

IN THE SENATE

SENATE BILL NO. 1145

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO THE NATIONAL GUARD; PROVIDING LEGISLATIVE INTENT; AMENDING
2 CHAPTER 1, TITLE 46, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 46-114,
3 IDAHO CODE, TO PROVIDE FOR THE DEFEND THE GUARD ACT; AND DECLARING AN
4 EMERGENCY AND PROVIDING AN EFFECTIVE DATE.
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6 Be It Enacted by the Legislature of the State of Idaho:

7 SECTION 1. LEGISLATIVE FINDINGS. The Defend the Guard Act follows the
8 principles that guided the writers of our inspired constitution, embodied in
9 the United States Constitution and the writings of the founders. Section 8,
10 Article I of the United States Constitution vests in the congress the exclu-
11 sive power to declare war, and by abdicating the war powers to the executive
12 branch, the United States Congress has failed to follow the United States
13 Constitution and the intent of the founders.

14 SECTION 2. That Chapter 1, Title 46, Idaho Code, be, and the same is
15 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
16 ignated as Section 46-114, Idaho Code, and to read as follows:

17 46-114. DEFEND THE GUARD ACT. (1) For the purposes of this section:

18 (a) "Active duty combat" means performing the following services in the
19 active federal military service of the United States:

20 (i) Participation in an armed conflict;

21 (ii) Performance of a hazardous service relating to an armed con-
22 flict in a foreign state; or

23 (iii) Performance of a duty through an instrumentality of war.

24 (b) "Official declaration of war" means an official declaration of war
25 made by the United States congress pursuant to clause 11, section 8, ar-
26 ticle I of the United States constitution.

27 (2) Notwithstanding any other provision of Idaho law, the Idaho na-
28 tional guard and any member thereof must not be released from the state into
29 active duty combat unless the United States congress has passed an official
30 declaration of war or has taken an official action pursuant to clause 15,
31 section 8, article I of the United States constitution to explicitly call
32 forth the Idaho national guard and any member thereof for the enumerated
33 purposes to expressly execute the laws of the union, repel an invasion, or
34 suppress an insurrection. The governor must take all actions necessary to
35 comply with the requirements of this section. Nothing in this section limits
36 or prohibits the governor from consenting to the deployment of any Idaho na-
37 tional guard member on title 32, U.S.C., defense support for civil authority
38 missions within the United States and United States territories.

1 SECTION 3. An emergency existing therefor, which emergency is hereby
2 declared to exist, this act shall be in full force and effect on and after
3 July 1, 2023.