

SENATE BILL No. 38

By Committee on Federal and State Affairs

1-16

1 AN ACT concerning the Kansas national guard; creating the defend the
2 guard act; establishing when the national guard may be released into
3 active duty combat.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. (a) The provisions of this section shall be known and may
7 be cited as the defend the guard act.

8 (b) The defend the guard act follows the principles that guided the
9 writers of our inspired constitution, embodied in the constitution of the
10 United States and the writings of the founders. Article I, section 8 of the
11 constitution of the United States vests in the congress the exclusive power
12 to declare war, and article 8 of the constitution of the state of Kansas
13 establishes our governor as the commander in chief of the state militia
14 while directing the Kansas legislature to provide for organizing, equipping
15 and disciplining the militia. By usurping the authority of Kansas officials
16 and by abdicating the war powers to the executive branch, the United
17 States congress has failed to follow the constitution of the United States
18 and the intent of the founders.

19 (c) Notwithstanding any other provisions of law, the Kansas national
20 guard, or any member thereof, shall not be released from the state into
21 active duty combat unless the United States congress has passed an official
22 declaration of war or has taken an official action pursuant to article I,
23 section 8, clause 15 of the constitution of the United States to explicitly
24 call forth the Kansas national guard, or any member thereof, for the
25 enumerated purposes to expressly execute the laws of the union, repel an
26 invasion or suppress an insurrection. The governor shall take all actions
27 necessary to comply with the requirements of this section.

28 (d) Nothing in this section limits or prohibits the governor from
29 consenting to the deployment of any Kansas national guard member on
30 defense support for civil authority missions within the United States and
31 territories of the United States under title 32 of the United States code.

32 (e) For the purposes of this section:

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

35 (A) Participation in an armed conflict;

36 (B) performance of a hazardous service relating to an armed conflict

1 in a foreign state; or

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

3 (2) "Official declaration of war" means an official declaration of war
4 made by the United States congress pursuant to article I, section 8, clause
5 11 of the constitution of the United States.

6 Sec. 2. This act shall take effect and be in force from and after its
7 publication in the statute book.