

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To provide for greater safeguards and accountability with respect to transferred defense articles and defense services.

**IN THE SENATE OF THE UNITED STATES—118th Cong., 2d Sess.**

**H. R. 815**

To amend title 38, United States Code, to make certain improvements relating to the eligibility of veterans to receive reimbursement for emergency treatment furnished through the Veterans Community Care program, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. VAN HOLLEN (for himself, Mr. DURBIN, Mr. SCHATZ, Mr. KAINE, Ms. WARREN, Mr. MERKLEY, Mr. WELCH, Mr. HEINRICH, Mr. CARPER, Mr. LUJÁN, Mr. SANDERS, Ms. HIRONO, Mr. MARKEY, Ms. SMITH, Mr. WARNOCK, Ms. BUTLER, Ms. BALDWIN, Mr. OSSOFF, and Mr. MURPHY) to the amendment (No. \_\_\_\_\_) proposed by Mrs. MURRAY

Viz:

- 1 On page 61, between lines 14 and 15, insert the fol-
- 2 lowing:

1 **SEC. 709. SAFEGUARDS AND ACCOUNTABILITY WITH RE-**  
2 **SPECT TO TRANSFERRED DEFENSE ARTI-**  
3 **CLES AND DEFENSE SERVICES.**

4 (a) REQUIREMENTS.—

5 (1) COMPLIANCE WITH INTERNATIONAL HU-  
6 MANITARIAN LAW AND LAW OF ARMED CONFLICT.—  
7 Any defense articles or defense services provided  
8 pursuant to this Act shall be used in accordance  
9 with international law, including international hu-  
10 manitarian law and the law of armed conflict, and  
11 United States law.

12 (2) COMPLIANCE WITH PROHIBITION ON AS-  
13 SISTANCE TO COUNTRIES THAT RESTRICT UNITED  
14 STATES HUMANITARIAN ASSISTANCE.—

15 (A) IN GENERAL.—Consistent with section  
16 620I(a) of the Foreign Assistance Act of 1961  
17 (22 U.S.C. 2378–1(a)), prior to the disburse-  
18 ment of any defense articles or defense services  
19 provided pursuant to this Act, the President  
20 shall obtain assurances that the recipient coun-  
21 try will cooperate fully with any United States  
22 efforts and United States-supported inter-  
23 national efforts to provide humanitarian assist-  
24 ance to civilians in an area of conflict where  
25 United States defense articles or defense serv-  
26 ices are being used by the recipient.

1 (B) WAIVER.—The President may waive  
2 the requirement under subparagraph (A) if the  
3 President determines that it is in the national  
4 security interest of the United States to do so  
5 and, consistent with section 620I(e) of the For-  
6 eign Assistance Act of 1961 (22 U.S.C. 2378–  
7 1(e)), notifies the appropriate congressional  
8 committees of the determination and the rea-  
9 sons for making the determination.

10 (3) RULE OF CONSTRUCTION.—Nothing in this  
11 subsection shall be construed to limit the obligation  
12 or expenditure of any funds appropriated by this Act  
13 for air defense systems or other systems that the  
14 President determines will be used for strictly defen-  
15 sive purposes.

16 (b) REPORT.—

17 (1) IN GENERAL.—Not later than 30 days after  
18 the date of the enactment of this Act, and every 180  
19 days thereafter, the President shall submit to the  
20 appropriate congressional committees a separate re-  
21 port for each recipient country of defense articles or  
22 defense services provided pursuant to this Act on the  
23 use by such country, on or after January 1, 2023,  
24 of defense articles and defense services provided or  
25 funded in whole or in part by the United States.

1           (2) ELEMENTS.—The report required under  
2 paragraph (1) shall include the following elements:

3           (A) A description of measures taken to ac-  
4 count for defense articles or defense services  
5 designated for the recipient, particularly meas-  
6 ures with regard to such articles or services  
7 that require enhanced end-use monitoring.

8           (B) A description of measures to ensure  
9 that such defense articles or defense services  
10 reach their intended recipient and are used for  
11 their intended purposes, and any other meas-  
12 ures to promote accountability for the use of  
13 such articles or services.

14           (C) An assessment of whether such defense  
15 articles or defense services have been used in a  
16 manner consistent with international law, in-  
17 cluding international humanitarian law and the  
18 law of armed conflict, United States law, and  
19 the standards contained in National Security  
20 Memorandum/NSM-18, dated February 23,  
21 2023, entitled “United States Conventional  
22 Arms Transfer Policy”.

23           (D) A description of the procedures and  
24 mechanisms used to make the assessment de-  
25 scribed in subparagraph (C).

1 (E) An assessment of—

2 (i) the extent to which the use of such  
3 defense articles or defense services is con-  
4 sistent with United States practices and  
5 mechanisms for minimizing civilian casual-  
6 ties, including practices and mechanisms  
7 developed pursuant to the Defense Depart-  
8 ment's Civilian Harm Mitigation and Re-  
9 sponse Action Plan (CHMR-AP); and

10 (ii) the extent to which civilian harm  
11 mitigation procedures and mechanisms  
12 have been incorporated in the recipient's  
13 security assistance program pursuant to  
14 CHMR-AP Objective 9.

15 (F) A description of the procedures and  
16 mechanisms used to make the assessment de-  
17 scribed under subparagraph (E).

18 (G) A description of any occurrences of  
19 such defense articles or defense services not  
20 reaching their intended recipient or being used  
21 for their intended purposes, and a description  
22 of any remedies taken.

23 (H) An assessment of whether the recipi-  
24 ent of such defense articles or defense services  
25 has been cooperating fully with United States

1           efforts and United States-supported inter-  
2           national efforts to provide humanitarian assist-  
3           ance to civilians in an area of conflict where  
4           United States defense articles or defense serv-  
5           ices are being used by the recipient.

6           (3) FORM.—The report required under para-  
7           graph (1) shall be submitted in unclassified form but  
8           may include a separate classified annex.

9           (c) DEFINITIONS.—In this section,:

10           (1) APPROPRIATE CONGRESSIONAL COMMIT-  
11           TEES.—the term “appropriate congressional commit-  
12           tees” means—

13                   (A) the Committee on Foreign Relations,  
14                   the Committee on Armed Services, and the  
15                   Committee on Appropriations of the Senate;  
16                   and

17                   (B) the Committee on Foreign Affairs, the  
18                   Committee on Armed Services, and the Com-  
19                   mittee on Appropriations of the House of Rep-  
20                   resentatives.

21           (2) DEFENSE ARTICLE; DEFENSE SERVICE.—  
22           The terms “defense article” and “defense service”  
23           have the meanings given those terms in section 47  
24           of the Arms Export Control Act (22 U.S.C. 2794).