

REFERENCE TITLE: national guard; active duty combat

State of Arizona
House of Representatives
Fifty-sixth Legislature
Second Regular Session
2024

HB 2181

Introduced by
Representatives Kolodin: Chaplik, Gillette, Heap, Hendrix, Jones, McGarr,
Parker B, Parker J, Smith; Senators Bolick, Hoffman, Kern, 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 EITHER OF THE FOLLOWING OCCURS:

7 1. THE UNITED STATES CONGRESS PASSES AN OFFICIAL DECLARATION OF WAR
8 OR TAKES AN OFFICIAL ACTION PURSUANT TO ARTICLE I, SECTION 8, CLAUSE 15,
9 UNITED STATES CONSTITUTION, THAT CALLS ON THE NATIONAL GUARD TO EXPRESSLY
10 EXECUTE THE LAWS OF THE UNION, REPEL AN INVASION OR SUPPRESS AN
11 INSURRECTION.

12 2. THE LEGISLATURE PROVIDES SPECIFIC AUTHORIZATION BY CONCURRENT
13 RESOLUTION.

14 B. THE GOVERNOR SHALL TAKE ALL NECESSARY ACTIONS TO COMPLY WITH THE
15 REQUIREMENTS OF THIS SECTION.

16 C. FOR THE PURPOSES OF THIS SECTION:

17 1. "ACTIVE DUTY COMBAT" MEANS DOING ANY OF THE FOLLOWING IN THE
18 ACTIVE FEDERAL MILITARY SERVICE:

19 (a) PARTICIPATING IN AN ARMED CONFLICT.

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

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

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

25 Sec. 2. Legislative findings

26 The legislature finds that:

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

29 2. In spite of the clear language of the United States Constitution
30 vesting the power over war exclusively to the United States Congress, the
31 United States executive branch has unconstitutionally assumed the power
32 over war causing the United States Congress to abdicate its constitutional
33 duty.

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

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

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

46 6. The father of the Constitution, James Madison, once wrote: "The
47 constitution supposes, what the History of all [Governments] demonstrates,
48 that the [Executive] is the branch of power most interested in war, [and]
49 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".