

Public Law 117–61
117th Congress

An Act

Nov. 18, 2021
[S. 1511]

Protecting
America’s First
Responders Act
of 2021.
34 USC 10101
note.

To amend the Omnibus Crime Control and Safe Streets Act of 1968 with respect to payments to certain public safety officers who have become permanently and totally disabled as a result of personal injuries sustained in the line of duty, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Protecting America’s First Responders Act of 2021”.

SEC. 2. PAYMENT OF DEATH AND DISABILITY BENEFITS UNDER PUBLIC SAFETY OFFICERS’ DEATH BENEFITS PROGRAM.

Section 1201 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10281) is amended—

(1) in subsection (a), in the matter preceding paragraph

(1)—

(A) by striking “the Bureau shall pay”; and

(B) by inserting “, and calculated in accordance with subsection (i), shall be payable by the Bureau” after “subsection (h)”.

(2) in subsection (b)—

(A) by striking “the Bureau shall pay the same benefit” and inserting “a benefit shall be payable”;

(B) by striking “that is payable under subsection (a) with respect to the date on which the catastrophic injury occurred,” and inserting “in the same amount that would be payable, as of the date such injury was sustained (including”;

(C) by inserting “, and calculated in accordance with subsection (i)), if such determination were a determination under subsection (a)” before “: Provided, That”; and

(D) by striking “necessary:” and all that follows and inserting “necessary.”;

(3) in subsection (c), by striking “\$3,000” and inserting “\$6,000, adjusted in accordance with subsection (h),”;

(4) in subsection (h), by striking “subsection (a)” and inserting “subsections (a) and (b) and the level of the interim benefit payable immediately before such October 1 under subsection (c)”;

(5) by striking subsection (i) and inserting the following:

“(i) The amount payable under subsections (a) and (b), with respect to the death or permanent and total disability of a public safety officer, shall be the greater of—

“(1) the amount payable under the relevant subsection as of the date of death or of the catastrophic injury of the public safety officer; or

“(2) in any case in which the claim filed thereunder has been pending for more than 365 days at the time of final determination by the Bureau, the amount that would be payable under the relevant subsection if the death or the catastrophic injury of the public safety officer had occurred on the date on which the Bureau makes such final determination.”; and

(6) in subsection (m), by inserting “, (b),” after “subsection (a)”.

SEC. 3. DEFINITIONS WITH RESPECT TO PUBLIC SAFETY OFFICERS’ DEATH BENEFITS PROGRAM.

Section 1204 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10284) is amended—

(1) by redesignating paragraphs (1), (2), (3), (4), (5), (6), (7), (8), and (9) as paragraphs (4), (5), (6), (7), (8), (9), (10), (13), and (14), respectively;

(2) by striking paragraph (4), as so redesignated, and inserting:

“(4) ‘catastrophic injury’ means an injury, the direct and proximate result of which is to permanently render an individual functionally incapable (including through a directly and proximately resulting neurocognitive disorder), based on the state of medicine on the date on which the claim is determined by the Bureau, of performing work, including sedentary work: Provided, That, if it appears that a claimant may be functionally capable of performing work—

“(A) the Bureau shall disregard work where any compensation provided is de minimis, nominal, honorary, or mere reimbursement of incidental expenses, such as—

“(i) work that involves ordinary or simple tasks, that because of the claimed disability, the claimant cannot perform without significantly more supervision, accommodation, or assistance than is typically provided to an individual without the claimed disability doing similar work;

“(ii) work that involves minimal duties that make few or no demands on the claimant and are of little or no economic value to the employer; or

“(iii) work that is performed primarily for therapeutic purposes and aids the claimant in the physical or mental recovery from the claimed disability; and

“(B) the claimant shall be presumed, absent clear and convincing medical evidence to the contrary as determined by the Bureau, to be functionally incapable of performing such work if the direct and proximate result of the injury renders the claimant—

“(i) blind;

“(ii) parapalegic; or

“(iii) quadriplegic;”;

(3) in paragraph (6), as so redesignated, by striking “at the time of the public safety officer’s fatal or catastrophic injury” and inserting “at the time of the public safety officer’s death or fatal injury (in connection with any claim predicated upon such death or injury) or the date of the public safety officer’s

catastrophic injury or of the final determination by the Bureau of any claim predicated upon such catastrophic injury”;

(4) in paragraph (7), as so redesignated, by inserting “, including an individual who, as such a member, engages in scene security or traffic management as the primary or only duty of the individual during emergency response” before the semicolon;

(5) in paragraph (9), as so redesignated by striking “delinquency),” and inserting “delinquency),”;

(6) in paragraph (13), as so redesignated, by inserting “, and includes (as may be prescribed by regulation hereunder) a legally organized volunteer fire department that is a nonprofit entity and provides services without regard to any particular relationship (such as a subscription) a member of the public may have with such a department” before the semicolon;

(7) in paragraph (14), as so redesignated,—

(A) by striking subparagraph (A) and inserting:

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“(A) an individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, as a firefighter, or as a chaplain: Provided, That (notwithstanding section 1205(b)(2) or (3)) the Bureau shall, absent clear and convincing evidence to the contrary as determined by the Bureau, deem the actions outside of jurisdiction taken by any such law enforcement officer or firefighter, to have been taken while serving such public agency in such capacity, in any case in which the principal legal officer of such public agency, and the head of such agency, together, certify that such actions—

“(i) were not unreasonable;

“(ii) would have been within the authority and line of duty of such law enforcement officer or such firefighter to take, had they been taken in a jurisdiction where such law enforcement officer or firefighter was authorized to act, in the ordinary course, in an official capacity; and

“(iii) would have resulted in the payment of full line-of-duty death or disability benefits (as applicable), if any such benefits typically were payable by (or with respect to or on behalf of) such public agency, as of the date the actions were taken;”;

(B) by redesignating subparagraphs (B), (C), (D), and (E) as subparagraphs (C), (D), (E), and (F), respectively;

(C) by inserting after subparagraph (A), the following new subparagraph:

“(B) a candidate officer who is engaging in an activity or exercise that itself is a formal or required part of the program in which the candidate officer is enrolled or admitted, as provided in this section;”;

(D) by striking subparagraph (E), as so redesignated, and inserting the following:

Determination.
Certification.

“(E) a member of a rescue squad or ambulance crew who, as authorized or licensed by law and by the applicable agency or entity, is engaging in rescue activity or in the provision of emergency medical services: Provided, That (notwithstanding section 1205(b)(2) or (3)) the Bureau shall, absent clear and convincing evidence to the contrary as determined by the Bureau, deem the actions outside of

jurisdiction taken by any such member to have been thus authorized or licensed, in any case in which the principal legal officer of such agency or entity, and the head of such agency or entity, together, certify that such actions—

“(i) were not unreasonable;

“(ii) would have been within the authority and line of duty of such member to take, had they been taken in a jurisdiction where such member was authorized or licensed by law and by a pertinent agency or entity to act, in the ordinary course; and

“(iii) would have resulted in the payment of full line-of-duty death or disability benefits (as applicable), if any such benefits typically were payable by (or with respect to or on behalf of) such applicable agency or entity, as of the date the action was taken;”;

(8) by inserting before paragraph (4), as so redesignated, the following new paragraphs:

“(1) ‘action outside of jurisdiction’ means an action, not in the course of any compensated employment involving either the performance of public safety activity or the provision of security services, by a law enforcement officer, firefighter, or member of a rescue squad or ambulance crew that—

“(A) was taken in a jurisdiction where—

“(i) the law enforcement officer or firefighter then was not authorized to act, in the ordinary course, in an official capacity; or

“(ii) the member of a rescue squad or ambulance crew then was not authorized or licensed to act, in the ordinary course, by law or by the applicable agency or entity;

“(B) then would have been within the authority and line of duty of—

“(i) a law enforcement officer or a firefighter to take, who was authorized to act, in the ordinary course, in an official capacity, in the jurisdiction where the action was taken; or

“(ii) a member of a rescue squad or ambulance crew to take, who was authorized or licensed by law and by a pertinent agency or entity to act, in the ordinary course, in the jurisdiction where the action was taken; and

“(C) was, in an emergency situation that presented an imminent and significant danger or threat to human life or of serious bodily harm to any individual, taken—

“(i) by a law enforcement officer—

“(I) to prevent, halt, or respond to the immediate consequences of a crime (including an incident of juvenile delinquency); or

“(II) while engaging in a rescue activity or in the provision of emergency medical services;

“(ii) by a firefighter—

“(I) while engaging in fire suppression; or

“(II) while engaging in a rescue activity or in the provision of emergency medical services; or

“(iii) by a member of a rescue squad or ambulance crew, while engaging in a rescue activity or in the provision of emergency medical services;

“(2) ‘candidate officer’ means an individual who is enrolled or admitted, as a cadet or trainee, in a formal and officially established program of instruction or of training (such as a police or fire academy) that is specifically intended to result upon completion, in the—

“(A) commissioning of such individual as a law enforcement officer;

“(B) conferral upon such individual of official authority to engage in fire suppression (as an officer or employee of a public fire department or as an officially recognized or designated member of a legally organized volunteer fire department); or

“(C) granting to such individual official authorization or license to engage in a rescue activity, or in the provision of emergency medical services, as a member of a rescue squad, or as a member of an ambulance crew that is (or is a part of) the agency or entity that is sponsoring the individual’s enrollment or admission;

“(3) ‘blind’ means an individual who has central visual acuity of 20/200 or less in the better eye with the use of a correcting lens or whose eye is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees;”;

and

(9) in the matter following paragraph (10), as so redesignated, by inserting the following new paragraphs:

“(11) ‘neurocognitive disorder’ means a disorder that is characterized by a clinically significant decline in cognitive functioning and may include symptoms and signs such as disturbances in memory, executive functioning (that is, higher-level cognitive processes, such as, regulating attention, planning, inhibiting responses, decision-making), visual-spatial functioning, language, speech, perception, insight, judgment, or an insensitivity to social standards; and

“(12) ‘sedentary work’ means work that—

“(A) involves lifting articles weighing no more than 10 pounds at a time or occasionally lifting or carrying articles such as docket files, ledgers, or small tools; and

“(B) despite involving sitting on a regular basis, may require walking or standing on an occasional basis.”.

SEC. 4. DUE DILIGENCE IN PAYING BENEFIT CLAIMS UNDER PUBLIC SAFETY OFFICERS’ DEATH BENEFITS PROGRAM.

Section 1206(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10288(b)) is amended by striking “the Bureau may not” and all that follows and inserting the following: “the Bureau—

Subpoenas.

“(1) may use available investigative tools, including subpoenas, to—

“(A) adjudicate or to expedite the processing of the benefit claim, if the Bureau deems such use to be necessary to adjudicate or conducive to expediting the adjudication of such claim; and

“(B) obtain information or documentation from third parties, including public agencies, if the Bureau deems such use to be necessary to adjudicate or conducive to expediting the adjudication of a claim; and

“(2) may not abandon the benefit claim unless the Bureau has used investigative tools, including subpoenas, to obtain the information or documentation deemed necessary to adjudicate such claim by the Bureau under subparagraph (1)(B).”.

SEC. 5. EDUCATIONAL ASSISTANCE TO DEPENDENTS OF CERTAIN PUBLIC SAFETY OFFICERS.

Section 1216(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10306(b)) is amended, in the first sentence, by striking “may” and inserting “shall (unless prospective assistance has been provided)”.

SEC. 6. TECHNICAL CORRECTION.

Section 1205(e)(3)(B) of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10285(e)(3)(B)) is amended by striking “subparagraph (B)(ix)” and inserting “subparagraph (I)”.

SEC. 7. SUBPOENA POWER.

Section 806 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10225) is amended—

(1) by inserting “Attorney General, the” before the “Bureau of Justice Assistance”;

(2) by striking “may appoint” and inserting “may appoint (to be assigned or employed on an interim or as-needed basis) such hearing examiners (who shall, if so designated by the Attorney General, be understood to be comprised within the meaning of “special government employee” under section 202 of title 18, United States Code)”;

(3) by striking “under this chapter. The” and inserting “or other law. The Attorney General, the”; and

(4) by inserting “conduct examinations” after “examine witnesses,”.

SEC. 8. EFFECTIVE DATE; APPLICABILITY.

(a) IN GENERAL.—Except as otherwise provided in this section, the amendments made by this Act shall take effect on the date of enactment of this Act.

(b) APPLICABILITY.—

(1) CERTAIN INJURIES.—The amendments made to paragraphs (2) and (7) of section 1204 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10284) shall apply with respect to injuries occurring on or after January 1, 2008.

(2) MATTERS PENDING.—Except as provided in paragraph (1), the amendments made by this Act shall apply to any matter pending, before the Bureau or otherwise, on the date of enactment of this Act, or filed (consistent with pre-existing effective dates) or accruing after that date.

(c) EFFECTIVE DATE FOR WTC RESPONDERS.—

(1) CERTAIN NEW CLAIMS.—Not later than two years after the effective date of this Act, a WTC responder may file a claim, under section 1201(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10281(b)), that is predicated on a personal injury sustained in the line

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of duty by such responder as a result of the September 11, 2001, attacks, where—

(A) no claim under such section 1201(b) so predicated has previously been filed; or

(B) a claim under such section 1201(b) so predicated had previously been denied, in a final agency determination, on the basis (in whole or in part) that the claimant was not totally disabled.

Deadline.
Determination.

(2) CLAIMS FOR A DECEASED WTC RESPONDER.—Not later than two years after the effective date of this Act, a claim may be filed, constructively under section 1201(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10281(a)), where a WTC responder who otherwise could have filed a claim pursuant to paragraph (1) has died before such effective date (or dies not later than 365 days after such effective date), or where a WTC responder has filed such a claim but dies while it is pending before the Bureau: Provided, That—

(A) no claim under such section 1201(a) otherwise shall have been filed, or determined, in a final agency determination; and

(B) if it is determined, in a final agency determination, that a claim under such paragraph (1) would have been payable had the WTC responder not died, then the WTC responder shall irrebutably be presumed (solely for purposes of determining to whom benefits otherwise pursuant to such paragraph (1) may be payable under the claim filed constructively under such section 1201(a)) to have died as the direct and proximate result of the injury on which the claim under such paragraph (1) would have been predicated.

Deadline.

(3) DIFFERENCE IN BENEFIT PAY.—In the event that a claim under section 1201(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10281(b)) and predicated on an injury sustained in the line of duty by a WTC responder as a result of the September 11, 2001, attacks was approved, in a final agency determination, before the effective date of this Act, the Bureau shall, upon application filed (not later than three years after such effective date of this Act) by the payee (or payees) indicated in subparagraphs (A) or (B), pay a bonus in the amount of the difference (if any) between the amount that was paid pursuant to such determination and the amount that would have been payable had the amendments made by this Act, other than those indicated in subsection (b)(1), been in effect on the date of such determination—

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(A) to the WTC responder, if living on the date the application is determined, in a final agency determination; or

(B) if the WTC responder is not living on the date indicated in subparagraph (A), to the individual (or individuals), if living on such date, to whom benefits would have been payable on such date under section 1201(a) of such title I (34 U.S.C. 10281(a)) had the application been, instead, a claim under such section 1201(a).

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(4) SPECIAL LIMITED RULE OF CONSTRUCTION.—A claim filed pursuant to paragraph (1) or (2) shall be determined as though the date of catastrophic injury of the public safety officer were

the date of enactment of this Act, for purposes of determining the amount that may be payable.

SEC. 9. SAFEGUARDING AMERICA’S FIRST RESPONDERS.

Time period.

Section 3 of Safeguarding America’s First Responders Act of 2020 (Public Law 116-157) is amended—

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(1) in subsection (a)(1), by striking “between January 1, 2020, and December 31, 2021” and inserting “during the period beginning on January 1, 2020, and ending on the termination date” and

(2) in subsection (b)(1), by striking “between January 1, 2020, and December 31, 2021” and inserting “during the period beginning on January 1, 2020, and ending on the termination date”; and

(3) by adding at the end the following:

“(c) TERMINATION DATE.—For purposes of this section, the term ‘termination date’ means the earlier of—

“(1) the date on which the public health emergency declared by the Secretary of Health and Human Services under section 319 of the Public Health Service Act (42 U.S.C. 247d) on January 31, 2020, with respect to the Coronavirus Disease (COVID–19), expires; and

“(2) December 31, 2023.”.

Approved November 18, 2021.

LEGISLATIVE HISTORY—S. 1511:

CONGRESSIONAL RECORD, Vol. 167 (2021):

June 10, considered and passed Senate.

Oct. 27, considered and passed House, amended.

Nov. 4, Senate concurred in House amendment.

DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2021):

Nov. 18, Presidential remarks.