

117TH CONGRESS  
1ST SESSION

# H. R. 2368

To amend title 38, United States Code, to establish a presumption of service connection for illnesses associated with exposure to certain airborne hazards, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 5, 2021

Mrs. LURIA 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 illnesses associated with exposure to certain airborne hazards, 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 “Conceding Our Vet-  
5       erans’ Exposures Now And Necessitating Training Act of  
6       2021” or the “COVENANT Act of 2021”.

1 **SEC. 2. PRESUMPTIONS OF SERVICE CONNECTION FOR ILL-**  
2 **NESSES ASSOCIATED WITH EXPOSURE TO**  
3 **CERTAIN AIRBORNE HAZARDS.**

4 (a) SENSE OF CONGRESS.—It is the sense of Con-  
5 gress that—

6 (1) as in past theaters of operation, Southwest  
7 Asia and its supporting theaters of operation pose  
8 numerous natural and manmade hazards that nega-  
9 tively affect the health outcomes of individuals serv-  
10 ing in these foreign environments;

11 (2) toxic exposures from burn pits, oil well  
12 fires, and other regional airborne hazards increase  
13 the potential for immediate and long-term illnesses  
14 to emerge among members of the Armed Forces;  
15 and

16 (3) legislation is necessary—

17 (A) to confront the scientific challenge of  
18 producing clear associations between in-theater  
19 toxic exposures and the illnesses confronting  
20 veterans who served in Southwest Asia and be-  
21 yond;

22 (B) to address the insufficient data hin-  
23 dering the Secretary of Veterans Affairs, the  
24 Secretary of Defense, and relevant partners  
25 from reaching proactive determinations regard-  
26 ing such associations; and

1 (C) to improve evaluations associated with  
 2 claims for disability compensation that relate to  
 3 toxic exposure.

4 (b) PRESUMPTIONS OF SERVICE CONNECTION.—

5 (1) IN GENERAL.—Subchapter II of chapter 11  
 6 of title 38, United States Code, is amended by add-  
 7 ing at the end the following new section:

8 **“§ 1119. Presumptions of service connection for ill-**  
 9 **nesses associated with exposure to cer-**  
 10 **tain airborne hazards**

11 “(a) PRESUMPTIONS.—(1) For the purposes of sec-  
 12 tion 1110 of this title, and subject to section 1113 of this  
 13 title, an illness specified in subsection (d) becoming mani-  
 14 fest in a covered veteran to a degree of 10 percent or more  
 15 shall be considered to have been incurred in or aggravated  
 16 during active military, naval, or air service, notwith-  
 17 standing that there is no record of evidence of such illness  
 18 during a period of such service.

19 “(2) A covered veteran shall be presumed to have  
 20 been exposed to an airborne hazard specified in subsection  
 21 (e) during service of the covered veteran specified in sub-  
 22 section (f)(1) unless there is affirmative evidence to estab-  
 23 lish that the covered veteran was not exposed to any such  
 24 airborne hazard during such service.

1       “(b) MEDICAL EXAMINATIONS AND OPINIONS.—(1)

2   If a covered veteran submits to the Secretary a claim for  
3   disability compensation for a diagnosed illness not speci-  
4   fied in subsection (d) that includes an assertion that the  
5   illness is related to airborne hazard exposure (regardless  
6   of whether such assertion identifies a particular airborne  
7   hazard specified in subsection (e)) or open burn pit expo-  
8   sure, and the evidence of record is insufficient to establish  
9   service connection for the illness, the Secretary shall pro-  
10  vide to the covered veteran a medical examination and ob-  
11  tain a medical opinion under section 5103A of this title  
12  to determine whether the illness is at least as likely as  
13  not caused by an airborne hazard specified in subsection  
14  (e).

15       “(2) In carrying out paragraph (1), if the diagnosed  
16  illness for which a claim is submitted involves a sign or  
17  symptom specified in section 1117(g) of this title, the Sec-  
18  retary shall ensure that—

19               “(A) the medical examination provided pursu-  
20               ant to such paragraph includes an evaluation of each  
21               corresponding body part or system that relates to  
22               the sign or symptom; and

23               “(B) the sign or symptom is considered in mak-  
24               ing the determination under such paragraph.

1 “(3) In providing the Secretary with a medical opin-  
2 ion pursuant to paragraph (1), a medical provider shall  
3 consider—

4 “(A) the total potential exposure to airborne  
5 hazards through any service of the covered veteran  
6 specified in subsection (f)(1) and the synergistic ef-  
7 fect of combined airborne hazards, including air-  
8 borne hazards that involve exposure through inhala-  
9 tion, dermal exposure, or ingestion; and

10 “(B) the medical evidence and scientific report-  
11 ing available at the time of the determination under  
12 paragraph (1).

13 “(c) RELATIONSHIP TO PRESUMPTIONS FOR ILL-  
14 NESSES ASSOCIATED WITH SERVICE IN PERSIAN  
15 GULF.—A determination that a presumption of service  
16 connection is not warranted pursuant to this section shall  
17 not preclude the Secretary from—

18 “(1) determining that a presumption of service  
19 connection is warranted pursuant to section 1118 of  
20 this title; or

21 “(2) paying compensation to the veteran (or de-  
22 pendency and indemnity compensation to a survivor  
23 of the veteran) pursuant to section 1117 of this title.

24 “(d) ILLNESSES.—The illnesses specified in this sub-  
25 section are the following:

- 1           “(1) Asthma that was diagnosed after a period  
2 of service specified in subsection (f)(1).  
3           “(2)(A) Head cancer of any type.  
4           “(B) Neck cancer of any type.  
5           “(C) Respiratory cancer of any type.  
6           “(D) Gastrointestinal cancer of any type.  
7           “(E) Reproductive cancer of any type.  
8           “(F) Lymphoma cancer of any type.  
9           “(G) Lymphomatic cancer of any type.  
10          “(H) Kidney cancer.  
11          “(I) Brain cancer.  
12          “(J) Melanoma.  
13          “(3) Chronic obstructive pulmonary disease.  
14          “(4) Chronic bronchitis.  
15          “(5) Constrictive bronchiolitis or obliterative  
16 bronchiolitis.  
17          “(6) Emphysema.  
18          “(7) Granulomatous disease.  
19          “(8) Interstitial lung disease.  
20          “(9) Pleuritis.  
21          “(10) Pulmonary fibrosis.  
22          “(11) Sarcoidosis.  
23          “(12) Rhinitis.  
24          “(13) Sinusitis.

1       “(e) AIRBORNE HAZARDS.—The airborne hazards  
2 specified in this subsection are the following:

3               “(1) Particulate matter, including the following:

4                       “(A) PM-10.

5                       “(B) PM-2.5.

6               “(2) Polycyclic aromatic hydrocarbons (PAHs),  
7 including the following:

8                       “(A) Acenaphthene.

9                       “(B) Acenaphthylene.

10                      “(C) Anthracene.

11                      “(D) Benzo(a)anthracene.

12                      “(E) Benzo(a)pyrene.

13                      “(F) Benzo(b)fluoroanthene.

14                      “(G) Benzo(g,h,i)perylene.

15                      “(H) Benzo(k)fluoroanthene.

16                      “(I) Chrysene.

17                      “(J) Dibenze(a,h)anthracene.

18                      “(K) Fluoranthene.

19                      “(L) Fluorene.

20                      “(M) Indeno(1,2,3-cd)pyrene.

21                      “(N) Naphthalene.

22                      “(O) Phenanthrene.

23                      “(P) Pyrene.

24               “(3) Volatile organic compounds, including the  
25 following:

1 “(A) Acetone.

2 “(B) Acrolein.

3 “(C) Benzene.

4 “(D) Carbon disulfide.

5 “(E) Chlorofluoromethane.

6 “(F) Chloromethane.

7 “(G) Ethylbenzene.

8 “(H) Hexane.

9 “(I) Hexachlorobutadiene.

10 “(J) M/p-Xylene.

11 “(K) Methylene chloride.

12 “(L) Pentane.

13 “(M) Propylene.

14 “(N) Styrene.

15 “(O) Toluene.

16 “(4) Toxic organic halogenated dioxins and  
17 furans (dioxins), including the following:

18 “(A) 1,2,3,4,6,7,8-HPCDD.

19 “(B) 1,2,3,4,6,7,8-HPCDF.

20 “(C) 1,2,3,4,7,8,9-HPCDF.

21 “(D) 1,2,3,4,7,8-HXCDD.

22 “(E) 1,2,3,4,7,8-HXCDF.

23 “(F) 1,2,3,6,7,8-HXCDD.

24 “(G) 1,2,3,6,7,8-HXCDF.

25 “(H) 1,2,3,7,8,9-HXCDD.



1 “(I) 1,2,3,7,8,9-HXCDF.

2 “(J) 1,2,3,7,8-PECDD.

3 “(K) 1,2,3,7,8-PECDF.

4 “(L) 2,3,4,6,7,8-HXCDF.

5 “(M) 2,3,4,7,8-PECDF.

6 “(N) 2,3,7,8-TCDD.

7 “(O) 2,3,7,8-TCDF.

8 “(P) Octachlorodibenzodioxin.

9 “(Q) Octachlorodibenzofuran.

10 “(5) Any other airborne hazard determined rel-  
11 evant by the Secretary.

12 “(f) DEFINITIONS.—In this section:

13 “(1) The term ‘covered veteran’ means any vet-  
14 eran who—

15 “(A) on or after August 2, 1990, per-  
16 formed active military, naval, or air service  
17 while assigned to a duty station in—

18 “(i) Bahrain;

19 “(ii) Iraq;

20 “(iii) Kuwait;

21 “(iv) Oman;

22 “(v) Qatar;

23 “(vi) Saudi Arabia;

24 “(vii) Somalia; or

25 “(viii) United Arab Emirates; or

1 “(B) on or after September 11, 2001, per-  
2 formed active military, naval, or air service  
3 while assigned to a duty station in—

4 “(i) Afghanistan;

5 “(ii) Djibouti;

6 “(iii) Egypt;

7 “(iv) Jordan;

8 “(v) Lebanon;

9 “(vi) Syria;

10 “(vii) Yemen;

11 “(viii) Uzbekistan;

12 “(ix) the Philippines; or

13 “(x) any other country determined rel-  
14 evant by the Secretary.

15 “(2) The term ‘illness’ means a disease or other  
16 condition that affects the health of an individual on  
17 a basis other than an acute or transient basis.

18 “(3) The term ‘open burn pit’ has the meaning  
19 given such term in section 201(c) of the Dignified  
20 Burial and Other Veterans’ Benefits Improvement  
21 Act of 2012 (Public Law 112–260; 38 U.S.C. 527  
22 note), except that the area of land may be located  
23 in any country specified in paragraph (1) or deter-  
24 mined relevant by the Secretary pursuant to such  
25 paragraph.

1       “(g) EFFECTIVE DATE OF AWARD.—The effective  
2 date of an award under this section shall be determined  
3 in accordance with section 5110 of this title, except that  
4 such date may not be earlier than the date of the enact-  
5 ment of this Act.”.

6           (2) CLERICAL AMENDMENT.—The table of con-  
7 tents at the beginning of chapter 11 of title 38,  
8 United States Code, is amended by inserting after  
9 the item relating to section 1118 the following new  
10 item:

“1119. Presumptions of service connection for illnesses associated with exposure  
to certain airborne hazards.”.

11           (3) IMPLEMENTATION DEADLINE.—The Sec-  
12 retary of Veterans Affairs shall implement the  
13 amendments made by this subsection by not later  
14 than 18 months after the date of the enactment of  
15 this Act.

16       (c) RELATIONSHIP TO PRESUMPTIONS FOR ILL-  
17 NESSES ASSOCIATED WITH SERVICE IN THE PERSIAN  
18 GULF.—Subchapter II of chapter 11 of title 38, United  
19 States Code, is further amended—

20           (1) in section 1117, by adding at the end the  
21 following new subsection:

22       “(i) A denial or termination of compensation paid to  
23 a veteran pursuant to this section shall not preclude the  
24 Secretary from determining that a presumption of service

1 connection is warranted pursuant to section 1119 of this  
2 title.”; and

3 (2) in section 1118, by adding at the end the  
4 following new subsection:

5 “(f) A determination that a presumption of service  
6 connection is not warranted pursuant to this section shall  
7 not preclude the Secretary from determining that a pre-  
8 sumption of service connection is warranted pursuant to  
9 section 1119 of this title.”.

10 (d) PENDING CASES.—

11 (1) AUTHORITY TO STAY.—The Secretary may  
12 stay a claim described in paragraph (2) until the  
13 date on which the Secretary commences the imple-  
14 mentation of section 1119 of title 38, United States  
15 Code (as added by subsection (b)).

16 (2) CLAIMS DESCRIBED.—A claim described in  
17 this subparagraph is a claim for disability compensa-  
18 tion that is pending at the Veterans Benefits Admin-  
19 istration, the Board of Veterans’ Appeals, the Court  
20 of Appeals for Veterans Claims, or the Court of Ap-  
21 peals for the Federal Circuit, on or after the date  
22 of the enactment of this Act and before the date on  
23 which the Secretary commences the implementation  
24 of such section 1119 and that relates to—

1 (A) the service and illnesses covered by  
2 such section 1119; or

3 (B) the service covered by such section  
4 1119 and a diagnosed illness asserted in the  
5 claim to be related to airborne hazard exposure,  
6 regardless of whether such assertion identifies a  
7 particular airborne hazard, or open burn pit ex-  
8 posure.

9 (e) STANDARD MEDICAL TRAINING CURRICULUM.—

10 (1) CURRICULUM.—Not later than 180 days  
11 after the date of the enactment of this Act, the Sec-  
12 retary of Veterans Affairs shall establish a standard  
13 medical training curriculum for all medical providers  
14 conducting examinations and providing opinions  
15 under section 1119(b) of title 38, United States  
16 Code (as added by subsection (b)), that provides a  
17 standardized approach to conducting and providing  
18 examinations and opinions in accordance with such  
19 section.

20 (2) ELEMENTS.—The Secretary shall include in  
21 the curriculum under paragraph (1) an instruction  
22 for each medical provider conducting an examination  
23 or providing an opinion to consider the following:

24 (A) Relevant medical and scientific lit-  
25 erature.

1 (B) Available information on the prox-  
2 imity, intensity, and frequency of exposure of  
3 the individual to airborne hazards.

4 (C) Medically unexplained chronic multi-  
5 symptom illnesses.

6 (D) All competent and credible evidence of  
7 record.

8 (3) SUBMISSION TO CONGRESS.—Prior to im-  
9 plementation of the curriculum under paragraph (1),  
10 the Secretary shall submit to the Committees on  
11 Veterans' Affairs of the House of Representatives  
12 and the Senate such curriculum.

13 (f) DEFINITIONS.—In this section:

14 (1) The terms “illness” and “open burn pit”  
15 have the meaning given such terms in section 1119  
16 of title 38, United States Code (as added by sub-  
17 section (b)).

18 (2) The term “medically unexplained chronic  
19 multisymptom illness” has the meaning given such  
20 term in section 1117(a)(2)(B) of title 38, United  
21 States Code.

1 **SEC. 3. ELIGIBILITY FOR CARE AND SERVICES BASED ON**  
2 **POTENTIAL EXPOSURE TO CERTAIN AIR-**  
3 **BORNE HAZARDS.**

4 (a) ELIGIBILITY FOR CARE AND SERVICES.—Section  
5 1710(e) of title 38, United States Code, is amended—

6 (1) in paragraph (1), by adding at the end the  
7 following new subparagraph:

8 “(G)(i) Subject to paragraph (2), a covered vet-  
9 eran is eligible for hospital care, medical services,  
10 and nursing home care under subsection (a)(2)(F)  
11 for any diagnosed illness, notwithstanding that there  
12 is insufficient medical evidence to conclude that such  
13 illness is attributable to the service specified in sec-  
14 tion 1119(f)(1) of this title.

15 “(ii) In this subparagraph, the term ‘covered  
16 veteran’ has the meaning given such term in section  
17 1119 of this title.”; and

18 (2) in paragraph (2)(B), by striking “or (F)”  
19 and inserting “(F), or (G)”.

20 (b) RESOURCE ASSESSMENT AND REPORT.—

21 (1) INITIAL ASSESSMENT AND REPORT.—Not  
22 later than 180 days after the date of the enactment  
23 of this Act, the Secretary of Veterans Affairs shall—

24 (A) complete an assessment to deter-  
25 mine—

1 (i) the personnel and material re-  
2 sources necessary to implement the amend-  
3 ments made by subsection (a); and

4 (ii) the total number of covered vet-  
5 erans, as such term is defined in section  
6 1119 of title 38, United States Code (as  
7 added by section 2(b)), who receive hos-  
8 pital care or medical services furnished by  
9 the Secretary under chapter 17 of such  
10 title, disaggregated by priority group speci-  
11 fied in section 1705(a) of such title; and

12 (B) submit to the Committees on Veterans'  
13 Affairs of the House of Representatives and the  
14 Senate an initial report containing the findings  
15 of the assessment completed under subpara-  
16 graph (A), including a specific determination as  
17 to whether the Department has the personnel  
18 and material resources necessary to implement  
19 the amendments made by subsection (a).

20 (2) SUBSEQUENT REPORTS.—If the initial re-  
21 port submitted under paragraph (1)(B) contains a  
22 determination that the Department does not have  
23 the personnel or material resources necessary to im-  
24 plement the amendments made by subsection (a),  
25 beginning not later than 90 days after the submis-



1 sion of such initial report and every 90 days there-  
2 after until the effective date specified in subsection  
3 (c), the Secretary shall submit to the Committees on  
4 Veterans' Affairs of the House of Representatives  
5 and the Senate a subsequent report containing an  
6 update to such determination.

7 (c) EFFECTIVE DATE.—The amendments made by  
8 subsection (a) shall take effect on the date that is the ear-  
9 lier of the following:

10 (1) The date on which the Secretary submits a  
11 report under subsection (b) containing a determina-  
12 tion that the Department has the personnel and ma-  
13 terial resources necessary to implement such amend-  
14 ments.

15 (2) The date that is 18 months after the date  
16 of the enactment of this Act.

○