

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

Purpose: To provide that certain photographic records relating to the treatment of any individual engaged, captured, or detained after September 11, 2001, by the Armed Forces of the United States in operations outside the United States shall not be subject to disclosure under section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act).

**IN THE SENATE OF THE UNITED STATES—111th Cong., 1st Sess.**

**H.R. 1256**

To protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products, to amend title 5, United States Code, to make certain modifications in the Thrift Savings Plan, the Civil Service Retirement System, and the Federal Employees' Retirement System, 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. LIEBERMAN  
(for himself and Mr. GRAHAM)

Viz:

1 At the end of division B, add the following:

1 **TITLE \_\_\_\_\_—DETAINEE PHOTO-**  
2 **GRAPHIC RECORDS PROTEC-**  
3 **TION**

4 **SEC. \_\_\_\_\_. DETAINEE PHOTOGRAPHIC RECORDS PROTEC-**  
5 **TION.**

6 (a) SHORT TITLE.—This section may be cited as the  
7 “Detainee Photographic Records Protection Act of 2009”.

8 (b) DEFINITIONS.—In this section:

9 (1) COVERED RECORD.—The term “covered  
10 record” means any record—

11 (A) that is a photograph that—

12 (i) was taken during the period begin-  
13 ning on September 11, 2001, through Jan-  
14 uary 22, 2009; and

15 (ii) relates to the treatment of individ-  
16 uals engaged, captured, or detained after  
17 September 11, 2001, by the Armed Forces  
18 of the United States in operations outside  
19 of the United States; and

20 (B) for which a certification by the Sec-  
21 retary of Defense under subsection (c) is in ef-  
22 fect.

23 (2) PHOTOGRAPH.—The term “photograph” en-  
24 compasses all photographic images, whether origi-  
25 nals or copies, including still photographs, negatives,

1 digital images, films, video tapes, and motion pic-  
2 tures.

3 (c) CERTIFICATION.—

4 (1) IN GENERAL.—For any photograph de-  
5 scribed under subsection (b)(1)(A), the Secretary of  
6 Defense shall submit a certification to the President,  
7 if the Secretary of Defense, in consultation with the  
8 Chairman of the Joint Chiefs of Staff, determines  
9 that the disclosure of that photograph would endan-  
10 ger—

11 (A) citizens of the United States; or

12 (B) members of the Armed Forces or em-  
13 ployees of the United States Government de-  
14 ployed outside the United States.

15 (2) CERTIFICATION EXPIRATION.—A certifi-  
16 cation submitted under paragraph (1) and a renewal  
17 of a certification submitted under paragraph (3)  
18 shall expire 3 years after the date on which the cer-  
19 tification or renewal, as the case may be, is sub-  
20 mitted to the President.

21 (3) CERTIFICATION RENEWAL.—The Secretary  
22 of Defense may submit to the President—

23 (A) a renewal of a certification in accord-  
24 ance with paragraph (1) at any time; and

25 (B) more than 1 renewal of a certification.

1           (4) NOTICE TO CONGRESS.—A timely notice of  
2           the Secretary’s certification shall be submitted to  
3           Congress.

4           (d) NONDISCLOSURE OF DETAINEE RECORDS.—A  
5           covered record shall not be subject to—

6           (1) disclosure under section 552 of title 5,  
7           United States Code (commonly referred to as the  
8           Freedom of Information Act); or

9           (2) disclosure under any proceeding under that  
10          section.

11          (e) RULE OF CONSTRUCTION.—Nothing in this sec-  
12          tion shall be construed to preclude the voluntary disclosure  
13          of a covered record.

14          (f) EFFECTIVE DATE.—This section shall take effect  
15          on the date of enactment of this Act and apply to any  
16          photograph created before, on, or after that date that is  
17          a covered record.