



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB2587

Introduced 2/15/2023, by Rep. Jed Davis

SYNOPSIS AS INTRODUCED:

20 ILCS 1805/10.5 new

Provides that the Act may be referred to as the Defend the Guard Act. Amends the Military Code of Illinois. Provides that, notwithstanding any other provision of the Code, the Illinois National Guard and any member thereof shall not be released from the State into active duty combat unless the United States Congress has passed an official declaration of war or has taken an official action in accordance with the United States Constitution to explicitly call forth the Illinois National Guard and any member thereof for the enumerated purposes to expressly execute the laws of the union, repel an invasion, or suppress an insurrection. Requires the Governor to take all actions necessary to comply with the requirements of the amendatory Act.

LRB103 24876 KTG 51209 b

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. This Act may be referred to as the Defend the
5 Guard Act.

6 Section 5. The Military Code of Illinois is amended by
7 adding Section 10.5 as follows:

8 (20 ILCS 1805/10.5 new)

9 Sec. 10.5. Mobilization of Illinois National Guard into
10 active duty combat.

11 (a) Findings. The General Assembly finds the following:

12 (1) Article I, Section 8 of the United States
13 Constitution vests in the United States Congress the
14 exclusive power of war.

15 (2) In spite of the clear language of the United
16 States Constitution, vesting the power over war
17 exclusively in the United States Congress, the United
18 States Executive Branch has unconstitutionally assumed
19 that power while the United States Congress has abdicated
20 its constitutional duty.

21 (3) Although the United States Congress has not
22 declared war in over 70 years, the nation has since gone to

1 war repeatedly at the whim of the United States Executive
2 Branch.

3 (4) When such unconstitutional actions are taken by
4 the federal government, it is the proper role of the
5 states themselves to take action to remedy such
6 situations, as outlined in the Kentucky and Virginia
7 Resolutions of 1798.

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

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

20 (7) The author of the Declaration of Independence,
21 Thomas Jefferson, once wrote: "We have already given in
22 example one effectual check to the dog of war by
23 transferring the power of letting him loose from the
24 Executive to the Legislative body. . ." and "Considering
25 that Congress alone is constitutionally invested with the
26 power of changing our condition from peace to war, I have

1 thought it my duty to await their authority for using
2 force in any degree which could be avoided".

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

9 (b) Definitions. As used in this Section:

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

13 (A) participation in an armed conflict;

14 (B) performance of a hazardous service in a
15 foreign state; or

16 (C) performance of a duty through an
17 instrumentality of war.

18 (2) "Official declaration of war" means an official
19 declaration of war made by the United States Congress in
20 accordance with Article I, Section 8, Clause 11 of the
21 United States Constitution.

22 (c) Notwithstanding any other provision of this Code, the
23 Illinois National Guard and any member thereof shall not be
24 released from the State into active duty combat unless the
25 United States Congress has passed an official declaration of
26 war or has taken an official action in accordance with Article

1 I, Section 8, Clause 15 of the United States Constitution to
2 explicitly call forth the Illinois National Guard and any
3 member thereof for the enumerated purposes to expressly
4 execute the laws of the union, repel an invasion, or suppress
5 an insurrection. The Governor shall take all actions necessary
6 to comply with the requirements of this Section.