

2 **SB 5875** - H COMM AMD **ADOPTED 4-9-93**  
3 By Committee on Judiciary

4

5 Strike everything after the enacting clause and insert the  
6 following:

7 "**Sec. 1.** RCW 38.08.040 and 1989 c 19 s 7 are each amended to read  
8 as follows:

9 In event of war, insurrection, rebellion, invasion, tumult, riot,  
10 mob, or organized body acting together by force with intent to commit  
11 a felony or to offer violence to persons or property, or by force and  
12 violence to break and resist the laws of this state, or the United  
13 States, or in case of the imminent danger of the occurrence of any of  
14 said events, or at the lawful request of competent state or local  
15 authority in support of enforcement of controlled substance statutes,  
16 or whenever responsible civil authorities shall, for any reason, fail  
17 to preserve law and order, or protect life or property, or the governor  
18 believes that such failure is imminent, or in event of public disaster,  
19 the governor shall have power to order the organized militia of  
20 Washington, or any part thereof, into active service of the state to  
21 execute the laws, and to perform such duty as the governor shall deem  
22 proper.

23 NEW SECTION. **Sec. 2.** A new section is added to chapter 38.08 RCW  
24 to read as follows:

25 (1) The governor, with the consent of congress, is authorized to  
26 enter into compacts and agreements for the deployment of the national  
27 guard with governors of other states concerning drug interdiction,  
28 counter-drug, and demand reduction activities. Article 1, Section 10  
29 of the Constitution of the United States permits a state to enter into  
30 a compact or agreement with another state, subject to the consent of  
31 congress. Congress, through enactment of Title 4 of the U.S.C. Section  
32 112, encourages the states to enter such compacts for cooperative  
33 effort and mutual assistance.

1 (2) The compact language contained in this subsection is intended  
2 to deal comprehensively with the supportive relationships between  
3 states in utilizing national guard assets in counter-drug activities.

4 **NATIONAL GUARD MUTUAL ASSISTANCE**  
5 **COUNTER-DRUG ACTIVITIES COMPACT**

6 **ARTICLE I**  
7 **PURPOSE**

8 The purposes of this compact are to:

9 (a) Provide for mutual assistance and support among the party  
10 states in the utilization of the national guard in drug interdiction,  
11 counter-drug, and demand reduction activities.

12 (b) Permit the national guard of this state to enter into mutual  
13 assistance and support agreements, on the basis of need, with one or  
14 more law enforcement agencies operating within this state, for  
15 activities within this state, or with a national guard of one or more  
16 other states, whether said activities are within or without this state  
17 in order to facilitate and coordinate efficient, cooperative  
18 enforcement efforts directed toward drug interdiction, counter-drug  
19 activities, and demand reduction.

20 (c) Permit the national guard of this state to act as a receiving  
21 and a responding state as defined within this compact and to ensure the  
22 prompt and effective delivery of national guard personnel, assets, and  
23 services to agencies or areas that are in need of increased support and  
24 presence.

25 (d) Permit and encourage a high degree of flexibility in the  
26 deployment of national guard forces in the interest of efficiency.

27 (e) Maximize the effectiveness of the national guard in those  
28 situations that call for its utilization under this compact.

29 (f) Provide protection for the rights of national guard personnel  
30 when performing duty in other states in counter-drug activities.

31 (g) Ensure uniformity of state laws in the area of national guard  
32 involvement in interstate counter-drug activities by incorporating said  
33 uniform laws within the compact.

34 **ARTICLE II**  
35 **ENTRY INTO FORCE AND WITHDRAWAL**

1 (a) This compact shall enter into force when enacted into law by  
2 any two states. Thereafter, this compact shall become effective as to  
3 any other state upon its enactment thereof.

4 (b) Any party state may withdraw from this compact by enacting a  
5 statute repealing the same, but no such withdrawal shall take effect  
6 until one year after the governor of the withdrawing state has given  
7 notice in writing of such withdrawal to the governors of all other  
8 party states.

9 **ARTICLE III**

10 **MUTUAL ASSISTANCE AND SUPPORT**

11 (a) As used in this article:

12 (1) "Drug interdiction and counter-drug activities" means the use  
13 of national guard personnel, while not in federal service, in any law  
14 enforcement support activities that are intended to reduce the supply  
15 or use of illegal drugs in the United States. These activities  
16 include, but are not limited to:

17 (i) Providing information obtained during either the normal course  
18 of military training or operations or during counter-drug activities,  
19 to federal, state, or local law enforcement officials that may be  
20 relevant to a violation of any federal or state law within the  
21 jurisdiction of such officials;

22 (ii) Making available any equipment, including associated supplies  
23 or spare parts, base facilities, or research facilities of the national  
24 guard to any federal, state, or local civilian law enforcement official  
25 for law enforcement purposes, in accordance with other applicable law  
26 or regulation;

27 (iii) Providing available national guard personnel to train  
28 federal, state, or local civilian law enforcement in the operation and  
29 maintenance of equipment, including equipment made available above, in  
30 accordance with other applicable law;

31 (iv) Providing available national guard personnel to operate and  
32 maintain equipment provided to federal, state, or local law enforcement  
33 officials pursuant to activities defined and referred to in this  
34 compact;

35 (v) Operation and maintenance of equipment and facilities of the  
36 national guard or law enforcement agencies used for the purposes of  
37 drug interdiction and counter-drug activities;

1 (vi) Providing available national guard personnel to operate  
2 equipment for the detection, monitoring, and communication of the  
3 movement of air, land, and sea traffic, to facilitate communications in  
4 connection with law enforcement programs, to provide transportation for  
5 civilian law enforcement personnel, and to operate bases of operations  
6 for civilian law enforcement personnel;

7 (vii) Providing available national guard personnel, equipment, and  
8 support for administrative, interpretive, analytic, or other purposes;

9 (viii) Providing available national guard personnel and equipment  
10 to aid federal, state, and local officials and agencies otherwise  
11 involved in the prosecution or incarceration of individuals processed  
12 within the criminal justice system who have been arrested for criminal  
13 acts involving the use, distribution, or transportation of controlled  
14 substances as defined in 21 U.S.C. Sec. 801 et seq., or otherwise by  
15 law, in accordance with other applicable law.

16 (2) "Demand reduction" means providing available national guard  
17 personnel, equipment, support, and coordination to federal, state,  
18 local, and civic organizations, institutions and agencies for the  
19 purposes of the prevention of drug abuse and the reduction in the  
20 demand for illegal drugs.

21 (3) "Requesting state" means the state whose governor requested  
22 assistance in the area of counter-drug activities.

23 (4) "Responding state" means the state furnishing assistance, or  
24 requested to furnish assistance, in the area of counter-drug  
25 activities.

26 (5) "Law enforcement agency" means a lawfully established federal,  
27 state, or local public agency that is responsible for the prevention  
28 and detection of crime and the enforcement of penal, traffic,  
29 regulatory, game, immigration, postal, customs, or controlled  
30 substances laws.

31 (6) "Official" means the appointed, elected, designated, or  
32 otherwise duly selected representative of an agency, institution, or  
33 organization authorized to conduct those activities for which support  
34 is requested.

35 (7) "Mutual assistance and support agreement" or "agreement" means  
36 an agreement between the national guard of this state and one or more  
37 law enforcement agencies or between the national guard of this state  
38 and the national guard of one or more other states, consistent with the  
39 purposes of this compact

1 (8) "Party state" refers to a state that has lawfully enacted this  
2 compact.

3 (9) "State" means each of the several states of the United States,  
4 the District of Columbia, the Commonwealth of Puerto Rico, or a  
5 territory or possession of the United States.

6 (b) Upon the request of a governor of a party state for assistance  
7 in the area of interdiction and counter-drug, and demand reduction  
8 activities, the governor of a responding state shall have authority  
9 under this compact to send without the borders of his or her state and  
10 place under the temporary operational control of the appropriate  
11 national guard or other military authorities of the requesting state,  
12 for the purposes of providing such requested assistance, all or any  
13 part of the national guard forces of his or her state as he or she may  
14 deem necessary, and the exercise of his or her discretion in this  
15 regard shall be conclusive.

16 (c) The governor of a party state may, within his or her  
17 discretion, withhold the national guard forces of his or her state from  
18 such use and recall any forces or part or member thereof previously  
19 deployed in a requesting state.

20 (d) The national guard of this state is hereby authorized to engage  
21 in interdiction and counter-drug activities and demand reduction.

22 (e) The adjutant general of this state, in order to further the  
23 purposes of this compact, may enter into a mutual assistance and  
24 support agreement with one or more law enforcement agencies of this  
25 state, including federal law enforcement agencies operating within this  
26 state, or with the national guard of one or more other party states to  
27 provide personnel, assets, and services in the area of interdiction and  
28 counter-drug activities and demand reduction. However, no such  
29 agreement may be entered into with a party that is specifically  
30 prohibited by law from performing activities that are the subject of  
31 the agreement.

32 (f) The agreement must set forth the powers, rights, and  
33 obligations of the parties to the agreement, where applicable, as  
34 follows:

35 (1) Its duration;

36 (2) The organization, composition, and nature of any separate legal  
37 entity created thereby;

38 (3) The purpose of the agreement;

1 (4) The manner of financing the agreement and establishing and  
2 maintaining its budget;

3 (5) The method to be employed in accomplishing the partial or  
4 complete termination of the agreement and for disposing of property  
5 upon such partial or complete termination;

6 (6) Provision for administering the agreement, which may include  
7 creation of a joint board responsible for such administration;

8 (7) The manner of acquiring, holding, and disposing of real and  
9 personal property used in this agreement, if necessary;

10 (8) The minimum standards for national guard personnel implementing  
11 the provisions of this agreement;

12 (9) The minimum insurance required of each party to the agreement,  
13 if necessary;

14 (10) The chain of command or delegation of authority to be followed  
15 by national guard personnel acting under the provisions of the  
16 agreement;

17 (11) The duties and authority that the national guard personnel of  
18 each party state may exercise; and

19 (12) Any other necessary and proper matters.

20 Agreements prepared under the provisions of this section are exempt  
21 from any general law pertaining to intergovernmental agreements.

22 (g) As a condition precedent to an agreement becoming effective  
23 under this part, the agreement must be submitted to and receive the  
24 approval of the office of the attorney general of Washington. The  
25 attorney general of the state of Washington may delegate his or her  
26 approval authority to the appropriate attorney for the Washington  
27 national guard subject to those conditions which he or she decides are  
28 appropriate. The delegation must be in writing and is subject to the  
29 following:

30 (1) The attorney general, or his or her agent as stated above,  
31 shall approve an agreement submitted to him or her under this part  
32 unless he or she finds that it is not in proper form, does not meet the  
33 requirements set forth in this part, or otherwise does not conform to  
34 the laws of Washington. If the attorney general disapproves an  
35 agreement, he or she shall provide a written explanation to the  
36 adjutant general of the Washington national guard; and

37 (2) If the attorney general, or his or her authorized agent as  
38 stated above, does not disapprove an agreement within thirty days after  
39 its submission to him or her, it is considered approved by him or her.

1 (h) Whenever national guard forces of any party state are engaged  
2 in the performance of duties, in the area of drug interdiction,  
3 counter-drug, and demand reduction activities, pursuant to orders, they  
4 shall not be held personally liable for any acts or omissions which  
5 occur during the performance of their duty.

6 **ARTICLE IV**  
7 **RESPONSIBILITIES**

8 (a) Nothing in this compact shall be construed as a waiver of any  
9 benefits, privileges, immunities, or rights otherwise provided for  
10 national guard personnel performing duty pursuant to Title 32 of the  
11 United States Code nor shall anything in this compact be construed as  
12 a waiver of coverage provided for under the Federal Tort Claims Act.  
13 In the event that national guard personnel performing counter-drug  
14 activities do not receive rights, benefits, privileges, and immunities  
15 otherwise provided for national guard personnel as stated above, the  
16 following provisions shall apply:

17 (1) Whenever national guard forces of any responding state are  
18 engaged in another state in carrying out the purposes of this compact,  
19 the members thereof so engaged shall have the same powers, duties,  
20 rights, privileges, and immunities as members of national guard forces  
21 of the requesting state. The requesting state shall save and hold  
22 members of the national guard forces of responding states harmless from  
23 civil liability, except as otherwise provided herein, for acts or  
24 omissions that occur in the performance of their duty while engaged in  
25 carrying out the purposes of this compact, whether responding forces  
26 are serving the requesting state within the borders of the responding  
27 state or are attached to the requesting state for purposes of  
28 operational control.

29 (2) Subject to the provisions of paragraphs (3), (4), and (5) of  
30 this Article, all liability that may arise under the laws of the  
31 requesting state or the responding states, on account of or in  
32 connection with a request for assistance or support, shall be assumed  
33 and borne by the requesting state.

34 (3) Any responding state rendering aid or assistance pursuant to  
35 this compact shall be reimbursed by the requesting state for any loss  
36 or damage to, or expense incurred in the operation of, any equipment  
37 answering a request for aid, and for the cost of the materials,

1 transportation, and maintenance of national guard personnel and  
2 equipment incurred in connection with such request, provided that  
3 nothing herein contained shall prevent any responding state from  
4 assuming such loss, damage, expense, or other cost.

5 (4) Unless there is a written agreement to the contrary, each party  
6 state shall provide, in the same amounts and manner as if they were on  
7 duty within their state, for pay and allowances of the personnel of its  
8 national guard units while engaged without the state pursuant to this  
9 compact and while going to and returning from such duty pursuant to  
10 this compact.

11 (5) Each party state providing for the payment of compensation and  
12 death benefits to injured members and the representatives of deceased  
13 members of its national guard forces in case such members sustain  
14 injuries or are killed within their own state shall provide for the  
15 payment of compensation and death benefits in the same manner and on  
16 the same terms in the event such members sustain injury or are killed  
17 while rendering assistance or support pursuant to this compact. Such  
18 benefits and compensation shall be deemed items of expense reimbursable  
19 pursuant to paragraph (3) of this Article.

20 (b) Officers and enlisted personnel of the national guard  
21 performing duties subject to proper orders pursuant to this compact  
22 shall be subject to and governed by the provisions of their home state  
23 code of military justice whether they are performing duties within or  
24 without their home state. In the event that any national guard member  
25 commits, or is suspected of committing, a criminal offense while  
26 performing duties pursuant to this compact without his or her home  
27 state, he or she may be returned immediately to his or her home state  
28 and said home state shall be responsible for any disciplinary action to  
29 be taken. However, nothing in this section shall abrogate the general  
30 criminal jurisdiction of the state in which the offense occurred.

31

## ARTICLE V

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## DELEGATION

33 Nothing in this compact shall be construed to prevent the governor  
34 of a party state from delegating any of his or her responsibilities or  
35 authority respecting the national guard, provided that such delegation  
36 is otherwise in accordance with law. For purposes of this compact,



1 however, the governor shall not delegate the power to request  
2 assistance from another state.

3 **ARTICLE VI**  
4 **LIMITATIONS**

5 Nothing in this compact shall:

6 (a) Authorize or permit national guard units or personnel to be  
7 placed under the operational control of any person not having the  
8 national guard rank or status required by law for the command in  
9 question.

10 (b) Deprive a properly convened court of jurisdiction over an  
11 offense or a defendant merely because of the fact that the national  
12 guard, while performing duties pursuant to this compact, was utilized  
13 in achieving an arrest or indictment.

14 **ARTICLE VII**  
15 **CONSTRUCTION AND SEVERABILITY**

16 This compact shall be liberally construed so as to effectuate the  
17 purposes thereof. The provisions of this compact shall be severable  
18 and if any phrase, clause, sentence, or provision of this compact is  
19 declared to be contrary to the Constitution of the United States or of  
20 any state or the applicability thereof to any government, agency,  
21 person, or circumstance is held invalid, the validity of the remainder  
22 of this compact and the applicability thereof to any government,  
23 agency, person, or circumstance shall not be affected thereby. If this  
24 compact shall be held contrary to the constitution of any state  
25 participating herein, the compact shall remain in full force and effect  
26 as to the remaining party states and in full force and effect as to the  
27 state affected as to all severable matters."

--- END ---