

107TH CONGRESS
1ST SESSION

H. R. 1287

To amend the Public Health Service Act with respect to the Vaccine Injury Compensation Program.

IN THE HOUSE OF REPRESENTATIVES

MARCH 29, 2001

Mr. WELDON of Florida (for himself, Mr. NADLER, Mr. BURTON of Indiana, Mr. FRANK, Mr. SESSIONS, Mr. MCGOVERN, Mr. HORN, Ms. MCCARTHY of Missouri, and Mr. TURNER) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Public Health Service Act with respect to the Vaccine Injury Compensation Program.

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 “Vaccine Injured Chil-
5 dren’s Compensation Act of 2001”.

6 **SEC. 2. PURPOSE OF PROGRAM.**

7 Section 2110(a) of the Public Health Service Act,
8 such Act (42 U.S.C. 300aa–10(a)) is amended by adding
9 at the end the following sentence: “Such Program is a re-

1 medial program that is to be construed, both as to causa-
 2 tion and damages, in a fashion that gives broad effect to
 3 the remedial purpose of this subtitle. Concepts of sov-
 4 ereign immunity do not apply in such Program.”.

5 **SEC. 3. BURDEN OF PROOF.**

6 Section 2113 of the Public Health Service Act (42
 7 U.S.C. 300aa–13) is amended—

8 (1) in subsection (a)(1)—

9 (A) in subparagraph (A), by striking “a
 10 preponderance of the evidence” and inserting
 11 the following: “submitting evidence sufficient to
 12 justify a belief by a fair and impartial indi-
 13 vidual that petitioner’s claims are well grounded
 14 as to”; and

15 (B) in the matter after and below subpara-
 16 graph (B), by adding at the end the following:
 17 “When, after consideration of all evidence and
 18 material of record in a case, there is an approx-
 19 imate balance of positive and negative evidence,
 20 while applying the standard under subpara-
 21 graph (A), regarding the merits of an issue ma-
 22 terial to the determination of the matter, the
 23 benefit of the doubt in resolving each such issue
 24 shall be given to petitioner.”;

25 (2) in subsection (a)(2)(B)—

1 (A) by inserting “only” before “include in-
2 fection”; and

3 (B) by inserting a comma after “metabolic
4 disturbances”;

5 (3) in subsection (a), by adding at the end the
6 following paragraph:

7 “(3) Any defense raised by respondent that the
8 illness, disability, injury, condition, or death de-
9 scribed in the petition was in fact due to factors un-
10 related to the administration of the vaccine must be
11 proved by clear and convincing evidence and may not
12 be made on the basis of a repudiation of the Vaccine
13 Injury Table.”; and

14 (4) in subsection (b)(1), in the matter after and
15 below subparagraph (B), by striking “shall consider
16 the entire record and the course of the injury” and
17 inserting the following: “shall consider the entire
18 record. In the evaluation of damages and future
19 needs, the special master or court shall consider the
20 course of injury”.

21 **SEC. 4. COMPENSATION ISSUES.**

22 Section 2115 of the Public Health Service Act (42
23 U.S.C. 300aa–15) is amended—

24 (1) in subsection (a)—

25 (A) in paragraph (1)(A)—

1 (i) in clause (ii), by striking “and” at
2 the end;

3 (ii) in clause (iii), by striking the pe-
4 riod at the end of subclause (II) and in-
5 serting “; and”; and

6 (iii) by adding at the end the fol-
7 lowing clause:

8 “(iv) are necessary for the establishment
9 and maintenance of a trust to receive program
10 funds.”;

11 (B) in paragraph (4), by adding after the
12 period the following sentence: “No reduction to
13 net present value shall be applied to this por-
14 tion of a petitioner’s award.”; and

15 (C) by adding at the end the following
16 paragraph:

17 “(5) Actual unreimbursable expenses that have
18 been or will be incurred for family counseling and/
19 or training determined to be reasonably necessary
20 and that result from the vaccine-related injury for
21 which the petitioner seeks compensation.”;

22 (2) in subsection (b)—

23 (A) in paragraph (1), by adding “and”
24 after the comma at the end;

1 (B) in paragraph (2), by striking “, and”
2 and inserting a period; and

3 (C) by striking paragraph (3); and
4 (3) in subsection (e), by adding at the end the
5 following paragraph:

6 “(4)(A) During the pendency of a petition filed
7 under section 2111 (whether for a vaccine adminis-
8 tered after the effective date of this part or before
9 such date), the special master or court may, upon
10 application of the petitioner, award payments to
11 cover the petitioner’s reasonable attorneys’ fees and
12 other costs that have been incurred with respect to
13 the petition.

14 “(B) Payments under subparagraph (A) re-
15 garding the petition involved may not be made more
16 frequently than once every 90 days.” .

17 **SEC. 5. LIMITATIONS OF ACTIONS.**

18 Section 2116 of the Public Health Service Act (42
19 U.S.C. 300aa-16) is amended—

20 (1) in subsection (a)—

21 (A) in paragraph (2), by striking “36
22 months” and inserting “72 months”;

23 (B) in paragraph (3)—

24 (i) by striking “24 months” and in-
25 serting “36 months”; and

1 (ii) by striking “48 months” and in-
2 serting “72 months”; and

3 (C) by adding after and below paragraph
4 (3) the following:

5 “Notwithstanding the limitations contained in this subtitle
6 as amended by the Vaccine Injury Compensation Program
7 Corrective Amendments of 2001, the time period for filing
8 a petition shall be extended an additional 36 months from
9 the date the petitioner first knew or reasonably should
10 have known that the petitioner may have been eligible for
11 compensation under this subtitle, including knowledge not
12 only that the injury or death involved may have been
13 caused by the vaccine, but also that a petition under sec-
14 tion 2111 was a potential remedy.”;

15 (2) in subsection (b), in the matter preceding
16 paragraph (1), by striking “2 years” and inserting
17 “72 months”; and

18 (3) by adding at the end the following sub-
19 sections:

20 “(d) The statute of limitations for filing a petition
21 under section 2111 shall be tolled until petitioner reaches
22 the age of 18, and, if a petitioner is incompetent, until
23 24 months after a guardian is appointed or otherwise
24 qualified by a court of competent jurisdiction.

1 “(e) Notwithstanding section 2114(c)(4) or
2 2111(b)(2), if a petitioner who previously filed a petition
3 under section 2111 was denied compensation because of
4 (1) failure to satisfy the former \$1,000 unreimbursed ex-
5 penses requirement of section 2111(c)(1)(D)(I), or (2)
6 failure to satisfy the filing deadlines set forth in section
7 2114, in any case in which the petitioner would have satis-
8 fied the limitations of actions provisions of this subtitle
9 as amended by the Vaccine Injury Compensation Program
10 Corrective Amendments of 2001, then the petitioner shall
11 have the right to refile the petition within 72 months after
12 reaching the age of majority, or within 24 months after
13 the effective date of such Amendments, whichever is the
14 longer period.”.

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