

**MARK-UP SUMMARY:** (Tester) S.XXX, The Comprehensive and Overdue Support for Troops (COST) of War Act of 2021

Title I – Expansion of Health Care for Toxic Exposure Veterans

Title II – Reforms to the Toxic Exposure Presumption Process

Title III – Reforms to the Service Connection Process for Toxic Exposure Veterans

Title IV – Expansion of Presumptions of Service Connection for Forgotten Veterans

Title V – Strengthening Federal Research on Toxic Exposures

Title VI – Improving Support to Toxic Exposure Veterans

Title VII – Strengthening Department of Defense Record-Keeping of Toxic Exposures

## **TITLE I - HEALTH CARE FOR TOXIC EXPOSURE VETERANS**

### **Section 101: Health care for certain Toxic Exposure Veterans**

- Provides priority group 6 health care eligibility to “Toxic Exposure Veterans” which is defined as veterans who engaged in toxic exposure risk activities
- Further defines toxic exposure risk activity as any risk of exposure recorded in the Individual Longitudinal Exposure Record to a substance identified as hazardous by the Occupational Safety and Health Administration during their military service.
- Additionally, the Secretary of VA has the authority to make their own determination that a veteran participated in a toxic exposure risk activity when the ILER does not contain the appropriate data.

### **Section 102: Expansion of health care eligibility for certain veterans exposed to open burn pits.**

- Provides priority group 6 health care eligibility for all veterans who are also eligible for Open Air Burn Pit Registry.
- *This provision is drawn from the Tillis-Hassan “Toxic Exposure in the American Military Act”.*

### **Section 103: Expansion of health care eligibility for veterans awarded certain medals.**

- Provides priority group 6 health care eligibility for veterans who were awarded any of the following medals:
  - The Afghanistan Campaign Medal,
  - The Armed Forces Expeditionary Medal,
  - The Global War On Terrorism Expeditionary Medal,
  - The Inherent Resolve Campaign Medal,
  - The Iraqi Campaign Medal,
  - The Southwest Asia Service Medal
- *This provision is drawn from the Tillis-Hassan “Toxic Exposure in the American Military Act”.*

**Section 104: Study on feasibility and advisability of furnishing hospital care and medical services to dependents of veterans who participated in toxic exposure risk activities**

- Directs VA to conduct a study on the feasibility of providing CHAMPVA benefits to dependents of veterans for healthcare costs related to toxic exposures experienced on military bases and other DoD maintained facilities.

**Title II - IMPROVING THE PRESUMPTION PROCESS FOR TOXIC EXPOSURE VETERANS**

**Section 201: Improvements to ability of Department of Veterans Affairs to establish presumptions of service connection based on toxic exposure.**

- Establishes a framework that provides for the establishment of future presumptions of exposure and service connection related to toxic exposure. This framework is comprised of the Toxic Exposure Review Commission, a long-term agreement with the National Academies, and the working group on presumption of service connection, to advise the Secretary of VA on all aspects of creating new presumptions, along with reporting requirements for each step from the new administrative bodies and the Secretary.
- **Toxic Exposure Review Commission**, Establishes a commission to provide advice to the Secretary of VA on toxic exposure issues. The commission is comprised of a group of nine private sector stakeholders with various medical and scientific expertise (including at least one respiratory specialist, one endocrinologist, one hematologist, one oncologist, and one with a background in environmental and occupational health) - *This provision is drawn from the Tillis-Hassan "Toxic Exposure in the American Military Act"*.
  - Eight members of this Commission would be nominated in a bipartisan fashion by Congress (2 by Speaker, 2 by House Minority Leader, 2 by Senate Majority Leader, 2 by Senate Minority Leader), and one member would be nominated by VA, each selecting one member to serve two years and one member to serve four years ending at different times within 180 days of the enactment of this bill
  - Decisions made by this Commission would be done by Majority vote, including determinations of Chairman and Vice Chairman
  - Meetings would be required at least twice per year and must be made public and can be conducted virtually/telephonically
- This Commission would be tasked with reviewing possible cases of exposure, and recommending to the Secretary whether the case should be reviewed by the National Academies of Sciences or recommending further research as appropriate.
- The Commission would collect any relevant information from the Department of Defense and other sources to identify possible toxic exposures related to service during active duty in order to meet the aforementioned obligations
- The Secretary would have 60 days to respond to all recommendations made by the Commission and would also be required to send publicly available reports to SVAC and HVAC on these recommendations

- The Secretary would also be required to notify Congress as to whether or not they intend to send a recommendation from the Committee to the Academies outlined below for further evaluation
- - *The Toxic Exposure Review Commission is drawn from the Tillis-Hassan “Toxic Exposure in the American Military Act”*
- **Agreement with the National Academies:** Establishes a 10-year contract with the National Academies of Sciences, Engineering, and Medicine to review the scientific evidence related to the health effects of a toxic exposure and determine the level of association for conditions potentially related to that exposure.
  - Each case sent to the Academies must be reviewed for: whether an association exists between exposure to toxic substances and the occurrence of a condition, the increased risk of the condition among those exposed to toxic substances during active military service, and whether there exists a plausible biological mechanism or other evidence of a causal relationship between the exposure and the occurrence of the disease.
  - Directs all federal agencies, including the Department of Defense, to provide full cooperation with the National Academies in the performance of the duties outlined in this section.
  - Directs the National Academies to submit a report to the Secretary of VA and SVAC/HVAC on any reviews conducted under this section.
  - In the instance that the Academies are unable to perform a review for a reason deemed acceptable by the Secretary, a private sector, nonprofit institution with relevant expertise could be employed to conduct the review.
- - *This agreement with the National Academies is drawn from the Tillis-Hassan “Toxic Exposure in the American Military Act”*
- **Working Group on Presumptions of Service Connection:** Establishes at VA a Working Group, to provide advice on the creation of new presumptions of service connection to illnesses caused by toxic exposures.
  - This group would evaluate conclusions reached by the Academies and provide recommendations to the Secretary, as to whether or not to establish new presumptions of service connection or modify existing presumptions of service connection.
  - The working group must provide recommendations to the Secretary within 60 days of receiving a report from the Academies.
  - When the Working Group submits recommendations to the secretary, they shall concurrently submit a report to SVAC and HVAC with a description of such recommendations.
  - The Secretary shall be required to respond to any recommendations made by the Working Group within 60 days.
    - If the Secretary proposes new recommendations in response to the Working Group, they must then issue final regulations within 90 days of the proposed regulation.
    - Should the Secretary decide against adding an illness to the presumptive care list, they must publish this decision in the Federal Register with information relating to this decision within 90 days.

## **Title III - IMPROVING THE DIRECT SERVICE-CONNECTION PROCESS FOR TOXIC EXPOSURE VETERANS**

### **Section 301: Presumptions of toxic exposure.**

- This section directs the secretary to consider any entry in the Individual Longitudinal Exposure Record that qualifies as a toxic exposure risk activity as a presumption of exposure for a claim for service connection.
  - Should the veteran applying for a claim for toxic exposure's Individual Longitudinal Exposure Record not indicate they were exposed to toxic agents during military service, this lack of information will not be automatically disqualifying, and VA should consider additional evidence that shows their ILER should reflect a toxic exposure risk activity.

### **Section 302: Presumption of exposure to airborne hazards and substances from burn pits.**

- Provides a presumption of exposure to Open Air Burn Pits for veterans who deployed in support of a contingency operation after August 2<sup>nd</sup>, 1990, and received one of the following medals:
  - The Afghanistan Campaign Medal,
  - The Armed Forces Expeditionary Medal,
  - The Global War On Terrorism Expeditionary Medal,
  - The Inherent Resolve Campaign Medal,
  - The Iraqi Campaign Medal,
  - The Southwest Asia Service Medal
- Also grants presumption of exposures to veterans who satisfy the following criteria:
  - Service in Iraq from August 2, 1990, to February 28<sup>th</sup>, 1991, and from March 19<sup>th</sup>, 2003, until the Secretary determines burn pits are no longer active in Iraq
  - Service in Kuwait, Saudi Arabia, Oman, and Qatar from August 2, 1990, until the Secretary determines that burn pits are no longer active in those areas
  - Service in Afghanistan, Djibouti, Syria, Jordan, Egypt, Lebanon, and Yemen starting on September 11, 2011, until the Secretary determines that burn pits are no longer active in those areas
  - Service in other areas which would provide a veteran eligibility to register with the Open Air Burn Pit Registry
  - Any areas later determined by a federal agency to have been exposed to or containing Open Air Burn Pits
  - Does not include service in waters surrounding or airs above the listed areas in this section
- Burn pit exposure is given meaning by an included list of 50 substances that are presumed to be present in burn pit exposure
  - The substances in this list may be removed from coverage at the Secretary's discretion, however, within two years of the enactment of this bill a report must be issued to Congress detailing the reasoning for removal as well as scientific evidence to substantiate the decision
  - A report must be issued to Congress every two years on the addition or removal of a substance from the above list
- *This provision is drawn from the Sullivan-Manchin "Veterans Burn Pits Exposure Recognition Act".*

### **Section 303: Medical nexus examinations for toxic exposure risk activities.**

- Requires VA to provide medical examinations for any veteran who submits a claim for a service-connected disability relating to toxic exposure with a history of exposure in their records or as previously described in this bill
  - VA must also request a medical examination to determine whether it is at least more likely than not that prior service-connected toxic exposure relates to the illness listed in their claim and examined by a medical professional
- Denials must include relevant information from the medical exam provided and must include information about potential toxic exposure and must account for potential cumulative effect from several exposures based on military service

## **Title IV - PRESUMPTIONS OF SERVICE-CONNECTION**

### **Section 401: Treatment of veterans who participated in the cleanup of Enewetak Atoll as radiation-exposed veterans for purposes of presumption of service-connection of certain disabilities by Department of Veterans Affairs.**

- Grants Radiation Exposed Veteran status to veterans who participated in the radioactive cleanup of Enewetak Atoll in the 1970s.
- *This provision is drawn from the Smith-Tillis “Mark Takai Atomic Veterans Healthcare Parity Act”.*

### **Section 402: Treatment of veterans who participated in nuclear response near Palomares, Spain, as radiation-exposed veterans for purposes of presumption of service-connection of certain disabilities by Department of Veterans Affairs.**

- Grants Radiation Exposed Veteran status to veterans who participated in the cleanup of the crashed Nuclear weapon carrying B-52 off the coast of Palomares Spain in the 1960s.
- *This provision is drawn from the Blumenthal “Palomares Veterans Act”.*

### **Section 403: Presumptions of service connection for diseases associated with exposures to certain herbicide agents for veterans who served in certain locations.**

- Grants presumption of exposure to Agent Orange, and eligibility for priority group 6 healthcare for veterans who meet the following criteria:
  - Service in Thailand at any United States or Royal Thai base during the period beginning on January 9, 1962, and ending on June 30, 1976
  - Service in Laos during the period beginning on December 1, 1965, and ending on September 30, 1969;
  - Service in Cambodia at Mimot or Krek, Kompon Cham Province during the period beginning on April 16, 1969, and ending on April 30, 1969; or
  - Service in Guam or American Samoa, or in the territorial waters thereof, during the period beginning on January 9, 1962, and ending on July 31, 1980, or served on Johnston Atoll or on a ship that called at Johnston Atoll during the period beginning on January 1, 1972, and ending on September 30, 1977.”.
- *This provision is partially drawn from the Boozman/Tester “Thailand Veterans Toxic Exposure Act”.*

**Section 404: Addition of additional diseases associated with exposure to certain herbicide agents for which there is a presumption of service connection for veterans who served in the Republic of Vietnam.**

- Creates a presumption of service connection between Agent Orange exposure and the following conditions:
  - Hypertension
  - Monoclonal gammopathy of undetermined significance (MGUS)
- *This provision is drawn from the Tester “Fair Care for Vietnam Veterans Act”.*

**Section 405: Improving compensation for disabilities occurring in Persian Gulf War veterans.**

- Removes the end dates for Gulf War Illness disability eligibility and requires VA staff to enact a DBQ specifically to ensure that Gulf War veterans are screened for Gulf War Illness with a mandated report to Congress on this implementation annually
- *This provision is drawn from the Menendez “Improving Benefits for Gulf War Veterans Act”.*

**Section 406: Presumption of service connection for certain diseases associated with exposure to burn pits and other toxins.**

- Creates a presumption of service connection for 13 conditions (11 lung conditions, 2 cancers) relating to exposure to burn pits
  - Asthma that was diagnosed after service which awarded a qualifying medal
  - Chronic obstructive pulmonary disease (COPD)
  - Chronic bronchitis
  - Constrictive bronchiolitis or obliterative bronchiolitis
  - Emphysema
  - Pleuritis
  - Pulmonary fibrosis
  - Interstitial lung disease
  - Sarcoidosis
  - Rhinitis
  - Sinusitis
  - Respiratory cancer of any type
  - Glioblastoma
- Eligibility for these presumptions includes veterans who, after August 2, 1990, received one or more of the following medals:
  - The Afghanistan Campaign Medal,
  - The Armed Forces Expeditionary Medal,
  - The Global War On Terrorism Expeditionary Medal,
  - The Inherent Resolve Campaign Medal,
  - The Iraqi Campaign Medal,
  - The Southwest Asia Service Medal
- *This provision is drawn from the Gillibrand/Rubio “Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act”.*

## **Title V - RESEARCH MATTERS**

### **Section 501: Coordination by Department of Veterans Affairs of toxic exposure research.**

- Designates VA as the official coordinating authority for toxic exposure-related studies and research performed by the federal government
  - Requires the creation of a Toxic Exposure Research Strategic Plan to organize and sort toxic exposure-related research at different federal agencies
- Mandates annual report to Congress on the implementation of the Toxic Exposure Research Strategic Plan

### **Section 502: Collection, analysis, and report on the treatment of veterans for medical conditions related to toxic exposure.**

- Requires the Secretary of VA to collect, compile, and coordinate medical data for veterans receiving health care to further identify potential links between illnesses, military history, and toxic exposure.
  - Also requires the Secretary to report on these efforts annually.
- Mandates an annual report to Congress with VA's findings from this medical data
- *This provision is drawn from the Tillis-Hassan "Toxic Exposure in the American Military Act".*

### **Section 503: Studies relating to veterans who served in Southwest Asia.**

- Mandates that VA performs several studies into the health trends of veterans who served in Southwest Asia during the War on Terror and reports these findings back to Congress within 180 days
- Requires three separate studies on veterans who served in Southwest Asia, covering mortality, toxicology, and epidemiology.
- *This provision is drawn from the Gillibrand/Rubio "Presumptive Benefits for War Fighters Exposed to Burn Pits and Other Toxins Act".*

### **Section 504: Study on health trends of post 9/11 veterans.**

- Requires an epidemiological study on the health trends of all Post 9/11 veterans.

### **Section 505: Study on cancer rates among veterans.**

- Requires a study on the incidence of cancers among veterans.

## **Title VI - IMPROVEMENT OF RESOURCES OF DEPARTMENT OF VETERANS AFFAIRS REGARDING TOXIC EXPOSURE VETERANS**

### **Section 601: Definitions.**

### **Section 602: Publication of list of resources of Department of Veterans Affairs for Toxic Exposure Veterans and outreach program for such veterans and caregivers and survivors of such veterans.**

- Requires VA to publish a list of the benefits and healthcare resources available to veterans and survivors related to toxic exposures.
- *This provision is drawn from the Tillis-Hassan “Toxic Exposure in the American Military Act”.*

### **Section 603: Incorporation of toxic exposure questionnaire during primary care appointments.**

- Directs VA to incorporate a toxic exposure questionnaire during primary care appointments.
- *This provision is drawn from the Tillis-Hassan “Toxic Exposure in the American Military Act”.*

### **Section 604: Training for personnel of the Department of Veterans Affairs with respect to Toxic Exposure Veterans.**

- Requires improved education and additional training for VA claims raters, as well as health care providers to identify, treat, and assess the impact of illnesses related to exposure to burn pits and other toxic substances.
- *This provision is drawn from the Klobuchar/Crapo “Toxic Exposure Training Act”.*

### **Section 605: Notifications and reports regarding reported cases of burn pit exposure.**

- Requires VA to submit quarterly reports to Congress on cases of veterans with exposure to burn pits, the circumstances surrounding the veterans’ exposure, and the services VA is providing to the veteran related to their exposure.
- Requires VA to report annually on the total number of disability claims approved and denied for any illnesses relating to burn pit exposure.
- *This provision is drawn from the Brown/Portman “SFC Heath Robinson Burn Pit Transparency Act”.*



## **Title VII - RECORD KEEPING BY DEPARTMENT OF DEFENSE**

### **Section 701: Definitions**

- This section includes definitions for the “Individual Longitudinal Exposure Record” and “Toxic Exposure”

### **Section 702: Independent study on Individual Longitudinal Exposure Record.**

- Requires an independent study on the ILER to assess the quality of location and exposure date, and determine whether a member of the Armed Forces can be reasonably assured that any toxic exposure they experienced during service will be reflected in their records.

### **Section 703: Biannual report on Individual Longitudinal Exposure Record.**

- Requires DOD to review ILER periodically to determine whether additional exposures should be added, based on geography, occupation, and timeframe of service.

### **Section 704: Correction by members of the Armed Forces of exposure records.**

- Requires the Secretary of Defense and the Secretary of Veterans Affairs to allow for service members and veterans to correct their military records as they pertain to toxic exposures.