

HOUSE BILL NO. 404

INTRODUCED BY L. DEMING, V. RICCI, L. SCHUBERT, M. VINTON, S. KELLY, S. KLAKKEN, K. LOVE, A. NICASTRO, G. OVERSTREET, T. SHARP, E. BYRNE, C. SCHOMER, T. MILLETT, S. ROSENZWEIG, T. MANZELLA, D. ZOLNIKOV, M. DUNWELL, D. EMRICH, J. FULLER, C. HINKLE, N. NICOL, A. REGIER, F. SMITH, M. REGIER, S. VINTON, C. GLIMM, B. LER, J. SCHILLINGER, G. OBLANDER, K. ZOLNIKOV, J. ETCHART, F. NAVE, B. USHER, L. BREWSTER, M. CAFERRO, N. DURAM, T. FALK, P. FIELDER, G. HERTZ, G. KMETZ, T. MCGILLVRAY, B. MITCHELL, M. NOLAND, K. SEEKINS-CROWE, J. TREBAS, Z. WIRTH, K. BOGNER, B. BEARD, S. ESSMANN, J. HINKLE, B. PHALEN, V. MOORE

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE "DEFEND THE GUARD ACT"; REQUIRING AN OFFICIAL CONGRESSIONAL DECLARATION OR ACTION TO RELEASE THE MONTANA NATIONAL GUARD TO ACTIVE COMBAT DUTY; PROVIDING POWERS OF THE GOVERNOR REGARDING THE MONTANA NATIONAL GUARD; PROVIDING DEFINITIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 4] may be cited as the "Defend the Guard Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 4], the following definitions apply:

(1) "Actions pursuant to Article I, section 8, clause 15" means actions explicitly taken by the United States congress to call forth the militia to:

- (a) execute the laws of the United States;
- (b) suppress insurrections; or
- (c) repel invasions.

(2) "Active duty combat" means performing one or more of the following services in the active

1 federal military of the United States:

2 (a) participation in an armed conflict;

3 (b) performance of a hazardous service relating to an armed conflict in a foreign state; or

4 (c) performance of a duty through an instrumentality of war.

5 (3) "Instrumentality of war" means any tool, equipment, technology, or personnel, including

6 Montana national guard personnel, specifically employed in support of or directly engaged in armed conflict or

7 military operations, including noncombat-related support elements.

8 (4) "Official declaration of war" means an official declaration of war made by the United States

9 congress pursuant to Article I, section 8, clause 11, of the United States constitution.

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11 **NEW SECTION. Section 3. Montana national guard -- official declaration or official action**

12 **required.** (1) Notwithstanding any other provision of law, the Montana national guard and any member of the

13 Montana national guard may not be released from the state into federal duty, including active duty combat,

14 unless the United States congress has:

15 (a) passed an official declaration of war; or

16 (b) taken an official action pursuant to Article I, section 8, clause 15, of the United States

17 constitution to explicitly call forth the Montana national guard or any member of the Montana national guard for

18 any of the purposes enumerated in that clause.

19 (2) The governor shall take any action necessary to enforce this section.

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21 **NEW SECTION. Section 4. Governor's powers.** (1) Nothing in [sections 1 through 4] limits or

22 restricts the governor's authority under Title 32 of the United States Code to consent to the activation of the

23 Montana national guard for federally funded missions that remain under state control, including but not limited

24 to:

25 (a) training and readiness within the United States or its territories or in friendly foreign countries;

26 (b) responding to domestic emergencies, including natural disasters and public health crises;

27 (c) homeland defense activities to protect public safety and critical infrastructure;

28 (d) counter-drug operations within the United States or its territories; and

1 (e) other authorized missions consistent with Title 32 of the United States Code.

2 (2) Nothing in [sections 1 through 4] prohibits any constitutionally authorized mission conducted
3 under Title 10 of the United States Code, provided that the mission does not violate the provisions of [sections
4 1 through 4].

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6 **NEW SECTION. Section 5. Codification instruction.** [Sections 1 through 4] are intended to be
7 codified as an integral part of Title 10, chapter 1, and the provisions of Title 10, chapter 1, apply to [sections 1
8 through 4].

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10 **NEW SECTION. Section 6. Effective date.** [This act] is effective on passage and approval.

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