

AMENDMENTS TO LB754

(Amendments to Standing Committee amendments, AM2103)

Introduced by Garrett, 3.

1           1. Insert the following new sections:

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

4           55-401 Sections 55-401 to 55-480 and section 10 of this act shall be  
5 known and may be cited as the Nebraska Code of Military Justice.

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

8           55-402 As used in the Nebraska Code of Military Justice sections  
9 ~~55-401 to 55-480~~, unless the context otherwise requires:

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

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

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

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

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

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

26           (7) Code shall mean the Nebraska Code of Military Justice provisions

1 ~~of sections 55-401 to 55-480.~~

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

4       55-416 (1) Under such regulations as the Governor may prescribe,  
5 limitations may be placed on the powers granted by this section with  
6 respect to the kind and amount of punishment authorized, the categories  
7 of commanding officers and warrant officers exercising command authorized  
8 to exercise those powers, the applicability of the code sections ~~55-401~~  
9 ~~to 55-480~~ to an accused who demands trial by court-martial, but  
10 punishment may not be imposed upon any member of the military forces  
11 under this section if the member has, before the imposition of such  
12 punishment, demanded trial by court-martial in lieu of such punishment.  
13 Under similar regulations, rules may be prescribed with respect to the  
14 suspension of punishments authorized hereunder.

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

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

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

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

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

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

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

31       (iii) Reduction to the next inferior pay grade, if the grade from

1 which demoted is within the promotion authority of the officer imposing  
2 the reduction or any officer subordinate to the one who imposes the  
3 reduction;

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

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

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

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

21 Detention of pay shall be for a stated period, but if the offender's  
22 term of service expires earlier, the detention shall terminate upon that  
23 expiration. No two or more of the punishments of arrest in quarters,  
24 correctional custody, extra duties, and restriction may be combined to  
25 run consecutively in the maximum amount imposable for each. Whenever any  
26 of those punishments are combined to run consecutively, there must be an  
27 apportionment. In addition, forfeiture of pay may not be combined with  
28 detention of pay without an apportionment. For the purposes of this  
29 subsection, correctional custody is the physical restraint of a person  
30 during duty or nonduty hours and may include extra duties, fatigue  
31 duties, or hard labor. If practicable, correctional custody will not be

1 served in immediate association with persons awaiting trial or held in  
2 confinement pursuant to trial by court-martial.

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

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

18 (a) Arrest in quarters to restriction;

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

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

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

31 (5) A person punished under this section who considers his or her

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

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

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

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

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

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

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

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

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

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

31 (8) Any punishment authorized by this section which is measured in

1 terms of days shall, when served in a status other than annual field  
2 training, be construed to mean consecutive active service days.

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

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

15 (a) Upon officers:

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

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

19 (b) Upon enlisted personnel:

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

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

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

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

26 (4) The officer who imposes the summarized administrative discipline  
27 as provided in subsection (2) of this section, or a successor in command,  
28 may, at any time, suspend probationally any part or amount of the  
29 unexecuted discipline imposed. In addition, the officer or successor in  
30 command may, at any time, remit or mitigate any part or amount of the  
31 unexecuted discipline imposed and may set aside in whole or in part the

1 discipline, whether executed or unexecuted, and restore all rights,  
2 privileges, and property affected.

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

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

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

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

30 (a) The offense committed;

31 (b) A brief, written summary of the information upon which the

1 allegations are based and notice that the enlisted member or officer may  
2 examine the statements and evidence;

3 (c) The possible disciplinary actions;

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

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

8 (f) The enlisted member's or officer'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 summarized administrative discipline or the officer's delegate if the  
13 officer proposing the discipline is unavailable. The officer proposing  
14 such discipline must render findings based upon the record prepared by  
15 the delegate;

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

18 (iv) Notice as prescribed in this subsection;

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

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

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

28 (viii) Consultation prior to the hearing with a trial defense  
29 attorney appointed in the Nebraska National Guard, if he or she is  
30 reasonably available. A trial defense attorney is not reasonably  
31 available if his or her presence would unreasonably delay the hearing,

1 there is a cost to the government to make him or her available, or other  
2 military duties or civilian employment precludes such trial defense  
3 attorney's participation, in the opinion of such trial defense attorney.  
4 Consultation with the trial defense attorney may be through personal  
5 contact, telephonic communication, or other electronic means available at  
6 no cost to the government;

7 (ix) To have an open hearing; and

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

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

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

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

19 55-418 A court-martial as defined in the code sections~~55-401 to~~  
20 ~~55-480~~ shall have jurisdiction to try persons subject to the this code  
21 for any offense defined and made punishable by the code sections~~55-401~~  
22 ~~to 55-480~~ and may, under such limitations and regulations as the Governor  
23 may prescribe, adjudge any of the following penalties:

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

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

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

28 (4) Bad conduct discharge;

29 (5) Dishonorable discharge;

30 (6) Reprimand; or

31 (7) Reduction of noncommissioned officers to the ranks, and to

1 combine any two or more of such punishments in the sentence imposed.

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

4 55-419 The jurisdiction of a court-martial is limited to the trial  
5 of persons accused of military offenses as described in the code sections  
6 ~~55-401 to 55-480~~. Persons subject to the code sections ~~55-401 to 55-480~~  
7 who are accused of offenses cognizable by the civil courts of this state  
8 or any other state where the military forces are present in that state  
9 may, upon accusation, be promptly surrendered to civil authorities for  
10 disposition, urgencies of the service considered. If the person subject  
11 to the code sections ~~55-401 to 55-480~~ is accused of both a military  
12 offense under the code sections ~~55-401 to 55-480~~ and a civil offense by  
13 the civil authorities, he or she shall be released to the civil  
14 authorities if the crime for which he or she is accused by the civil  
15 authorities carries a penalty in excess of the maximum penalty provided  
16 by the code sections ~~55-401 to 55-480~~.

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

19 55-427 A person charged with any offense is not liable to be tried  
20 by court-martial or punished under section 55-416 or section 10 of this  
21 act if the offense was committed more than two years before the receipt  
22 of sworn charges and specifications by an officer exercising court-  
23 martial jurisdiction as set forth in the code sections ~~55-401 to 55-480~~.

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

26 55-428 (1) Any person not subject to the code sections ~~55-401 to~~  
27 ~~55-480~~ who:

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

1 or board;

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

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

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

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

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

18 55-452 (1) An act done with specific intent to commit an offense  
19 under the code ~~sections 55-401 to 55-480~~, amounting to more than mere  
20 preparation and tending, even though failing, to effect its commission is  
21 an attempt to commit that offense.

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

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

28 Sec. 16. Original sections 55-401, 55-402, 55-416, 55-418, 55-419,  
29 55-427, 55-428, and 55-452, Reissue Revised Statutes of Nebraska, are  
30 repealed.