

111TH CONGRESS  
1ST SESSION

# H. R. 3491

To amend title 38, United States Code, to establish a presumption of service connection for certain cancers occurring in veterans who served in the Republic of Vietnam and were exposed to certain herbicide agents, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 31, 2009

Mr. KAGEN (for himself and Mr. FRANK of Massachusetts) introduced the following bill; which was referred to the Committee on Veterans' Affairs

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## A BILL

To amend title 38, United States Code, to establish a presumption of service connection for certain cancers occurring in veterans who served in the Republic of Vietnam and were exposed to certain herbicide agents, 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 “Thomas G. Schubert  
5       Agent Orange Fairness Act”.

6       **SEC. 2. FINDINGS.**

7       Congress makes the following findings:

1           (1) Between 1962 and 1971, the Armed Forces  
2           sprayed approximately 107 million pounds of herbi-  
3           cides in South Vietnam for the purpose of defolia-  
4           tion and crop destruction.

5           (2) Section 1116(a)(3) of title 38, United  
6           States Code, defines the term “herbicide agent” as  
7           a chemical in an herbicide used in support of the  
8           United States and allied military operations in the  
9           Republic of Vietnam during the period beginning on  
10          January 9, 1962, and ending on May 7, 1975.

11          (3) It has been incontrovertibly established that  
12          exposure to Agent Orange leads to long-term, sys-  
13          temic health problems that can occur years after the  
14          exposure.

15          (4) The amendments to title 38, United States  
16          Code, enacted by the Veterans’ Health Care Eligi-  
17          bility Reform Act of 1996 (Public Law 104–262)  
18          provide that a veteran does not have to demonstrate  
19          a link between a certain health condition and expo-  
20          sure to Agent Orange and other toxic substances  
21          used during the Vietnam War in order to receive  
22          certain medical care provided by the Secretary of  
23          Veterans Affairs.

24          (5) Section 1116 of title 38, United States  
25          Code, provides for a presumption of service con-

1 nected disability when there is exposure to an herbi-  
2 cide agent and the occurrence of a disease if the  
3 credible evidence for such association is equal to or  
4 outweighs the credible evidence against the associa-  
5 tion.

6 (6) The Veterans' Health Care Eligibility Re-  
7 form Act of 1996 (Public Law 104–262) recognizes  
8 the Institute of Medicine as a resource by which the  
9 Secretary of Veterans Affairs should determine the  
10 association between the occurrence of a disease and  
11 Agent Orange.

12 (7) One established standard for the Secretary  
13 of Veterans Affairs to deny a presumption of service  
14 connection for a disability is that a disease shall be  
15 established by the Institute of Medicine to have lim-  
16 ited or suggestive evidence of no association between  
17 the occurrence of the disease and exposure to herbi-  
18 cide.

19 (8) Cancers of the gastrointestinal tract are  
20 recognized by the Institute of Medicine as having in-  
21 adequate or insufficient evidence to determine asso-  
22 ciation, which suggests that the credible evidence of  
23 an association is equal to the credible evidence  
24 against association.

1           (9) Thomas George Schubert served honorably  
2           in the Army in the Republic of Vietnam from 1966  
3           to 1967 where it is presumed he was exposed to  
4           Agent Orange.

5           (10) He later developed esophageal cancer and  
6           passed away as a result on August 29, 2002, his  
7           56th birthday.

8           (11) Thirty-five years after his discharge, the  
9           Department of Veterans Affairs issued a ruling that  
10          Mr. Schubert's death was service connected, stating,  
11          "The preponderance of the competent evidence re-  
12          lates the victim's cause of death, esophageal cancer,  
13          to in-service Agent Orange exposure," and "Resolv-  
14          ing any reasonable doubt in the appellants favor,  
15          that his death is directly related to in-service expo-  
16          sure to Agent Orange.".

17 **SEC. 3. PRESUMPTION OF SERVICE CONNECTION FOR CER-**  
18 **TAIN CANCERS ASSOCIATED WITH EXPOSURE**  
19 **TO HERBICIDES DURING THE VIETNAM ERA.**

20          Section 1116(a)(2) of title 38, United States Code,  
21          is amended by adding at the end the following new sub-  
22          paragraph:

23                “(I) Cancers of any tissues through the opening  
24                of the gastrointestinal tract to the end, including  
25                any and all carcinomas arising from tissues of

1       endodermal origin, beginning in the oral pharynx,  
2       extending through the esophagus, duodenum, cecum,  
3       transverse and descending colon, as well as biliary  
4       and pancreatic tissues, not to exclude the rectum,  
5       becoming manifest to a degree of disability of 10  
6       percent or more.”.

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