

## LEGISLATIVE BILL 754

Approved by the Governor April 18, 2016

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

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

Be it enacted by the people of the State of Nebraska,

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

- (a) The Director of Economic Development;
- (b) The Adjutant General or his or her designee;
- (c) The Director of Veterans' Affairs; and

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

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

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

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

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

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

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

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

(1) Address matters of military significance to Nebraska;

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

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

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

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

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

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

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

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

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

(7) Recommend state, federal, and local economic development projects to promote, foster, and support economic progress through a military presence in Nebraska;

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

(9) Partner with local communities to develop methods to improve private and public employment opportunities for former members of the military and

their families residing in this state; and

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

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

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

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

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

Sec. 5. (1) The Department of Veterans' Affairs shall hire a military affairs liaison for the Commission on Military and Veteran Affairs and fix his or her salary. The department shall provide administrative support to the commission as needed. The liaison shall have military experience and serve at the pleasure of the commission. The liaison shall not be subject to Chapter 81, article 13.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Upon officers of his or her command:

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Arrest in quarters to restriction;

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

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

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

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

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

(b) Correctional custody for more than seven days;

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

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

(e) Extra duties for more than ten days;

(f) Restriction for more than ten days; or

(g) Detention of more than fourteen days' pay, the authority who is to act on the appeal shall refer the case to a judge advocate for consideration and

advice, and may so refer the case upon appeal from any punishment imposed under subsection (2) of this section.

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

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

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

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

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

(a) Upon officers:

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

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

(b) Upon enlisted personnel:

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

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

(iii) Extra duty not to exceed ten days.

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

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

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

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

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

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

(a) The offense committed;

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

(c) The possible disciplinary actions;

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

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

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

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

(ii) The right to appear personally before the officer proposing the summarized administrative discipline or the officer's delegate if the officer proposing the discipline is unavailable. The officer proposing such discipline

must render findings based upon the record prepared by the delegate;

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

(iv) Notice as prescribed in this subsection;

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

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

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

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

(ix) To have an open hearing; and

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

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

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

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

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

(1) Confinement at hard labor for not more than six months;

(2) Hard labor without confinement for not more than three months;

(3) Forfeitures or detentions of pay not exceeding two-thirds pay per month for six months;

(4) Bad conduct discharge;

(5) Dishonorable discharge;

(6) Reprimand; or

(7) Reduction of noncommissioned officers to the ranks, and to combine any two or more of such punishments in the sentence imposed.

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

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

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

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

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

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

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

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

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

(2) The Attorney General of Nebraska, upon the certification of the facts

to him or her by the military court, commission, or board shall file an information against and prosecute any person violating this section.

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

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

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

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

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

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