

116TH CONGRESS
2D SESSION

S. 4572

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

SEPTEMBER 15, 2020

Mrs. GILLIBRAND introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

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 2020”.

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 listed under paragraph
 22 (4)(B).

23 “(B) Cancer of any type.

24 “(C) Chronic bronchitis.

25 “(D) Chronic obstructive pulmonary disease.

1 “(E) Constrictive bronchiolitis or obliterative
2 bronchiolitis.

3 “(F) Emphysema.

4 “(G) Granulomatous disease.

5 “(H) Interstitial lung disease.

6 “(I) Lymphoma.

7 “(J) Pleuritis.

8 “(K) Pulmonary fibrosis.

9 “(L) Sarcoidosis.

10 “(M) Any other disease with respect to which
11 final regulations have been prescribed under sub-
12 section (c)(3).

13 “(3) A veteran described in this paragraph is any vet-
14 eran who—

15 “(A) on or after August 2, 1990—

16 “(i) served as a member of the Armed
17 Forces in support of a military operation de-
18 scribed in paragraph (4); and

19 “(ii) was present for 15 or more cumu-
20 lative days in a country or territory listed under
21 subparagraph (B) of that paragraph; or

22 “(B) was awarded any of the following:

23 “(i) The Southwest Asia Service Medal.

24 “(ii) The Global War on Terrorism Expe-
25 ditionary Medal.

1 “(iii) A campaign medal in recognition of
2 service in any of the following:

3 “(I) Operation Enduring Freedom.

4 “(II) Operation Iraqi Freedom.

5 “(III) Operation Nomad Shadow.

6 “(IV) Operation New Dawn.

7 “(V) Operation Inherent Resolve.

8 “(VI) Operation Freedom’s Sentinel.

9 “(VII) Operation Odyssey Lightning.

10 “(VIII) Operation Pacific Eagle.

11 “(4) A military operation described in this paragraph
12 is—

13 “(A) any contingency operation (as defined in
14 section 101(a)(13) of title 10); or

15 “(B) any military operation in any of the fol-
16 lowing countries or territories:

17 “(i) Afghanistan.

18 “(ii) Bahrain

19 “(iii) Burkina Faso.

20 “(iv) Cameroon.

21 “(v) Chad.

22 “(vi) Diego Garcia.

23 “(vii) Djibouti.

24 “(viii) Egypt.

25 “(ix) Ethiopia.

- 1 “(x) Gabon.
- 2 “(xi) Ghana.
- 3 “(xii) Iraq.
- 4 “(xiii) Jordan.
- 5 “(xiv) Kenya.
- 6 “(xv) Kuwait.
- 7 “(xvi) Kyrgyzstan.
- 8 “(xvii) Libya.
- 9 “(xviii) Mali.
- 10 “(xix) Niger.
- 11 “(xx) Nigeria.
- 12 “(xxi) Oman
- 13 “(xxii) Pakistan.
- 14 “(xxiii) Philippines.
- 15 “(xxiv) Saudi Arabia.
- 16 “(xxv) Somalia.
- 17 “(xxvi) South Sudan.
- 18 “(xxvii) Sudan.
- 19 “(xxviii) Syria.
- 20 “(xxix) Tajikistan.
- 21 “(xxx) Tunisia.
- 22 “(xxxi) Turkey.
- 23 “(xxxii) United Arab Emirates.
- 24 “(xxxiii) Uzbekistan.
- 25 “(xxxiv) Yemen.

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

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

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

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

16 “(A) a congressionally chartered veterans serv-
 17 ice organization;

18 “(B) an organization that—

19 “(i) is described in section 501(c)(3) of the
 20 Internal Revenue Code of 1986 and exempt
 21 from taxation under section 501(a) of such
 22 Code;

23 “(ii) serves veterans or members of the
 24 Armed Forces; and

1 “(iii) has continuously operated for a pe-
2 riod of five years or more preceding the date of
3 the submittal of the written petition under
4 paragraph (1);

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

7 “(D) a nationally recognized medical associa-
8 tion;

9 “(E) the National Academies; or

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

11 “(c) DETERMINATIONS BY NATIONAL ACADEMIES.—

12 (1) If the Secretary receives a determination described in
13 paragraph (2), not later than 180 days after receipt of
14 such determination, the Secretary shall—

15 “(A) publish in the Federal Register proposed
16 regulations to add the disease covered by the deter-
17 mination to the list of diseases specified in sub-
18 section (a)(2);

19 “(B) publish in the Federal Register, and sub-
20 mit to the Committee on Veterans’ Affairs of the
21 Senate and the Committee on Veterans’ Affairs of
22 the House of Representatives—

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

1 “(ii) the basis for such decision, including
2 specific medical science refuting the determina-
3 tion; or

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

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

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

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

12 “(ii) the occurrence of the disease in hu-
13 mans; and

14 “(B) may be made pursuant to—

15 “(i) a request from the Secretary under
16 subsection (b); or

17 “(ii) an agreement between the Secretary
18 and the National Academies under section 3 of
19 the Presumptive Benefits for War Fighters Ex-
20 posed to Burn Pits and Other Toxins Act of
21 2020.

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

1 “(B) Such regulations shall be effective on the date
2 of issuance.

3 “(d) REFERENCE TO NATIONAL ACADEMIES.—In the
4 case that the Secretary enters into an agreement with an-
5 other organization as described in section 3(h)(1) of the
6 Presumptive Benefits for War Fighters Exposed to Burn
7 Pits and Other Toxins Act of 2020, any reference in this
8 section to the National Academies shall be treated as a
9 reference to the other organization.

10 “(e) DEFINITIONS.—In this section:

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

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

14 “(B) Hazardous waste, mixed waste, solid
15 waste, or used oil (as those terms are defined
16 in section 1004 of the Solid Waste Disposal Act
17 (42 U.S.C. 6903)).

18 “(C) Radiological waste.

19 “(D) Any other carcinogen.

20 “(2) The term ‘veterans service organization’
21 means an organization recognized by the Secretary
22 for the representation of veterans under section
23 5902 of this title.”.

24 (b) EFFECTIVE DATE.—

1 (1) IN GENERAL.—The amendment made by
2 subsection (a) shall take effect on the date that is
3 180 days after the date of the enactment of this Act.

4 (2) WRITTEN PETITIONS.—With respect to a
5 written petition described in section 1119(b)(1) of
6 title 38, United States Code, as added by subsection
7 (a), that was received by the Secretary of Veterans
8 Affairs before the effective date described in para-
9 graph (1), the Secretary shall make a request of the
10 National Academies of Sciences, Engineering, and
11 Medicine under such section, as so added, not later
12 than 90 days after such effective date.

13 (c) CLERICAL AMENDMENT.—The table of sections
14 at the beginning of chapter 11 of title 38, United States
15 Code, is amended by inserting after the item relating to
16 section 1118 the following new item:

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

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

20 **SEC. 3. AGREEMENT WITH THE NATIONAL ACADEMIES OF**
21 **SCIENCES, ENGINEERING, AND MEDICINE**
22 **CONCERNING THE EXPOSURE OF HUMANS TO**
23 **BURN PITS AND OTHER TOXINS.**

24 (a) AGREEMENT.—

1 (1) IN GENERAL.—The Secretary of Veterans
2 Affairs shall seek to enter into an agreement with
3 the National Academies of Sciences, Engineering,
4 and Medicine (referred to in this section as the “Na-
5 tional Academies”) to perform the services covered
6 by this section.

7 (2) TIMING.—The Secretary shall seek to enter
8 into the agreement described in paragraph (1) not
9 later than 60 days after the date of the enactment
10 of this Act.

11 (b) REVIEWS OF SCIENTIFIC EVIDENCE.—

12 (1) IN GENERAL.—Under an agreement be-
13 tween the Secretary and the National Academies,
14 the National Academies shall review and summarize
15 the scientific evidence, and assess the strength there-
16 of, concerning the association between the exposure
17 of humans to covered toxins and each disease sus-
18 pected to be associated with such exposure.

19 (2) REVIEWS UPON REQUEST.—Under an
20 agreement between the Secretary and the National
21 Academies under this section, the National Acad-
22 emies shall conduct a review described in paragraph
23 (1) in response to each request made by the Sec-
24 retary under section 1119(b)(1) of title 38, United
25 States Code, as added by section 2(a).

1 (c) SCIENTIFIC DETERMINATIONS CONCERNING DIS-
2 EASES.—

3 (1) IN GENERAL.—For each disease reviewed
4 under subsection (b), the National Academies shall
5 determine (to the extent that available scientific data
6 permit meaningful determinations) whether there is
7 a positive association between the exposure of hu-
8 mans to one or more covered toxins and the occur-
9 rence of the disease in humans, taking into account
10 the strength of the scientific evidence and the appro-
11 priateness of the statistical and epidemiological
12 methods used to detect the association.

13 (2) SUBMISSIONS FOR REVIEWS UPON RE-
14 QUEST.—Under an agreement between the Secretary
15 and the National Academies under this section, not
16 later than 270 days after the date on which the Sec-
17 retary transmits a request to the National Acad-
18 emies with respect to a disease under section
19 1119(b)(1) of title 38, United States Code, as added
20 by section 2(a), the National Academies shall submit
21 to the Secretary the determination made with re-
22 spect to that disease under paragraph (1).

23 (d) RECOMMENDATIONS FOR ADDITIONAL SCI-
24 ENTIFIC STUDIES.—

1 (1) IN GENERAL.—Under an agreement be-
2 tween the Secretary and the National Academies
3 under this section, the National Academies shall
4 make any recommendations it has for additional sci-
5 entific studies to resolve areas of continuing sci-
6 entific uncertainty relating to the exposure of hu-
7 mans to covered toxins.

8 (2) CONSIDERATIONS.—In making recommen-
9 dations for additional scientific studies, the National
10 Academies shall consider—

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

13 (B) the value and relevance of the informa-
14 tion that could result from additional studies;
15 and

16 (C) the feasibility of carrying out such ad-
17 ditional studies.

18 (e) SUBSEQUENT REVIEWS.—Under an agreement
19 between the Secretary and the National Academies under
20 this section, the National Academies shall—

21 (1) conduct as comprehensive a review as is
22 practicable of the evidence referred to in subsection
23 (b)(1) that became available since the last review of
24 such evidence under this section; and

(2) make determinations and estimates on the basis of the results of such review and all other reviews conducted for the purposes of this section.

(f) REPORTS.—

(1) INITIAL REPORT.—

(A) IN GENERAL.—Under an agreement between the Secretary and the National Academies under this section, not later than 540 days after the date of the enactment of this Act, the National Academies shall submit to the Secretary and the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives a report on the activities of the National Academies under the agreement.

(B) ELEMENTS.—The report submitted under subparagraph (A) shall include the following:

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

(ii) An explanation of the scientific evidence and reasoning that led to such determinations.

(iii) Any recommendations of the National Academies under subsection (d).

1 (2) PERIODIC UPDATES.—Under an agreement
2 between the Secretary and the National Academies
3 under this section, not less frequently than once
4 every two years, the National Academies shall sub-
5 mit to the Secretary and the Committee on Vet-
6 erans' Affairs of the Senate and the Committee on
7 Veterans' Affairs of the House of Representatives an
8 updated report on the activities of the National
9 Academies under the agreement.

10 (g) LIMITATION ON AUTHORITY.—The authority to
11 enter into agreements under this section shall be effective
12 for a fiscal year to the extent that appropriations are
13 available.

14 (h) ALTERNATIVE CONTRACT SCIENTIFIC ORGANIZA-
15 TION.—

16 (1) IN GENERAL.—If the Secretary is unable
17 within the period prescribed in subsection (a)(2) to
18 enter into an agreement with the National Acad-
19 emies on terms acceptable to the Secretary, the Sec-
20 retary shall seek to enter into such an agreement
21 with another appropriate scientific organization
22 that—

23 (A) is not part of the Government;

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

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

3 (2) TREATMENT.—If the Secretary enters into
 4 an agreement with another organization as described
 5 in paragraph (1), any reference in this section, sec-
 6 tion 4, and section 1119 of title 38, United States
 7 Code, as added by section 2(a), to the National
 8 Academies shall be treated as a reference to the
 9 other organization.

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

14 (j) AUTHORIZATION OF APPROPRIATIONS.—There
 15 are authorized to be appropriated to the Department of
 16 Veterans Affairs such sums as may be necessary to carry
 17 out this section.

18 **SEC. 4. ACCESS OF THE NATIONAL ACADEMIES OF**
 19 **SCIENCES, ENGINEERING, AND MEDICINE TO**
 20 **INFORMATION FROM FEDERAL AGENCIES.**

21 (a) IN GENERAL.—Upon request by the National
 22 Academies of Sciences, Engineering, and Medicine (re-
 23 ferred to in this section as the “National Academies”),
 24 the head of any Federal agency with relevant information
 25 shall provide to the National Academies information in the

1 possession of the agency that the National Academies de-
 2 termines useful in conducting a review under section 3(b).

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

6 **SEC. 5. PRESUMPTION RELATING TO PERSONAL INJURY OF**
 7 **CERTAIN FEDERAL EMPLOYEES.**

8 (a) **IN GENERAL.**—Section 8102 of title 5, United
 9 States Code, is amended by adding at the end the fol-
 10 lowing:

11 “(c)(1) In this subsection, the term ‘covered em-
 12 ployee’ means an employee who, on or after August 2,
 13 1990, carried out the job responsibilities of the employee
 14 for not fewer than 15 total days in a country or territory
 15 listed under subparagraph (B) of paragraph (4) of section
 16 1119(a) of title 38 in support of a military operation de-
 17 scribed in that paragraph.

18 “(2) Disability or death from a disease described in
 19 paragraph (2) of such section suffered by a covered em-
 20 ployee is deemed to have resulted from personal injury
 21 sustained while in the performance of the duty of the cov-
 22 ered employee, whether or not the covered employee was
 23 engaged in the course of employment when the disability
 24 or disability resulting in death occurred.”.

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

○