

116TH CONGRESS
2D SESSION

S. _____

To amend title 38, United States Code, to provide for a presumption of service connection for certain diseases associated with exposure to toxins, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mrs. GILLIBRAND (for herself and Mr. RUBIO) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend title 38, United States Code, to provide for a presumption of service connection for certain diseases associated with exposure to toxins, 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 “Presumptive Benefits
5 for War Fighters Exposed to Burn Pits and Other Toxins
6 Act of 2021”.

1 **SEC. 2. PRESUMPTION OF SERVICE CONNECTION FOR CER-**
2 **TAIN DISEASES ASSOCIATED WITH EXPO-**
3 **SURE TO BURN PITS AND OTHER TOXINS.**

4 (a) IN GENERAL.—Subchapter II of chapter 11 of
5 title 38, United States Code, is amended by adding at the
6 end the following new section:

7 **“§ 1119. Presumption of service connection for cer-**
8 **tain diseases associated with exposure to**
9 **burn pits and other toxins**

10 “(a) PRESUMPTION OF SERVICE CONNECTION.—(1)
11 For the purposes of section 1110 of this title, and subject
12 to section 1113 of this title, a disease specified in para-
13 graph (2) becoming manifest in a veteran described in
14 paragraph (3) shall be considered to have been incurred
15 in or aggravated during active military, naval, or air serv-
16 ice, notwithstanding that there is no record of evidence
17 of such disease during the period of such service.

18 “(2) The diseases specified in this paragraph are the
19 following:

20 “(A) Asthma that was diagnosed after service
21 in a country or territory for which a medal described
22 in paragraph (3) was awarded.

23 “(B)(i) Head cancer of any type.

24 “(ii) Neck cancer of any type.

25 “(iii) Respiratory cancer of any type.

26 “(iv) Gastrointestinal cancer of any type.

- 1 “(v) Reproductive cancer of any type.
- 2 “(vi) Lymphoma cancer of any type.
- 3 “(vii) Lymphomatic cancer of any type.
- 4 “(viii) Kidney cancer.
- 5 “(ix) Brain cancer.
- 6 “(x) Melanoma.
- 7 “(C) Chronic bronchitis.
- 8 “(D) Chronic obstructive pulmonary disease.
- 9 “(E) Constrictive bronchiolitis or obliterative
- 10 bronchiolitis.
- 11 “(F) Emphysema.
- 12 “(G) Granulomatous disease.
- 13 “(H) Interstitial lung disease.
- 14 “(I) Pleuritis.
- 15 “(J) Pulmonary fibrosis.
- 16 “(K) Sarcoidosis.
- 17 “(L) Any other disease listed under subsection
- 18 (a)(2) of section 1116 of this title or for which a
- 19 presumption of service connection is warranted pur-
- 20 suant to regulations prescribed under section sub-
- 21 section (b)(1) of such section.
- 22 “(M) Any other disease with respect to which
- 23 final regulations have been prescribed under sub-
- 24 section (c)(3).

1 “(3) A veteran described in this paragraph is any vet-
2 eran who on or after August 2, 1990, was awarded any
3 of the following:

4 “(A) The Afghanistan Campaign Medal.

5 “(B) The Armed Forces Expeditionary Medal.

6 “(C) The Armed Forces Reserve Medal with M-
7 device.

8 “(D) The Armed Forces Service Medal.

9 “(E) The Global War On Terrorism Expedi-
10 tionary Medal.

11 “(F) The Inherent Resolve Campaign Medal.

12 “(G) The Iraqi Campaign Medal.

13 “(H) The Southwest Asia Service Medal.

14 “(b) PROCESS TO ADD DISEASES THROUGH WRIT-
15 TEN PETITION.—(1) In the case that the Secretary re-
16 ceives a written petition from an interested party to add
17 a disease to the list of diseases specified in subsection
18 (a)(2), not later than 90 days after the date of receipt
19 of such petition, the Secretary shall request a determina-
20 tion by the National Academies of Sciences, Engineering,
21 and Medicine (referred to in this section as the ‘National
22 Academies’) with respect to whether there is a positive as-
23 sociation between—

24 “(A) the exposure of humans to one or more
25 covered toxins; and

1 “(B) the occurrence of the disease in humans.

2 “(2) For purposes of this subsection, the term ‘inter-
3 ested party’ includes a representative of—

4 “(A) a congressionally chartered veterans serv-
5 ice organization;

6 “(B) an organization that—

7 “(i) is described in section 501(c)(3) of the
8 Internal Revenue Code of 1986 and exempt
9 from taxation under section 501(a) of such
10 Code;

11 “(ii) serves veterans or members of the
12 Armed Forces; and

13 “(iii) has continuously operated for a pe-
14 riod of five years or more preceding the date of
15 the submittal of the written petition under
16 paragraph (1);

17 “(C) a collective bargaining agent for civilian
18 employees of the United States Government;

19 “(D) a nationally recognized medical associa-
20 tion;

21 “(E) the National Academies; or

22 “(F) a State or political subdivision of a State.

23 “(c) DETERMINATIONS BY NATIONAL ACADEMIES.—

24 (1) If the Secretary receives a determination described in

1 paragraph (2), not later than 180 days after receipt of
2 such determination, the Secretary shall—

3 “(A) publish in the Federal Register proposed
4 regulations to add the disease covered by the deter-
5 mination to the list of diseases specified in sub-
6 section (a)(2);

7 “(B) publish in the Federal Register, and sub-
8 mit to the Committee on Veterans’ Affairs of the
9 Senate and the Committee on Veterans’ Affairs of
10 the House of Representatives—

11 “(i) the decision of the Secretary not to
12 publish such proposed regulations; and

13 “(ii) the basis for such decision, including
14 specific medical science refuting the determina-
15 tion; or

16 “(C) publish in the Federal Register a decision
17 that insufficient evidence exists to take action under
18 subparagraph (A) or (B).

19 “(2) A determination described in this paragraph—

20 “(A) is a determination by the National Acad-
21 emies that there is a positive association between—

22 “(i) the exposure of humans to one or
23 more covered toxins; and

24 “(ii) the occurrence of the disease in hu-
25 mans; and

1 “(B) may be made pursuant to—

2 “(i) a request from the Secretary under
3 subsection (b); or

4 “(ii) an agreement between the Secretary
5 and the National Academies under section 3 of
6 the Presumptive Benefits for War Fighters Ex-
7 posed to Burn Pits and Other Toxins Act of
8 2021.

9 “(3)(A) Not later than 180 days after the date on
10 which the Secretary publishes any proposed regulations
11 under paragraph (1)(A) for a disease, the Secretary shall
12 prescribe final regulations for that disease.

13 “(B) Such regulations shall be effective on the date
14 of issuance.

15 “(d) REFERENCE TO NATIONAL ACADEMIES.—In the
16 case that the Secretary enters into an agreement with an-
17 other organization as described in section 3(h)(1) of the
18 Presumptive Benefits for War Fighters Exposed to Burn
19 Pits and Other Toxins Act of 2021, any reference in this
20 section to the National Academies shall be treated as a
21 reference to the other organization.

22 “(e) DEFINITIONS.—In this section:

23 “(1) The term ‘covered toxin’ includes the fol-
24 lowing:

25 “(A) Any toxic chemical or toxic fume.

1 “(B) Hazardous waste, mixed waste, solid
2 waste, or used oil (as those terms are defined
3 in section 1004 of the Solid Waste Disposal Act
4 (42 U.S.C. 6903)).

5 “(C) Radiological waste.

6 “(D) Any other carcinogen.

7 “(2) The term ‘veterans service organization’
8 means an organization recognized by the Secretary
9 for the representation of veterans under section
10 5902 of this title.”.

11 (b) EFFECTIVE DATE.—

12 (1) IN GENERAL.—The amendment made by
13 subsection (a) shall take effect on the date that is
14 180 days after the date of the enactment of this Act.

15 (2) WRITTEN PETITIONS.—With respect to a
16 written petition described in section 1119(b)(1) of
17 title 38, United States Code, as added by subsection
18 (a), that was received by the Secretary of Veterans
19 Affairs before the effective date described in para-
20 graph (1), the Secretary shall make a request of the
21 National Academies of Sciences, Engineering, and
22 Medicine under such section, as so added, not later
23 than 90 days after such effective date.

24 (c) CLERICAL AMENDMENT.—The table of sections
25 at the beginning of chapter 11 of title 38, United States

1 Code, is amended by inserting after the item relating to
2 section 1118 the following new item:

“1119. Presumption of service connection for certain diseases associated with
exposure to burn pits and other toxins.”.

3 (d) CONFORMING AMENDMENT.—Section 1113 of
4 such title is amended by striking “or 1118” each place
5 it appears and inserting “1118, or 1119”.

6 **SEC. 3. AGREEMENT WITH THE NATIONAL ACADEMIES OF**
7 **SCIENCES, ENGINEERING, AND MEDICINE**
8 **CONCERNING THE EXPOSURE OF HUMANS TO**
9 **BURN PITS AND OTHER TOXINS.**

10 (a) AGREEMENT.—

11 (1) IN GENERAL.—The Secretary of Veterans
12 Affairs shall seek to enter into an agreement with
13 the National Academies of Sciences, Engineering,
14 and Medicine (referred to in this section as the “Na-
15 tional Academies”) to perform the services covered
16 by this section.

17 (2) TIMING.—The Secretary shall seek to enter
18 into the agreement described in paragraph (1) not
19 later than 60 days after the date of the enactment
20 of this Act.

21 (b) REVIEWS OF SCIENTIFIC EVIDENCE.—

22 (1) IN GENERAL.—Under an agreement be-
23 tween the Secretary and the National Academies,
24 the National Academies shall review and summarize

1 the scientific evidence, and assess the strength there-
2 of, concerning the association between the exposure
3 of humans to covered toxins and each disease sus-
4 pected to be associated with such exposure.

5 (2) **REVIEWS UPON REQUEST.**—Under an
6 agreement between the Secretary and the National
7 Academies under this section, the National Acad-
8 emies shall conduct a review described in paragraph
9 (1) in response to each request made by the Sec-
10 retary under section 1119(b)(1) of title 38, United
11 States Code, as added by section 2(a).

12 (c) **SCIENTIFIC DETERMINATIONS CONCERNING DIS-**
13 **EASES.**—

14 (1) **IN GENERAL.**—For each disease reviewed
15 under subsection (b), the National Academies shall
16 determine (to the extent that available scientific data
17 permit meaningful determinations) whether there is
18 a positive association between the exposure of hu-
19 mans to one or more covered toxins and the occur-
20 rence of the disease in humans, taking into account
21 the strength of the scientific evidence and the appro-
22 priateness of the statistical and epidemiological
23 methods used to detect the association.

24 (2) **SUBMISSIONS FOR REVIEWS UPON RE-**
25 **QUEST.**—Under an agreement between the Secretary

1 and the National Academies under this section, not
2 later than 270 days after the date on which the Sec-
3 retary transmits a request to the National Acad-
4 emies with respect to a disease under section
5 1119(b)(1) of title 38, United States Code, as added
6 by section 2(a), the National Academies shall submit
7 to the Secretary the determination made with re-
8 spect to that disease under paragraph (1).

9 (d) RECOMMENDATIONS FOR ADDITIONAL SCI-
10 ENTIFIC STUDIES.—

11 (1) IN GENERAL.—Under an agreement be-
12 tween the Secretary and the National Academies
13 under this section, the National Academies shall
14 make any recommendations it has for additional sci-
15 entific studies to resolve areas of continuing sci-
16 entific uncertainty relating to the exposure of hu-
17 mans to covered toxins.

18 (2) CONSIDERATIONS.—In making rec-
19 ommendations for additional scientific studies, the
20 National Academies shall consider—

21 (A) the scientific information that is avail-
22 able at the time of the recommendation;

23 (B) the value and relevance of the informa-
24 tion that could result from additional studies;
25 and

1 (C) the feasibility of carrying out such ad-
2 ditional studies.

3 (e) SUBSEQUENT REVIEWS.—Under an agreement
4 between the Secretary and the National Academies under
5 this section, the National Academies shall—

6 (1) conduct as comprehensive a review as is
7 practicable of the evidence referred to in subsection
8 (b)(1) that became available since the last review of
9 such evidence under this section; and

10 (2) make determinations and estimates on the
11 basis of the results of such review and all other re-
12 views conducted for the purposes of this section.

13 (f) REPORTS.—

14 (1) INITIAL REPORT.—

15 (A) IN GENERAL.—Under an agreement
16 between the Secretary and the National Acad-
17 emies under this section, not later than 540
18 days after the date of the enactment of this
19 Act, the National Academies shall submit to the
20 Secretary and the Committee on Veterans' Af-
21 fairs of the Senate and the Committee on Vet-
22 erans' Affairs of the House of Representatives
23 a report on the activities of the National Acad-
24 emies under the agreement.

1 (B) ELEMENTS.—The report submitted
2 under subparagraph (A) shall include the fol-
3 lowing:

4 (i) The determinations described in
5 subsection (c)(1).

6 (ii) An explanation of the scientific
7 evidence and reasoning that led to such de-
8 terminations.

9 (iii) Any recommendations of the Na-
10 tional Academies under subsection (d).

11 (2) PERIODIC UPDATES.—Under an agreement
12 between the Secretary and the National Academies
13 under this section, not less frequently than once
14 every two years, the National Academies shall sub-
15 mit to the Secretary and the Committee on Vet-
16 erans' Affairs of the Senate and the Committee on
17 Veterans' Affairs of the House of Representatives an
18 updated report on the activities of the National
19 Academies under the agreement.

20 (g) LIMITATION ON AUTHORITY.—The authority to
21 enter into agreements under this section shall be effective
22 for a fiscal year to the extent that appropriations are
23 available.

24 (h) ALTERNATIVE CONTRACT SCIENTIFIC ORGANIZA-
25 TION.—

1 (1) IN GENERAL.—If the Secretary is unable
2 within the period prescribed in subsection (a)(2) to
3 enter into an agreement with the National Acad-
4 emies on terms acceptable to the Secretary, the Sec-
5 retary shall seek to enter into such an agreement
6 with another appropriate scientific organization
7 that—

8 (A) is not part of the Government;

9 (B) operates as a not-for-profit entity; and

10 (C) has expertise and objectivity com-
11 parable to that of the National Academies.

12 (2) TREATMENT.—If the Secretary enters into
13 an agreement with another organization as described
14 in paragraph (1), any reference in this section, sec-
15 tion 4, and section 1119 of title 38, United States
16 Code, as added by section 2(a), to the National
17 Academies shall be treated as a reference to the
18 other organization.

19 (i) COVERED TOXIN DEFINED.—In this section, the
20 term “covered toxin” has the meaning given that term in
21 section 1119(e) of title 38, United States Code, as added
22 by section 2(a).

23 (j) AUTHORIZATION OF APPROPRIATIONS.—There
24 are authorized to be appropriated to the Department of

1 Veterans Affairs such sums as may be necessary to carry
2 out this section.

3 **SEC. 4. ACCESS OF THE NATIONAL ACADEMIES OF**
4 **SCIENCES, ENGINEERING, AND MEDICINE TO**
5 **INFORMATION FROM FEDERAL AGENCIES.**

6 (a) IN GENERAL.—Upon request by the National
7 Academies of Sciences, Engineering, and Medicine (re-
8 ferred to in this section as the “National Academies”),
9 the head of any Federal agency with relevant information
10 shall provide to the National Academies information in the
11 possession of the agency that the National Academies de-
12 termines useful in conducting a review under section 3(b).

13 (b) FEDERAL AGENCY DEFINED.—In this section,
14 the term “Federal agency” means any agency as that term
15 is defined in section 551 of title 5, United States Code.

16 **SEC. 5. PRESUMPTION RELATING TO PERSONAL INJURY OF**
17 **CERTAIN FEDERAL EMPLOYEES.**

18 (a) IN GENERAL.—Section 8102 of title 5, United
19 States Code, is amended by adding at the end the fol-
20 lowing:

21 “(c)(1) In this subsection, the term ‘covered em-
22 ployee’ means an employee of the Department of State,
23 the Department of Defense, or an element of the intel-
24 ligence community (as defined in section 3 of the National
25 Security Act of 1947 (50 U.S.C. 3003)) who, on or after

1 August 2, 1990, carried out the job responsibilities of the
2 employee for not fewer than 30 total days in a country
3 or territory while the United States was conducting a con-
4 tingency operation (as defined in section 101 of title 10)
5 in that country or territory.

6 “(2) Disability or death from a disease described in
7 paragraph (2) of such section suffered by a covered em-
8 ployee is deemed to have resulted from personal injury
9 sustained while in the performance of the duty of the cov-
10 ered employee, whether or not the covered employee was
11 engaged in the course of employment when the disability
12 or disability resulting in death occurred.”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 subsection (a) shall take effect on the date that is 180
15 days after the date of enactment of this Act.

16 (c) RULE OF CONSTRUCTION.—Subsection (c) of sec-
17 tion 8102 of such title, as added by subsection (a), shall
18 not be construed to apply to a contractor of a Federal
19 department or agency.