

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2155

By Delegates McGeehan and Dillon

[Introduced January 11, 2023; Referred to the
Committee on Veterans' Affairs and Homeland
Security then the Judiciary]

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

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

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

32 (c) Definitions. — For the purposes of this section:

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

35 (A) Participation in an armed conflict;

36 (B) Performance of a hazardous service in a foreign state; or

37 (C) Performance of a duty through an instrumentality of war.

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

40 (d) Notwithstanding any other provision of this code, the West Virginia National Guard and
41 any member thereof shall not be released from the state into active duty combat unless the United
42 States Congress has passed an official declaration of war or has taken an official action pursuant
43 to Article I, § 8, Clause 15 of the United States Constitution to explicitly call forth the West Virginia
44 National Guard and any member thereof for the enumerated purposes to expressly execute the

- 45 laws of the union, repel an invasion or suppress an insurrection. The Governor shall take all
46 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.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.