

REFERENCE TITLE: National guard; active duty combat

State of Arizona  
House of Representatives  
Fifty-sixth Legislature  
First Regular Session  
2023

## **HB 2320**

Introduced by  
Representatives Kolodin, Carter: Chaplik, Heap, Jones, Marshall, McGarr,  
Montenegro, Parker B, Wilmeth, Senator Wadsack

AN ACT

AMENDING TITLE 26, CHAPTER 1, ARTICLE 3, ARIZONA REVISED STATUTES, BY  
ADDING SECTION 26-164; RELATING TO THE NATIONAL GUARD.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 26, chapter 1, article 3, Arizona Revised  
3 Statutes, is amended by adding section 26-164, to read:

4 26-164. National guard; active duty combat; definitions

5 A. NOTWITHSTANDING ANY OTHER LAW, THE NATIONAL GUARD SHALL NOT BE  
6 CALLED INTO ACTIVE DUTY COMBAT UNLESS THE UNITED STATES CONGRESS PASSES AN  
7 OFFICIAL DECLARATION OF WAR OR TAKES AN OFFICIAL ACTION PURSUANT TO  
8 ARTICLE I, SECTION 8, CLAUSE 15, UNITED STATES CONSTITUTION, THAT CALLS ON  
9 THE NATIONAL GUARD TO EXPRESSLY EXECUTE THE LAWS OF THE UNION, REPEL AN  
10 INVASION OR SUPPRESS AN INSURRECTION. THE GOVERNOR SHALL TAKE ALL  
11 NECESSARY ACTIONS TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION.

12 B. FOR THE PURPOSES OF THIS SECTION:

13 1. "ACTIVE DUTY COMBAT" MEANS DOING ANY THE FOLLOWING IN THE ACTIVE  
14 FEDERAL MILITARY SERVICE:

15 (a) PARTICIPATING IN AN ARMED CONFLICT.

16 (b) PERFORMING A HAZARDOUS SERVICE IN A FOREIGN STATE.

17 (c) PERFORMING A DUTY THROUGH AN INSTRUMENTALITY OF WAR.

18 2. "OFFICIAL DECLARATION OF WAR" MEANS AN OFFICIAL DECLARATION OF  
19 WAR MADE BY THE UNITED STATES CONGRESS PURSUANT TO ARTICLE I, SECTION 8,  
20 CLAUSE 15, UNITED STATES CONSTITUTION.

21 Sec. 2. Legislative findings

22 The legislature finds that:

23 1. Article I, section 8 of the United States Constitution vests in  
24 the United States Congress the exclusive power of war.

25 2. In spite of the clear language of the United States Constitution  
26 vesting the power over war exclusively to the United States Congress, the  
27 United States executive branch has unconstitutionally assumed the power  
28 over war causing the United States Congress to abdicate its constitutional  
29 duty.

30 3. Although the United States Congress has not declared war in over  
31 seventy years, the United States has since gone to war repeatedly at the  
32 whim of the executive branch.

33 4. When unconstitutional actions are taken by the federal  
34 government, it is the proper role of the states themselves to take action  
35 to remedy the situation as outlined in the Kentucky and Virginia  
36 Resolutions of 1798.

37 5. A founder of this country, George Washington, once wrote: "The  
38 Constitution vests the power of declaring war with Congress; therefore no  
39 offensive expedition of importance can be undertaken until after they  
40 shall have deliberated upon the subject, and authorized such a measure".  
41 Letter from George Washington to William Moultrie (Aug. 28, 1793).

42 6. The father of the Constitution, James Madison, once wrote: "The  
43 constitution supposes, what the History of all [Governments] demonstrates,  
44 that the [Executive] is the branch of power most interested in war, [and]  
45 most prone to it. It has accordingly with studied care, vested the

1 question of war in the [Legislature]". Letter from James Madison to  
2 Thomas Jefferson (April 2, 1798).

3 7. The author of the Declaration of Independence, Thomas Jefferson,  
4 once wrote: "We have already given in example one effectual check to the  
5 Dog of war, by transferring the power of letting him loose from the  
6 Executive to the Legislative body" and "Considering that Congress alone is  
7 constitutionally invested with the power of changing our condition from  
8 peace to war, I have thought it my duty to await their authority for using  
9 force in any degree which could be avoided". Letter from Thomas Jefferson  
10 to James Madison (Sept. 6, 1789); letter from Thomas Jefferson to United  
11 States Congress (Dec. 6, 1805).

12 8. Another Constitutional framer, Alexander Hamilton, once wrote:  
13 "The Congress shall have power to declare War; the plain meaning of which  
14 is that, it is the peculiar and exclusive province of Congress, when the  
15 nation is at peace, to change that state into a state of war."  
16 The Examination No. 1 (Alexander Hamilton).

17 Sec. 3. Short title

18 This act may be cited as the "Defend the Guard Act".