

Amendment - 1st Reading-white - Requested by: Lee Deming - (H) Energy, Technology and Federal Relations

- 2023

68th Legislature 2023

Drafter: Laura Sankey Keip, 406-444-4410

HB0527.001.001

1 HOUSE BILL NO. 527
2 INTRODUCED BY L. DEMING, C. KNUDSEN, S. ESSMANN, B. MITCHELL, P. FIELDER, S. VINTON, L.
3 SHELDON-GALLOWAY, M. CAFERRO, J. CARLSON, J. HINKLE, B. LER, A. REGIER, R. MARSHALL, C.
4 HINKLE, J. READ, J. BERGSTROM, B. MOLNAR, T. MCGILLVRAY, G. KMETZ, J. ETCHART, R. MINER, B.
5 PHALEN, L. HELLEGAARD, T. SMITH, N. DURAM, N. HASTINGS

6
7 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING AN OFFICIAL CONGRESSIONAL DECLARATION
8 OR ACTION TO RELEASE THE MONTANA NATIONAL GUARD TO ACTIVE COMBAT DUTY; PROVIDING
9 DEFINITIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
10

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

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

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

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

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

24 WHEREAS, the father of the United States Constitution, James Madison, once wrote, "The constitution
25 supposes, what the History of all Governments demonstrates, that the Ex[ecutive] is the branch of power most
26 interested in war, & most prone to it. It has accordingly with studied care, vested the question of war in the
27 Legisl[ature]"; and

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

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

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

10

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

12

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

15

16 NEW SECTION. Section 2. Definitions. As used in [sections 1 through 3], the following definitions
17 apply:

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

20 (a) participation in an armed conflict;

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

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

23 (2) "Official declaration of war" means an official declaration of war made by the United States

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

25

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

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

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1 Montana national guard may not be released from the state into active duty combat unless the United States
2 congress has:

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

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

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

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

9
10 **NEW SECTION. Section 4. Codification instruction.** [Sections 1 through 3] are intended to be
11 codified as an integral part of Title 10, chapter 1, and the provisions of Title 10, chapter 1, apply to [sections 1
12 through 3].

13
14 **NEW SECTION. Section 5. Effective date.** [This act] is effective on passage and approval.

15 - END -