

IN THE SENATE

SENATE BILL NO. 1252

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO THE NATIONAL GUARD; PROVIDING LEGISLATIVE INTENT; AMENDING
2 CHAPTER 23, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION
3 67-2360, IDAHO CODE, TO PROVIDE FOR THE DEFEND THE GUARD ACT; AND
4 DECLARING AN EMERGENCY.
5

6 Be It Enacted by the Legislature of the State of Idaho:

7 SECTION 1. LEGISLATIVE INTENT. The Defend the Guard Act follows the
8 principles that guided the writers of our inspired constitution, embodied in
9 the United States Constitution and the writings of the founders. Section 8,
10 Article I of the United States Constitution vests in the congress the exclu-
11 sive power to declare war, and by abdicating the war powers to the executive
12 branch, the United States Congress has failed to follow the United States
13 Constitution and the intent of the founders.

14 The legislature recognizes that the Idaho national guard is separate in
15 function and authority from the federal branches of the military. The legis-
16 lature of Idaho should zealously protect its authority over its own militia
17 to ensure that the mission outlined in Article IV of the Constitution of the
18 state of Idaho can be fulfilled.

19 SECTION 2. That Chapter 23, Title 67, Idaho Code, be, and the same is
20 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
21 ignated as Section 67-2360, Idaho Code, and to read as follows:

22 67-2360. DEFEND THE GUARD ACT. (1) For the purposes of this section:

23 (a) "Active duty combat" means performing the following services in the
24 active federal military service of the United States:

25 (i) Participation in an armed conflict;

26 (ii) Performance of a hazardous service relating to an armed con-
27 flict in a foreign state; or

28 (iii) Performance of a duty through an instrumentality of war.

29 (b) "Official declaration of war" means an official declaration of war
30 made by the United States congress pursuant to clause 11, section 8, ar-
31 ticle I of the United States constitution.

32 (2) Notwithstanding any other provision of law to the contrary, the
33 Idaho national guard and any member thereof shall not be released from the
34 state into active duty combat unless the United States congress has passed
35 an official declaration of war or has taken an official action pursuant to
36 clause 15, section 8, article I of the United States constitution to ex-
37 plicitly call forth the Idaho national guard and any member thereof for the
38 enumerated purposes to expressly execute the laws of the union, repel an
39 invasion, or suppress an insurrection. The governor shall take all actions
40 necessary to comply with the requirements of this section. Nothing in this
41 section limits or prohibits the governor from consenting to the deployment

1 of any Idaho national guard member pursuant to 32 U.S.C. 101 et seq., defense
2 support for civil authority missions within the United States and United
3 States territories.

4 SECTION 3. An emergency existing therefor, which emergency is hereby
5 declared to exist, this act shall be in full force and effect on and after its
6 passage and approval.