

HOUSE BILL NO. 278

INTRODUCED BY W. WARBURTON

1
2
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE STATE MILITIA; CLARIFYING
5 AND PROVIDING FOR A VOLUNTARY STATE HOME GUARD; CLARIFYING THE GOVERNOR'S ROLE AND
6 RULEMAKING AUTHORITY; SPECIFYING THE AUTHORITY TO RECRUIT, TRAIN, EQUIP, CERTIFY, AND
7 ACTIVATE THE HOME GUARD; PROVIDING FOR CERTAIN DUTIES, RIGHTS, IMMUNITIES, AND
8 PRIVILEGES FOR HOME GUARD MEMBERS; AMENDING SECTIONS 2-16-204, 10-1-102, 10-1-201, 10-1-203,
9 10-1-204, 10-1-205, 10-1-206, 10-1-207, 10-1-301, 10-1-302, 10-1-303, 10-1-401, 10-1-402, 10-1-403, 10-1-501,
10 10-1-502, 10-1-503, 10-1-611, 10-1-612, 10-1-614, 10-1-701, 10-1-702, 10-1-703, 10-1-1002, 10-1-1003,
11 10-1-1009, 10-3-1001, AND 45-8-109, MCA; REPEALING SECTION 10-1-704, MCA; AND PROVIDING AN
12 IMMEDIATE EFFECTIVE DATE."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15
16 **Section 1.** Section 2-16-204, MCA, is amended to read:

17 **"2-16-204. Gubernatorial commissions.** (1) The governor ~~must~~ shall commission:

- 18 (a) all officers elected by the people whose commissions are not otherwise provided for;
- 19 (b) all officers of the militia, except as provided in [section 24];
- 20 (c) all officers appointed by the governor or by the governor with consent of the senate; and
- 21 (d) United States senators.

22 (2) The commissions of all officers commissioned by the governor must be issued in the name of the
23 state and must be signed by the governor and attested by the secretary of state under the great seal."

24
25 **Section 2.** Section 10-1-102, MCA, is amended to read:

26 **"10-1-102. Powers and duties of department of military affairs.** Under the direction of the governor,
27 the department shall:

- 28 (1) keep a roster of all officers and enlisted persons of the ~~militia~~ national guard of this state whether
29 active, inactive, or retired;
- 30 (2) supervise, administer, and coordinate civil defense and disaster control activities;

- 1 (3) recruit, mobilize, administer, train, discipline, equip, and supply the organized militia;
- 2 (4) maintain the archives and keep the records and documents required by law or regulation to be filed
- 3 with the United States department of defense;
- 4 (5) establish and maintain the headquarters required for the militia;
- 5 (6) exercise the powers vested in it and perform any other duty and function required of it by the governor
- 6 and by federal and state laws and regulations."

7

8 **Section 3.** Section 10-1-201, MCA, is amended to read:

9 **"10-1-201. Officers.** (1) The governor shall appoint all officers of the militia, except as provided in

10 [section 24].

- 11 (2) Officers must be citizens of the United States.
- 12 (3) ~~Before~~ Except as provided in [section 24], before a person can be appointed an officer by the
- 13 governor, the person must be examined and adjudged qualified to be an officer by an examining board. The
- 14 composition, appointment, and examination procedure of the board and the nature and scope of examinations
- 15 must be prescribed by federal law or regulation or state regulations.
- 16 (4) Each officer shall hold office under the appointment until the officer is regularly appointed to another
- 17 grade or office or until the officer is regularly retired, discharged, dismissed, or placed in the reserve."

18

19 **Section 4.** Section 10-1-203, MCA, is amended to read:

20 **"10-1-203. Retirement of officers.** (1) An officer of the national guard must be retired by order of the

21 governor for the following reasons:

22 (a) upon loss of federal recognition; or

23 (b) unfitness for military service because of a physical disability.

24 (2) An officer is retired from the ~~militia~~ national guard with the grade and rank held at the time of

25 retirement."

26

27 **Section 5.** Section 10-1-204, MCA, is amended to read:

28 **"10-1-204. Resignation of officers.** An officer of the national guard may resign, but the resignation is

29 not effective until it has been accepted by the governor."

30

1 **Section 6.** Section 10-1-205, MCA, is amended to read:

2 **"10-1-205. Vacating commissions or warrants.** The commission or warrant of an officer in the national
3 guard must be vacated:

4 (1) upon acceptance by the governor of the resignation of the officer; or

5 (2) by an order of the governor discharging the officer:

6 (a) for failure to maintain the officer's qualifications for federal recognition;

7 (b) upon the scheduled or actual termination or withdrawal of the officer's federal recognition when
8 federal recognition is a prerequisite for continued service;

9 (c) upon a change in federal reserve status that makes the officer ineligible for continued assignment
10 to a unit of the ~~organized militia~~ national guard;

11 (d) for the officer's absence from duty without leave for more than 3 months;

12 (e) upon the recommendation of a board of examination or the sentence of a court-martial;

13 (f) upon conviction of a felony; or

14 (g) upon final sentencing to confinement in a federal or state penitentiary or correctional institution as
15 defined in 45-2-101."

16

17 **Section 7.** Section 10-1-206, MCA, is amended to read:

18 **"10-1-206. Examination as to fitness -- board of examination.** (1) The governor, when the governor
19 considers it necessary, may order an officer of the national guard to appear before a board of examination. The
20 board of examination consists of three officers, senior in rank to the officer whose fitness for service is under
21 examination. The board may:

22 (a) inquire into the fitness for military service due to physical disability of an officer under 10-1-203(1)(b);

23 (b) inquire into the moral character, capacity, and professional fitness of an officer in order to make a
24 recommendation under 10-1-205(2)(e).

25 (2) The board, under 10-1-203(1)(b), may recommend the retention of the officer being examined or
26 recommend the officer's retirement because of a physical inability to perform active service.

27 (3) The board, under 10-1-205(2)(e), may recommend the discharge and the vacating of the officer's
28 commission or warrant.

29 (4) The findings of the board become effective only upon the approval of the governor."
30

1 **Section 8.** Section 10-1-207, MCA, is amended to read:

2 **"10-1-207. Uniform allowance for officers.** There may be paid annually on April 1 a uniform allowance
3 to each properly uniformed and equipped officer of the ~~organized militia~~ national guard."

4

5 **Section 9.** Section 10-1-301, MCA, is amended to read:

6 **"10-1-301. Terms of enlistment.** Except as otherwise provided by federal law or regulation or under
7 the provisions of part 7, enlistments, reenlistments, and extension of enlistments ~~shall~~ must be for periods as
8 prescribed by the department."

9

10 **Section 10.** Section 10-1-302, MCA, is amended to read:

11 **"10-1-302. Oath of enlistment.** (1) Except when a comparable oath of enlistment is subscribed to under
12 federal law or regulation, every person who enlists or reenlists in the national guard shall take and subscribe to
13 the following oath of enlistment:

14 "I hereby acknowledge to have voluntarily enlisted this day of in the of the United States and
15 the state of Montana for a period of years under the conditions prescribed by law, unless sooner discharged
16 by proper authority. And I do solemnly swear that I will bear true faith and allegiance to the United States of
17 America and to the state of Montana, and that I will serve them honestly and faithfully against all their enemies,
18 and that I will obey the orders of the president of the United States, the governor of the state of Montana, and the
19 officers appointed over me."

20 (2) Any officer of the ~~organized militia~~ national guard or any officer of the armed forces of the United
21 States, detailed to duty with any component of the ~~organized militia~~ national guard of this state, may administer
22 the oath of enlistment to enlisted personnel."

23

24 **Section 11.** Section 10-1-303, MCA, is amended to read:

25 **"10-1-303. Extension of terms of service.** If an emergency is declared by the president, congress, the
26 governor, or the legislature, the governor may by proclamation, in accordance with federal and state law and
27 regulation, extend the enlistment of an enlisted member of the ~~organized militia~~ national guard until 6 months after
28 the termination of that emergency."

29

30 **Section 12.** Section 10-1-401, MCA, is amended to read:

1 **"10-1-401. Courts -- composition, jurisdiction, powers, and procedures.** The military courts for the
 2 ~~militia shall~~ national guard must be constituted like similar courts of the armed forces of the United States. They
 3 have the jurisdiction and powers, except as to punishments, and shall follow the forms and procedures of those
 4 courts. The convening authority for these military courts and maximum punishments authorized ~~shall~~ must be as
 5 prescribed by federal and state law and regulation applicable to the national guard."
 6

7 **Section 13.** Section 10-1-402, MCA, is amended to read:

8 **"10-1-402. Persons subject.** All members of the ~~organized militia~~ national guard and all other persons
 9 lawfully called, ordered, or drafted for duty in the ~~organized militia~~ national guard are subject to this part from the
 10 dates they are required by the terms of the call, order, or other directive to serve."
 11

12 **Section 14.** Section 10-1-403, MCA, is amended to read:

13 **"10-1-403. Territorial applicability.** (1) This part is applicable in all places in this state. It also applies
 14 to all persons while serving outside this state and while going to and returning from service outside this state.

15 (2) Courts-martial and courts of inquiry may be convened and held in units of the ~~organized militia~~
 16 national guard while serving outside this state. These courts serve with the same jurisdiction and powers as if
 17 held in this state. Offenses committed outside this state may be tried and punished either in or out of this state."
 18

19 **Section 15.** Section 10-1-501, MCA, is amended to read:

20 **"10-1-501. Pay for ~~militia~~ national guard.** (1) When the ~~organized militia~~ national guard is ordered into
 21 active duty as provided for in Article VI, section 13, of the constitution of this state, warrants for pay and expenses
 22 must be drawn upon funds appropriated by the legislature.

23 (2) If national guard members are placed on state duty for special work pursuant to 10-1-505, the
 24 members are entitled to pay and allowances as provided in 10-1-502(3). Warrants for pay and allowances for
 25 state duty for special work must be drawn upon funds appropriated by the legislature."
 26

27 **Section 16.** Section 10-1-502, MCA, is amended to read:

28 **"10-1-502. Pay and allowances.** (1) An officer of the national guard ordered into active duty as provided
 29 for in Article VI, section 13, of the constitution of this state must receive pay and allowances as prescribed for an
 30 officer of corresponding grade and length of service when on active duty in federal service.

1 (2) An enlisted member of the national guard ordered into active duty as provided for in Article VI, section
 2 13, of the constitution of this state must receive pay at rates equivalent to twice those allowed for an enlisted
 3 member of corresponding grade and length of time when on active duty in federal service. This schedule of pay
 4 for enlisted members applies only to the first 15 days of service. After 15 days, an enlisted member must receive
 5 the pay and allowances as prescribed for an enlisted member of corresponding grade and length of service when
 6 on active duty in federal service.

7 (3) A national guard member placed on state duty for special work, as defined in 10-1-505, must receive
 8 the pay and allowances as prescribed for an officer or enlisted member of corresponding grade and length of
 9 service when on active duty in federal service.

10 (4) The pay and allowances provided for in subsections (1) and (2) may not be paid when pay and
 11 allowances for the active duty are provided out of federal funds."

12

13 **Section 17.** Section 10-1-503, MCA, is amended to read:

14 "**10-1-503. Allowances for incidental expenses -- payment of claims authorized.** Each commanding
 15 ~~officer~~ captain of an activated home guard company may receive an allowance for the incidental expenses of the
 16 command. Additionally, the state, if activation was initiated by the governor, or the county, if activation was
 17 requested by a county sheriff, may pay claims from home guard members for:

18 (1) personal equipment that is lost, damaged, or destroyed as a part of the active service;

19 (2) food, fuel, or other supplies used as part of the active service; or

20 (3) other necessary expenses incurred as part of the active service."

21

22 **Section 18.** Section 10-1-611, MCA, is amended to read:

23 "**10-1-611. Authority of commanding officer to arrest.** The commanding officer of a national guard
 24 unit at any drill, parade, encampment, or other duty may order those under the commanding officer's command
 25 to perform any military duty the commanding officer requires. The commanding officer of a national guard unit
 26 may arrest, for the time of the drill, parade, encampment, or other duty, an officer or enlisted person of a national
 27 guard unit who disobeys the orders of a superior officer."

28

29 **Section 19.** Section 10-1-612, MCA, is amended to read:

30 "**10-1-612. Arrest of trespassers and disturbers.** (1) The commanding officer of a national guard unit

1 may arrest or authorize the arrest of a person who trespasses upon a camp or parade ground, armory, arsenal,
2 rifle range, or any other place devoted to or used for military purposes.

3 (2) The commanding officer may arrest a person who:

4 (a) interrupts, molests, or disturbs the orderly discharge of duty by those under arms;

5 (b) disturbs or prevents the passage of troops going to or returning from any duty; or

6 (c) assaults a member of the uniformed militia while that member is performing any military duty.

7 (3) A person who is arrested under this section ~~shall~~ must be transferred to the civil authorities in the
8 county where the offense was committed.

9 (4) A person committing an offense for which an arrest may be made pursuant to this section is guilty
10 of a misdemeanor."

11

12 **Section 20.** Section 10-1-614, MCA, is amended to read:

13 "**10-1-614. Unlawful wearing of uniform.** A person who is not a member of the ~~organized militia~~
14 national guard may not wear the uniform or insignia issued or authorized for use by the ~~organized militia~~ national
15 guard."

16

17 NEW SECTION. **Section 21. Short title.** This part may be cited as the "Montana Home Guard
18 Revitalization Act".

19

20 NEW SECTION. **Section 22. Purpose.** The purpose of this part is to establish the Montana home guard
21 as a volunteer community service apparatus in Montana to fill the gap between community service organizations,
22 such as a neighborhood watch program and the Montana national guard, and to provide the state and its local
23 communities with the ability to call upon trained and organized volunteers when necessary resources are
24 otherwise unavailable.

25

26 **Section 23.** Section 10-1-701, MCA, is amended to read:

27 "**10-1-701. Home guard -- organization and composition -- company identification.** (1) The home
28 guard may be organized, maintained, and disbanded ~~at the discretion of the governor, in accordance with federal~~
29 ~~law and regulation, as provided for in this part~~ when additional defense or emergency response forces are needed
30 in this state. The home guard ~~shall~~ must be composed of volunteers who include company captains, officers

1 ~~assigned to it selected by the company captains, and any able-bodied citizen of this state who volunteers to serve~~
 2 ~~in it. If additional persons are needed in the home guard, members of the unorganized militia shall serve if~~
 3 ~~enrolled by draft or otherwise as provided by law and regulation.~~

4 (2) The basic unit of the home guard is a company, which may be organized into platoons and squads.

5 (3) Each home guard company may adopt a company flag, company creed, company colors, and other
 6 designations or insignia suitable for company identity and tradition. The company shall agree on a uniform to
 7 distinguish its members. A uniformly worn special badge with a company insignia or readily available clothing
 8 item, such as a cap, shirt, or other item, is sufficient to constitute a uniform.

9 (4) A home guard company may be established as provided in [section 25] and may be formed as an
 10 infantry company, medical company, transportation company, heavy equipment company, construction company,
 11 forestry company, police company, environmental company, signal company, scout company, cavalry company,
 12 supply company, specialty company, general service company, or another type of company. A mixed company
 13 may be formed of specialized platoons or squads of the types listed in this subsection."

14
 15 **NEW SECTION. Section 24. Company captain responsibilities -- commissioning and recruiting**
 16 **members -- charter.** (1) A home guard company must be commanded by a captain commissioned by the
 17 governor. The company captain is responsible for selecting and commissioning the company's officers and for
 18 recruiting, training, mustering, equipping, assigning, and promoting company members. The company captain
 19 may dismiss or demote company members or administer other lesser disciplinary measures.

20 (2) Each company member is responsible to the company captain, and each company captain is
 21 responsible to the governor through a chain of command established by the governor pursuant to rules adopted
 22 under 10-1-702.

23 (3) With the advice of the company officers, the company captain shall prepare and execute a company
 24 charter to specify the mission, policies, equipment, and procedures for the company. The charter must be
 25 approved by the governor to be valid.

26 (4) The company captain's responsibilities must also include a monthly report to the governor concerning
 27 the recruiting, training, mustering, equipping, physical fitness, and assigning and promoting of company members.
 28 Annual inspections must be convened to ensure readiness and strength.

29
 30 **NEW SECTION. Section 25. How home guard company may be established.** (1) A home guard

1 company may be established in any of the following ways:

2 (a) The governor may appoint a home guard captain and authorize that captain to recruit, train, muster,
3 and equip a home guard company.

4 (b) Any citizen of good repute may form a company and petition the governor to appoint the citizen as
5 the company's captain and to accept the company into the home guard.

6 (c) Any group of citizens may form a company, select a company captain, and petition the governor to
7 commission the captain and accept the company as part of the home guard.

8 (2) To be officially recognized as a home guard company, the company must be certified by the governor
9 pursuant to 10-1-702.

10

11 **Section 26.** Section 10-1-702, MCA, is amended to read:

12 **"10-1-702. Gubernatorial rules for home guard -- company certification -- decertification.** (1) The
13 home guard shall must be organized, armed, equipped, maintained, disciplined, governed, administered, and
14 trained under rules prescribed by the governor in accordance with the provisions of this part. ~~These rules shall~~
15 ~~conform to federal law and regulations.~~ The rules may not be so burdensome that they preclude home guard
16 companies from being effectively organized, trained, and employed pursuant to this part.

17 (2) The governor shall, within 30 days of acceptance of a company into the home guard, issue to the
18 company a certificate of acceptance that entitles the company to all of the privileges, traditions, and
19 responsibilities of a home guard company for as long as that certificate of acceptance is valid. The first and
20 second certificate of acceptance is valid and in effect for 1 year from date of issuance. The third certificate of
21 acceptance is valid indefinitely unless revoked by the governor for cause or unless the certificate is voluntarily
22 abandoned or returned to the governor by a disused or disabled company."

23

24 **NEW SECTION. Section 27. Oaths -- conditions of service.** (1) Each member of a home guard
25 company shall, as a condition of acceptance into a home guard company, swear an oath as provided for in this
26 section and must be informed upon the member's recruitment that service in the home guard is at the member's
27 own risk and without compensation.

28 (2) Each home guard officer shall take and subscribe to the following oath of office before assuming
29 office:

30 "I,, do solemnly swear that I will support and defend the constitution of the state of Montana and the

1 constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance
2 to the same; that I will obey the orders of the governor of the state of Montana; that I make this obligation freely,
3 without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the
4 office of in the upon which I am about to enter, so help me God."

5 (3) Each noncommissioned person who joins the home guard shall take and subscribe to the following
6 oath of enlistment:

7 "I hereby acknowledge to have voluntarily joined this day of in the home guard of the state of
8 Montana. And I do solemnly swear that I will bear true faith and allegiance to the state of Montana, that I will serve
9 it honestly and faithfully against all its enemies, and that I will obey the orders of the governor of the state of
10 Montana and the officers appointed over me."

11 (4) A company captain or any commissioned officer of the home guard may administer this oath.
12

13 **NEW SECTION. Section 28. Officer resignations -- when commissions must be vacated.** (1) An
14 officer of the home guard may resign the officer's commission at any time.

15 (2) A commission must be vacated when an officer has been dismissed by the company captain for
16 cause.

17 (3) A company captain's commission must be vacated if the company captain is dismissed by the
18 governor for cause.

19 (4) A commission may be vacated for reasons including but not limited to:

20 (a) failure to maintain the officer's initial qualifications for recognition;

21 (b) absence from duty without leave for more than 6 months; or

22 (c) a felony conviction.
23

24 **NEW SECTION. Section 29. Activation and deployment -- failure to respond -- restrictions.** (1) A
25 home guard company may be activated and assigned to duty by order of the governor or upon the request of a
26 county sheriff if the requested activation is approved and ordered by the governor within 48 hours of the request.
27 The governor or the county sheriff shall provide written documentation of the activation order to the company.

28 (2) A home guard company may volunteer service to the county sheriff.

29 (3) If a home guard company fails to respond to a call for activation at a minimum of half strength within
30 8 hours of the governor's call, the home guard company may be decertified by the governor and its captain

1 dismissed. If a home guard member fails to respond to a call for activation, for cause or otherwise, the member
2 may be dismissed from the company by the company captain.

3 (4) A home guard company or company members may not be deployed or assigned outside of
4 Montana's borders. A home guard company or company members may serve in support of federal agencies but
5 may not be compelled to serve under the direction of any federal agency, employee, or officer.

6 (5) The governor may activate any company of the home guard for a period not to exceed 10 consecutive
7 days. The governor may not activate a company for more than 30 days in any calendar year without the prior
8 consent of the legislature. In consenting to activation for more than 30 days in a calendar year, the legislature
9 shall identify the specific company or companies for which it is authorizing active service and the date by which
10 the active service must be terminated.

11

12 **Section 30.** Section 10-1-703, MCA, is amended to read:

13 **"10-1-703. Use Training -- use of armories and equipment.** (1) Each home guard captain is
14 responsible for ensuring that the personnel of the captain's company are trained sufficiently to fulfill the company's
15 mission according to the company's charter. The national guard may provide training for units and personnel of
16 the home guard to the extent that the resources of the national guard permit the training.

17 (2) The governor may make available to the home guard the facilities of state armories and their
18 equipment and any other state land and property ~~as~~ that may be available. The governor may requisition from
19 the federal government, for the use of the home guard, arms, ammunition, clothing, equipment, and other items
20 in accordance with federal law and regulations to the extent that the governor may do so without obligating the
21 home guard to federal service. The governing body of a county, municipality, or school district may make
22 available to the home guard any premises, facilities, equipment, or other property belonging to or under the
23 control of the county, municipality, or school district."

24

25 **NEW SECTION. Section 31. Volunteer status -- workers' compensation.** (1) A member of the home
26 guard, whether on active duty or otherwise, serves strictly as an unpaid volunteer and is not entitled to
27 compensation, except as provided in 10-1-503.

28 (2) When a home guard company is activated, the state if the activation was initiated by the governor
29 or the county if the activation was requested by the county sheriff shall provide workers' compensation insurance
30 coverage for the activated members of the company for the duration of the member's active service under the

1 activation order.

2 (3) The governor shall report rosters of the home guard to the state workers' compensation board state
3 plan and have in place a workers' compensation insurance plan for when the home guard is activated.

4
5 **NEW SECTION. Section 32. Liability.** When a home guard company is in an activated status, the
6 provisions of 10-1-601 and 10-3-111 apply. A member of a home guard company is not liable for injuries or
7 damages incurred in the performance of assigned duties unless the member is found to be grossly negligent.

8
9 **Section 33.** Section 10-1-1002, MCA, is amended to read:

10 **"10-1-1002. Purpose -- legislative intent.** The purpose of this part is to recognize the importance of
11 the service performed by Montana national guard and home guard members and to protect the employment rights
12 of national guard and home guard members who may be called to state active duty when there is a state
13 emergency or disaster. The legislature also supports the efforts and sacrifices of the employers of Montana
14 national guard and home guard members and intends that this part will provide a means for national guard and
15 home guard members and employers to work cooperatively to resolve any workplace issues."

16
17 **Section 34.** Section 10-1-1003, MCA, is amended to read:

18 **"10-1-1003. Definitions.** Unless the context requires otherwise, as used in this part, the following
19 definitions apply:

20 (1) "Department" means the department of labor and industry established in 2-15-1701.

21 (2) "Elected official" means an official duly elected or appointed to any state or local judicial, legislative,
22 or executive elective office of the state, a district, or a political subdivision of the state, including a school district
23 or any other local district.

24 (3) (a) "Employer" means any public or private person or entity providing employment in Montana.

25 (b) The term does not include the United States.

26 (4) "Federally funded military duty" means duty, including training, performed pursuant to orders issued
27 under Title 10 or 32 of the United States Code and the time period, if any, required pursuant to a licensed
28 physician's certification to recover from an illness or injury incurred while performing the duty.

29 (5) "Member" means a member of the state's organized militia provided for in 10-1-103.

30 (6) "Military service" includes both federally funded military duty and state active duty.

1 (7) (a) "State active duty" means duty performed by a member when a disaster or an emergency has
 2 been declared by the proper authority of the state pursuant to Article VI, section 13, of the Montana constitution
 3 or when a home guard company is activated under [section 29] to include the time period, if any, required
 4 pursuant to a licensed physician's certification to recover from an illness or injury incurred while performing the
 5 active duty.

6 (b) The term does not include federally funded military duty."
 7

8 **Section 35.** Section 10-1-1009, MCA, is amended to read:

9 **"10-1-1009. Paid military leave for public employees.** (1) An employee of the state or of any political
 10 subdivision, as defined in 2-9-101, who is a member of the ~~organized militia~~ national guard of this state or who
 11 is a member of the organized or unorganized reserve corps or military forces of the United States and who has
 12 been an employee for a period of at least 6 months must be given leave of absence with pay accruing at a rate
 13 of 120 hours in a calendar year, or academic year if applicable, for performing military service.

14 (2) Military leave may not be charged against the employee's annual vacation time.

15 (3) Unused military leave must be carried over to the next calendar year, or academic year if applicable,
 16 but may not exceed a total of 240 hours in any calendar or academic year."
 17

18 **Section 36.** Section 10-3-1001, MCA, is amended to read:

19 **"10-3-1001. Enactment -- provisions.** The Emergency Management Assistance Compact is enacted
 20 into law and entered into with all other jurisdictions joining in the compact in the form substantially as follows:

21 Article I - Definitions, Purposes, and Authorities

22 (1) As used in this compact, the following definitions apply:

23 (a) "Party states" means the states that enact this compact.

24 (b) "States" means the several states, the Commonwealth of Puerto Rico, the District of Columbia, and
 25 all U.S. territorial possessions.

26 (2) This compact is made and entered into by and between the participating party states that enact this
 27 compact.

28 (3) The purpose of this compact is to provide for mutual assistance between the party states in managing
 29 any emergency or disaster that is declared by the governor of an affected state, whether arising from natural
 30 disaster, technological hazard, human-caused disaster, civil emergency aspects of resources shortages,

1 community disorders, insurgency, or enemy attack.

2 (4) This compact also provides for mutual cooperation in emergency-related exercises, testing, or other
3 training activities using equipment and personnel simulating performance of any aspect of the giving and
4 receiving of aid by party states or subdivisions of party states during emergencies, those actions occurring outside
5 actual declared emergency periods. Mutual assistance in this compact may include the use of the states' national
6 guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement
7 between party states.

8 Article II - General Implementation

9 (1) Each party state recognizes that many emergencies transcend political jurisdictional boundaries and
10 that intergovernmental coordination is essential in managing these and other emergencies under this compact.
11 Each party state further recognizes that there will be emergencies that require immediate access and present
12 procedures to apply outside resources to make a prompt and effective response to an emergency. This is
13 because few, if any, individual states have all the resources that they may need in all types of emergencies or
14 the capability of delivering resources to areas where emergencies exist.

15 (2) The prompt, full, and effective utilization of resources of the participating states, including any
16 resources on hand or available from the federal government or any other source, that are essential to the safety,
17 care, and welfare of the people in the event of any emergency or disaster declared by a party state is the
18 underlying principle on which all articles of this compact must be understood.

19 (3) On behalf of the governor of each party state, the legally designated state official who is assigned
20 responsibility for emergency management is responsible for formulation of the appropriate interstate mutual aid
21 plans and procedures necessary to implement this compact.

22 Article III - Party State Responsibilities

23 (1) It is the responsibility of each party state to formulate procedural plans and programs for interstate
24 cooperation in the performance of the responsibilities listed in this article. In formulating those plans and in
25 carrying them out, the party states, insofar as practical, shall:

26 (a) review individual party state hazards analyses and, to the extent reasonably possible, determine all
27 those potential emergencies that the party states might jointly suffer, whether because of natural disaster,
28 technological hazard, human-caused disaster, emergency aspects of resource shortages, civil disorders,
29 insurgency, or enemy attack;

30 (b) review party states' individual emergency plans and develop a plan that will determine the mechanism

- 1 for the interstate management and provision of assistance concerning any potential emergency;
- 2 (c) develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies
- 3 or overlaps in existing or developed plans;
- 4 (d) assist in warning communities adjacent to or crossing the state boundaries;
- 5 (e) protect and ensure uninterrupted delivery of services, medicines, water, food, energy and fuel, search
- 6 and rescue, and critical lifeline equipment, services, and resources, both human and material;
- 7 (f) inventory and set procedures for the interstate loan and delivery of human and material resources,
- 8 together with procedures for reimbursement or forgiveness; and
- 9 (g) provide, to the extent authorized by law, for temporary suspension of any statutes.
- 10 (2) The authorized representative of a party state may request assistance of another party state by
- 11 contacting the authorized representative of that state. The provisions of this agreement apply only to requests
- 12 for assistance made by and to authorized representatives. Requests may be verbal or in writing. If a request is
- 13 verbal, the request must be confirmed in writing within 30 days of the verbal request. Requests must provide the
- 14 following information:
- 15 (a) a description of the emergency service function for which assistance is needed, such as fire services,
- 16 law enforcement, emergency medical, transportation, communications, public works and engineering, building
- 17 inspection, planning and information assistance, mass care, resource support, health and medical services, and
- 18 search and rescue;
- 19 (b) the amount and type of personnel, equipment, materials, and supplies needed and a reasonable
- 20 estimate of the length of time that will be needed; and
- 21 (c) the specific place and time for staging of the assisting party state's response and a point of contact
- 22 at that location.
- 23 (3) There must be frequent consultation between state officials who have assigned emergency
- 24 management responsibilities and other appropriate representatives of the party states with affected jurisdictions
- 25 and the United States government, with free exchange of information, plans, and resource records relating to
- 26 emergency capabilities.

27 Article IV - Limitations

28 A party state requested to render mutual aid or to conduct exercises and training for mutual aid shall take

29 action necessary to provide and make available the resources covered by this compact in accordance with the

30 terms of this compact. However, it is understood that the state rendering aid may withhold resources to the extent

1 necessary to provide reasonable protection for that state. Each party state shall afford to the emergency forces
2 of any party state, while operating within its state limits under the terms and conditions of this compact, the same
3 powers, except the power of arrest unless specifically authorized by the receiving state, duties, rights, and
4 privileges as are afforded forces of the party state in which they are performing emergency services. Emergency
5 forces shall continue under the command and control of their regular leaders, but the organizational units shall
6 come under the operational control of the emergency services authorities of the state receiving assistance. These
7 conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by
8 the governor of the party state that is to receive assistance or subsequent to commencement of exercises or
9 training for mutual aid and must continue so long as the exercises or training for mutual aid is in progress, the
10 state of emergency or disaster remains in effect, or loaned resources remain in the receiving state, whichever
11 is longer.

12 Article V - Licenses and Permits

13 If a person holding a license, certificate, or other permit issued by a party state evidencing the meeting
14 of qualifications for professional, mechanical, or other skills is requested for assistance by the receiving party
15 state, that person is considered licensed, certified, or permitted by the party state requesting assistance to render
16 aid involving that skill to meet a declared emergency or disaster. However, the person holding the license,
17 certificate, or permit is subject to limitations and conditions that the governor of the requesting party state may
18 prescribe by executive order or other means.

19 Article VI - Liability

20 Officers or employees of a party state rendering aid in another party state pursuant to this compact are
21 considered agents of the requesting state for tort liability and immunity purposes. A party state or its officers or
22 employees rendering aid in another party state pursuant to this compact are not liable on account of an act taken
23 or omission made in good faith on the part of the forces giving that aid or on account of the maintenance or use
24 of any equipment or supplies in connection with giving that aid. Good faith, as used in this article, does not include
25 willful misconduct, gross negligence, or recklessness.

26 Article VII - Supplementary Agreements

27 Because it is probable that the pattern and detail of the machinery for mutual aid among two or more
28 states may differ from that among the states that are party to this compact, this compact contains elements of
29 a broad base common to all states. This compact does not prevent a party state from making supplementary
30 agreements with another state or affect any other agreements already in force between states. Supplementary

1 agreements may include provisions for evacuation and reception of injured and other persons and the exchange
2 of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and
3 equipment and supplies.

4 Article VIII - Compensation

5 Each party state shall provide for the payment of compensation and death benefits to injured members
6 of the emergency forces of that state and representatives of deceased members of those forces in case those
7 members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on
8 the same terms as if the injury or death were sustained within their own state.

9 Article IX - Reimbursement

10 A party state rendering aid in another party state pursuant to this compact must be reimbursed by the
11 party state receiving that aid for any loss or damage to or expense incurred in the operation of any equipment
12 and the provision of any service in answering a request for aid and for the costs incurred in connection with a
13 request. However, an aiding party state may assume in whole or in part a loss, damage, expense, or other cost
14 or may loan equipment or donate services to the receiving party state without charge or cost. Two or more party
15 states may enter into supplementary agreements establishing a different allocation of costs among those states.
16 Article VIII expenses are not reimbursable under this provision.

17 Article X - Evacuation

18 (1) Plans for the orderly evacuation and interstate reception of portions of the civilian population as the
19 result of any emergency or disaster of sufficient proportions to require those plans, must be worked out and
20 maintained between the party states and the emergency management or emergency services directors of the
21 various jurisdictions where any type of incident requiring evacuations might occur. The plans must be put into
22 effect by request of the party state from which evacuees come and must include:

- 23 (a) the manner of transporting those evacuees;
24 (b) the number of evacuees to be received in different areas;
25 (c) the manner in which food, clothing, housing, and medical care will be provided;
26 (d) the registration of the evacuees;
27 (e) the providing of facilities for the notification of relatives or friends of evacuees;
28 (f) the forwarding of evacuees to other areas or the bringing in of additional materials or supplies; and
29 (g) all other relevant factors.

30 (2) The plans referred to in subsection (1) must provide that the party state receiving evacuees and the

1 party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses
2 incurred in receiving and caring for evacuees, for expenditures for transportation, food, clothing, medicines, and
3 medical care, and for similar items. The expenditures must be reimbursed as agreed by the party state from which
4 the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees
5 come shall assume the responsibility for the ultimate support of repatriation of the evacuees.

6 Article XI - Implementation

7 (1) This compact becomes operative immediately upon its enactment into law by any two states. After
8 it becomes operative, this compact is effective in any other state upon its enactment by that other state.

9 (2) A party state may withdraw from this compact by enacting a statute repealing the compact, but
10 withdrawal does not take effect until 30 days after the governor of the withdrawing state has given notice in writing
11 of the withdrawal to the governors of all other party states. Withdrawal does not relieve the withdrawing state from
12 obligations assumed under this compact prior to the effective date of withdrawal.

13 (3) Authenticated copies of this compact and any supplementary agreements as may be entered into
14 must, at the time of their approval, be deposited with each of the party states and with the federal emergency
15 management agency and other appropriate agencies of the United States government.

16 Article XII - Validity

17 This compact must be construed to effectuate the purposes stated in Article I. If any provision of this
18 compact is declared unconstitutional or if the applicability of a provision to any person or circumstances is held
19 invalid, the constitutionality of the remainder of this compact and the applicability of this compact to other persons
20 and circumstances are not affected.

21 Article XIII - Additional Provisions

22 This compact does not authorize or permit the use of military force by the national guard of a party state
23 at any place outside that state in any emergency for which the president is authorized by law to call into federal
24 service the ~~militia~~ national guard or for any purpose for which the use of the army or the air force would in the
25 absence of express statutory authorization be prohibited under 18 U.S.C. 1385."

26
27 **Section 37.** Section 45-8-109, MCA, is amended to read:

28 **"45-8-109. Civil disorder -- prohibited activities -- penalties -- exceptions.** (1) A person is guilty of
29 a crime if, with one or more other persons, the person purposely or knowingly assembles for the purpose of
30 training in, instructing in the use of, or practicing with any technique or means capable of causing property

1 damage, bodily injury, or death, with the purpose of employing the training, instruction, or practice in a civil
2 disorder.

3 (2) A person convicted of violating the provisions of subsection (1) is guilty of a felony and shall be
4 imprisoned in the state prison for a period not to exceed 10 years or be fined not to exceed \$50,000, or both.

5 (3) Subsection (1) does not prohibit:

6 (a) an act protected pursuant to Article II of the Montana constitution;

7 (b) an act of a governmental military force;

8 (c) an act of a peace officer performed in the lawful performance of the officer's duties;

9 (d) an authorized activity of the department of fish, wildlife, and parks; the department of corrections; a
10 law enforcement agency; or the law enforcement academy;

11 (e) training in nonviolent civil disobedience techniques;

12 (f) lawful self-defense or defense of others or an activity intended to teach or practice self-defense or
13 self-defense techniques; ~~or~~

14 (g) a facility, program, or lawful activity related to firearms instruction or training intended to teach the
15 safe handling and use of firearms or activities or sports related to recreational use or possession of firearms; or

16 (h) training for any person actively involved in the home guard or training for admission into the home
17 guard.

18 (4) Sections 45-8-107 through 45-8-109 do not apply to an employer or employees involved in a labor
19 dispute."

20

21 **NEW SECTION. Section 38. Repealer.** The following section of the Montana Code Annotated is
22 repealed:

23 10-1-704. Pay and allowances.

24

25 **NEW SECTION. Section 39. Codification instruction.** [Sections 21, 22, 24, 25, 27 through 29, 31,
26 and 32] are intended to be codified as an integral part of Title 10, chapter 1, part 7, and the provisions of Title 10,
27 chapter 1, part 7, apply to [sections 21, 22, 24, 25, 27 through 29, 31, and 32].

28

29 **NEW SECTION. Section 40. Severability.** If a part of [this act] is invalid, all valid parts that are
30 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,

1 the part remains in effect in all valid applications that are severable from the invalid applications.

2

3 NEW SECTION. **Section 41. Effective date.** [This act] is effective on passage and approval.

4 - END -