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**HOUSE BILL 2204**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Representatives Shea, Young, Taylor, Condotta, Scott, G. Hunt, and McCaslin

AN ACT Relating to the defend the guard act; adding a new section to chapter 38.40 RCW; and creating new sections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  This act may be known and cited as the defend the guard act.

NEW SECTION. **Sec.**  The legislature finds that:

(1) Section 8, Article I of the United States Constitution vests in the United States congress the exclusive power of war.

(2) In spite of the clear language of the Unites States Constitution vesting the power over war exclusively in the United States congress, the United States executive branch has unconstitutionally assumed that power while the United State congress has abdicated its constitutional duty.

(3) Although the United States congress has not declared war in over seventy years, the nation has since gone to war repeatedly at the whim of the executive branch.

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

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

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

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

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

NEW SECTION. **Sec.**  A new section is added to chapter 38.40 RCW to read as follows:

(1) For the purposes of this section:

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

(i) Participation in an armed conflict;

(ii) Performance of a hazardous service;

(iii) Performance of a duty under conditions simulating war; and

(iv) Performance of a duty through an instrumentality of war.

(b) "Official declaration of war" means an official declaration of war made by the United States congress pursuant to section 8, Article I of the United States Constitution.

(2) Notwithstanding any other provision of this code, the Washington state guard may 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 pursuant to section 8, Article I of the United States Constitution to explicitly call forth the state militia to execute the laws of the union, repel an invasion, or suppress an insurrection. The governor shall take all actions necessary to comply with the requirements of this section.

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