

SENATE BILL NO. 309
INTRODUCED BY J. BALYEAT

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE CONFISCATION OF PRIVATELY OWNED FIREARMS WITHIN THE STATE FOLLOWING THE DECLARATION OF AN EMERGENCY OR DISASTER OR THE OCCURRENCE OF AN INCIDENT; PROVIDING CERTAIN RESTRICTIONS ON THE USE OF NONRESIDENT PEACE OFFICERS FOLLOWING THE DECLARATION OF AN EMERGENCY OR DISASTER OR THE OCCURRENCE OF AN INCIDENT; PROVIDING FOR ENFORCEMENT; AMENDING SECTIONS 7-32-302, 10-3-204, 10-3-207, 10-3-1001, 44-11-101, 44-11-302, 44-11-304, 44-11-306, AND 44-11-312, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE."

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

NEW SECTION. **Section 1. State policy on confiscation of private firearms -- definitions.** (1) It is the policy of the state of Montana that a person may not, following the declaration of an emergency or disaster or the occurrence of an incident pursuant to Title 10, chapter 3, and while purporting to act on behalf of the state or a political subdivision of the state, confiscate a privately owned firearm of another person except as provided in [sections 1 through 5].

(2) As used in [sections 1 through 5], the following definitions apply:

(a) (i) "Confiscation action" means the intentional deprivation by a person in Montana of a privately owned firearm.

(ii) The term does not include the taking of a firearm from a person:

(A) in self-defense;

(B) possessing a firearm while the person is committing a felony or misdemeanor; or

(C) who may not, under state or federal law, lawfully possess the firearm.

(b) "Disaster" has the meaning provided in 10-3-103.

(c) "Emergency" has the meaning provided in 10-3-103.

(d) "Incident" has the meaning provided in 10-3-103.

(e) "Interested party" includes the owner of the firearm confiscated or to be confiscated and a person otherwise with sufficient interest in the outcome of the issue to satisfy the constitutional prerequisites for legal standing for the purposes of the civil action authorized by [section 5].

(f) "Peace officer" means a peace officer as defined in 46-1-202.

NEW SECTION. Section 2. Confiscation of firearm by government prohibited. (1) Following a declaration of an emergency or disaster or the occurrence of an incident pursuant to Title 10, chapter 3, a peace officer or other person purporting to act on behalf of the state or a political subdivision of the state may not take a confiscation action.

(2) The attorney general, a county attorney, or an interested party may enforce the provisions of this section as provided in [section 5].

NEW SECTION. Section 3. Agreement for employment of nonresident peace officers to be filed. (1) An entity authorized to employ, appoint, request the assistance of, use, or deputize a person as a peace officer may not take any of those actions with regard to a nonresident peace officer during an emergency, disaster, or incident unless:

(a) the entity executes a written agreement for the deployment of the nonresident peace officer in Montana and the agreement provides:

(i) where, when, and how the nonresident peace officer is to be deployed;

(ii) the state law, county resolution, city ordinance, or any of those documents that will be enforced by the nonresident peace officer;

(iii) the name, rank, badge number, and position of the nonresident peace officer to be deployed in Montana;

(iv) the source of the authority for bringing the nonresident peace officer to Montana and deploying the officer in this state;

(b) if one party to the agreement referred to in subsection (1)(a) is a city, the agreement has been approved by and filed with the county sheriff of the county in which the nonresident peace officer will be deployed before the peace officer is deployed to the officer's duties in this state;

(c) the person to be employed, appointed, requested, used, or deputized is a citizen of the United States;

(d) the person to be employed, appointed, requested, used, or deputized reads and signs the agreement required by subsection (1)(a) acknowledging that:

(i) the person has provided the correct information for use in the agreement;

(ii) the person understands the construction of the Montana constitution as provided in [section 4], agrees with that construction, and intends to abide by the terms of the oath the person has taken or will take to uphold

the Montana constitution;

(e) the agreement required by subsection (1)(a) is filed with the clerk and recorder of the county in which the nonresident peace officer is to be used before the nonresident peace officer is deployed to the officer's duties in this state.

(2) An agreement that does not comply with the requirements of this section is void.

(3) [Sections 1 through 5] do not authorize the employment of a nonresident peace officer in this state.

NEW SECTION. Section 4. Constitution construed -- oath required -- effect of violation. (1) The legislature construes Article II, sections 3, 12, 17, and 33, of the Montana constitution as including a prohibition against a confiscation action, as provided in [sections 1 through 5], by a resident or nonresident peace officer or by any other person purporting to act on behalf of the state or a political subdivision of the state following the declaration of an emergency or disaster or the occurrence of an incident.

(2) An entity authorized to employ, appoint, request the assistance of, use, or deputize a person as a peace officer shall, before deploying a nonresident peace officer to the officer's duties following the declaration of an emergency or disaster or the occurrence of an incident, as provided in Title 10, chapter 3, require that the peace officer take an oath to uphold the Montana constitution, and the entity shall administer the oath to the nonresident peace officer. A person other than a peace officer purporting to act on behalf of the state or a political subdivision of the state shall also take an oath to uphold the Montana constitution. A nonresident peace officer or other person required by this subsection to take an oath who fails to take the oath required by this section forfeits the authority to act as a peace officer or to act on behalf of the state or a political subdivision of the state. A forfeiture is effective for the period of time that a declaration of disaster or emergency or an executive order pertaining to an incident is effective.

(3) A resident or a nonresident peace officer or other person who takes the oath required by this section who engages in a confiscation action after taking the oath violates the oath and forfeits the officer's authority and status as a peace officer in this state or, if the person is not a peace officer, forfeits whatever authority the person possesses to act on behalf of the state or a political subdivision of the state. A forfeiture is effective for the period of time that a declaration of disaster or emergency or an executive order pertaining to an incident is effective.

NEW SECTION. Section 5. Action by attorney general or county attorney -- private right of action -- civil penalty -- costs and attorney fees. (1) At any time before a violation of [sections 1 through 5] occurs,

the attorney general, a county attorney, or an interested party may bring a civil action in the district court for the county in which the violation may occur for appropriate relief as provided in Title 27, chapter 19.

(2) After a violation of [sections 1 through 5] has occurred, an interested party injured by a confiscation action in violation of [sections 1 through 5] may bring an action for damages in a court otherwise having jurisdiction in the maximum amount of \$10,000, a penalty as provided in this section, or both damages and a penalty.

(3) An interested party, in an action brought pursuant to this section, may collect and retain a civil penalty in the maximum amount of \$1,000 to be collected from a person violating [sections 1 through 5] in the same way other civil monetary judgments are levied.

(4) A nongovernmental plaintiff substantially prevailing in an action to enjoin a violation of [sections 1 through 5], collect damages, collect a penalty, or any of those actions, must be awarded the plaintiff's costs and reasonable attorney fees, including costs and fees on appeal.

Section 6. Section 7-32-302, MCA, is amended to read:

"7-32-302. Waiver of residency requirements. ~~The~~ Subject to the requirements of [sections 1 through 5] regarding confiscation of firearms, the person or body authorized by law to appoint special deputies, marshals, or ~~policemen~~ police officers may in its discretion waive residency requirements."

Section 7. Section 10-3-204, MCA, is amended to read:

"10-3-204. Intergovernmental arrangements. (1) This state enacts into law and enters into the interstate mutual aid compact with all states, ~~as defined therein, which states that~~ that have enacted or ~~shall hereafter~~ will enact the compact in the form substantially contained in 10-3-207.

(2) The governor may enter into the compact with any state if ~~he~~ the governor finds that joint action with the state is desirable in meeting common intergovernmental problems of emergency and disaster planning, prevention, response, and recovery.

(3) ~~Nothing in subsections~~ Subsections (1) and (2) may not be construed to limit previous or future entry of this state into the interstate mutual aid compact.

(4) All interstate mutual aid compacts and other interstate agreements dealing with disaster and emergency services ~~shall~~ must be reviewed and made current at intervals not to exceed 4 years.

(5) If a person holds a license, certificate, or other permit issued by any state or political subdivision ~~thereof~~ of a state evidencing the meeting of qualifications for professional, mechanical, or other skills, the person

may render aid involving that skill in this state to meet an emergency or disaster and this state shall give due recognition to the license, certificate, or other permit.

(6) When considered of mutual benefit, the governor may, subject to limitations of law, enter into intergovernmental arrangements with neighboring provinces of Canada for the purpose of exchanging disaster and emergency services.

(7) The interstate mutual aid compact is subject to the requirements of [sections 1 through 5] regarding confiscation of firearms."

Section 8. Section 10-3-207, MCA, is amended to read:

"10-3-207. Text of compact. The interstate mutual aid compact referred to in 10-3-204 and 10-3-205, which is subject to [sections 1 through 5] concerning the confiscation of firearms, reads as follows:

INTERSTATE MUTUAL AID COMPACT

Article I

The purpose of this compact is to provide voluntary assistance among participating states in responding to any disaster or imminent disaster that overextends the ability of local and state governments to reduce, counteract, or remove the danger. Assistance may include but is not limited to rescue, fire, police, medical, communication, and transportation services and facilities to cope with problems which require use of special equipment, trained personnel, or personnel in large numbers not locally available.

Article II

Article I, section 10, of the Constitution of the United States permits a state to enter into an agreement or compact with another state, subject to the consent of congress. Congress, through enactment of 50 U.S.C. 2281(g) and 2283 (now repealed) and the executive branch, by issuance of Executive Orders No. 10186 of December 1, 1950, encourages the states to enter into emergency, disaster, and civil defense mutual aid agreements or pacts.

Article III

It is agreed by participating states that the following conditions will guide implementation of the compact:

(1) Participating states through their designated officials are authorized to request and receive assistance from a participating state. Requests will be granted only if the requesting state is committed to the mitigation of the emergency and other resources are not immediately available.

(2) Requests for assistance may be verbal or in writing. If the request is made by other than written communication, it must be confirmed in writing as soon as practical after the request. A written request shall

provide an itemization of equipment and operators, types of expertise, and personnel or other resources needed. Each request must be signed by an authorized official.

(3) Personnel and equipment of the aiding state made available to the requesting state shall, whenever possible, remain under the control and direction of the aiding state. The activities of personnel and equipment of the aiding state must be coordinated by the requesting state.

(4) An aiding state has the right to withdraw some or all of its personnel and equipment whenever the personnel and equipment are needed by that state. Notice of intention to withdraw should be communicated to the requesting state as soon as possible.

Article IV

(1) The requesting state shall reimburse the aiding state as soon as possible after the receipt by the requesting state of an itemized voucher requesting reimbursement of costs.

(2) Any state rendering aid pursuant to this compact must be reimbursed by the state receiving ~~such~~ the aid for any damage to, loss of, or expense incurred in the operation of any equipment used in responding to a request for aid; and for the cost incurred in connection with such requests.

(3) Any state rendering aid pursuant to this compact must be reimbursed by the state receiving ~~such~~ the aid for the cost of compensation and death benefits to injured officers, agents, or employees and their dependents or representatives if ~~such~~ the officers, agents, or employees sustain injuries or are killed while rendering aid pursuant to this arrangement and ~~such~~ the payments are made in the same manner and on the same terms as if the injury or death were sustained within the aiding state.

Article V

(1) All privileges and immunities from liability, exemptions from law, ordinances, and rules and all pension, disability relief, workers' compensation, and other benefits that apply to the activity of officers, agents, or employees when performing their respective functions within the territorial limits of their respective political subdivisions apply to them to the same extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of this compact.

(2) All privileges and immunities from liability, exemptions from law, ordinances, and rules and workers' compensation and other benefits that apply to duly enrolled or registered volunteers when performing their respective functions at the request of their state and within its territorial limits apply to the same extent while performing their functions extraterritorially under the provisions of this compact. Volunteers may include but are not limited to physicians, surgeons, nurses, dentists, structural engineers, and trained search and rescue volunteers.

(3) The signatory states, their political subdivisions, municipal corporations, and other public agencies shall hold harmless the corresponding entities and personnel ~~thereof~~ of these entities from the other state with respect to the acts and omissions of its own agents and employees that occur while providing assistance pursuant to the common plan.

(4) ~~Nothing in this~~ This arrangement may not be construed as repealing or impairing any existing interstate mutual aid agreements.

(5) Upon enactment of this compact by two or more states, and annually by each January 1 thereafter, the participating states will exchange with each other the names of officials designated to request and provide services under this arrangement. In accordance with the cooperative nature of this arrangement, it is permissible and desirable for the states to exchange operational procedures to be followed in requesting assistance and reimbursing expenses.

(6) This compact becomes effective and is binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact becomes effective and binding as to any other state upon similar action by ~~such~~ that state.

(7) This compact remains binding upon a party state until it enacts a law repealing the compact and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal may not take effect until the 30th consecutive day after the notice has been sent. ~~Such~~ A withdrawal does not relieve the withdrawing state from its obligations assumed under this compact prior to the effective date of withdrawal."

Section 9. Section 10-3-1001, MCA, is amended to read:

"10-3-1001. Enactment -- provisions. The Emergency Management Assistance Compact is enacted into law, subject to the requirements of [sections 1 through 5] concerning confiscation of firearms, and entered into with all other jurisdictions joining in the compact in the form substantially as follows:

Article I - Definitions, Purposes, and Authorities

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

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

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

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

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

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

Article II - General Implementation

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

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

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

Article III - Party State Responsibilities

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

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

insurgency, or enemy attack;

(b) review party states' individual emergency plans and develop a plan that will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency;

(c) develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans;

(d) assist in warning communities adjacent to or crossing the state boundaries;

(e) protect and ensure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material;

(f) inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness; and

(g) provide, to the extent authorized by law, for temporary suspension of any statutes.

(2) The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this agreement apply only to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If a request is verbal, the request must be confirmed in writing within 30 days of the verbal request. Requests must provide the following information:

(a) a description of the emergency service function for which assistance is needed, such as fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue;

(b) the amount and type of personnel, equipment, materials, and supplies needed and a reasonable estimate of the length of time that will be needed; and

(c) the specific place and time for staging of the assisting party state's response and a point of contact at that location.

(3) There must be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States government, with free exchange of information, plans, and resource records relating to emergency capabilities.

Article IV - Limitations

A party state requested to render mutual aid or to conduct exercises and training for mutual aid shall take action necessary to provide and make available the resources covered by this compact in accordance with the

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

Article V - Licenses and Permits

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

Article VI - Liability

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

Article VII - Supplementary Agreements

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

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

Article VIII - Compensation

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

Article IX - Reimbursement

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

Article X - Evacuation

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

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

(2) The plans referred to in subsection (1) must provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses

incurred in receiving and caring for evacuees, for expenditures for transportation, food, clothing, medicines, and medical care, and for similar items. The expenditures must be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of the evacuees.

Article XI - Implementation

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

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

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

Article XII - Validity

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

Article XIII - Additional Provisions

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

Section 10. Section 44-11-101, MCA, is amended to read:

"44-11-101. Mutual assistance authorized -- powers and duties of assisting officers. A Subject to [sections 1 through 5] concerning confiscation of firearms, a peace officer or any law enforcement entity of any county or municipality or a state government law enforcement entity may request the assistance of a peace officer from another law enforcement entity within the state of Montana. A peace officer, while in the jurisdiction of the requesting officer or entity and while ~~on such~~ responding to the request for assistance, has the same powers,

duties, rights, privileges, and immunities as a peace officer of the requesting entity and is under the authority of the requesting officer or entity."

Section 11. Section 44-11-302, MCA, is amended to read:

"44-11-302. Purpose. It is the purpose of this part to permit one or more law enforcement agencies of this state to enter into mutual aid agreements, on the basis of mutual advantage but subject to the requirements of [sections 1 through 5] concerning confiscation of firearms, with one or more law enforcement agencies of any other state or the United States in order to facilitate and coordinate efficient, cooperative enforcement efforts directed at mutual law enforcement problems transcending jurisdictional boundaries and to ~~insure~~ ensure the prompt and effective delivery of law enforcement and emergency services in areas that, due to geographic remoteness, population sparsity, and economic and other factors, are in need of an increased law enforcement presence."

Section 12. Section 44-11-304, MCA, is amended to read:

"44-11-304. Authorization to enter agreement -- general content -- authority of peace officer. (1) ~~Any~~ Subject to [sections 1 through 5] concerning confiscation of firearms, any one or more law enforcement agencies of this state may enter into a mutual aid agreement with any one or more law enforcement agencies of any other state or the United States to provide the law enforcement or emergency services that all of the parties are authorized by law to perform. If required by applicable law, the agreement must be authorized and approved by the governing body of each party to the agreement.

(2) The agreement must fully set forth the powers, rights, and obligations of the parties to the agreement.

(3) Subject to 44-11-308, a mutual aid agreement may grant a peace officer of any party law enforcement agency acting within the territorial jurisdiction of any other party law enforcement agency authority to act as if ~~he~~ the peace officer were a duly appointed and qualified peace officer of the law enforcement agency ~~he~~ that the peace officer is assisting."

Section 13. Section 44-11-306, MCA, is amended to read:

"44-11-306. Right of state in actions involving agreements. ~~It~~ Subject to [sections 1 through 5] concerning confiscation of firearms, in any case or controversy involving performance or interpretation of or liability under a mutual aid agreement entered into between one or more law enforcement agencies of political subdivisions of this state and one or more law enforcement agencies of another state or of the United States, the

parties to the agreement are the real parties in interest. This state may maintain an action against any law enforcement agency whose default, failure, performance, or other conduct caused or contributed to any liability incurred by this state."

Section 14. Section 44-11-312, MCA, is amended to read:

"44-11-312. Effect of other law. (1) The procedures and remedies provided in this part apply to the exclusion of those remedies and procedures for interlocal agreements generally under Title 7, chapter 11, part 1.

(2) An agreement pursuant to this part is subject to the requirements of [sections 1 through 5] concerning confiscation of firearms."

NEW SECTION. **Section 15. Lack of confiscation authority as defense.** In a prosecution for any of the offenses provided in 45-7-301, 45-7-302, and 45-7-304, as those sections may apply to an individual resisting a confiscation action as defined in [section 1], because the officer lacks the authority of a peace officer as a result of the operation of [section 4], it is a defense to the prosecution that the officer was without authority to act because of [section 4].

NEW SECTION. **Section 16. Codification instruction.** (1) [Sections 1 through 5] are intended to be codified as an integral part of Title 45, chapter 8, part 3, and the provisions of Title 45, chapter 8, part 3, apply to [sections 1 through 5].

(2) [Section 15] is intended to be codified as an integral part of Title 45, chapter 7, part 3, and the provisions of Title 45, chapter 7, part 3, apply to [section 15].

NEW SECTION. **Section 17. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 18. Retroactive applicability.** [Section 1 through 5] apply retroactively, within the meaning of 1-2-109, to an agreement, contract, or compact entered into before October 1, 2007.

- END -