

1
2 INTRODUCED BY SENATE BILL NO. 69
Rep. Holden

3 BY REQUEST OF THE DEPARTMENT OF MILITARY AFFAIRS

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO MILITARY JUSTICE IN THE MONTANA NATIONAL
6 GUARD; CLARIFYING THAT THE FEDERAL UNIFORM CODE OF MILITARY JUSTICE AND ITS
7 IMPLEMENTING REGULATIONS, FORMS, AND USAGES ARE ADOPTED FOR USE BY THE MILITARY
8 FORCES OF THIS STATE WHEN SERVING OTHER THAN IN A FEDERAL CAPACITY UNDER TITLE 10,
9 U.S.C.; PROVIDING FOR THE ADMINISTRATION OF MILITARY JUSTICE; AND AMENDING SECTION
10 10-1-104, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 **Section 1.** Section 10-1-104, MCA, is amended to read:

15 "10-1-104. **Federal regulations to govern.** (1) Federal laws and regulations, forms, precedents,
16 and usages relating to and governing the armed forces of the United States and the militia, ~~including The~~
17 ~~Uniform Code of Military Justice, shall~~, insofar as they are applicable and not inconsistent with the
18 constitution of this state, apply to and govern the military forces of this state, including all members of the
19 national guard on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32,
20 U.S.C. of the United States Code.

21 (2) The Uniform Code of Military Justice, as in effect on [the effective date of this act], including
22 the regulations, manuals, forms, precedents and usages implementing, interpreting, and complementing the
23 code, is adopted for use by the military forces of this state and applies, insofar as the code is not otherwise
24 inconsistent with the constitution of this state and except as otherwise provided by this title or by rule
25 adopted by the department, to the greatest extent practicable to govern the military forces of this state,
26 including all members of the national guard on active duty within the state as active duty guard/reserve
27 (AGR) personnel under Title 32 of the United States Code when the members are serving other than in a
28 federal capacity under Title 10 of the United States Code."

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30 **NEW SECTION. Section 2. Administration of military justice.** (1) The senior judge advocate of

1 any element of the Montana national guard that may convene a court-martial shall assign trial counsel and
2 defense counsel for the court-martial.

3 (2) A military judge appointed pursuant to 10-1-104 and the manual for courts-martial must be
4 appointed by the adjutant general. The military judge must be an attorney licensed to practice law in the
5 state of Montana and a member of the Montana national guard senior in rank to the accused, but may not
6 be the state judge advocate of the Montana national guard. The adjutant general may prescribe additional
7 requirements for a military judge.

8 (3) Following approval of the findings and sentence of a court-martial by the court-martial
9 convening authority, the findings and sentence or either the findings or sentence may be appealed to the
10 state judge advocate of the Montana national guard in a manner directed by the judge advocate. The state
11 judge advocate may reverse a decision of the convening authority only if the findings of fact are clearly
12 erroneous, a fraud upon the court has occurred, the law has been incorrectly applied, or the sentence is
13 an abuse of discretion. Because courts-martial are military courts of the military justice system adopted
14 under 10-1-104 and because the federal military appellate courts do not have jurisdiction over national
15 guard soldiers not in active federal service, no appeal to other courts is allowed.

16

17 **NEW SECTION. Section 3. Codification instruction.** [Section 2] is intended to be codified as an
18 integral part of Title 10, chapter 1, and the provisions of Title 10, chapter 1, apply to [section 2].

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15 courts-martial are military courts of the military justice system adopted under 10-1-104 and because the
16 federal military appellate courts do not have jurisdiction over national guard ~~soldiers~~ MEMBERS not in active
17 federal service, no appeal to other courts is allowed.

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