

IN THE SENATE

SENATE BILL NO. 1334

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO THE GOVERNOR'S AUTHORITY REGARDING ACTIVE DUTY COMBAT SERVICE OF THE ORGANIZED MILITIA; PROVIDING LEGISLATIVE FINDINGS AND INTENT; AMENDING CHAPTER 23, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-2364, IDAHO CODE, TO ESTABLISH PROVISIONS REGARDING THE GOVERNOR'S AUTHORITY REGARDING ACTIVE DUTY COMBAT SERVICE OF THE ORGANIZED MILITIA; AND DECLARING AN EMERGENCY.

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

SECTION 1. LEGISLATIVE FINDINGS AND INTENT. (1) The Legislature finds that:

(a) Clause 11, Section 8, Article I of the Constitution of the United States vests in the Congress the power to declare war. The Legislature further recognizes that Clause 15, Section 8, Article I authorizes Congress to call forth the militia to execute the laws of the Union, repel invasion, and suppress insurrection;

(b) The Governor serves as the commander in chief of the organized militia of the State of Idaho except when such forces are lawfully called into federal service pursuant to the Constitution of the United States; and

(c) The State of Idaho retains authority to prescribe by law the duties and limitations applicable to state officers acting under the Constitution of the State of Idaho and laws of this state.

(2) It is the intent of the Legislature to clarify the constitutional conditions under which the Governor may authorize entry of the organized militia into active duty combat service, consistent with the allocation of powers set forth in the Constitution of the United States.

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 67-2364, Idaho Code, and to read as follows:

67-2364. GOVERNOR'S AUTHORITY REGARDING ACTIVE DUTY COMBAT SERVICE OF THE ORGANIZED MILITIA. (1) As used in this section:

(a) "Active duty combat" means performing one of 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 constitution of the United States.

1 (2) Notwithstanding any provision of law to the contrary, the governor
2 shall not authorize the organized militia of the state of Idaho, or any mem-
3 ber thereof, to enter active duty combat unless:

4 (a) The United States congress has passed an official declaration of
5 war; or

6 (b) The United States has taken official action pursuant to clause 15,
7 section 8, article I of the constitution of the United States to explic-
8 itly call forth the Idaho national guard and any member thereof for the
9 enumerated purposes of executing the laws of the union, repelling inva-
10 sion, or suppressing insurrection.

11 (3) The governor shall take all actions necessary to comply with the re-
12 quirements of this section.

13 (4) Nothing in this section shall be construed to restrict participa-
14 tion in non-combat federal service, including training or administrative
15 duty.

16 (5) Nothing in this section shall be construed to limit or prohibit the
17 governor from authorizing or maintaining members of the organized militia in
18 duty status pursuant to 32 U.S.C. 101 et seq., or from authorizing defense
19 support for civil authorities missions within the United States or United
20 States territories.

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