

Calendar No. 146

118TH CONGRESS
1ST SESSION

S. 822

To terminate the Department of Defense memorandum relating to access to abortions, to prohibit the use of travel and transportation allowances, medical convalescent leave, and administrative absences to travel to obtain abortions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 15, 2023

Ms. ERNST (for herself, Mr. WICKER, Mr. DAINES, Mr. CRAMER, Mrs. BLACKBURN, Mr. BUDD, Mr. TILLIS, Mr. SCOTT of Florida, Mr. HAWLEY, Mr. LEE, Mrs. HYDE-SMITH, Mr. BRAUN, Mr. COTTON, Mr. GRAHAM, Mr. RICKETTS, Mr. HOEVEN, Mr. LANKFORD, Mr. KENNEDY, Mr. TUBERVILLE, Mr. RISCH, Mr. VANCE, Mr. CRAPO, Mr. BARRASSO, Mr. CORNYN, Mr. BOOZMAN, Mrs. BRITT, Mrs. FISCHER, Mr. RUBIO, Mr. THUNE, Mr. SCOTT of South Carolina, Mr. CASSIDY, Mr. HAGERTY, Ms. LUMMIS, Mr. ROUNDS, Mr. SCHMITT, Mr. MULLIN, and Mr. SULLIVAN) introduced the following bill; which was read twice and referred to the Committee on Armed Services

JULY 25, 2023

Reported by Mr. REED, with an amendment

[Omit the part struck through and insert the part printed in *italic*]

A BILL

To terminate the Department of Defense memorandum relating to access to abortions, to prohibit the use of travel and transportation allowances, medical convalescent leave, and administrative absences to travel to obtain abortions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Modification to De-
5 partment of Defense Travel Authorities for Abortion-Re-
6 lated Expenses Act of 2023”.

7 **SEC. 2. TERMINATION OF DEPARTMENT OF DEFENSE**
8 **MEMORANDUM RELATING TO ACCESS TO**
9 **ABORTIONS.**

10 (a) SENSE OF CONGRESS.—It is the sense of Con-
11 gress that—

12 (1) consistent with section 1093 of title 10,
13 United States Code, the Department of Defense may
14 not use any funds for abortions except in a case in
15 which the life of the mother would be endangered if
16 the fetus were carried to term or in which the preg-
17 nancy is the result of an act of rape or incest;

18 (2) the Secretary of Defense has no legal au-
19 thority to implement any policies under which funds
20 are to be used for that purpose; and

21 (3) the Department of Defense memorandum
22 entitled “Ensuring Access to Reproductive Health
23 Care”, dated October 20, 2022, is therefore in direct
24 conflict with section 1093 of title 10, United States

1 Code, and the intent of Congress, and must be re-
2 scinded.

3 (b) **TERMINATION OF MEMORANDUM.**—

4 (1) **IN GENERAL.**—The Department of Defense
5 memorandum entitled “Ensuring Access to Repro-
6 ductive Health Care”, dated October 20, 2022, shall
7 have no force or effect.

8 (2) **PROHIBITION ON AVAILABILITY OF FUNDS**
9 **TO CARRY OUT MEMORANDUM.**—None of the funds
10 authorized to be appropriated or otherwise made
11 available to the Department of Defense may be obli-
12 gated or expended to carry out the memorandum de-
13 scribed in paragraph (1) or any successor to such
14 memorandum.

15 **SEC. 3. PROHIBITION ON PROVISION OF TRAVEL AND**
16 **TRANSPORTATION ALLOWANCES TO OBTAIN**
17 **ABORTIONS.**

18 (a) **IN GENERAL.**—Section 452 of title 37, United
19 States Code, is amended by adding at the end the fol-
20 lowing new subsection:

21 “(j) **PROHIBITION ON ALLOWANCES TO OBTAIN**
22 **ABORTIONS.**—The Secretary of Defense may not provide
23 transportation, lodging, meals-in-kind, or any actual or
24 necessary expenses of travel or transportation, for, or in
25 connection with, official travel under circumstances as

1 specified in regulations prescribed under section 464 of
2 this title for a member of the Armed Forces or a depend-
3 ent of such a member seeking an abortion or any abortion-
4 related service, except in a case in which the life of the
5 mother would be endangered if the fetus were carried to
6 term or the pregnancy is the result of an act of rape or
7 incest.”.

8 (b) PROHIBITION ON CONSIDERING LIMITED ACCESS
9 TO ABORTIONS AS UNUSUAL, EXTRAORDINARY, HARD-
10 SHIP, OR EMERGENCY CIRCUMSTANCES.—Section 453(d)
11 of title 37, United States Code, is amended—

12 (1) by inserting “(1)” before “An authorized
13 traveler”; and

14 (2) by adding at the end the following new
15 paragraph:

16 “(2) The access of a member of the Armed Forces
17 or a dependent of such a member to an abortion or abor-
18 tion-related services being limited because of the duty loca-
19 tion of the member does not constitute an unusual, ex-
20 traordinary, hardship, or emergency circumstance for the
21 purposes of section 452 of title 37, United States Code,
22 except in a case in which the life of the mother would be
23 endangered if the fetus were carried to term or the preg-
24 nancy is the result of an act of rape or incest.”.

1 **SEC. 4. PROHIBITION ON USE OF MEDICAL CONVALESCENT**
 2 **LEAVE OR ADMINISTRATIVE ABSENCES FOR**
 3 **TRAVEL TO OBTAIN ABORTIONS.**

4 (a) **IN GENERAL.**—Chapter 40 of title 10, United
 5 States Code, is amended by inserting after section 701 the
 6 following new section:

7 **“§ 701a. Prohibition on use of medical convalescent**
 8 **leave or administrative absences for trav-**
 9 **el to obtain abortions**

10 “A member of the Armed Forces may not take con-
 11 valescent leave under section 701(m) or use an adminis-
 12 trative absence for travel for the purposes of obtaining an
 13 abortion or abortion-related service, except in a case in
 14 which the life of the mother would be endangered if the
 15 fetus were carried to term or the pregnancy is the result
 16 of an act of rape or incest.”.

17 (b) **CLERICAL AMENDMENT.**—The table of sections
 18 at the beginning of chapter 40 of such title is amended
 19 by inserting after the item relating to section 701 the fol-
 20 lowing new item:

“701a. Prohibition on use of medical convalescent leave or administrative ab-
 sences for travel to obtain abortions.”.

21 **SEC. 5. RULE OF CONSTRUCTION.**

22 (a) **IN GENERAL.**—Nothing in this Act or an amend-
 23 ment made by this Act may be construed to affect the
 24 treatment of any infection, injury, disease, or disorder that

1 has been caused by or exacerbated by the performance of
 2 an abortion.

3 (b) ~~APPLICABILITY.~~—Subsection (a) applies without
 4 regard to whether—

5 (1) the abortion was performed in accordance
 6 with Federal or State law; or

7 (2) funding for the abortion is permissible
 8 under section 1093 of title 10, United States Code.

9 **SEC. 2. BRIEFING OR REPORT ON IMPLEMENTATION OF**
 10 **CERTAIN POLICIES OF THE DEPARTMENT OF**
 11 **DEFENSE RELATING TO ABORTION.**

12 (a) *IN GENERAL.*—Not later than July 24, 2023, the
 13 Secretary of Defense, in consultation with the Attorney
 14 General and the Defense Advisory Committee on Women in
 15 the Services, shall provide to the Committees on Armed
 16 Services of the Senate and the House of Representatives a
 17 briefing or a report that contains an assessment of the fol-
 18 lowing:

19 (1) *The legality of the implementation by the De-*
 20 *partment of Defense of policies allowing members of*
 21 *the Armed Forces to seek medical procedures that are*
 22 *not covered by the Department, including elective*
 23 *abortions, including with respect to—*

1 (A) existing requirements and prohibitions
2 relating to abortion under section 1093 of title
3 10, United States Code; and

4 (B) the rule submitted by the Department of
5 Health and Human Services relating to “Ensuring
6 Access to Equitable, Affordable, Client-Centered,
7 Quality Family Planning Services” (86
8 Fed. Reg. 19812; published April 15, 2021).

9 (2) The oversight functions of the Department of
10 Defense in preventing abuse of policies described in
11 paragraph (1).

12 (3) The ability of those policies to cover medical
13 services for late-stage elective abortions after 20 weeks
14 gestation.

15 (4) The approval process necessary for a member
16 of the Armed Forces to request coverage under those
17 policies.

18 (5) The requirement of approval by multiple
19 physicians to be covered under those policies.

20 (6) The applicability of those policies to the family
21 members of members of the Armed Forces.

22 (7) The protections in place for members of the
23 Armed Forces who choose to utilize those policies.

24 (8) The reproductive health care services that are
25 not covered by the Department of Defense that have

1 *been accessed pursuant to those policies as of the date*
2 *of the briefing or report, as the case may be.*

3 *(9) Whether or not the provisions of S. 822 of the*
4 *118th Congress, as introduced on March 15, 2023—*

5 *(A) return the Department to the standard*
6 *held before those policies were implemented; and*

7 *(B) do not restrict access to health care not*
8 *covered by the Department further than the*
9 *standard held before those policies were imple-*
10 *mented.*

11 *(b) PROTECTION OF PERSONALLY IDENTIFIABLE IN-*
12 *FORMATION.—In providing the briefing or report, as the*
13 *case may be, required under subsection (a), the Secretary*
14 *of Defense shall—*

15 *(1) observe all protections required under the*
16 *Health Insurance Portability and Accountability Act*
17 *of 1996 (Public Law 106–191), or any other provi-*
18 *sion of law; and*

19 *(2) take any necessary precautions to prevent the*
20 *disclosure of any personal identifiable information of*
21 *individuals included within the population assessed*
22 *for purposes of such briefing or report, as the case*
23 *may be.*

Calendar No. 146

118TH CONGRESS
1ST Session
S. 822

A BILL

To terminate the Department of Defense memorandum relating to access to abortions, to prohibit the use of travel and transportation allowances, medical convalescent leave, and administrative absences to travel to obtain abortions, and for other purposes.

JULY 25, 2023

Reported with an amendment