

H. B. 2168

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(By Delegates McGeehan, Faircloth, Hamrick, Folk, Hill,
Perdue, Householder, Gearheart, Storch, Ihle, and Shott)

[Introduced January 21, 2015; referred to the
Committee on Veterans’ Affairs and Homeland Security then the Judiciary.]

10 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
11 designated §15-1B-1a, relating to the West Virginia National Guard; requiring an official
12 declaration of war or an action to call forth the state militia by the United States Congress
13 before members of the West Virginia National Guard may be released from state control to
14 participate in active duty combat.

15 *Be it enacted by the Legislature of West Virginia:*

16 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
17 section, designated §15-1B-1a, to read as follows:

18 **ARTICLE 1B. NATIONAL GUARD.**

19 §15-1B-1a . Mobilization of National Guard into Active Duty Combat.

20 (a) Short Title. – This section shall be known and may be cited as the "Defend the Guard
21 Act."

22 (b) Findings. -- The Legislature finds that:

23 (1) Article I, Section 8 of the Constitution of the United States vests in the United States

1 Congress the exclusive power of war;

2 (2) In spite of the clear language of the United States Constitution, vesting the power over
3 war exclusively in the United States Congress, the United States Executive branch has
4 unconstitutionally assumed that power while the United States Congress has abdicated its
5 constitutional duty;

6 (3) Although the United States Congress has not declared war in over seventy years, the
7 nation has since gone to war repeatedly at the whim of the Executive branch;

8 (4) When such unconstitutional actions are taken by the federal government, it is the proper
9 role of the states themselves to take action to remedy such situations, as outlined in the Kentucky
10 and Virginia Resolutions of 1798;

11 (5) A founder of this country, George Washington, once wrote "The Constitution vests the
12 power of declaring war in Congress; therefore no offensive expedition of importance can be
13 undertaken until after they shall have deliberated upon the subject and authorized such a measure.";

14 (6) The Father of the Constitution, James Madison, once wrote: "The Constitution supposes,
15 what the History of all Governments demonstrates, that the Executive is the branch of power most
16 interested in war, and most prone to it. It has accordingly with studied care vested the question of
17 war to the Legislature.";

18 (7) The author of the Declaration of Independence, Thomas Jefferson, once wrote "We have
19 already given in example one effectual check to the dog of war by transferring the power of letting
20 him loose from the Executive to the Legislative body. . ." and "Considering that Congress alone is
21 constitutionally invested with the power of changing our condition from peace to war, I have thought
22 it my duty to await their authority for using force in any degree which could be avoided"; and

1 (8) Another constitutional framer, Alexander Hamilton, once wrote: 'The Congress shall have
 2 the power to declare war'; the plain meaning of which is, that it is the peculiar and exclusive duty
 3 of Congress, when the nation is at peace, to change that state into a state of war. . .";

4 (c) Definitions.– For the purposes of this section:

5 (1) "Active duty combat" means performing the following services in the active military
 6 service of the United States:

7 (A) Participation in an armed conflict;

8 (B) Performance of a hazardous service;

9 (C) Performance of a duty under conditions simulating war; or

10 (D) Performance of a duty through an instrumentality of war.

11 (2) "Official declaration of war" means an official declaration of war made by the United
 12 States Congress pursuant to Article I, § 8, Clause 11 of the United States Constitution.

13 (d) Notwithstanding any other provision of this code, the West Virginia National Guard and
 14 any member thereof shall not be released from the state into active duty combat unless the United
 15 States Congress has passed an official declaration of war or has taken an official action pursuant to
 16 Article I, § 8, Clause 15 of the United States Constitution to explicitly call forth the state militia to
 17 execute the laws of the union, repel an invasion or suppress an insurrection. The Governor shall take
 18 all actions necessary to comply with the requirements of this section.

NOTE: The purpose of this bill is to require an official declaration of war or an action to call forth the state militia by the United States Congress before members of the West Virginia National Guard may be released from state control to participate in active duty combat.

This section is new; therefore, it has been completely underscored.