

1 SB452  
2 159917-1  
3 By Senators Holtzclaw, Dial, Taylor, Williams, Ross, Bedford  
4 and Smith  
5 RFD: Veterans and Military Affairs  
6 First Read: 06-MAR-14

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8 SYNOPSIS: Under existing law, the state code of  
9 military justice provides disciplinary authority  
10 and procedures for the Alabama National Guard that  
11 are based on the Federal Code of Military Justice.

12 This bill would make technical revisions so  
13 as to make the state code substantially similar to  
14 the federal code. This bill would clarify that the  
15 penalty of a reduction in grade may not be imposed  
16 on commissioned officers through nonjudicial  
17 punishment. This bill would clarify that penalties  
18 which may be imposed by field grade officers  
19 through nonjudicial punishment may also be imposed  
20 by generals, the Adjutant General, and the  
21 Governor. This bill would clarify the definition of  
22 commanding officer so that it includes warrant  
23 officers in a command position. This bill would  
24 clarify that a summary court martial does not have  
25 the authority to order a discharge of any kind.

26  
27 A BILL

1 TO BE ENTITLED

2 AN ACT

3  
4 To amend Sections 31-2A-1, 31-2A-15, and 31-2A-20,  
5 Code of Alabama 1975; to provide further for disciplinary  
6 penalties; to clarify the definition of commanding officer;  
7 and to clarify the authorities of a summary court martial.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Sections 31-2A-1, 31-2A-15, and 31-2A-20,  
10 Code of Alabama 1975, are amended to read as follows:

11 "§31-2A-1.

12 "For the purposes of this code, unless the context  
13 otherwise requires, the following words have the following  
14 meanings:

15 "(1) ACCUSER. A person who signs and swears to  
16 charges, any person who directs that charges nominally be  
17 signed and sworn to by another, and any other person who has  
18 an interest other than an official interest in the prosecution  
19 of the accused.

20 "(2) CADET, CANDIDATE, or MIDSHIPMAN. A person who  
21 is enrolled in or attending a state military academy, a  
22 regional training institute, or any other formal education  
23 program for the purpose of becoming a commissioned officer in  
24 the state military forces.

25 "(3) CLASSIFIED INFORMATION. Information that meets  
26 all of the following requirements:

1            "a. Any information or material that has been  
2 determined by an official of the United States or any state  
3 pursuant to law, an Executive order, or regulation to require  
4 protection against unauthorized disclosure for reasons of  
5 national or state security.

6            "b. Any restricted data, as defined in Section 11(y)  
7 of the Atomic Energy Act of 1954 (42 U.S.C. §2014(y)).

8            "(4) CODE. This chapter.

9            "(5) COMMANDING OFFICER. Includes only commissioned  
10 officers of the state military forces and warrant officers in  
11 a command position and shall include officers in charge only  
12 when administering nonjudicial punishment under Section  
13 31-2A-15 (Article 15). The term "commander" has the same  
14 meaning as "commanding officer" unless the context otherwise  
15 requires. A commander is any general officer, the Adjutant  
16 General, or any other officer who, by virtue of position, is  
17 designated as a commanding officer.

18            "(6) CONVENING AUTHORITY. Includes, in addition to  
19 the person who convened the court, a commissioned officer  
20 commanding for the time being or a successor in command to the  
21 convening authority.

22            "(7) DAY. Unless otherwise specified with respect to  
23 forfeiture of pay, means calendar day and is not synonymous  
24 with the term "unit training assembly." Any punishment  
25 authorized by this code which is measured in terms of days,  
26 shall when served in a status other than annual field  
27 training, be construed to mean succeeding duty days.

1           "(8) DUTY STATUS OTHER THAN STATE ACTIVE DUTY. Any  
2 other type of duty not in federal service and not full-time  
3 duty in the active service of the state; under an order issued  
4 by authority of law and includes travel to and from such duty.

5           "(9) ENLISTED MEMBER. A person in an enlisted grade.

6           "(10) JUDGE ADVOCATE. A commissioned officer of the  
7 organized state military forces who is a member in good  
8 standing of the bar of the highest court of a state, and is  
9 either of the following:

10           "a.1. Certified or designated as a judge advocate in  
11 the Judge Advocate General's Corps of the Army, Air Force,  
12 Navy, or the Marine Corps or designated as a law specialist as  
13 an officer of the Coast Guard, or a reserve component of one  
14 of these.

15           "2. Certified as a non-federally recognized judge  
16 advocate, under regulations promulgated pursuant to this code,  
17 by the senior judge advocate of the commander of the force in  
18 the state military forces of which the accused is a member, as  
19 competent to perform such military justice duties required by  
20 this code. If there is no such judge advocate available, then  
21 such certification may be made by such senior judge advocate  
22 of the commander of another force in the state military  
23 forces, as the convening authority directs.

24           "b. In the instance when a judge advocate is  
25 detailed under this code and is not a member of the bar of  
26 this state, the judge advocate shall be deemed admitted pro  
27 hac vice, subject to filing a certificate with the military

1 judge setting forth his or her qualifications, and with notice  
2 and approval of the Alabama State Bar and Chief Justice of the  
3 Alabama Supreme Court, that counsel is all of the following:

4 "1. A commissioned officer of the Armed Forces of  
5 the United States or a component thereof.

6 "2. A member in good standing of the bar of the  
7 highest court of a state.

8 "3. Meets the qualifications detailed in paragraph  
9 a.

10 "(11) MILITARY COURT. A court-martial or a court of  
11 inquiry.

12 "(12) MILITARY JUDGE. An official of a general or  
13 special court-martial detailed in accordance with Section  
14 31-2A-26 (Article 26).

15 "(13) MILITARY OFFENSES. Those offenses prescribed  
16 under Part X which are not also covered by federal or state  
17 law.

18 "(14) NATIONAL SECURITY. The national defense and  
19 foreign relations of the United States.

20 "(15) OFFICER. A commissioned or warrant officer.

21 "(16) OFFICER IN CHARGE. A member of the naval  
22 militia, the Navy, the Marine Corps, or the Coast Guard  
23 designated as such by appropriate authority.

24 "(17) RECORD. When used in connection with the  
25 proceedings of a court-martial, means either of the following:

26 "a. An official written transcript, written summary,  
27 or other writing relating to the proceedings.

1            "b. An official audiotape, videotape, digital image  
2 or file, or similar material from which sound, or sound and  
3 visual images, depicting the proceedings may be reproduced.

4            "(18) SENIOR FORCE COMMANDER. The commander of the  
5 same force of the state military forces as the accused.

6            "(19) SENIOR FORCE JUDGE ADVOCATE. The senior judge  
7 advocate of the commander of the same force of the state  
8 military forces as the accused and who is that commander's  
9 chief legal advisor.

10            "(20) STATE. One of the several states, the District  
11 of Columbia, the Commonwealth of Puerto Rico, Guam, and the  
12 U.S. Virgin Islands.

13            "(21) STATE ACTIVE DUTY. Full-time duty in the state  
14 military forces under an order of the Governor or otherwise  
15 issued by authority of law under Chapter 2 of this title and  
16 paid in whole or in part by state funds, and includes travel  
17 to and from such duty.

18            "(22) STATE MILITARY FORCES. The Alabama National  
19 Guard, as defined in Title 32, United States Code, Section 271  
20 of the Constitution of Alabama 1901, and Section 31-2-3. The  
21 unorganized militia, state defense force, state national  
22 guard, home guard, or any other name of any state force that  
23 does not meet this definition shall not be part of the "state  
24 military forces" under this code.

25            "(23) SUPERIOR COMMISSIONED OFFICER. A commissioned  
26 officer superior in rank or command.

27            "§31-2A-15.

1           "(a) Under such regulations as prescribed, any  
2 commanding officer may impose disciplinary punishments for  
3 minor offenses without the intervention of a court-martial  
4 pursuant to this article. The Governor, the Adjutant General,  
5 or an officer or a general or flag rank in command may  
6 delegate the powers under this article to a principal  
7 assistant who is a member of the Alabama National Guard.

8           "(b) For the purposes of this article, the term  
9 "day" shall mean the following:

10           "(1) For the purposes of pay, one day shall equal  
11 one active duty military payday.

12           "(2) For all other purposes, one day shall equal one  
13 calendar day.

14           "(c) For the purposes of this part, all members must  
15 be in military status when punishment is imposed.

16           "(d) Any commanding officer may impose upon enlisted  
17 members of the officer's command any of the following:

18           "(1) An admonition.

19           "(2) A reprimand.

20           "(3) The withholding of privileges for up to six  
21 consecutive months.

22           "(4) The forfeiture of pay of up to eight days' pay.

23           "(5) A reduction to the next inferior pay grade, if  
24 the grade from which demoted is within the promotion authority  
25 of the commander imposing the reduction.

26           "(6) Extra duties, including fatigue or other  
27 duties, for up to eight days, which need not be consecutive.



1           "(7) Restriction to certain specified limits, with  
2 or without suspension from duty, for not more than eight days,  
3 which need not be consecutive.

4           "(e) Any commanding officer of the grade of major or  
5 lieutenant commander, or above may impose upon enlisted  
6 members of the officer's command any of the following:

7           "(1) Any punishment authorized in subdivisions (1),  
8 (2), and (3) of subsection (d).

9           "(2) The forfeiture of pay of up to 12 days' pay.

10          "(3) A reduction to the lowest or any intermediate  
11 pay grade, if the grade from which demoted is within the  
12 promotion authority of the commanding officer imposing the  
13 reduction, but an enlisted member in a pay grade above E-4 may  
14 not be reduced more than two pay grades.

15          "(4) Extra duties, including fatigue or other  
16 duties, for not more than 14 days which need not be  
17 consecutive.

18          "(5) Restriction to certain specified limits, with  
19 or without suspension from duty, for not more than 14 days  
20 which need not be consecutive.

21          "(f) The Governor, the Adjutant General, an officer  
22 exercising general court-martial convening authority, or an  
23 officer of a general or flag rank in command may impose both  
24 of the following:

25          "(1) Upon officers of the officer's command, any  
26 punishment authorized in subdivisions (1), (2), ~~(3)~~, and (5)  
27 of subsection (e).

1           "(2) Upon enlisted members of the officer's command,  
2 any punishment authorized in subsection ~~(d)~~(e).

3           "(g) Whenever any of those punishments are combined  
4 to run consecutively, the total length of the combined  
5 punishment cannot exceed the authorized duration of the  
6 longest punishment in the combination, and there must be an  
7 apportionment of punishments so that no single punishment in  
8 the combination exceeds its authorized length under this  
9 article.

10           "(h) Prior to the offer of non-judicial punishment,  
11 the commanding officer shall determine whether restriction  
12 shall be considered as a punishment. Should the commanding  
13 officer determine that the punishment option may include  
14 restriction, the accused shall be notified of the right to  
15 demand trial by court-martial. Should the commanding officer  
16 determine that the punishment option will not include  
17 restriction, the accused shall be notified that there is no  
18 right to trial by court-martial in lieu of non-judicial  
19 punishment.

20           "(i) The officer who imposes the punishment, or the  
21 successor in command, at any time, may suspend, set aside,  
22 mitigate, or remit any part or amount of the punishment and  
23 restore all rights, privileges, and property affected. The  
24 officer also may do either of the following:

25           "(1) Mitigate reduction in grade to forfeiture of  
26 pay.

27           "(2) Mitigate extra duties to restriction.

1           "The mitigated punishment shall not be for a greater  
2 period than the punishment mitigated. When mitigating  
3 reduction in grade to forfeiture of pay, the amount of the  
4 forfeiture shall not be greater than the amount that could  
5 have been imposed initially under this article by the officer  
6 who imposed the punishment mitigated.

7           "(j) A person punished under this article who  
8 considers the punishment unjust or disproportionate to the  
9 offense, through the proper channel, may appeal to the next  
10 superior authority within 45 days after the punishment is  
11 either announced or sent to the accused, as the commander may  
12 determine. The appeal shall be promptly forwarded and decided.  
13 During the pendency of the appeal, the punishment shall not be  
14 implemented. The superior authority may exercise the same  
15 powers with respect to the punishment imposed as may be  
16 exercised under subsection (i) by the officer who imposed the  
17 punishment. Before acting on an appeal from a punishment, the  
18 authority that is to act on the appeal may refer the case to a  
19 judge advocate for consideration and advice.

20           "(k) The imposition and enforcement of disciplinary  
21 punishment under this article for any act or omission is not a  
22 bar to trial by court-martial or a civilian court of competent  
23 jurisdiction for a serious crime or offense growing out of the  
24 same act or omission and not properly punishable under this  
25 article; however, the fact that a disciplinary punishment has  
26 been enforced may be shown by the accused upon trial and, when

1 so shown, it shall be considered in determining the measure of  
2 punishment to be adjudged in the event of a finding of guilty.

3 "(l) Whenever a punishment of forfeiture of pay is  
4 imposed under this article, the forfeiture may apply to pay  
5 accruing before, on, or after the date that punishment is  
6 imposed.

7 "(m) Regulations may prescribe the form of records  
8 to be kept of proceedings under this article and may require  
9 that certain categories of those proceedings be in writing.

10 "(n) The accused shall be informed of the location  
11 of and right to consult counsel with regard to any  
12 non-judicial punishment. The Commander shall ensure the member  
13 is given appropriate means to contact counsel.

14 "§31-2A-20.

15 "(a) Subject to Section 31-2A-17 (Article 17),  
16 summary courts-martial have jurisdiction to try persons  
17 subject to this code, except officers, cadets, candidates, and  
18 midshipmen, for any offense made punishable by this code under  
19 such limitations as the Governor may prescribe.

20 "(b) No person with respect to whom summary  
21 courts-martial have jurisdiction may be brought to trial  
22 before a summary court-martial if that person objects thereto.  
23 If objection to trial by summary court-martial is made by an  
24 accused, trial by special or general courts-martial may be  
25 ordered, as may be appropriate. Summary courts-martial, under  
26 such limitations as the Governor may prescribe, may adjudge  
27 any punishment not forbidden by this code except ~~dismissal,~~

1 ~~dishonorable or bad-conduct~~ a discharge, confinement,  
2 restriction to specified limits for more than two months, or  
3 forfeiture of more than 15 days of pay."

4           Section 2. This act shall become effective on the  
5 first day of the third month following its passage and  
6 approval by the Governor, or its otherwise becoming law.