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Chapter No. 352

11/SS01/R1107

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SENATE BILL NO. 2980

Originated in Senate

Demetrius

Secretary

SENATE BILL NO. 2980

AN ACT TO AMEND SECTION 33-13-31, MISSISSIPPI CODE OF 1972, TO REMOVE THE PROVISION ALLOWING A SOLDIER TO DEMAND TRIAL BY COURT MARTIAL BEFORE COMMANDING OFFICER'S DISCIPLINARY PUNISHMENT FOR A MINOR OFFENSE; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 33-13-31, Mississippi Code of 1972, is amended as follows:

33-13-31. (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, and the categories of commanding officers and warrant officers exercising command authorized to exercise those powers * * *. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized hereunder. If authorized by regulations of the Governor, the Governor or an officer of general rank in command may delegate his powers under this section to a principal assistant. If disciplinary punishment other than admonition or reprimand is to be imposed, the accused shall be afforded the opportunity to consult with counsel having the qualifications prescribed under Section 33-13-15(2), Mississippi Code of 1972, if available. Otherwise, the accused shall be afforded the opportunity to be represented by any available commissioned officer of his choice. The accused may also employ civilian counsel of his own choosing at his own expense. In all proceedings, the accused is allowed forty-eight (48) hours, or longer on written justification, to

reply to the notification of intent to impose punishment under this section.

(2) Subject to subsection (1) of this section, any commanding officer or the Commandant of the Mississippi Military Academy may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses * * *:

(a) Upon officers of his command:

(i) Restriction to certain specified limits with or without suspension from duty, for not more than thirty (30) days;

(ii) If imposed by the Governor, or an officer of general rank in command;

(A) Arrest in quarters for not more than thirty (30) days;

(B) A fine of not more than Seventy-five Dollars (\$75.00), subject to such limitations as may be imposed by federal law;

(C) Restriction to certain specified limits, with or without suspension from duty, for not more than sixty (60) days;

(D) Detention of not more than one-half (1/2) of one (1) month's pay per month for three (3) months.

(b) Upon other personnel of his command:

(i) If imposed upon a person attached to or embarked in a vessel, confinement for not more than three (3) days;

(ii) Correctional custody for not more than seven (7) days;

(iii) A fine of not more than Ten Dollars (\$10.00), subject to such limitations as may be imposed by federal law;

(iv) 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;

(v) Extra duties including fatigue or other duties, for not more than thirty (30) days, which need not be consecutive, and for not more than two (2) hours per day, holidays included;

(vi) Restriction to certain specified limits, with or without suspension from duty for not more than thirty (30) days;

(vii) Detention of not more than fourteen (14) days' pay;

(viii) If imposed by an officer of the grade of major or above;

(A) The punishment authorized under subsection (2)(b)(i) of this section;

(B) Correctional custody for not more than thirty (30) days;

(C) A fine of not more than Seventy-five Dollars (\$75.00), subject to such limitations as may be imposed by federal law;

(D) 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, but an enlisted member in a pay grade above E-4 may not be reduced more than two (2) pay grades;

(E) Extra duties including fatigue or other duties, for not more than forty-five (45) days which need not be consecutive and for not more than two (2) hours per day, holidays included;

(F) Restriction to certain specified limits with or without suspension from duty, for not more than sixty (60) days;

(G) Detention of not more than one-half (1/2) of one (1) month's pay per month for three (3) months. Detention of pay shall be for a stated period of not more than one (1) year but if the offender's term of service expires earlier, the detention shall terminate upon that expiration. No two (2) 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. For the purpose of this subsection, "correctional custody" is the physical restraint of a person during 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) (a) An officer in charge may impose upon enlisted members assigned to the unit of which he is in charge such of the punishments authorized under subsection (2)(b)(i)-(vii) of this section as the Governor may specifically prescribe by regulation.

(b) The Commandant of the Mississippi Military Academy may impose upon officers of which he is in charge such of the punishments authorized under subsection (2)(a)(i) of this section.

(4) The officer who imposes the punishment authorized in subsection (2) or his 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 fine imposed under subsection (2), whether or not executed. In addition, he 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 may also mitigate reduction in grade to a fine and/or detention of pay.

When mitigating (a) arrest in quarters or restriction, or (b) extra duties to restriction, the mitigated punishment shall not be for a greater period than the punishment mitigated.

When mitigating reduction in grade to a fine and/or detention of pay, the amount of the fine and/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 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 (7) days;
- (b) Correctional custody for more than seven (7) days;
- (c) A fine of Seventy-five Dollars (\$75.00);
- (d) Reduction of one or more pay grades from the fourth or a higher pay grade;
- (e) Extra duties for more than fourteen (14) days' pay;
- (f) Restriction of more than fourteen (14) days' pay;
- (g) Detention of more than fourteen (14) days' pay; the

authority who is to act on the appeal shall refer the case to a judge advocate of the state military forces for consideration and advice, and may so refer the case upon appeal from any punishment imposed under subsection (2).

(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 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.

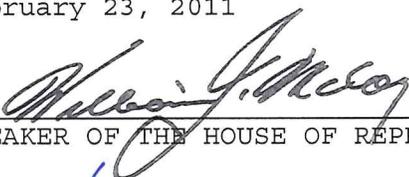
(7) The Governor may, by regulation, prescribe the form of records to be kept of proceedings under this section and may also prescribe that certain categories of those proceedings shall be in writing.

SECTION 2. This act shall take effect and be in force from and after July 1, 2011.

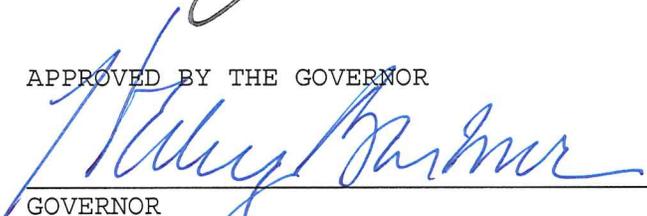
PASSED BY THE SENATE
February 8, 2011


PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
February 23, 2011


SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR


GOVERNOR

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