

HOUSE BILL 220

E4, P1
HB 273/22 – HGO

3lr1427

By: **Delegate Grammer**

Introduced and read first time: January 23, 2023

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Public Safety – Militia – Active Duty Combat**
3 **(Maryland Defend Our Guard Act)**

4 FOR the purpose of prohibiting the Governor from ordering the militia or a member of the
5 militia into active duty combat unless the U.S. Congress has passed an official
6 declaration of war or taken a certain official action; establishing that this prohibition
7 does not limit or prohibit the Governor from deploying the militia or a member of the
8 militia under certain circumstances; and generally relating to ordering the militia
9 into active duty combat.

10 BY repealing and reenacting, with amendments,
11 Article – Public Safety
12 Section 13–702
13 Annotated Code of Maryland
14 (2022 Replacement Volume)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
16 That the Laws of Maryland read as follows:

17 **Article – Public Safety**

18 13–702.

19 (a) This section applies to the Maryland Defense Force and the National Guard.

20 (b) **[The] EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION, THE**
21 Governor may order the militia into State active duty:

22 (1) in times of or on reasonable apprehension of imminent public crisis,
23 disaster, rioting, catastrophe, insurrection, invasion, tumult, or breach of peace;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2) when martial law is declared;

2 (3) to enforce the laws; or

3 (4) to carry on any function of the militia of the State.

4 (c) (1) To enforce the laws, a member of the militia in State active duty has all
5 the authority of a peace or law enforcement officer.

6 (2) The authority of the member extends throughout the State during the
7 State active duty.

8 (d) Whenever the militia is in State active duty, the ranking officer of the militia
9 ordered into State active duty or that officer's subordinates on State active duty shall:

10 (1) cooperate with local law enforcement authorities; or

11 (2) if the exigencies of the case require and subject only to order from the
12 Governor:

13 (i) direct and control local law enforcement authorities and the
14 Department of State Police; and

15 (ii) assume all the powers vested in these subordinated law
16 enforcement authorities.

17 **(E) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE**
18 **MEANINGS INDICATED.**

19 **(II) "ACTIVE DUTY COMBAT" MEANS PERFORMING THE**
20 **FOLLOWING SERVICES IN THE ACTIVE FEDERAL MILITARY SERVICE OF THE UNITED**
21 **STATES:**

22 **1. PARTICIPATION IN AN ARMED CONFLICT;**

23 **2. PERFORMANCE OF A HAZARDOUS SERVICE RELATING**
24 **TO AN ARMED CONFLICT IN A FOREIGN STATE; OR**

25 **3. PERFORMANCE OF A DUTY THROUGH AN**
26 **INSTRUMENTALITY OF WAR.**

27 **(III) "OFFICIAL DECLARATION OF WAR" MEANS AN OFFICIAL**
28 **DECLARATION OF WAR MADE BY THE U.S. CONGRESS UNDER ARTICLE I, § 8,**
29 **CLAUSE 11 OF THE U.S. CONSTITUTION.**

1 **(2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE**
2 **GOVERNOR MAY NOT ORDER THE MILITIA OR ANY MEMBER OF THE MILITIA INTO**
3 **ACTIVE DUTY COMBAT UNLESS THE U.S. CONGRESS HAS PASSED AN OFFICIAL**
4 **DECLARATION OF WAR OR HAS TAKEN AN OFFICIAL ACTION UNDER ARTICLE I, § 8,**
5 **CLAUSE 15 OF THE U.S. CONSTITUTION TO EXPLICITLY CALL FORTH THE STATE**
6 **MILITIA OR ANY MEMBER OF THE STATE MILITIA TO EXECUTE THE LAWS OF THE**
7 **UNITED STATES, REPEL AN INVASION, OR SUPPRESS AN INSURRECTION.**

8 **(3) NOTHING IN THIS SUBSECTION MAY BE CONSTRUED TO LIMIT OR**
9 **PROHIBIT THE GOVERNOR FROM DEPLOYING THE MILITIA OR A MEMBER OF THE**
10 **MILITIA UNDER U.S.C. TITLE 32, DEFENSE SUPPORT OF CIVIL AUTHORITIES,**
11 **WITHIN THE UNITED STATES AND U.S. TERRITORIES.**

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 October 1, 2023.