

1 H.74

2 Introduced by Representatives Moran of Wardsboro and Grad of Moretown

3 Referred to Committee on

4 Date:

5 Subject: Internal security and public safety; courts-martial; nonjudicial

6 discipline

7 Statement of purpose of bill as introduced: This bill proposes to allow

8 commanding officers in the Vermont National Guard to impose nonjudicial

9 discipline.

10 An act relating to nonjudicial discipline

11 It is hereby enacted by the General Assembly of the State of Vermont:

12 Sec. 1. 20 V.S.A. § 946 is added to read:

13 § 946. COMMANDING OFFICER NONJUDICIAL DISCIPLINE

14 (a) A commanding officer may impose discipline for minor military

15 offenses without the intervention of a court-martial in accordance with any

16 regulations issued under this chapter. An enlisted member subject to discipline

17 shall have the right to a hearing before a nonjudicial discipline panel.

18 (b) A commanding officer may impose upon enlisted members of the

19 officer's command:

20 (1) an admonition;

1 (2) a reprimand;

2 (3) for members who are serving on full-time military orders in excess
3 of 179 days, the forfeiture of up to seven days of wages and for all others up to
4 four days of wages;

5 (4) a reduction to the next inferior pay grade, if the grade from which
6 the member is demoted is within the promotion authority of the officer
7 imposing the reduction or any officer subordinate to the one who imposes the
8 reduction; or

9 (5) the imposition of extra duties for up to 14 days, which need not be
10 consecutive.

11 (c) A commanding officer of the grade of major or above may impose upon
12 enlisted members of the officer's command:

13 (1) any discipline authorized in subsections (b)(1), (2), and (3) of this
14 section;

15 (2) for members who are serving on full-time military orders in excess
16 of 179 days, the forfeiture of not more than one-half of one month's wages per
17 month for up to two months, and for all others up to 14 days of wages;

18 (3) a reduction to the lowest or any intermediate pay grade, if the grade
19 from which demoted is within the promotion authority of the officer imposing
20 the reduction or any officer subordinate to the one who imposes the reduction,

1 but an enlisted member in a pay grade above E-4 may not be reduced more
2 than two pay grades; or

3 (4) for members who are serving on full-time military orders in excess
4 of 179 days, the imposition of extra duties for up to 45 days which need not be
5 consecutive, and for all others the imposition of extra duties for up to 14 days
6 which need not be consecutive.

7 (d) Any commanding officer may impose upon officers and warrant officer
8 members of the officer's command disciplines authorized under subdivisions
9 (b)(1) and (2) of this section.

10 (e) The Adjutant General may impose upon officers and warrant officers:

11 (1) any discipline authorized in subdivisions (b)(1) and (2) of this
12 section; or

13 (2) for members who are serving on full-time military orders in excess
14 of 179 days, the forfeiture of not more than one-half of one month's wages per
15 month for up to two months, and for all others up to 14 days of wages.

16 (f) Whenever any of those imposed disciplines are to be served
17 consecutively, the total length of the combined discipline cannot exceed the
18 authorized duration of the longest discipline in the combination, and there must
19 be an apportionment of disciplines so that no single discipline in the
20 combination exceeds its authorized length.

1 (g) The officer who imposes the discipline or the successor in command
2 may at any time suspend, set aside, mitigate, or remit any part or amount of the
3 discipline and restore all rights, privileges, and property affected. The officer
4 also may mitigate reduction in grade to forfeiture of pay.

5 (h) The mitigated discipline shall not be for a greater period than the
6 original discipline mitigated. When mitigating reduction in grade to forfeiture
7 of pay, the amount of the forfeiture shall not be greater than the amount that
8 could have been imposed initially under this section by the officer who
9 imposed the discipline.

10 (i) A person punished under this section may appeal to the next superior
11 authority within 15 days after the discipline is either announced or sent to the
12 accused, as the commander may determine. The appeal shall be promptly
13 forwarded and decided, but the person punished may, in the meantime, be
14 required to undergo the discipline adjudged. The superior authority may
15 exercise the same powers with respect to the discipline imposed as may be
16 exercised under subsection (f) of this section by the officer who imposed the
17 discipline. Before acting on an appeal, the authority may refer the case to a
18 judge advocate for consideration and advice.

19 (j) The imposition and enforcement of discipline under this section for any
20 act or omission is not a bar to trial by court-martial or a civilian court of
21 competent jurisdiction for a serious crime or offense growing out of the same

1 act or omission and not properly punishable under this section. The fact that a
2 discipline has been enforced may be shown by the accused upon trial and,
3 when so shown, it shall be considered in determining the measure of discipline
4 to be adjudged in the event of a finding of guilty.

5 (k) Whenever a discipline of forfeiture of wages is imposed under this
6 section, the forfeiture may apply to wages accruing before, on, or after the date
7 that discipline is imposed.

8 (l)(1) If an individual is not entitled to a court-martial, then that individual
9 may elect to have his or her case heard before a nonjudicial discipline panel.
10 The commanding officer shall notify the individual, verbally and in writing, of
11 the following:

12 (A) the nature of the alleged wrongdoing;

13 (B) his or her intent to dispose of the matter by nonjudicial discipline;

14 and

15 (C) other nonjudicial discipline procedural rights set forth by
16 regulation.

17 (2) The individual shall have 24 hours to make an election for
18 disposition by the panel.

19 (3) The panel shall consist of three members, appointed by the
20 commander's next higher authority. The members of the panel will be officers
21 who are senior to the individual requesting the panel. If it is an enlisted

1 member requesting the panel, there will be at least one enlisted member on the
2 panel but the member must be senior to the enlisted member requesting the
3 panel. If the individual requesting the panel is female, at least one member of
4 the panel will be female. The senior member shall be the chair. The most
5 junior member shall be the recorder and shall record summaries of the
6 proceedings. However, if the nonjudicial discipline is being offered by a
7 general officer, then the panel will consist of three members appointed by the
8 Adjutant General with the most senior member being the chair and the most
9 junior member being the recorder, who shall record the summaries of the
10 proceedings.

11 (4) The panel decision shall be by majority vote. The panel has the
12 same authority and responsibility in conducting the proceeding and disposing
13 of the matter, including imposing nonjudicial discipline, as has a field grade
14 officer pursuant to this section. The panel shall forward its recommendation
15 for disposition and imposition of discipline, if any, to the appointing authority.
16 The appointing authority shall approve the recommended discipline or any part
17 or amount as the appointing authority sees fit and may suspend, mitigate, or
18 remit as he or she deems appropriate. The appointing authority may not
19 approve any discipline in excess of that approved by the panel.

20 (5) The procedural requirements for a nonjudicial hearing and its
21 disposition by the panel shall be the same as would otherwise be applicable for

1 disposition by the commanding officer, including the individual's right to
2 counsel, to submit matters in extenuation, mitigation, or defense, and to call
3 and examine witnesses, to the extent witnesses are reasonably available.

4 (6) Appeals from the decision of the appointing authority may be taken
5 directly to the next higher authority to act upon appeal as set forth in this
6 section with respect to nonjudicial discipline appeals generally, unless the
7 action is initiated by a general officer, in which case the Adjutant General will
8 have the final decision.

9 Sec. 2. EFFECTIVE DATE

10 This act shall take effect on July 1, 2013.