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National Veterans Legal Services Program


THE PACT ACT: A PRIMER FOR VETERANS SERVICE OFFICERS

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AGENDA

- Background
- Title I: Expansion of Health Care Eligibility
- Title II: Toxic Exposure Presumption Process
- Title III: Improving the Establishment of SC Process for Toxic-Exposed Vets
- Title IV: Presumptions of SC
- Summary of other Titles of Act




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BACKGROUND


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THE BASICS


- **8/10/2022: President Biden signed into law**
 - “Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022” or the “Honoring our PACT Act of 2022”
 - Public Law No. 117-168

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THE BASICS

- It could bring more than 5 million more Vets into the VA Health Care system
- It expands VA benefits for Vets harmed by certain toxic exposures, including:
 - Burn Pits
 - Agent Orange
 - Radiation




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TITLE I: EXPANSION OF HEALTH CARE ELIGIBILITY

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SECTIONS

- **101: Short title** (“Conceding Our Veterans’ Exposure Now and Necessitating Training Act of 2022” or “COVENANT Act of 2022”)
- **102: Definitions Relating to Toxic-Exposed Vets**
- **103: Expansion of Health Care for Specific Categories of Toxic-Exposed Vets and Vets Supporting Certain Overseas Contingency Operations**
- **104: Assessments of Implementation and Operation**
- **111: Expansion of Period of Eligibility for Health Care for Certain Vets of Combat Service**

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DEFINITIONS RELATING TO TOXIC-EXPOSED VETERANS

- **“Toxic Exposure” includes:**
 - A. A toxic exposure risk activity, which is any activity that:
 1. Requires a corresponding entry in an exposure tracking record system for the Vet
 2. Secretary of VA determines qualifies as such when taking into account what is reasonably prudent to protect the health of Vets

• 38 U.S.C. §§ 101(37)(A); 1710(e)(4)

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DEFINITIONS RELATING TO TOXIC-EXPOSED VETERANS

- **“Toxic Exposure” includes:**
 - B. An exposure to a substance, chemical, or airborne hazard identified in a list to be created under 38 U.S.C. § 1119(b)(2)
 - VA Secretary must establish and maintain the list, in collaboration with the Secretary of Defense

• 38 U.S.C. § 101(37)(B); 1119(b)(2)(A)

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DEFINITIONS RELATING TO TOXIC-EXPOSED VETERANS



• “Toxic-Exposed Veteran”:

- Any Vet described in 38 U.S.C. § 1710(e)(1)
 - Vietnam-era herbicides
 - Radiation
 - SW Asia during Persian Gulf War 8/1990-11/1998
 - In theater of combat ops or in combat after 11/11/1998
 - DOD chem and bio weapons testing 1962-1973
 - Camp Lejeune for at least 30 days 8/1/1953-12/31/1987
 - Toxic-exposure risk activity participant

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DEFINITIONS RELATING TO TOXIC-EXPOSED VETERANS



• “Toxic-Exposed Veteran”:

- Any Vet described in 38 U.S.C. § 1710(e)(1) (cont’d)
 - Covered Vet in 38 U.S.C. § 1119(c)
 - On/after 8/2/1990:
 - Bahrain
 - Iraq
 - Kuwait
 - Oman
 - Qatar
 - Saudi Arabia
 - Somalia
 - U.A.E
 - On/after 9/11/2001:
 - Afghanistan
 - Djibouti
 - Egypt
 - Jordan
 - Lebanon
 - Syria
 - Yemen
 - Uzbekistan
 - Any other relevant country per Sec VA

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DEFINITIONS RELATING TO TOXIC-EXPOSED VETERANS




• “Toxic-Exposed Veteran”:

- Any Vet described in 38 U.S.C. § 1710(e)(1) (cont’d)
 - Vet who deployed in support of:
 - Operation Enduring Freedom
 - Operation Freedom’s Sentinel
 - Operation Iraqi Freedom
 - Operation New Dawn
 - Operation Inherent Resolve
 - Resolute Support Mission


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SEC. 103

- Expansion of Health Care for Specific Categories of Toxic-Exposed Veterans and Veterans Supporting Certain Overseas Contingency Operations
- Amends 38 U.S.C. § 1710(e)



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EXPANSION OF VA HEALTH CARE FOR TOXIC-EXPOSED VETS

- VA must furnish hospital care (including mental health services and counseling), medical services, and nursing home care, for any illness, to any Vet **“who is a toxic-exposed veteran, in accordance with [38 U.S.C. § 1710(e)]”**
- 38 U.S.C. § 1710(a)(2)(F)
- Toxic-exposed Vets will qualify for at least Priority Group 6

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EXPANSION OF VA HEALTH CARE FOR TOXIC-EXPOSED VETS

- New groups of toxic-exposed Vets:
 1. Vets who participated in a **toxic exposure risk activity** while serving on active duty, active duty for training, or inactive duty training
 2. “Covered veterans” who served in **certain locations during certain periods** (listed in new 38 U.S.C. § 1119(c));
 3. Those who deployed in support of a **specified contingency operation**
 - 38 U.S.C. § 1710(e)(1)(G), (H), (I)

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“COVERED VETERANS”
38 U.S.C. § 1119(c)(1)(A), (B)



- Vets who, on or after 8/2/1990, performed active service while assigned to a duty station in, including airspace above:
 - Bahrain, Iraq, Kuwait, Oman, Qatar, Saudi Arabia, Somalia, U.A.E.
- Vets who, on or after 9/11/2001, performed active service while assigned to a duty station in, including airspace above:
 - Afghanistan, Djibouti, Egypt, Jordan, Lebanon, Syria, Yemen, Uzbekistan, any other country determined relevant by VA Secretary

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SPECIFIED CONTINGENCY OPERATIONS
38 U.S.C. § 1710(e)(1)(I)(ii)



- Operation Enduring Freedom
- Operation Freedom’s Sentinel
- Operation Iraqi Freedom
- Operation New Dawn
- Operation Inherent Resolve
- Resolute Support Mission




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ELIGIBILITY DATES
38 U.S.C. § 1710(e)(6)



- For Vets in first two new groups (participated in a toxic exposure risk activity and “covered veterans”), eligibility will be phased in:
 - 10/1/2024: Vets discharged or released from active service 8/2/1990 – 9/11/2001
 - 10/1/2026: Vets discharged or released from active service 9/12/2001 – 12/31/2006
 - 10/1/2028 – Vets discharged or released from active service 1/1/2007 – 12/31/2012
 - 10/1/2030 - Vets discharged or released from active service 1/1/2013 – 12/31/2018


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ELIGIBILITY DATES 38 U.S.C. § 1710(e)(6)

- Vets in third new group (deployed in support of a specified contingency operation) will not be eligible until **10/1/2032**
- VA Secretary may move up any eligibility start date, as long as VA has the resources to do so
- Many Vets also eligible for VA health care based on other factors

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EXPANSION OF ELIGIBILITY FOR HEALTH CARE FOR CERTAIN VETERANS OF COMBAT SERVICE

- Sec. 111 of PACT Act amends 38 U.S.C. § 1710(e)(3)
- For Vets who served on active duty in a theater of combat operations during a period of war after the Persian Gulf War, or in combat against a hostile force during a period of hostilities after 11/11/1998,
 - with a discharge/release date after 9/11/2001 (previously 1/27/2003)
 - expands period of eligibility for hospital care, medical services, and nursing home care for any illness from 5 years following discharge to 10 years following discharge


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EXPANSION OF ELIGIBILITY FOR HEALTH CARE FOR CERTAIN VETERANS OF COMBAT SERVICE

- For Vets who served on active duty in a theater of combat operations during a period of war after the Persian Gulf War, or in combat against a hostile force during a period of hostilities after 11/11/1998
 - If discharged/released from active service after 9/11/2001 and before 10/1/2013, and did not enroll to receive such VHA medical services before 10/1/2022
 - Creates a 1 year eligibility period, from 10/1/2022-9/30/2023, for hospital care, medical services, or nursing home care for any illness

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EXPANSION OF ELIGIBILITY FOR HEALTH CARE FOR CERTAIN VETERANS OF COMBAT SERVICE 

- Amends 38 U.S.C. § 1710(e)(1)(D) to clarify who is eligible for VA health care for any illness based on active duty service in a theater of combat operations during a period of war after the Persian Gulf War
 - “. . . a veteran who served on active duty in a theater of combat operations . . . during a period of war after the Persian Gulf War (including any veteran who, in connection with service during such period, received the Armed Forces Expeditionary Medal, Service Specific Expeditionary Medal, Campaign Specific Medal, or any other combat theater award established by a Federal Statute or an Executive Order)”

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TITLE II - TOXIC EXPOSURE PRESUMPTION PROCESS 

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SECTIONS 

- **201: Short Title** (“Toxic Exposure in the American Military Act of 2022” or the “TEAM Act of 2022”)
- **202: Improvements to Ability of VA to Establish Presumptions of SC Based on Toxic Exposure**
- **203: Outreach to Claimants for Disability Comp Pursuant to Changes in Presumptions of SC**
- **204: Reevaluation of Claims for DIC involving Presumptions of SC**


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38 U.S.C. § 1171

- **Procedures to determine presumptions of SC based on toxic exposure; definitions**
- **Basic framework of procedures:**
 - VA provides notice of its plans for formal evaluations and opportunity for public comment
 - Working group advises VA on toxic-exposed Vets and Vets/dependents possibly exposed
 - VA provides for formal evaluations and considers NASEM reports
 - VA issues regs


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38 U.S.C. § 1171

- **Definitions**
 - **Illness:** disease or other condition affecting the health of an individual, including mental and physical health
 - **Individual Longitudinal Exposure Record (ILER):**
 - Service records
 - Any database maintained by DOD and shared w/VA to serve as central portal for exposure-related data that compiles, collates, presents, and provides available occupational and environmental exposure info to support the needs of DOD and VA
 - Any successor system to that database


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38 U.S.C. § 1172

- **Annual Notice and Opportunity for Public Comment:**
 - At least once a year, VA must publish in Federal Register notice of the formal evaluations it plans to conduct
 - VA must seek public comment on the exposures and adverse health outcomes that are subject of the evaluations and publish response to comments
 - VA must have open meeting for public to voice comments
 - At least quarterly, to help evaluate presumptions of SC, VA must collaborate w/ veterans service orgs and other appropriate stakeholders


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38 U.S.C. § 1172

- VA must create a working group of VHA and VBA personnel
 - VA Secretary must consult w/ and seek advice from group w/ respect to cases in which Vet or dependent of Vet may have experienced toxic exposure during Vet's active service
 - Must assess cases by conducting ongoing surveillance and reviewing exposure described in scientific literature, media reports, and info from Vets and Congress
 - Shall periodically assess ILER to ensure accuracy
 - May recommend formal evaluation of health effects related to cases of exposure and changes to existing periods and locations of exposure
 - Must report recommendations to VA and Congress annually
 - VA must initiate formal evaluation w/in 30 days of report


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38 U.S.C. § 1173

- **Formal evaluation of recommendations**
 - VA must establish a process to conduct a formal evaluation of working group recommendations
 - Evaluation must cover:
 - Scientific evidence
 - Claims data
 - Other factors, such as level of disability and mortality caused by health effects related to the exposure; quantity and quality of available info; feasibility of and period for generating info/evidence; whether effects related to combat or deployment; rarity of effects; time frame effect must manifest


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38 U.S.C. § 1173

- Formal evaluation must determine strength of evidence for a positive association between toxic exposure and illness, and categorize as
 - "Sufficient" evidence of positive association
 - "Equipose and above" – positive association at least as likely as not
 - "Below equipose" – not sufficient evidence it is at least as likely as not there is a positive association
 - "Against" – evidence suggests lack of positive association


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38 U.S.C. § 1173

- W/in 120 days evaluation is commenced, part of VA conducting evaluation must submit to Secretary recommendation regarding establishment of presumptive SC for exposure/illness


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38 U.S.C. § 1174

- Regulations regarding presumptions of SC based on toxic exposure
- W/in 160 days of receiving recommendation re establishing presumptive SC, Secretary must:
 - Commence issuing regs establishing presumption, OR
 - Publish notice in Fed. Reg. that presumption not warranted, including reasons why


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38 U.S.C. § 1174

- Secretary may issue regs removing presumption for illness if evidence suggests lack of positive association between disease and toxic exposure
- Vet awarded SC or survivor awarded DIC prior to removal of presumption will continue to be entitled to comp/DIC


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38 U.S.C. § 1176

- Agreement with National Academies of Sciences, Engineering, and Medicine concerning toxic exposures
- Directs the VA to enter into a 5 year agreement with the academies to review and summarize scientific evidence, and assess its strength, regarding the association between military toxic exposures and adverse health conditions
- May be extended in 5-year increments


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38 U.S.C. § 1176

- National Academies shall determine:
 - Whether an association exists between toxic exposures and the occurrence of disease
 - Increased risk of disease based on exposure during active service
 - Whether there is a plausible biological mechanism or other evidence of an association
 - The strength of the evidence for a positive association (sufficient, equipoise and above, below equipoise, against)
- National Academies must issue initial report by 8/10/2023, and additional reports at least every 2 years thereafter


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CONFORMING AMENDMENTS

- New process for determining toxic-exposure presumptions applies to herbicide-related conditions and Persian Gulf War illnesses
- 38 U.S.C. §§ 1116, 1116B, and 1118 updated accordingly


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38 U.S.C. § 1167


- Outreach pursuant to changes in presumptions of SC
 - When a law, reg, or court decision/settlement establishes or modifies a presumption of SC, VA must identify all claims for comp that were previously denied that might have been decided differently based on change
 - Must conduct outreach to inform claimants they may submit a supplemental claim based on change
 - Notice on VA's website
 - Notifying Veterans Service Orgs
 - Directly contacting each claimant!

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38 U.S.C. § 1167

- Nothing requires an effective date for SC earlier than the date a presumption of SC is established or modified
- But rule is different for DIC!




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38 U.S.C. § 1305

- Reevaluation of DIC determinations pursuant to changes in presumptions of SC
 - When a law, reg, or court decision/settlement establishes or modifies a presumption of SC, VA must identify all claims for DIC that were previously denied that might have been decided differently based on change
 - Allow claimant to have claim reevaluated
 - If DIC now granted, VA must assign effective date as if the new presumption was in effect at the time of the prior claim


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38 U.S.C. § 1305


- VA must conduct outreach to inform DIC claimants they may request to have claim reevaluated based on change re presumption
 - Notice on VA's website
 - Notifying Veterans Service Orgs
 - Directly contacting each claimant!
- Rule applies to presumptions established / modified on or after 8/10/2022

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TITLE III - IMPROVING THE ESTABLISHMENT OF SERVICE CONNECTION PROCESS FOR TOXIC-EXPOSED VETERANS


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SECTIONS

- 301: Short title (“Veterans Burn Pits Exposure Recognition Act of 2022”)
- 302: Presumptions of Toxic Exposure
- 303: Medical Nexus Exams for Toxic Exposure Risk Activities


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38 U.S.C. § 1119

- Presumptions of Toxic Exposure
- If a Vet files a claim for SC with evidence of a disability and toxic exposure during active service, VA may consider:
 1. Any record of the Vet in an exposure tracking record system (such as the ILER); AND
 2. If **no record** of the Vet in an exposure tracking record system indicates Vet was subject to a toxic exposure during active service, **the totality of the circumstances of the service of the Vet**

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38 U.S.C. § 1119

- VA must presume that a “covered veteran” had in-service exposure to substances, chemicals, and airborne hazards identified in list to be established and maintained by VA, in collaboration with SECDEF
- List may include end dates for presumptions of exposure, but cannot be earlier than last day of Persian Gulf War in 38 U.S.C. § 101(33)
- Rebuttable with affirmative evidence of no exposure


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“COVERED VETERANS” 38 U.S.C. § 1119(c)(1)(A), (B)

- Vets who, on or after 8/2/1990, performed active service while assigned to a duty station in, including airspace above:
 - Bahrain, Iraq, Kuwait, Oman, Qatar, Saudi Arabia, Somalia, U.A.E.
- Vets who, on or after 9/11/2001, performed active service while assigned to a duty station in, including airspace above:
 - Afghanistan, Djibouti, Egypt, Jordan, Lebanon, Syria, Yemen, Uzbekistan, any other country determined relevant by VA Secretary

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38 U.S.C. § 1168


- Medical nexus exams for toxic exposure risk activities
- Medical nexus opinion provider must consider:
 1. Total potential exposure through all of Vet's applicable military deployments
 2. Synergistic, combined effect of all toxic exposure risk activities of Vet
 - But not the synergistic, combined effect of each of the substances, chemicals, and airborne hazards in list created under § 1119(b)(2)

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TITLE IV - PRESUMPTIONS OF SERVICE CONNECTION


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SECTIONS

- 401: Treatment of Vets who participated in cleanup of Enewetak Atoll as Radiation-Exposed Vets for purposes of presumption of SC of certain disabilities by VA
- 402: Treatment of Vets who Participated in Nuclear Response Near Palomares, Spain, or Thule, Greenland, as Radiation-Exposed Vets for Purposes of Presumption of SC of Certain Disabilities by VA
- 403: Presumptions of SC for Diseases Associated with Exposures to Certain Herbicide Agents for Vets Who Served in Certain Locations


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SECTIONS


- **404: Addition Of Additional Diseases Associated with Exposure to Certain Herbicide Agents for Which There is a Presumption of SC for Vets Who Served in Certain Locations**
- **405: Improving Compensation for Disabilities Occurring in Persian Gulf War Vets**
- **406: Presumption of SC for Certain Diseases Associated with Exposure to Burn Pits and Other Toxins**
- **407: Rule of Construction**

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RADIATION EXPOSURE

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38 U.S.C. § 1112(c)(3)(B)

- **“Radiation-exposed veterans” are entitled to presumptive SC for several cancers listed in § 1112(c)(2)**
- **PACT Act updates list of “radiation-risk activities” that qualify person as a radiation-exposed Vet:**
 - v. **Cleanup of Enewetak Atoll during the period beginning 1/1/1977 and ending 12/31/1980**

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38 U.S.C. § 1112(c)(3)(B)

vi. Onsite participation in the response effort following the collision of a U.S. Air Force B-52 bomber and refueling plane that caused the release of four thermonuclear weapons in the vicinity of **Palomares, Spain**, during the period beginning **1/17/1966** and ending **3/31/1967**

vii. Onsite participation in the response effort following the on-board fire and crash of a U.S. Air Force B-52 bomber that caused the release of four thermonuclear weapons in the vicinity of **Thule Air Force Base, Greenland**, during the period beginning **1/21/1968** and ending **9/25/1968**

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AGENT ORANGE EXPOSURE / PRESUMPTIVE CONDITIONS

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BACKGROUND

- Vets who served in certain locations during certain time periods are presumed to have been exposed to herbicides (Agent Orange)
- Vets with presumed herbicide exposure (and others who can prove actual exposure) are entitled to presumptive SC for numerous disabilities

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38 U.S.C. § 1116

- PACT Act makes several changes to law on presumptive SC for diseases associated with herbicide exposure:
- Broadens language regarding who qualifies for presumptive SC from Vets who served in the Republic of Vietnam during the period beginning 1/9/1962 and ending 5/7/1975, to Vets who “performed covered service”
- In name of statute, changes “Republic of Vietnam” to “certain locations”


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38 U.S.C. § 1116(d) (new)

- “Covered service” is active service performed:
 - 1) In the **REPUBLIC OF VIETNAM** during the period beginning 1/9/1962 and ending 5/7/1975
 - 2) In **THAILAND AT ANY U.S. OR ROYAL THAI BASE** during the period beginning 1/9/1962 and ending 6/30/1976, without regard to where on the base the Vet was located or what military job specialty the Vet performed
 - 3) In **LAOS** during the period beginning 12/1/1965 and ending 9/30/1969

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38 U.S.C. § 1116(d) (new)

- 4) In **CAMBODIA AT MIMOT OR KREK, KAMPONG CHAM PROVINCE** (now in Tboung Khmum province) during the period beginning 4/16/1969 and ending 4/30/1969
- 5) On **GUAM or AMERICAN SAMOA, or IN THE TERRITORIAL WATERS THEREOF**, during the period beginning on 1/9/1962 and ending 7/31/1980 or served on **JOHNSTON ATOLL or ON A SHIP THAT CALLED AT JOHNSTON ATOLL** during the period beginning 1/1/1972 and ending 9/30/1977

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APPLICABILITY DATE FOR NEW PRESUMPTIVE LOCATIONS



• This section applicable on 8/10/2022 to

- DIC claimants
- Vets who are:
 - Terminally ill
 - Homeless
 - Under extreme financial hardship
 - Over 85 years old
 - Capable of demonstrating sufficient cause



• It will apply to everyone else on 10/1/2022

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OTHER PRESUMPTIVE EXPOSURE



• VA also presumes herbicide exposure for Vets who served in other locations:

- In the 12nm area offshore of the Republic of Vietnam any time from 1/9/1962 through 5/7/1975 (38 U.S.C. § 1116A)
- Along the Korean DMZ any time from 9/1/1967 through 8/31/71 (38 U.S.C. § 1116B)
- Regularly and repeatedly operated, maintained, or served onboard C-123 aircraft that, during the Vietnam era, sprayed AO (38 C.F.R. § 3.307(a)(6)(v))

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38 U.S.C. § 1710(e)(4)(A)




• Sec. 403 of PACT Act also changes definition of "Vietnam-era herbicide-exposed veteran" in the statute regarding eligibility for hospital care and medical services, to a Vet who

- Performed covered service as defined in § 1116(d); or
- VA finds may have been exposed during active service, during the Vietnam era, to dioxin or a toxic substance found in an herbicide or defoliant used for military purposes, regardless of the geographic area of such service

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38 U.S.C. § 1116(a)(2)


- PACT Act adds 2 NEW herbicide-related presumptive conditions:
 1. Monoclonal gammopathy of undetermined significance (MGUS)
 - Abnormal "M" protein in blood
 - Usually asymptomatic, but may lead to blood cancer
 2. Hypertension
- No 10% manifestation requirement for SC for either condition

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APPLICABILITY OF MGUS PRESUMPTION

- This section applicable on 8/10/2022 to
 - DIC claimants
 - Vets who are:
 - Terminally ill
 - Homeless
 - Under extreme financial hardship
 - Over 85 years old
 - Capable of demonstrating sufficient cause
- It will apply to everyone else on 10/1/2022



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APPLICABILITY OF HYPERTENSION PRESUMPTION

- This section applicable on 8/10/2022 to
 - DIC claimants
 - Vets who are:
 - Terminally ill
 - Homeless
 - Under extreme financial hardship
 - Over 85 years old
 - Capable of demonstrating sufficient cause
- It will apply to everyone else on 10/1/2026




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VA TREATMENT OF APPLICABILITY

- **Despite applicability dates in PACT Act, VA has announced on its website that**
 “We’re considering all presumptive conditions established by the PACT Act presumptive on the date the bill becomes law.”
 - www.va.gov/resources/the-pact-act-and-your-va-benefits/


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RETROACTIVE BENEFITS


- **VA shall award retroactive benefits for claims based on MGUS and hypertension only to DIC claimants**
 • VA NOT required to apply *Nehmer*, but it is possible VA could decide to apply those rules on its own, as it did when Congress added bladder cancer, Parkinsonism, and hypothyroidism to presumptive list

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PERSIAN GULF WAR ILLNESSES


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BACKGROUND

- **38 U.S.C. § 1117 – Compensation for disabilities occurring in Persian Gulf War Vets**
 - Provides for presumptive SC for qualifying chronic disabilities in Persian Gulf War Vets
 - Undiagnosed illnesses
 - MUCMIs
 - Diagnosed illnesses VA Secretary determines warrant a presumption
- **PACT Act makes a number of changes to § 1117**


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REDUCTION OF THRESHOLD OF ELIGIBILITY

- **PACT Act eliminates requirement that a qualifying chronic disability manifest in the SW Asia theater of operations during the Persian Gulf War, or to a degree of at least 10 percent disabling during an applicable presumptive period**
- **VA may now pay comp for qualifying chronic disabilities that manifest to any degree at any time**
- **Amends § 1117(a)(1); Removes current § 1117(b)**

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EXPANSION OF DEFINITION OF "PERSIAN GULF VETERAN"

- **Pre-PACT Act, § 1117(f) defined Persian Gulf Vet as a Vet who served on active duty in the "Southwest Asia theater of operations" during the Persian Gulf War**
- **VA defines SW Asia Theater of Operations in 38 C.F.R. § 3.317(e)(2) as:**

> Iraq	> Qatar	> Persian Gulf
> Saudi Arabia	> U.A.E.	> Arabian Sea
> Kuwait	> Oman	> Red Sea
> Bahrain	> Gulf of Aden	> Airspace above these areas
	> Gulf of Oman	

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EXPANSION OF DEFINITION OF "PERSIAN GULF VETERAN"



• In addition to "Southwest Asia theater of operations", PACT Act adds:

- Afghanistan
- Israel
- Egypt
- Turkey
- Syria
- Jordan



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BURN PITS & OTHER TOXINS



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PRE-PACT ACT REGULATION



• 38 C.F.R. § 3.320, Claims based on exposure to particulate matter, was in effect when PACT Act enacted

• Provides 2 rebuttable presumptions:

- Presumed exposure to fine particulate matter (FPM) for certain Vets
- Presumed SC for certain diseases

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REGULATORY PRESUMPTION OF EXPOSURE



- Under § 3.320, Vets presumed to have been exposed to FPM if they served in:
 - SW Asia theater of operations (Iraq, Kuwait, Saudi Arabia, neutral zone between Iraq and Saudi Arabia, Bahrain, Qatar, UAE, Oman, Gulf of Aden, Gulf of Oman, Persian Gulf, Arabian Sea, Red Sea, and airspace above these areas)
 - Dates: 8/2/1990 – present (date TBD)
 - Afghanistan, Djibouti, Syria, or Uzbekistan
 - Dates: 9/19/2001 – present (date TBD)

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REGULATORY PRESUMPTION OF SC



- Under § 3.320(a)(2) & (3), chronic diseases presumed SC if Vet exposed to FPM:
 - Asthma
 - Rhinitis
 - Sinusitis, to include rhinosinusitis
 - 9 rare respiratory cancers
- Non-cancers must manifest w/in 10 years of separation from a period of service during which Vet presumed to have been exposed to FPM

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38 U.S.C. § 1120



- Presumption of SC for certain diseases associated with exposure to burn pits and other toxins
 - Rebuttable presumption of SC for 24 diseases/types of disease for “covered veterans”
 - Does not automatically change 38 C.F.R. § 3.320, which may be more favorable to some Vets

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“COVERED VETERANS”
38 U.S.C. § 1119(c)(1)(A), (B)



- Vets who, on or after **8/2/1990**, performed active service while assigned to a duty station in, including airspace above:
 - Bahrain, Iraq, Kuwait, Oman, Qatar, Saudi Arabia, Somalia, U.A.E.
- Vets who, on or after **9/11/2001**, performed active service while assigned to a duty station in, including airspace above:
 - Afghanistan, Djibouti, Egypt, Jordan, Lebanon, Syria, Yemen, Uzbekistan, any other country determined relevant by VA Secretary

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NEW **PRESUMPTIVE DISEASES**
38 U.S.C. § 1120(b)



- Asthma diagnosed after service
- Head cancer (any type)
- Neck cancer (any type)
- Respiratory cancer (any type)
- Gastrointestinal cancer (any type)
- Reproductive cancer (any type)
- Lymphoma cancer (any type)
- Lymphomatic cancer (any type)
- Kidney cancer
- Brain cancer
- Melanoma
- Pancreatic cancer
- Chronic bronchitis
- COPD
- Constrictive bronchiolitis or obliterative bronchiolitis
- Emphysema
- Granulomatous disease
- Interstitial lung disease
- Pleuritis
- Pulmonary fibrosis
- Sarcoidosis
- Chronic sinusitis
- Chronic rhinitis
- Glioblastoma

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NEW **PRESUMPTIVE DISEASES**
38 U.S.C. § 1120(b)



- List can be expanded to include any other disease the VA Secretary determines has a positive association with a substance, chemical, or airborne hazard in the list to be created by § 1119(b)(2)
- Must use the process set forth in Title II of the PACT Act (new 38 U.S.C. §§ 1171-1176)
- No requirement that disease manifest during a certain period after service or to a certain disabling degree

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APPLICABILITY DATES

- This section applicable on 8/10/2022 to
 - DIC claimants
 - Vets who are:
 - Terminally ill
 - Homeless
 - Under extreme financial hardship
 - Over 85 years old
 - Capable of demonstrating sufficient cause



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APPLICABILITY DATES

- Section also applicable on 8/10/2022 for:


<ul style="list-style-type: none"> • Asthma diagnosed after service • Respiratory cancer of any type • Brain cancer • Constrictive bronchiolitis or obliterative bronchiolitis • Emphysema 	<ul style="list-style-type: none"> • Granulomatous Disease • Interstitial Lung Disease • Pleuritis • Pulmonary Fibrosis • Sarcoidosis • Chronic Rhinitis • Chronic Sinusitis • Glioblastoma
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APPLICABILITY DATES

- **10/1/2023:**
 - Chronic Bronchitis
 - COPD
- **10/1/2024:**
 - Head cancer of any type
 - Neck cancer of any type
 - Gastrointestinal cancer of any type
 - Reproductive cancer of any type
 - Lymphoma cancer of any type
 - Lymphomatic cancer of any type
 - Pancreatic cancer
- **10/1/2025**
 - Kidney cancer
 - Melanoma



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VA TREATMENT OF APPLICABILITY

- **Despite applicability dates in PACT Act, VA has announced on its website that**
“We’re considering all presumptive conditions established by the PACT Act presumptive on the date the bill becomes law.”
- www.va.gov/resources/the-pact-act-and-your-va-benefits/

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TITLE V – RESEARCH MATTERS


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SECTIONS

- **501: Interagency Working Group on Toxic Exposure Research**
- **502: Analysis and Report on Treatment of Vets for Medical Conditions Related to Toxic Exposure**
- **503: Analysis Relating to Mortality of Vets Who Served in SW Asia**
- **504: Study on Health Trends of Post-9/11 Vets**
- **505: Study on Cancer Rates Among Vets**


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SECTIONS


- **506: Study on Health Effects of Waste Related to Manhattan Project on Certain Vets**
- **507: Study on Toxic Exposure and Mental Health Outcomes**
- **508: Study on Vets in Territories of the U.S.**
- **509: VA Public Website for Toxic Exposure Research**
 - Directs VA to, w/in 1 year, create a website to provide the public with info on all toxic exposure research carried out or funded by the federal gov't
- **510: Report on Health Effects of Jet Fuels Used by Armed Forces**

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TITLE VI – IMPROVEMENT OF RESOURCES AND TRAINING REGARDING TOXIC-EXPOSED VETERANS


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SECTIONS

- **601: Short Title; Definitions**
- **602: Publication of List Of Resources of VA for Toxic-Exposed Vets and Vets who Report Toxic Exposures and Outreach Program for Such Vets and Caregivers and Survivors of Such Vets**
- **603: Incorporation of Toxic Exposure Screening for Vets**
- **604: Training for Personnel of the VA with Respect to Vets Who Report Toxic Exposures**
 - For VHA, to identify, treat, and assess impact of illnesses related to toxic exposure
 - For claims processors

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TITLE VII - RESOURCING


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SECTIONS

- **701: Authority to Use Appropriations to Enhance Claims Processing Capacity and Automation**
 - VA can use funds from Veterans Toxic Exposure Fund to pay for modernization of VBA IT systems, including automation
- **702: Authorization of Major Medical Facility Leases of VA for FY 2023**
- **703: Treatment of Major Medical Facility Leases of VA**

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SECTIONS


- **704: Authority To Enter Into Agreements With Academic Affiliates And Other Entities To Acquire Space For The Purpose Of Providing Health-care Resources To Vets**
- **705: Modifications to Enhanced-use Lease Authority of VA**
- **706: Authority For Joint Leasing Actions of DOD and VA**
- **707: Appropriation of Amounts for Major Medical Facility Leases**

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TITLE VIII – RECORDS AND OTHER MATTERS


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SECTIONS

- **801: Epidemiological Study on Ft. McClellan Vets**
- **802: Biennial Briefing on Individual Longitudinal Exposure Record**
- **803: Correction of Exposure Records by Members of The Armed Forces and Vets**
- **804: Federal Cause of Action Relating to Water At Camp Lejeune, NC**


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SECTIONS

- **805: Cost of War Toxic Exposures Fund**
- **806: Appropriation for FY 2022**
- **807: Authorization of Electronic Notice in Claims Under Laws Administered by The Secretary of VA**
- **808: Burn Pit Transparency**


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CAMP LEJEUNE LAWSUITS

- **Sec. 804: Federal Cause of Action Relating to Water at Camp Lejeune, North Carolina**
- An individual, or legal representative of an individual, who resided, worked, or was otherwise exposed (including in utero exposure) for not less than 30 days during the period beginning 8/1/1953 and ending 12/31/1987, to water at Camp Lejeune that was supplied by, or on behalf of, the U.S., may bring an action in the U.S. District Court for the Eastern District of NC to obtain appropriate relief for harm that was caused by exposure to the water at Camp Lejeune


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CAMP LEJEUNE LAWSUITS


- Person must prove relationship between the water and the harm with evidence sufficient to show a causal relationship exists or is at least as likely as not
- Awards will be offset by VA, Medicare, or Medicaid disability awards, payments, or benefits associated with the contaminated water
- Individual must first file claim (SF 95) with Navy JAG Tort Claims Unit in Norfolk, VA and be denied
- Claim may not be commenced after the later of:
 - 8/10/2024, or
 - 180 days after the date on which claim denied by Navy

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ELECTRONIC NOTICE

- **Sec. 807: Authorization of Electronic Notice in Claims Under Laws Administered by the Secretary of Veterans Affairs**
- Updates several statutes to allow VA and BVA to provide notice (to include notice of decisions) electronically, if claimant or claimant's representative elects such notice
- Election may removed at any time
- 38 U.S.C. §§ 5100, 5104, 5104B, 5112, 7104, 7105, 7105A, 7266




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**TITLE IX – IMPROVEMENT OF
WORKFORCE OF DEPARTMENT
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SECTIONS

- **901: National Rural Recruitment and Hiring Plan for VHA**
- **902: Authority to Buy Out Service Contracts for Certain Health Care Professionals In Exchange For Employment at Rural or Highly Rural Facilities of VA**
- **903: Qualifications for Human Resources Positions Within VA and Plan to Recruit and Retain Human Resources Employees**
- **904: Modification of Pay Cap For Certain Employees of VHA**

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SECTIONS

- **905: Expansion Of Opportunities For Housekeeping Aides**
- **906: Modification Of Authority Of The Secretary Of VA Relating To Hours, Conditions Of Employment, And Pay For Certain Employees Of VHA**
- **907: Waiver of Pay Limitation For Certain Employees of VA**
- **908: Elimination of Limitation on Awards and Bonus For Employees of VA**
- **909: Additional Authority of The Secretary of VA Relating to Recruitment and Retention of Personnel**

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QUESTIONS?



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