

IN THE SENATE

SENATE BILL NO. 1252

BY STATE AFFAIRS COMMITTEE

AN ACT

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

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

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

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

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

- 67-2360. DEFEND THE GUARD ACT. (1) For the purposes of this section:
 - (a) "Active duty combat" means performing the following services in the active federal military service of the United States:
 - (i) Participation in an armed conflict;
 - (ii) Performance of a hazardous service relating to an armed conflict in a foreign state; or
 - (iii) Performance of a duty through an instrumentality of war.
 - (b) "Official declaration of war" means an official declaration of war made by the United States congress pursuant to clause 11, section 8, article I of the United States constitution.

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