

25102538D

HOUSE BILL NO. 2193

Offered January 13, 2025

Prefiled January 7, 2025

A BILL to amend and reenact §§ 18.2-410, 44-75.1, and 44-78.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 44-75.1:2, relating to Virginia National Guard; deployment to active duty combat.

Patrons—Freitas, Helmer, Cherry, Cordoza, Ennis, Feggans, Garrett, Glass, Griffin, Obenshain, Scott, P.A., Simon, Thomas and Wiley

Referred to Committee on Public Safety

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-410, 44-75.1, and 44-78.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 44-75.1:2 as follows:

§ 18.2-410. Power of Governor to summon law-enforcement agencies, National Guard, etc., to execute process or preserve the peace.

Except as provided in § 44-75.1:2, if it appears to the Governor that the power of the locality is not sufficient to enable the sheriff or other officer to execute process delivered to him or to suppress riots and to preserve the peace, he may order law-enforcement agencies, national guard National Guard, militia, or other agencies of the Commonwealth or localities as may be necessary to execute such process and to preserve the peace. All persons so ordered or summoned by the Governor are required to attend and act. Any person who, without lawful cause, refuses or neglects to obey the command, shall be is guilty of a Class 1 misdemeanor.

§ 44-75.1. Militia state active duty.

A. Except as provided in § 44-75.1:2, the Governor or his designee may call forth the militia or any part thereof to state active duty for service in any of the following circumstances:

1. In the event of invasion or insurrection or imminent threat of either;

2. When any combination of persons becomes so powerful as to obstruct the execution of laws in any part of this Commonwealth;

3. When the Governor determines that a state agency or agencies having law-enforcement responsibilities are in need of assistance to perform particular law-enforcement functions, which functions he shall specify in his call to the militia;

4. In the event of flood, hurricane, fire or other forms of natural or man-made disaster wherein human life, public or private property, or the environment is imperiled;

5. In emergencies of lesser magnitude than those described in subdivision 4, including but not limited to the disruption of vital public services, wherein the use of militia personnel or equipment would be of assistance to one or more departments, agencies, institutions, or political subdivisions of the Commonwealth;

6. When the Governor determines that the National Guard and its assets would be of valuable assistance to state, local or federal agencies having a drug law-enforcement function to combat the flow of or use of illegal drugs in the Commonwealth, he may provide for the National Guard or any part thereof to support drug interdiction, counterdrug and demand reduction activities within the Commonwealth, or outside the Commonwealth under the National Guard Mutual Assistance Counterdrug Activities Compact. In calling forth the National Guard under this section, the Governor shall specify the type of support that the National Guard shall undertake with state, local or federal law-enforcement agencies. Once called forth by the Governor, the National Guard is also specifically authorized to enter into mutual assistance and support agreements with any law-enforcement agencies, state or federal, operating within or outside this Commonwealth so long as those activities are consistent with the Governor's call. All activities undertaken by the National Guard in the areas of drug interdiction, counterdrug and drug demand reduction shall be reported by the Adjutant General's office to the Governor and reviewed by the Governor no less frequently than every three months; and

7. When the Governor or his designee, in consultation with the Adjutant General, determines that the militia or any part thereof is in need of specific training to be prepared for being called forth for any of the circumstances expressed in subdivisions 1 through 6 above. Such training may be conducted with a state or federal agency or agencies having the capability or responsibility to coordinate or assist with any of the circumstances set forth in subdivisions 1 through 6 above.

B. The Virginia National Guard shall be designated as a state law-enforcement agency for the sole purpose of receiving property and revenues pursuant to 18 U.S.C. § 981 (e) (2), 19 U.S.C. § 1616a, and 21 U.S.C. § 881 (e) (1) (A).

§ 44-75.1:2. National Guard; deployment to active duty combat.

58 A. For the purposes of this section:

59 "Active duty combat" means (i) participation in an armed conflict, (ii) performance of a hazardous
60 service relating to an armed conflict in a foreign state, or (iii) performance of a duty through an
61 instrumentality of war.

62 "Official declaration of war" means an official declaration of war pursuant to an act of Congress as
63 authorized by Article I, Section 8, Clause 11 of the Constitution of the United States.

64 B. Notwithstanding any other provision of law, the Virginia National Guard and its members shall not be
65 called forth into active duty combat by the Governor unless Congress has (i) made an official declaration of
66 war or (ii) called forth the Virginia National Guard and its members in an official action taken pursuant to
67 Article I, Section 8, Clause 15 of the Constitution of the United States for the purposes of expressly executing
68 the laws of the United States, repelling invasion, or suppressing an insurrection. The Governor shall take all
69 necessary actions to comply with the requirements of this subsection.

70 C. Nothing in this section shall be construed to prohibit or limit the Governor's authority to deploy the
71 Virginia National Guard into active duty for the purposes of providing defense support for civil authority
72 missions in a foreign state or elsewhere within the United States.

73 **§ 44-78.1. Request for assistance by localities.**

74 ~~In~~ Except as provided in § 44-75.1:2, in the event of the circumstances described in subdivision A 2, 4, or
75 5 of § 44-75.1 arise within a county, city, or town of the Commonwealth, either the governing body or the
76 chief law-enforcement officer of the county, city, or town may call upon the Governor for assistance from the
77 militia. The Governor may call forth the militia or any part thereof to provide such assistance as he may deem
78 proper in responding to such circumstances, but in all instances the militia shall remain subject to military
79 command and not to civilian authorities of the county, city, or town receiving assistance.