

Senate Bill 462

By: Senator Moore of the 53rd

A BILL TO BE ENTITLED  
AN ACT

1 To amend Part 1 of Article 1 of Chapter 2 of Title 38 of the Official Code of Georgia  
2 Annotated, relating to general provisions regarding state militia generally, so as to require  
3 an official declaration of war or an action to call forth the state militia by the United States  
4 Congress before members of the Georgia National Guard may be released from state control  
5 to participate in active duty combat or combat support operations; to provide for definitions;  
6 to provide for construction; to provide for a short title; to provide for related matters; to  
7 repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 This Act shall be known and may be cited as the "Defend the Guard Act."

11 **SECTION 2.**

12 Part 1 of Article 1 of Chapter 2 of Title 38 of the Official Code of Georgia Annotated,  
13 relating to general provisions regarding state militia generally, is amended by revising Code  
14 Section 38-2-5, relating to federal call up of militia, Governor's duties, utilization of  
15 unorganized militia, and effect of unit's absence, as follows:

16 "38-2-5.

- 17 (a) As used in this Code section, the term:  
18 (1) 'Active duty combat' means performing the following services in the active federal  
19 military service of the United States:  
20 (A) Participating in an armed conflict;  
21 (B) Performing of a hazardous service in a foreign state; or  
22 (C) Performing of a duty through an instrumentality of war.  
23 (2) 'Official declaration of war' means an official declaration of war made by the United  
24 States Congress pursuant to Article I, Section 8, Clause 11 of the United States  
25 Constitution.
- 26 (b) Notwithstanding any other provision of this Code, the Georgia National Guard and any  
27 member thereof shall not be released from the state into active duty combat or combat  
28 support operations unless the United States Congress has passed an official declaration of  
29 war or has taken an official action pursuant to Article I, Section 8, Clause 15 of the United  
30 States Constitution to explicitly call forth the Georgia National Guard and any member  
31 thereof for the enumerated purposes to expressly execute the laws of the union, repel an  
32 invasion, or suppress an insurrection. The Governor shall take all actions necessary to  
33 comply with the requirements of this Code section. Nothing in this subsection shall limit  
34 or prohibit the Governor from consenting to the deployment of any Georgia National Guard  
35 member for defense support of civil authority missions within the United States and United  
36 States territories pursuant to 32 U.S.C. Section 328.
- 37 (c) When the militia of the state is called into federal service under the Constitution and  
38 laws of the United States, the Governor shall order out for service the organized militia or  
39 such part thereof as may be necessary; and, if the number available is insufficient, the  
40 Governor may call for and accept from the unorganized militia as many volunteers as are  
41 required for service in the organized militia. During the absence of the organized militia  
42 in the service of the United States, their state designations shall not be given to new  
43 organizations."

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**SECTION 3.**

45 All laws and parts of laws in conflict with this Act are repealed.