

[REPUBLIC ACT NO. 242, June 12, 1948]

AN ACT TO AMEND CERTAIN PROVISIONS OF COMMONWEALTH ACT NUMBERED FOUR HUNDRED AND EIGHT, OTHERWISE KNOWN AS THE ARTICLES OF WAR.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section one of Commonwealth Act Numbered Four hundred and eight is hereby amended to read as follows:

"SECTION 1. The following articles shall be known as the Articles of War and shall at all times and in all places govern the Armed Forces of the Philippines and the Philippine Constabulary."

SEC. 2. Article two of Commonwealth Act Numbered Four hundred and eight is hereby amended to read as follows:

"ART. 2. *Persons Subject to Military Law.*—The following persons are subject to these articles and shall be understood as included in the term 'any person subject to military law' or 'persons subject to military law,' whenever used in these articles:

"(a) All officers, members of the Nurse Corps and soldiers in the active service of the Armed Forces of the Philippines or of the Philippine Constabulary; all members of the reserve force, from the dates of their call to active duty and while on such active duty; all trainees undergoing- military instructions; and all other persons lawfully called, drafted, or ordered into, or to duty or for training in, the said service, from the dates they are required by the terms of the call, draft, or order to obey the same;

"(b) Cadets, flying cadets, and probationary second lieutenants;

"(c) All retainers to the camp and all persons accompanying or serving with the Armed Forces of the Philippines in the field in time of war or when martial law is declared though not otherwise subject to these articles;

"(d) All persons under sentence adjudged by courts-martial."

SEC. 3. Article four of Commonwealth Act Numbered Four hundred and eight is hereby amended to read as follows:

"ART. 4. *Who may Serve on Courts-Martial*—All officers in active duty in the Armed Forces of the Philippines or in the Philippine Constabulary shall be competent to serve on courts-martial for the trial of any person who may lawfully be brought before such courts for trial. When appointing

courts-martial, the appointing authority shall detail as members thereof those officers of the command who, in his opinion, are best qualified for the duty by reason of age, training, experience, and judicial temperament; and officers having less than two years' service shall not, if it can be avoided without manifest injury to the service, be appointed as members of courts-martial in excess of the minority membership thereof."

SEC. 4. Article eight of Commonwealth Act Numbered Four hundred and eight is hereby amended to read as follows:

"ART. 8. *General Courts-Martial*—The President of the Philippines, the Chief of Staff of the Armed Forces of the Philippines, the Chief of Constabulary and, when empowered by the President, the Commanding Officer of a major command or task force, the Commanding Officer of a Division, the Commanding Officer of a military area, the Superintendent of the Military Academy, the Commanding Officer of a separate brigade or body of troops may appoint general courts-martial; but when any such commander is the accuser or the prosecutor of the person or persons to be tried, the court shall be appointed by superior competent authority, and no officer shall be eligible to sit as a member of such court when he is the accuser or a witness for the prosecution or for the defense.

"The authority appointing a general court-martial shall detail as one of the members thereof a law member, who shall be an officer of the Judge Advocate General's Service, except that when an officer of that service is not available for the purpose the appointing authority shall detail instead an officer of some other branch of the service selected by the appointing authority as specially qualified to perform the duties of law member. The law member, in addition to his duties as a member, shall perform such other duties as the President may by regulations prescribe."

SEC. 5. Article nine of Commonwealth Act Numbered Four hundred and eight is hereby amended to read as follows:

"ART. 9. *Special Courts-Martial*.—The commanding officer of a major command, task force, military area, or division and when empowered by the President, the commanding officer of a garrison, fort, camp, brigade, regiment, detached battalion or squadron, or other detached command or place, zone or commissioned vessel where troops are on duty may appoint special courts-martial; but when any such commanding officer is the accuser or the prosecutor of the person or persons to be tried, the court shall be appointed by superior authority, and may in any case be appointed by superior authority when by the latter deemed desirable; and no officer shall be eligible to sit as a member of such court when he is the accuser or a witness for the prosecution or for the defense."

SEC. 6. Article fourteen of Commonwealth Act Numbered Four hundred and eight is hereby amended to read as follows:

"ART. 14. *Summary Courts-Martial.*-Summary courts-partial shall have power to try any person subject to military law, except an officer, a member of the Nurse corps, a cadet, a flying cadet or probationary second lieutenant, for any crime or offense not capital made Punishable by these articles: *Provided*, That noncommissioned officers shall not, if they object thereto, be brought to trial before a summary court-martial without the authority of the officer competent to bring them to trial before a general court-martial: *Provided, further*, That the President may, by regulations, except from the jurisdiction of summary courts-martial any class or classes of persons subject to military law.

"Summary courts-martial shall not have power to adjudge confinement in excess of one month, restriction to limits for more than three months, or forfeiture or detention of more than two-thirds of one month's pay."

SEC. 7. Article eighteen of Commonwealth Act Numbered Four hundred and eight is hereby amended to read as follows:

"ART. 18. *Challenges.*—Members of general or special courts-martial may be challenged by the accused or the trial judge advocate for cause stated to the court. The court shall determine the relevancy and validity thereof and shall not receive a challenge to more than one member at a time. Challenges by the trial judge advocate shall ordinarily be presented and decided before those by the accused are offered. Each side shall be entitled to the peremptory challenge, but the law member of the court shall not be challenged except for cause,"

SEC. 8. Article nineteen of Commonwealth Act Numbered Four hundred and eight is hereby amended to read as follows:

"ART. 19. *Oath.*—The trial judge advocate of a general or special court-martial shall administer to the members of the court, before they proceed upon any trial, the following oath or affirmation: 'You, A. B., do swear (or affirm) that you will well and truly try and determine according to the evidence, the matter now before you, between the People of the Philippines and the person to be tried, and that you will duly administer justice, without partiality, favor, or affection according to the provisions of the rules and articles for the government of the Armed Forces of the Philippines and of the Philippine Constabulary and if any doubt should arise, not explained by said rules and articles, then according to your conscience, the best of your understanding and the custom of war in like cases; and you do further swear (or affirm) that you will not divulge the findings or sentence of the court until they shall be published by the proper authority or duly announced by the court, except to the trial judge advocate And assistant trial judge advocate; neither will you disclose or discover the vote or opinion of any particular member of the court-martial upon a challenge or upon the findings or sentence, unless required to give evidence thereof as a witness by a court of justice in due course of law. So help you God'.

"When the oath or affirmation has been administered to the members of a general or special court-martial, the president of the court shall administer to the trial judge advocate and to each assistant trial judge

advocate if any, an oath or affirmation in the following form: 'You, A. B., do swear (or affirm) that you will faithfully and impartially perform the duties of a trial judge advocate, and will not divulge the findings or sentence of the court to any but the proper authority until they shall be duly disclosed. So help you God.'

"All persons who give evidence before a court-martial shall be examined on oath or affirmation in the following form: 'You swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth and nothing but the truth. So help you God.'

"Every reporter of the proceedings of a court-martial shall, before entering upon its duties, take oath or affirmation in the following form: 'You swear (or affirm) that you will faithfully perform the duties of reporter to this court. So help you God.'

"Every interpreter in the trial of any case before a court-martial shall, before entering upon his duties, take oath or affirmation in the following form: 'You swear (or affirm) that you will truly interpret in the case now in hearing. So help you God.'

"In case of affirmation the closing sentence of adjuration will be omitted."

SEC. 9. Article twenty-three of Commonwealth Act Numbered Four hundred and eight is hereby amended to read as follows:

"ART. 23. *Refusal to Appear or Testify.*—Every person not subject to military law who, being duly subpoenaed to appear as a witness before any military court, commission, court of inquiry, or board, or officer appointed to conduct an investigation under the provisions of Article seventy-one, or before any officer, military or civil, designated to take a deposition to be read in evidence before such court, commission, court of inquiry, or board, willfully neglects or refuses to appear, or refuses to qualify as a witness, or testify, or produce documentary evidence which such person may have been legally *subpoenaed* to produce, shall be deemed guilty of contempt, for which such person shall be punished on information in the court of first instance of the province or city where the *subpoena* is issued, jurisdiction being hereby conferred upon such courts for such purpose and it shall be the duty of the City Fiscal or City Attorney or Provincial Fiscal, on the certification of the facts to him by the military court, commission, court of inquiry, or board, or officer appointed to conduct an investigation under the provisions of Article seventy-one, to file an information against and prosecute the person so offending in the manner provided in sections four and five, Rule sixty-four of the Rules of Court, and the punishment of such person, on conviction, shall be that provided in sections six and seven of the aforesaid Rule sixty-four: *Provided*, That such fees as the Chief of Staff may prescribe, and traveling expenses in the amount of ten centavos per kilometer of travel shall be duly paid or tendered to witnesses, such amounts to be paid out of the appropriations of the Armed Forces of the Philippines or Philippine Constabulary."

SEC. 10. Article thirty-one of Commonwealth Act Numbered Four hundred and eight is hereby amended to read as follows:

"ART. 81. *Contempts.*—A military tribunal may punish any person who commits direct contempt as defined in rules of court: *Provided*, That such punishment shall in case exceed ten days confinement, or a fine not exceeding two hundred pesos, or both."

SEC. 11. Article thirty-four of Commonwealth Act Numbered Four hundred and eight is hereby amended to read as follows:

"ART. 34. *Disposition of Records-General and Special Courts-Martial.*—The trial judge advocate of each general or special court-martial shall, with such expedition as circumstances may permit, forward to the appointment authority or to his successor in command the original record of the proceedings of such court in the trial of each case. All records of such proceedings shall, after having been acted upon, be transferred to the Judge Advocate General of the Armed Forces of the Philippines."

SEC. 12. Article thirty-eight of Commonwealth Act Numbered Four hundred and eight is hereby amended to read as follows:

"ART. 38. *As to Time.*—Except for desertion or murder committed in time of war, or for mutiny or for war offenses, no person subject to military law shall be liable to be tried or punished by a court-martial for any crime or offense committed more than two years before the arraignment of such person: *Provided*, That desertion in time of peace or for any crime or offense punishable under articles ninety-four and ninety-five of these articles, the period of limitations upon trial and punishment by courts-martial shall be three years: *Provided, further*, That the period of any absence of the accused from the jurisdiction of the Philippines, and also any period during which by reason of some manifest impediment the accused shall not have been amenable to military justice shall be excluded in computing the aforesaid periods of limitations: *And provided, further*, That this article shall not have the effect to authorize the trial or punishment for any crime or offense barred by the provisions of existing law."

SEC. 13. Article forty-seven of Commonwealth Act Numbered Four hundred and eight is hereby amended to read as follows:

ART. 47. *Confirmation-When Required.*—In addition to the approval required by article forty-five, confirmation by the President is required in the following cases before the sentence of a court-martial is carried into execution, namely:

"(a) Any sentence respecting a general officer;

"(b) Any sentence extending to the dismissal of an officer except that in time of war a sentence extending to the dismissal of an officer below the grade of brigadier general may be carried into execution upon confirmation by the commanding general of the Army in the field.

"(c) Any sentence extending to the suspension or dismissal of a cadet, flying cadet, probationary second lieutenant, and