive sentences for the same offense or incident are not
27 authorized.

28 (4) The officer who imposes the summary discipline as provided in
29 subsection (2) of this section, or a successor in command, may, at any
30 time, suspend probationally any part or amount of the unexecuted
31 discipline imposed. In addition, the officer or successor in command may,

1 at any time, remit or mitigate any part or amount of the unexecuted
2 discipline imposed and may set aside in whole or in part the discipline,
3 whether executed or unexecuted, and restore all rights, privileges, and
4 property affected.

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

18 (6) The imposition and enforcement of summary discipline under this
19 section for any act or omission is not a bar to trial by court-martial
20 for a serious crime or offense growing out of the same act or omission
21 and not properly punishable under this section. The fact that summary
22 discipline has been enforced may be shown by the accused upon trial, and
23 when so shown shall be considered in determining the measure of
24 punishment to be adjudged in the event of a finding of guilty.

25 (7) Any summary discipline authorized by this section shall be
26 executed within one year of the imposition of the discipline during any
27 one or more periods of military duty.

28 (8) The member shall be given twenty-four hours written notice of
29 the intent to impose summary discipline under this section. Such notice
30 shall include:

31 (a) The offense committed;

1 (b) A brief summary of the information upon which the allegations
2 are based or notice that the member may examine the statements and
3 evidence;

4 (c) The possible disciplinary actions;

5 (d) An explanation that the rules of evidence do not apply and that
6 any testimony or evidence deemed relevant may be considered;

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

8 (f) The member's rights, which shall include:

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

11 (ii) The right to appear personally before the officer proposing the
12 summary discipline or the officer's delegate if the officer proposing the
13 discipline is unavailable. The officer proposing such discipline must
14 render findings based upon the record prepared by the delegate;

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

17 (iv) Notice as prescribed in this subsection;

18 (v) Examining the evidence presented or considered by the officer
19 proposing the discipline;

20 (vi) Presenting matters in defense, extenuation, and mitigation
21 orally, in writing, or both;

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

27 (viii) To have an open hearing; and

28 (ix) To waive in writing or at the hearing any or all of the
29 member's rights.

30 (9) After considering the evidence, the officer proposing the
31 discipline shall (a) announce the findings with regard to each

1 allegation, (b) inform the member of the discipline imposed, if any, and
2 (c) advise the member of his or her right to appeal.

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

5 Sec. 5. Section 55-418, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 55-418 A court-martial as defined in the code sections ~~55-401 to~~
8 ~~55-480~~ shall have jurisdiction to try persons subject to the ~~this~~ code
9 for any offense defined and made punishable by the code sections ~~55-401~~
10 ~~to 55-480~~ and may, under such limitations and regulations as the Governor
11 may prescribe, adjudge any of the following penalties:

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

21 Sec. 6. Section 55-419, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 55-419 The jurisdiction of a court-martial is limited to the trial
24 of persons accused of military offenses as described in the code sections
25 ~~55-401 to 55-480~~. Persons subject to the code sections ~~55-401 to 55-480~~
26 who are accused of offenses cognizable by the civil courts of this state
27 or any other state where the military forces are present in that state
28 may, upon accusation, be promptly surrendered to civil authorities for
29 disposition, urgencies of the service considered. If the person subject
30 to the code sections ~~55-401 to 55-480~~ is accused of both a military
31 offense under the code sections ~~55-401 to 55-480~~ and a civil offense by

1 the civil authorities, he or she shall be released to the civil
2 authorities if the crime for which he or she is accused by the civil
3 authorities carries a penalty in excess of the maximum penalty provided
4 by the code sections 55-401 to 55-480.

5 Sec. 7. Section 55-427, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 55-427 A person charged with any offense is not liable to be tried
8 by court-martial or punished under section 55-416 or section 4 of this
9 act if the offense was committed more than two years before the receipt
10 of sworn charges and specifications by an officer exercising court-
11 martial jurisdiction as set forth in the code sections 55-401 to 55-480.

12 Sec. 8. Section 55-428, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 55-428 (1) Any person not subject to the code sections 55-401 to
15 55-480 who:

16 (a) Has been duly subpoenaed to appear as a witness before a court-
17 martial, military commission, court of inquiry, or any other military
18 court or board, or before any military or civil officer designated to
19 take a deposition to be read in evidence before such a court, commission,
20 or board;

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

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

29 (2) The Attorney General of Nebraska, upon the certification of the
30 facts to him or her by the military court, commission, or board shall
31 file an information against and prosecute any person violating this

1 section.

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

4 Sec. 9. Section 55-452, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 55-452 (1) An act done with specific intent to commit an offense
7 under the code ~~sections 55-401 to 55-480~~, amounting to more than mere
8 preparation and tending, even though failing, to effect its commission is
9 an attempt to commit that offense.

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

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

16 Sec. 10. Original sections 55-401, 55-402, 55-416, 55-418, 55-419,
17 55-427, 55-428, and 55-452, Reissue Revised Statutes of Nebraska, are
18 repealed.