

SENATE BILL NO. 560

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING NATIONAL GUARD COMBAT DEPLOYMENT LAW; REQUIRING AN OFFICIAL CONGRESSIONAL DECLARATION OR ACTION TO RELEASE THE MONTANA NATIONAL GUARD TO ACTIVE COMBAT DUTY; PROVIDING FOR THE SECRETARY OF STATE TO CIRCULATE COPIES OF THE ACT; PROVIDING FOR THE SECRETARY OF STATE TO CHARGE A FEE; AND PROVIDING DEFINITIONS."

WHEREAS, the Montana Legislature finds that Article I, section 8, of the United States Constitution vests in the United States Congress the exclusive power of war; and

WHEREAS, despite the clear language of the United States Constitution vesting power over war exclusively in the United States Congress, the United States executive branch has unconstitutionally assumed this power while the United States Congress has abdicated its constitutional duty; and

WHEREAS, although the United States Congress has not declared war in over 70 years, the nation has since gone to war repeatedly at the whim of the executive branch; and

WHEREAS, when unconstitutional actions are taken by the federal government, it is the proper role of the states themselves to take action to remedy these situations, as outlined in the Kentucky and Virginia Resolutions of 1798; and

WHEREAS, a founder of this country, George Washington, once wrote, "The Constitution vests the power of declaring War with Congress, therefore, no offensive expedition of importance can be undertaken until after they shall have deliberated upon the subject, and authorized such a measure"; and

WHEREAS, the father of the United States Constitution, James Madison, once wrote, "The constitution

1 supposes, what the History of all Governments demonstrates, that the Ex[ecutive] is the branch of power most
2 interested in war, & most prone to it. It has accordingly with studied care, vested the question of war in the
3 Legis[ature]"; and

4 WHEREAS, the author of the Declaration of Independence, Thomas Jefferson, once wrote, "We have
5 already given in example one effectual check to the Dog of war by transferring the power of letting him loose
6 from the Executive to the Legislative body"; and

7 WHEREAS, Thomas Jefferson also wrote, "[C]onsidering that Congress alone is constitutionally
8 invested with the power of changing our condition from peace to war, I have thought it my duty to await their
9 authority for using force in any decree which could be avoided"; and

10 WHEREAS, another constitutional framer, Alexander Hamilton, once wrote, "'The Congress shall have
11 the power to declare war;' the plain meaning of which is that, it is the peculiar and exclusive province of
12 Congress, when the nation is at peace, to change that state into a state of war[.]".

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

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16 NEW SECTION. Section 1. Short title. [Sections 1 through 3] may be cited as the "Defend the
17 Montana Guard Act".

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19 NEW SECTION. Section 2. Definitions. As used in [sections 1 through 3], unless the context clearly
20 indicates otherwise, the following definitions apply:

21 (1) "Active duty combat" means performing one or more of the following services in the active
22 military service of the United States:

23 (a) participation in armed conflict;

24 (b) performance of a hazardous service relating to an armed conflict in a foreign state other than
25 performance in a training exercise in a foreign state; or

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

27 (2) "Official declaration of war" means an official declaration of war made by the United States
28 congress pursuant to Article I, section 8, clause 11, of the United States constitution.

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

3 **required.** (1) Notwithstanding any other provision of law, the Montana national guard and any member of the
4 Montana national guard may not be released from the state into active-duty combat unless the United States
5 congress has:

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

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

8 constitution to explicitly call forth the Montana national guard and any member of the Montana national guard
9 for the enumerated purposes to expressly execute the laws of the country, repel an invasion, or suppress an
10 insurrection.

11 (2) The governor shall take any action necessary to comply with the requirements of this section.

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13 **NEW SECTION. Section 4. Governor's powers.** Nothing in this section limits or prohibits the

14 governor from consenting to the deployment of any Montana national guard member pursuant to Title 32,
15 U.S.C., for defense support for civil authority missions within the United States and United States territories or
16 for active federal duty for the purposes of training outside the United States.

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18 **NEW SECTION. Section 5. Secretary of state to circulate copies of Defend the Guard Act.** (1) A

19 resident of the state may request the secretary of state mail a copy of the Defend the Montana Guard Act to the
20 office of any of the following people or entities:

21 (a) the president of the United States;

22 (b) the vice president of the United States;

23 (c) members or committees of congress;

24 (d) members of the national security council; and

25 (e) legislatures of other states or territories of the United States.

26 (2) The secretary of state shall charge a person submitting a request under subsection (1) a \$10
27 fee for each individual mailing and may require payment of the fee prior to mailing.

28 (3) The secretary of state may not mail more than one copy to a particular person or entity listed in

1 subsection (1) in any biennium.

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

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