

MILITARY

CHAPTER 322

SENATE BILL NO. 2131

(Government and Veterans Affairs Committee)

(At the request of the Adjutant General)

UNIFORM CODE OF MILITARY JUSTICE APPLICATION

AN ACT to amend and reenact sections 37-01-03, 37-09-01, 37-09-02, 37-09-04, 37-09-05, 37-09-06, 37-09-08, 37-09-09, 37-09-12, and 37-09-14 of the North Dakota Century Code, relating to application of the uniform code of military justice to the North Dakota national guard and military courts within the North Dakota national guard; and to repeal sections 37-09-03 and 37-09-13 of the North Dakota Century Code, relating to military courts of inquiry and court-martial sentences.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-01-03 of the North Dakota Century Code is amended and reenacted as follows:

37-01-03. Articles of uniform code of military justice applicable in state - Regulations governing - Punishment for offenses while on duty. The articles of uniform code of military justice governing the armed forces of the United States as codified in the Manual for Courts-Martial, United States, 1984 (1998 edition), now ~~or hereafter~~ in effect, are a part of this title so far as the same are applicable and not modified by any provision of this title. A person who commits an offense while on duty may be tried by a court-martial lawfully appointed even after such duty has terminated, and if found guilty, the accused must be punished according to the articles of uniform code of military justice and the rules and regulations governing the armed forces of the United States and within the limits prescribed in this title and by federal law for the courts-martial in the national guard. In any case in which the person alleged to have committed the offense could be charged either under the code of military justice or the civil law of this state, the officer whose duty it is to approve such charge, in his discretion, may order the person charged or subject to being charged to be turned over to the civil authorities for trial. Whenever reference is made to the articles of uniform code of military justice, to the military service, or to the armed forces of the United States, such reference shall be deemed to include the military service of this state. The intent of this title and of all laws of this state affecting the military forces is to conform to all acts and regulations of the United States affecting the same subjects, and all laws of this state shall be construed to effect this purpose.

SECTION 2. AMENDMENT. Section 37-09-01 of the North Dakota Century Code is amended and reenacted as follows:

37-09-01. Military courts. The military courts of this state for the national guard are:

1. ~~Courts of inquiry.~~
2. General courts-martial.
3. 2. Special courts-martial.
4. 3. Summary courts-martial.

SECTION 3. AMENDMENT. Section 37-09-02 of the North Dakota Century Code is amended and reenacted as follows:

37-09-02. Powers and procedure of military courts. The military courts of this state must be constituted the same, have cognizance of the same subjects, and shall possess the same powers, except as to punishment, as similar courts provided for by the laws and regulations governing the army of the United States. The proceedings of ~~courts of inquiry and courts-martial~~ of the national guard must follow the forms and modes of procedure prescribed ~~for such similar courts~~ in the Manual for Courts-Martial, United States, 1984 (1998 edition).

SECTION 4. AMENDMENT. Section 37-09-04 of the North Dakota Century Code is amended and reenacted as follows:

37-09-04. General courts-martial - Convening - Powers. A general court-martial may be convened by order of the governor or the adjutant general. Such court may sentence any member to:

1. ~~Impose fines~~ A fine not exceeding ~~two~~ five hundred dollars ~~upon the accused person~~ for a single offense;
2. ~~Sentence an accused person to forfeiture~~ Forfeiture of pay and allowances of not more than five hundred dollars for a single offense;
3. ~~Reprimand an accused person~~ A reprimand;
4. ~~Dismiss~~ Dismissal or ~~dishonorably bad conduct discharge, or dishonorable discharge~~ an accused person from the service; or
5. ~~Reduce a noncommissioned officer~~ Reduction of an enlisted member to the ranks, and it may combine any ~~two or more of such punishments~~ in any sentence imposed by it. any lower rank;
6. Confinement of not more than one hundred eighty days; or
7. Any combination of these punishments.

SECTION 5. AMENDMENT. Section 37-09-05 of the North Dakota Century Code is amended and reenacted as follows:

37-09-05. Special courts-martial - Appointment - Jurisdiction - Punishment. The commanding officer, with a rank of at least colonel (O-6), of each garrison, fort, post, camp, or other place, or of any brigade, regiment, detached battalion, or other detached command, may appoint special courts-martial for ~~his~~ the officer's command. A special court-martial may be appointed in any case by a superior authority when it is deemed desirable by the ~~latter~~ superior authority. A special court-martial may try any person, except a commissioned officer, subject to the military law, for any crime or offense made punishable by the military laws of the

United States, and has the same powers of punishment as a general court-martial except that fines imposed by a special court-martial may not exceed ~~one~~ three hundred dollars and a sentence of confinement may not exceed one hundred days. A bad conduct discharge may not be adjudged unless a complete record of the proceedings and testimony has been made, counsel was detailed to represent the accused, and a military judge was detailed to the trial.

SECTION 6. AMENDMENT. Section 37-09-06 of the North Dakota Century Code is amended and reenacted as follows:

37-09-06. Summary courts-martial - Appointment - Powers - Proceedings.

The commanding officer, with a rank of at least colonel (O-6), of each garrison, fort, post, or other place, or of any regiment, corps, detached battalion, company, or other detachment, may appoint for such place or command a summary court to consist of one officer, who shall have power to administer oaths and to try the enlisted ~~men~~ members of such place or command for breaches of discipline and violations of laws governing such organization. Such court, when satisfied of the guilt of a soldier, may:

1. Impose a fine ~~upon him~~ in an amount not exceeding ~~twenty-five~~ two hundred dollars for any single offense;
2. Sentence ~~him~~, if he is a ~~noncommissioned officer~~ an enlisted member, to reduction to the ranks; ~~or~~
3. Sentence ~~him~~ an enlisted member to forfeiture of pay and allowances not to exceed two hundred dollars for a single offense; or
4. Any combination of these punishments.

The proceedings of such court must be informal, and the minutes of the court must be the same as those prescribed for summary courts of the United States army.

SECTION 7. AMENDMENT. Section 37-09-08 of the North Dakota Century Code is amended and reenacted as follows:

37-09-08. Commitment to prison or jail pending trial - Bail allowed.

Whenever an accused person has been arrested for failure to appear before a court-martial for trial as provided in this chapter, the president of the court-martial or the summary court officer to whom the charges have been referred for trial may issue a warrant to a civil officer for the commitment of such person to prison or jail pending trial. In all such cases, the accused must be admitted to bail, the amount of bail fixed, and the surety or sureties thereon approved by the president of the court-martial or by the summary court officer issuing the warrant. In default of bail, such person must be confined pending trial. ~~No person, however, may be kept in prison or jail pending trial for more than five days.~~

SECTION 8. AMENDMENT. Section 37-09-09 of the North Dakota Century Code is amended and reenacted as follows:

37-09-09. Powers of president of ~~court of inquiry~~, court-martial; and summary court officer. A president ~~of a court of inquiry~~, of a court-martial; and a summary court officer may:

1. Issue subpoenas.

2. Enforce the attendance of witnesses and the production of books and papers.
3. ~~Sentence for a refusal to be sworn or to answer as is provided in civil courts.~~

SECTION 9. AMENDMENT. Section 37-09-12 of the North Dakota Century Code is amended and reenacted as follows:

37-09-12. Sentence imposing confinement - Execution. Any portion of a sentence imposed by a military court that prescribes confinement must be executed in such ~~county jail~~ facility as the reviewing authority may direct. The expenses of such confinement must be borne by the state of North Dakota. A commitment in writing must be executed by the presiding officer of the court to the sheriff or jailer where temporary restraint is deemed necessary, but ~~where~~ if the confinement is the result of the confirmed action of the reviewing authority, an official copy of the order publishing the sentence of the court must be furnished to the sheriff or jailer.

SECTION 10. AMENDMENT. Section 37-09-14 of the North Dakota Century Code is amended and reenacted as follows:

37-09-14. Sentence of court-martial to be approved. ~~No~~ A sentence of any court-martial ~~becomes~~ is not effective until approved by the convening authority. ~~No~~ A sentence of dismissal from the service or dishonorable discharge imposed by a court-martial may not be executed until approved by the governor.

SECTION 11. REPEAL. Sections 37-09-03 and 37-09-13 of the North Dakota Century Code are repealed.

Approved March 8, 1999
Filed March 8, 1999

CHAPTER 323

HOUSE BILL NO. 1080

(Government and Veterans Affairs Committee)
(At the request of the Adjutant General)

NATIONAL GUARD ORDERING OUT AUTHORITY

AN ACT to amend and reenact section 37-01-04 of the North Dakota Century Code, relating to the power of the governor to order out the national guard; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-01-04 of the North Dakota Century Code is amended and reenacted as follows:

37-01-04. ~~Governor may~~ Governor's authority to order out national guard in case of insurrection or riot - Reserve militia ordered out. In case of insurrection, invasion, tumult, riot, ~~or~~ breach of the peace, or imminent danger thereof, to provide a presence at state ceremonial events, or to provide assistance to political entities in search and rescue efforts or to respond to a potential natural or environmental hazard or nuisance, the governor may order into the active service of this state any part of the national guard that ~~he~~ the governor may deem proper. When the national guard of this state, or a part thereof, is called forth under the Constitution of the United States and the laws of the United States, the governor shall order out for service the remaining troops or such part thereof as may be necessary. If the number of available troops is insufficient, the governor shall order out such part of the reserve militia as ~~he~~ the governor may deem necessary.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 22, 1999
Filed March 23, 1999

CHAPTER 324**SENATE BILL NO. 2084**

(Education Committee)

(At the request of the Adjutant General)

NATIONAL GUARD TUITION WAIVERS

AN ACT to amend and reenact section 37-07.1-03 of the North Dakota Century Code, relating to tuition waivers granted to national guard members by state-controlled schools.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-07.1-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

37-07.1-03. Tuition waiver - Terms. ~~Any~~ A qualifying member of the national guard who enrolls in any state-controlled school ~~shall~~, subject to ~~national guard~~ rules ~~promulgated~~ adopted by the adjutant general, is entitled to receive a twenty-five percent waiver of the tuition charged by from the state-controlled school, conditioned on the adjutant general having sufficient appropriations for tuition reimbursement under section 37-07.1-06.2. The tuition waiver is valid only so long as the member of the national guard maintains satisfactory performance with the guard, meets the qualification requirements of rules ~~promulgated~~ adopted by the adjutant general, and pursues a course of study in a manner ~~which~~ that satisfies the normal requirements of the school.

Approved March 18, 1999

Filed March 19, 1999

CHAPTER 325

SENATE BILL NO. 2145

(Government and Veterans Affairs Committee)

(At the request of the Office of Management and Budget)

DISASTER EMERGENCY COMPENSATION CLAIMS

AN ACT to amend and reenact section 37-17.1-12 of the North Dakota Century Code, relating to disaster emergency claims for compensation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-17.1-12 of the North Dakota Century Code is amended and reenacted as follows:

37-17.1-12. Compensation - Entitlement - Time - Amount.

1. Persons within this state shall conduct themselves and keep and manage their affairs and property in ways that will reasonably assist and will not unreasonably detract from the ability of the state and the public to effectively mitigate, prepare for, respond to, and recover from a disaster or emergency. This obligation includes appropriate personal service and use or restriction on the use of property in time of disaster or emergency. This chapter neither increases nor decreases these obligations but recognizes their existence under the Constitution of North Dakota and statutes of this state and the common law. Compensation for services or for the taking or use of property must be only to the extent that obligations recognized herein are exceeded in a particular case and then only to the extent that the claimant may not be deemed to have volunteered ~~his~~ that person's services or property without compensation.
2. ~~No personal~~ Personal services may not be compensated by the state or any county or city thereof, except pursuant to statute or local law or ordinance.
3. Compensation for property must be only if the property was commandeered or otherwise used in management of a disaster or emergency declared by the governor and its use or destruction was ordered by the governor.
4. Any person claiming compensation for the use, damage, loss, or destruction of property under this chapter shall file a written claim therefor with the office of management and budget in the form and manner required by the office. The claim for compensation must be received by the office of management and budget within one year after the use, damage, loss, or destruction of the property pursuant to the governor's order under section 37-17.1-05 is discovered or reasonably should have been discovered or compensation under this chapter is waived.

5. Unless the amount of compensation on account of property damaged, lost, or destroyed is agreed between the claimant and the office of management and budget, the amount of compensation must be calculated in the same manner as compensation due for a taking of property pursuant to the condemnation laws of this state.

Approved March 5, 1999

Filed March 5, 1999

CHAPTER 326

SENATE BILL NO. 2083

(Government and Veterans Affairs Committee)
(At the request of the Division of Emergency Management)

EMERGENCY MANAGEMENT LOAN REPAYMENTS

AN ACT to amend and reenact section 37-17.1-23 of the North Dakota Century Code, relating to use of federal emergency management agency administrative fees for payments of loans from the Bank of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-17.1-23 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

37-17.1-23. Disaster or emergency recovery funding - Loan authorization.

When approved by the emergency commission, the division of emergency management is authorized to borrow from the Bank of North Dakota, to match federal funds under the Robert T. Stafford Disaster Emergency Assistance Act [Public Law 93-288, as amended]. In addition to the principal repayment, the Bank of North Dakota shall receive interest on the loan at a rate equal to other state agency borrowings. On behalf of the state, the division of emergency management shall administer the disaster or emergency recovery program according to state procedures based on federal laws or regulations. After a county or group of counties have been declared a major disaster or emergency area by the president, the division shall submit a request to the emergency commission for:

1. Approval to make an application for a loan from the Bank of North Dakota;
2. Approval for additional personnel required to perform the anticipated recovery activities; and
3. Authority to spend additional state and federal funds for the recovery program.

If the request is acceptable, the emergency commission shall approve the request and issue a notice of their action to the division, Bank of North Dakota, and the office of management and budget. The division shall keep the emergency commission apprised of the progress of the recovery operation and submit a final report upon completion of the project. The emergency commission is responsible to repay any loan, including accrued interest, from the Bank of North Dakota which is provided under this section. ~~The emergency commission is authorized to repay the loan utilizing federal recovery administrative reimbursements to the state under Public Law 93-288, as amended, and any other moneys remaining in the contingency fund.~~ If at the end of the biennium a balance exists on the loan, the emergency commission shall request the legislative assembly for a deficiency appropriation to repay the loan.

Approved March 3, 1999
Filed March 4, 1999