

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.

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IN THE SENATE OF THE UNITED STATES

Mrs. GILLIBRAND introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**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           “(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 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 rec-  
9           ommendations for additional scientific studies, the  
10          National 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

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

4 (f) REPORTS.—

5           (1) INITIAL REPORT.—

6           (A) IN GENERAL.—Under an agreement  
7 between the Secretary and the National Acad-  
8 emies under this section, not later than 540  
9 days after the date of the enactment of this  
10 Act, the National Academies shall submit to the  
11 Secretary and the Committee on Veterans' Af-  
12 fairs of the Senate and the Committee on Vet-  
13 erans' Affairs of the House of Representatives  
14 a report on the activities of the National Acad-  
15 emies under the agreement.

16           (B) ELEMENTS.—The report submitted  
17 under subparagraph (A) shall include the fol-  
18 lowing:

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

21           (ii) An explanation of the scientific  
22 evidence and reasoning that led to such de-  
23 terminations.

24           (iii) Any recommendations of the Na-  
25 tional 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.