

Public Law 101-426
101st Congress

An Act

Oct. 15, 1990
[H.R. 2372]

To provide jurisdiction and procedures for claims for compassionate payments for injuries due to exposure to radiation from nuclear testing.

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

Radiation
Exposure
Compensation
Act.
State listing.
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note.
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SECTION 1. SHORT TITLE.

This Act may be cited as the "Radiation Exposure Compensation Act".

SEC. 2. FINDINGS, PURPOSE, AND APOLOGY.

(a) **FINDINGS.**—The Congress finds that—

(1) fallout emitted during the Government's above-ground nuclear tests in Nevada exposed individuals who lived in the downwind affected area in Nevada, Utah, and Arizona to radiation that is presumed to have generated an excess of cancers among these individuals;

(2) the health of the individuals who were unwitting participants in these tests was put at risk to serve the national security interests of the United States;

(3) radiation released in underground uranium mines that were providing uranium for the primary use and benefit of the nuclear weapons program of the United States Government exposed miners to large doses of radiation and other airborne hazards in the mine environment that together are presumed to have produced an increased incidence of lung cancer and respiratory diseases among these miners;

(4) the United States should recognize and assume responsibility for the harm done to these individuals; and

(5) the Congress recognizes that the lives and health of uranium miners and of innocent individuals who lived downwind from the Nevada tests were involuntarily subjected to increased risk of injury and disease to serve the national security interests of the United States.

(b) **PURPOSE.**—It is the purpose of this Act to establish a procedure to make partial restitution to the individuals described in subsection (a) for the burdens they have borne for the Nation as a whole.

(c) **APOLOGY.**—The Congress apologizes on behalf of the Nation to the individuals described in subsection (a) and their families for the hardships they have endured.

SEC. 3. TRUST FUND.

(a) **ESTABLISHMENT.**—There is established in the Treasury of the United States, a trust fund to be known as the "Radiation Exposure Compensation Trust Fund" (hereinafter in this Act referred to as the "Fund"), which shall be administered by the Secretary of the Treasury.

(b) **INVESTMENT OF AMOUNTS IN THE FUND.**—Amounts in the Fund shall be invested in accordance with section 9702 of title 31, United

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States Code, and any interest on, and proceeds from any such investment shall be credited to and become a part of the Fund.

(c) **AVAILABILITY OF THE FUND.**—Amounts in the Fund shall be available only for disbursement by the Attorney General under section 6.

(d) **TERMINATION.**—The Fund shall terminate not later than the earlier of the date on which an amount has been expended from the Fund which is equal to the amount authorized to be appropriated to the Fund by subsection (e), and any income earned on such amount, or 22 years after the date of the enactment of this Act. If all of the amounts in the Fund have not been expended by the end of that 22-year period, investments of amounts in the Fund shall be liquidated and receipts thereof deposited in the Fund and all funds remaining in the Fund shall be deposited in the miscellaneous receipts account in the Treasury.

(e) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Fund \$100,000,000. Any amounts appropriated pursuant to this section are authorized to remain available until expended.

SEC. 4. CLAIMS RELATING TO OPEN AIR NUCLEAR TESTING.

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(a)(1) **CLAIMS RELATING TO CHILDHOOD LEUKEMIA.**—Any individual who was physically present in the affected area for a period of at least 1 year during the period beginning on January 21, 1951, and ending on October 31, 1958, or was physically present in the affected area for the period beginning on June 30, 1962, and ending on July 31, 1962, and who submits written medical documentation that he or she, after such period of physical presence and between 2 and 30 years of first exposure to the fallout, contracted leukemia (other than chronic lymphocytic leukemia), shall receive \$50,000 if—

(A) initial exposure occurred prior to age 21,

(B) the claim for such payment is filed with the Attorney General by or on behalf of such individual, and

(C) the Attorney General determines, in accordance with section 6, that the claim meets the requirements of this Act.

(2) **CLAIMS RELATING TO SPECIFIED DISEASES.**—Any individual who was physically present in the affected area for a period of at least 2 years during the period beginning on January 21, 1951, and ending on October 31, 1958, or was physically present in the affected area for the period beginning on June 30, 1962, and ending on July 31, 1962, and who submits written medical documentation that he or she, after such period of physical presence, contracted a specified disease, shall receive \$50,000 if—

(A) the claim for such payment is filed with the Attorney General by or on behalf of such individual, and

(B) the Attorney General determines, in accordance with section 6, that the claim meets the requirements of this Act.

Payments under this section may be made only in accordance with section 6.

(b) **DEFINITIONS.**—For purposes of this section, the term—

(1) “affected area” means—

(A) in the State of Utah, the counties of Washington, Iron, Kane, Garfield, Sevier, Beaver, Millard, and Piute;

(B) in the State of Nevada, the counties of White Pine, Nye, Lander, Lincoln, Eureka, and that portion of Clark County that consists of townships 13 through 16 at ranges 63 through 71; and

(C) that part of Arizona that is north of the Grand Canyon and west of the Colorado River; and

(2) "specified disease" means leukemia (other than chronic lymphocytic leukemia), provided that initial exposure occurred after the age of 20 and the onset of the disease was between 2 and 30 years of first exposure, and the following diseases, provided onset was at least 5 years after first exposure: multiple myeloma, lymphomas (other than Hodgkin's disease), and primary cancer of: the thyroid (provided initial exposure occurred by the age of 20), female breast (provided initial exposure occurred prior to age 40), esophagus (provided low alcohol consumption and not a heavy smoker), stomach (provided initial exposure occurred before age 30), pharynx (provided not a heavy smoker), small intestine, pancreas (provided not a heavy smoker and low coffee consumption), bile ducts, gall bladder, or liver (except if cirrhosis or hepatitis B is indicated).

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SEC. 5. CLAIMS RELATING TO URANIUM MINING.

(a) **ELIGIBILITY OF INDIVIDUALS.**—Any individual who was employed in a uranium mine located in Colorado, New Mexico, Arizona, Wyoming, or Utah at any time during the period beginning on January 1, 1947, and ending on December 31, 1971, and who, in the course of such employment—

(1)(A) if a nonsmoker, was exposed to 200 or more working level months of radiation and submits written medical documentation that he or she, after such exposure, developed lung cancer, or

(B) if a smoker, was exposed to 300 or more working level months of radiation and cancer incidence occurred before age 45 or was exposed to 500 or more working level months of radiation, regardless of age of cancer incidence, and submits written medical documentation that he or she, after such exposure, developed lung cancer; or

(2)(A) if a nonsmoker, was exposed to 200 or more working level months of radiation and submits written medical documentation that he or she, after such exposure, developed a nonmalignant respiratory disease, or

(B) if a smoker, was exposed to 300 or more working level months of radiation and the nonmalignant respiratory disease developed before age 45 or was exposed to 500 or more working level months of radiation, regardless of age of disease incidence, and submits written medical documentation that he or she, after such exposure, developed a nonmalignant respiratory disease,

shall receive \$100,000, if—

(1) the claim for such payment is filed with the Attorney General by or on behalf of such individual, and

(2) the Attorney General determines, in accordance with section 6, that the claim meets the requirements of this Act. Payments under this section may be made only in accordance with section 6.

(b) **DEFINITIONS.**—For purposes of this section—

(1) the term "working level month of radiation" means radiation exposure at the level of one working level every work day for a month, or an equivalent exposure over a greater or lesser amount of time;

(2) the term "working level" means the concentration of the short half-life daughters of radon that will release (1.3×10^9) million electron volts of alpha energy per liter of air;

(3) the term "nonmalignant respiratory disease" means fibrosis of the lung, pulmonary fibrosis, and corpulmonale related to fibrosis of the lung; and if the claimant, whether Indian or non-Indian, worked in an uranium mine located on or within an Indian Reservation, the term shall also include moderate or severe silicosis or pneumoconiosis; and

(4) the term "Indian tribe" means any Indian tribe, band, nation, pueblo, or other organized group or community, that is recognized as eligible for special programs and services provided by the United States to Indian tribes because of their status as Indians.

SEC. 6. DETERMINATION AND PAYMENT OF CLAIMS.

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(a) **ESTABLISHMENT OF FILING PROCEDURES.**—The Attorney General shall establish procedures whereby individuals may submit claims for payments under this Act.

(b) **DETERMINATION OF CLAIMS.**—

(1) **IN GENERAL.**—The Attorney General shall, in accordance with this subsection, determine whether each claim filed under this Act meets the requirements of this Act.

(2) **CONSULTATION.**—The Attorney General shall—

(A) in consultation with the Surgeon General, establish guidelines for determining what constitutes written medical documentation that an individual contracted a specified disease under section 4 or other disease specified in section 5; and

(B) in consultation with the Director of the National Institute for Occupational Safety and Health, establish guidelines for determining what constitutes documentation that an individual was exposed to the working level months of radiation under section 5.

The Attorney General may consult with the Surgeon General with respect to making determinations pursuant to the guidelines issued under subparagraph (A), and with the Director of the National Institute for Occupational Safety and Health with respect to making determinations pursuant to the guidelines issued under subparagraph (B).

(c) **PAYMENT OF CLAIMS.**—

(1) **IN GENERAL.**—The Attorney General shall pay, from amounts available in the Fund, claims filed under this Act which the Attorney General determines meet the requirements of this Act.

(2) **OFFSET FOR CERTAIN PAYMENTS.**—A payment to an individual, or to a survivor of that individual, under this section on a claim under section 4 or 5 shall be offset by the amount of any payment made pursuant to a final award or settlement on a claim (other than a claim for worker's compensation), against any person, that is based on injuries incurred by that individual on account of—

(A) exposure to radiation, from open air nuclear testing, in the affected area (as defined in section 4(b)(1)) at any time during any period specified in section 4(a), or

(B) exposure to radiation in a uranium mine at any time during the period described in section 5(a).

Uranium.
Mine safety and
health.

(3) **RIGHT OF SUBROGATION.**—Upon payment of a claim under this section, the United States Government is subrogated for the amount of the payment to a right or claim that the individual to whom the payment was made may have against any person on account of injuries referred to in paragraph (2).

(4) **PAYMENTS IN THE CASE OF DECEASED PERSONS.**—

(A) **IN GENERAL.**—In the case of an individual who is deceased at the time of payment under this section, such payment may be made only as follows:

(i) If the individual is survived by a spouse who is living at the time of payment, such payment shall be made to such surviving spouse.

(ii) If there is no surviving spouse described in clause (i), such payment shall be made in equal shares to all children of the individual who are living at the time of payment.

(iii) If there is no surviving spouse described in clause (i) and if there are no children described in clause (ii), such payment shall be made in equal shares to the parents of the individual who are living at the time of payment.

(iv) If there is no surviving spouse described in clause (i), and if there are no children described in clause (ii) or parents described in clause (iii), such payment shall be made in equal shares to all grandchildren of the individual who are living at the time of payment.

(v) If there is no surviving spouse described in clause (i), and if there are no children described in clause (ii), parents described in clause (iii), or grandchildren described in clause (iv), then such payment shall be made in equal shares to the grandparents of the individual who are living at the time of payment.

(B) **INDIVIDUALS WHO ARE SURVIVORS.**—If an individual eligible for payment under section 4 or 5 dies before filing a claim under this Act, a survivor of that individual who may receive payment under subparagraph (A) may file a claim for such payment under this Act.

(C) **DEFINITIONS.**—For purposes of this paragraph—

(i) the “spouse” of an individual means a wife or husband of that individual who was married to that individual for at least one year immediately before the death of that individual;

(ii) a “child” includes a recognized natural child, a stepchild who lived with an individual in a regular parent-child relationship, and an adopted child;

(iii) a “parent” includes fathers and mothers through adoption;

(iv) a “grandchild” of an individual is a child of a child of that individual; and

(v) a “grandparent” of an individual is a parent of a parent of that individual.

(d) **ACTION ON CLAIMS.**—The Attorney General shall complete the determination on each claim filed in accordance with the procedures established under subsection (a) not later than twelve months after the claim is so filed.

(e) **PAYMENT IN FULL SETTLEMENT OF CLAIMS AGAINST THE UNITED STATES.**—The acceptance of payment by an individual under this

section shall be in full satisfaction of all claims of or on behalf of that individual against the United States, or against any person with respect to that person's performance of a contract with the United States, that arise out of exposure to radiation, from open air nuclear testing, in the affected area (as defined in section 4(b)(1)) at any time during any period described in section 4(a), or exposure to radiation in a uranium mine at any time during the period described in section 5(a).

(f) **ADMINISTRATIVE COSTS NOT PAID FROM THE FUND.**—No costs incurred by the Attorney General in carrying out this section shall be paid from the Fund or set off against, or otherwise deducted from, any payment under this section to any individual.

(g) **TERMINATION OF DUTIES OF ATTORNEY GENERAL.**—The duties of the Attorney General under this section shall cease when the Fund terminates.

(h) **CERTIFICATION OF TREATMENT OF PAYMENTS UNDER OTHER LAWS.**—Amounts paid to an individual under this section—

(1) shall be treated for purposes of the internal revenue laws of the United States as damages for human suffering; and

(2) shall not be included as income or resources for purposes of determining eligibility to receive benefits described in section 3803(c)(2)(C) of title 31, United States Code, or the amount of such benefits.

(i) **USE OF EXISTING RESOURCES.**—The Attorney General should use funds and resources available to the Attorney General to carry out his or her functions under this Act.

(j) **REGULATORY AUTHORITY.**—The Attorney General may issue such regulations as are necessary to carry out this Act.

(k) **ISSUANCE OF REGULATIONS, GUIDELINES, AND PROCEDURES.**—Regulations, guidelines, and procedures to carry out this Act shall be issued not later than 180 days after the date of the enactment of this Act.

SEC. 7. CLAIMS NOT ASSIGNABLE OR TRANSFERABLE; CHOICE OF REMEDIES.

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(a) **CLAIMS NOT ASSIGNABLE OR TRANSFERABLE.**—No claim cognizable under this Act shall be assignable or transferable.

(b) **CHOICE OF REMEDIES.**—No individual may receive payment under both sections 4 and 5 of this Act.

SEC. 8. LIMITATIONS ON CLAIMS.

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A claim to which this Act applies shall be barred unless the claim is filed within 20 years after the date of the enactment of this Act.

SEC. 9. ATTORNEY FEES.

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Notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with the claim of an individual under this Act, more than 10 per centum of a payment made under this Act on such claim. Any such representative who violates this section shall be fined not more than \$5,000.

SEC. 10. CERTAIN CLAIMS NOT AFFECTED BY AWARDS OF DAMAGES.

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A payment made under this Act shall not be considered as any form of compensation or reimbursement for a loss for purposes of imposing liability on any individual receiving such payment, on the basis of such receipt, to repay any insurance carrier for insurance payments, or to repay any person on account of worker's compensa-

tion payments; and a payment under this Act shall not affect any claim against an insurance carrier with respect to insurance or against any person with respect to worker's compensation.

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SEC. 11. BUDGET ACT.

No authority under this Act to enter into contracts or to make payments shall be effective in any fiscal year except to such extent or in such amounts as are provided in advance in appropriations Acts.

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SEC. 12. REPORT.

(a) The Secretary of Health and Human Services shall submit a report on the incidence of radiation related moderate or severe silicosis and pneumoconiosis in uranium miners employed in the uranium mines that are defined in section 5 and are located off of Indian reservations.

(b) Such report shall be completed not later than September 30, 1992.

Approved October 15, 1990.

LEGISLATIVE HISTORY—H.R. 2372:

HOUSE REPORTS: No. 101-463 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 136 (1990):

June 5, considered and passed House.

Aug. 1, considered and passed Senate, amended.

Sept. 27, House concurred in Senate amendment.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 26 (1990):

Oct. 15, Presidential statement.