116TH CONGRESS 2D SESSION	<b>S.</b> _	

To amend title 38, United States Code, to provide for a presumption of service connection for certain diseases associated with exposure to toxins, and for other purposes.

## IN THE SENATE OF THE UNITED STATES

Mrs.	GILLIBRAND	introduced	the	following	bill;	which	was	${\rm read}$	${\rm twice}$	and
	referred	to the Com	mitte	ee on					-	

## A BILL

- To amend title 38, United States Code, to provide for a presumption of service connection for certain diseases associated with exposure to toxins, and for other purposes.
  - 1 Be it enacted by the Senate and House of Representa-
  - ${\it 2\ tives\ of\ the\ United\ States\ of\ America\ in\ Congress\ assembled},$
  - 3 SECTION 1. SHORT TITLE.
  - 4 This Act may be cited as the "Presumptive Benefits
  - 5 for War Fighters Exposed to Toxins Act of 2020".

1	SEC. 2. PRESUMPTION OF SERVICE CONNECTION FOR CER-
2	TAIN DISEASES ASSOCIATED WITH EXPO-
3	SURE TO TOXINS.
4	(a) In General.—Subchapter II of chapter 11 of
5	title 38, United States Code, is amended by adding at the
6	end the following new section:
7	"§ 1119. Presumption of service connection for cer-
8	tain diseases associated with exposure to
9	toxins
10	"(a) Presumption of Service Connection.—(1)
11	For the purposes of section 1110 of this title, and subject
12	to section 1113 of this title, a disease specified in para-
13	graph (2) becoming manifest in a veteran described in
14	paragraph (3) shall be considered to have been incurred
15	in or aggravated during active military, naval, or air serv-
16	ice, notwithstanding that there is no record of evidence
17	of such disease during the period of such service.
18	"(2) The diseases specified in this paragraph are the
19	following:
20	"(A) Asthma that was diagnosed after service
21	in a country or territory listed under paragraph
22	(4)(B).
23	"(B) Cancer of any type, except skin cancers.
24	"(C) Chronic bronchitis or obliterative
25	bronchiolitis.
26	"(D) Chronic obstructive pulmonary disease.

1	"(E) Constrictive bronchiolitis.
2	"(F) Emphysema.
3	"(G) Granulomatous disease.
4	"(H) Interstitial lung disease.
5	"(I) Lymphoma.
6	"(J) Pleuritis.
7	"(K) Sarcoidosis.
8	"(L) Any other disease with respect to which
9	final regulations have been prescribed under sub-
10	section $(c)(3)$ .
11	"(3) A veteran described in this paragraph is any vet-
12	eran who, on or after January 1, 1990—
13	"(A) served as a member of the Armed Forces
14	in support of a military operation described in para-
15	graph (4); and
16	"(B) was present for 15 or more cumulative
17	days in a country or territory listed under subpara-
18	graph (B) of that paragraph.
19	"(4) A military operation described in this paragraph
20	is—
21	"(A) any contingency operation (as defined in
22	section 101(a)(13) of title 10); or
23	"(B) any military operation in any of the fol-
24	lowing countries or territories:
25	"(i) Afghanistan.

1	"(ii) Burkina Faso.
2	"(iii) Cameroon.
3	"(iv) Chad.
4	"(v) Diego Garcia.
5	"(vi) Djibouti.
6	"(vii) Egypt.
7	"(viii) Ethiopia.
8	"(ix) Gabon.
9	"(x) Ghana.
10	"(xi) Iraq.
11	"(xii) Jordan.
12	"(xiii) Kenya.
13	"(xiv) Kuwait.
14	"(xv) Kyrgyzstan.
15	"(xvi) Libya.
16	"(xvii) Mali.
17	"(xviii) Niger.
18	"(xix) Nigeria.
19	"(xx) Pakistan.
20	"(xxi) Saudi Arabia.
21	"(xxii) Somalia.
22	"(xxiii) South Sudan.
23	"(xxiv) Sudan.
24	"(xxv) Syria.
25	"(xxvi) Tajikistan.

1	"(xxvii) Tunisia.
2	"(xxviii) United Arab Emirates.
3	"(xxix) Uzbekistan.
4	"(b) Process to Add Diseases Through Writ-
5	TEN PETITION.—(1) In the case that the Secretary re-
6	ceives a written petition from an interested party to add
7	a disease to the list of diseases specified in subsection
8	(a)(2), not later than 90 days after the date of receipt
9	of such petition, the Secretary shall request a determina-
10	tion by the National Academies of Sciences, Engineering
11	and Medicine (referred to in this section as the 'National
12	Academies') with respect to whether there is a positive as-
13	sociation between—
14	"(A) the exposure of humans to one or more
15	covered toxins; and
16	"(B) the occurrence of the disease in humans
17	"(2) For purposes of this subsection, the term 'inter-
18	ested party' includes a representative of—
19	"(A) a congressionally chartered veterans serv-
20	ice organization;
21	"(B) an organization that—
22	"(i) is described in section 501(c)(3) of the
23	Internal Revenue Code of 1986 and exempt
24	from taxation under section 501(a) of such
25	Code;

1	(11) serves veterans or members of the
2	Armed Forces; and
3	"(iii) has continuously operated for a pe-
4	riod of five years or more preceding the date of
5	the submittal of the written petition under
6	paragraph (1);
7	"(C) a collective bargaining agent for civilian
8	employees of the United States Government;
9	"(D) a nationally recognized medical associa-
10	tion;
11	"(E) the National Academies; or
12	"(F) a State or political subdivision of a State.
13	"(c) Determinations by National Academies.—
14	(1) If the Secretary receives a determination described in
15	paragraph (2), not later than 180 days after receipt of
16	such determination, the Secretary shall—
17	"(A) publish in the Federal Register proposed
18	regulations to add the disease covered by the deter-
19	mination to the list of diseases specified in sub-
20	section (a)(2);
21	"(B) publish in the Federal Register, and sub-
22	mit to the Committee on Veterans' Affairs of the
23	Senate and the Committee on Veterans' Affairs of
24	the House of Representatives—

1	"(1) the decision of the Secretary not to
2	publish such proposed regulations; and
3	"(ii) the basis for such decision, including
4	specific medical science refuting the determina-
5	tion; or
6	"(C) publish in the Federal Register a decision
7	that insufficient evidence exists to take action under
8	subparagraph (A) or (B).
9	"(2) A determination described in this paragraph—
10	"(A) is a determination by the National Acad-
11	emies that there is a positive association between—
12	"(i) the exposure of humans to one or
13	more covered toxins; and
14	"(ii) the occurrence of the disease in hu-
15	mans; and
16	"(B) may be made pursuant to—
17	"(i) a request from the Secretary under
18	subsection (b); or
19	"(ii) an agreement between the Secretary
20	and the National Academies under section 3 of
21	the Presumptive Benefits for War Fighters Ex-
22	posed to Toxins Act of 2020.
23	"(3)(A) Not later than 180 days after the date on
24	which the Secretary publishes any proposed regulations

under paragraph (1)(A) for a disease, the Secretary shall prescribe final regulations for that disease. 3 "(B) Such regulations shall be effective on the date of issuance. 5 "(d) Reference to National Academies.—In the case that the Secretary enters into an agreement with an-7 other organization as described in section 3(h)(1) of the 8 Presumptive Benefits for War Fighters Exposed to Toxins Act of 2020, any reference in this section to the National 10 Academies shall be treated as a reference to the other or-11 ganization. 12 "(e) Definitions.—In this section: 13 "(1) The term 'covered toxin' includes the fol-14 lowing: 15 "(A) Any toxic chemical or toxic fume. 16 "(B) Hazardous waste, mixed waste, solid 17 waste, or used oil (as those terms are defined 18 in section 1004 of the Solid Waste Disposal Act 19 (42 U.S.C. 6903)). 20 "(C) Radiological waste. 21 "(D) Any other carcinogen. 22 "(2) The term 'veterans service organization' 23 means an organization recognized by the Secretary 24 for the representation of veterans under section 25 5902 of this title.".

(D) P/B/B/B/C/TIVB/ I JATE/ —	(b)	EFFECTIVE DATE.—
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- 2 (1) In General.—The amendment made by 3 subsection (a) shall take effect on the date that is 4 180 days after the date of the enactment of this Act.
- 5 (2) Written petitions.—With respect to a 6 written petition described in section 1119(b)(1) of 7 title 38, United States Code, as added by subsection 8 (a), that was received by the Secretary of Veterans 9 Affairs before the effective date described in para-10 graph (1), the Secretary shall make a request of the 11 National Academies of Sciences, Engineering, and 12 Medicine under such section, as so added, not later 13 than 90 days after such effective date.
- 14 (c) CLERICAL AMENDMENT.—The table of sections 15 at the beginning of chapter 11 of title 38, United States 16 Code, is amended by inserting after the item relating to

section 1118 the following new item:

- "1119. Presumption of service connection for certain diseases associated with exposure to toxins.".
- 18 (d) Conforming Amendment.—Section 1113 of 19 such title is amended by striking "or 1118" each place 20 it appears and inserting "1118, or 1119".

1	SEC. 3. AGREEMENT WITH THE NATIONAL ACADEMIES OF
2	SCIENCES, ENGINEERING, AND MEDICINE
3	CONCERNING THE EXPOSURE OF HUMANS TO
4	TOXINS.
5	(a) AGREEMENT.—
6	(1) In general.—The Secretary of Veterans
7	Affairs shall seek to enter into an agreement with
8	the National Academies of Sciences, Engineering,
9	and Medicine (referred to in this section as the "Na-
10	tional Academies") to perform the services covered
11	by this section.
12	(2) Timing.—The Secretary shall seek to enter
13	into the agreement described in paragraph (1) not
14	later than 60 days after the date of the enactment
15	of this Act.
16	(b) Reviews of Scientific Evidence.—
17	(1) In General.—Under an agreement be-
18	tween the Secretary and the National Academies,
19	the National Academies shall review and summarize
20	the scientific evidence, and assess the strength there-
21	of, concerning the association between the exposure
22	of humans to covered toxins and each disease sus-
23	pected to be associated with such exposure.
24	(2) Reviews upon request.—Under an
25	agreement between the Secretary and the National
26	Academies under this section, the National Acad-

1 emies shall conduct a review described in paragraph 2 (1) in response to each request made by the Sec-3 retary under section 1119(b)(1) of title 38, United States Code, as added by section 2(a). 4 5 (c) Scientific Determinations Concerning Dis-6 EASES.— 7 (1) In General.—For each disease reviewed 8 under subsection (b), the National Academies shall 9 determine (to the extent that available scientific data 10 permit meaningful determinations) whether there is 11 a positive association between the exposure of hu-12 mans to one or more covered toxins and the occur-13 rence of the disease in humans, taking into account 14 the strength of the scientific evidence and the appro-15 priateness of the statistical and epidemiological 16 methods used to detect the association. 17 SUBMISSIONS FOR REVIEWS UPON RE-18 QUEST.—Under an agreement between the Secretary 19 and the National Academies under this section, not 20 later than 270 days after the date on which the Sec-21 retary transmits a request to the National Acad-22 emies with respect to a disease under section 23 1119(b)(1) of title 38, United States Code, as added

by section 2(a), the National Academies shall submit

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1	to the Secretary the determination made with re
2	spect to that disease under paragraph (1).
3	(d) Recommendations for Additional Sci
4	ENTIFIC STUDIES.—
5	(1) In general.—Under an agreement be
6	tween the Secretary and the National Academies
7	under this section, the National Academies shall
8	make any recommendations it has for additional sci
9	entific studies to resolve areas of continuing sci
10	entific uncertainty relating to the exposure of hu
11	mans to covered toxins.
12	(2) Considerations.—In making rec
13	ommendations for additional scientific studies, the
14	National Academies shall consider—
15	(A) the scientific information that is avail
16	able at the time of the recommendation;
17	(B) the value and relevance of the informa
18	tion that could result from additional studies
19	and
20	(C) the feasibility of carrying out such ad
21	ditional studies.
22	(e) Subsequent Reviews.—Under an agreement
23	between the Secretary and the National Academies under
24	this section, the National Academies shall—

1	(1) conduct as comprehensive a review as is
2	practicable of the evidence referred to in subsection
3	(b)(1) that became available since the last review of
4	such evidence under this section; and
5	(2) make determinations and estimates on the
6	basis of the results of such review and all other re-
7	views conducted for the purposes of this section.
8	(f) Reports.—
9	(1) Initial report.—
10	(A) In general.—Under an agreement
11	between the Secretary and the National Acad-
12	emies under this section, not later than 540
13	days after the date of the enactment of this
14	Act, the National Academies shall submit to the
15	Secretary and the Committee on Veterans' Af-
16	fairs of the Senate and the Committee on Vet-
17	erans' Affairs of the House of Representatives
18	a report on the activities of the National Acad-
19	emies under the agreement.
20	(B) Elements.—The report submitted
21	under subparagraph (A) shall include the fol-
22	lowing:
23	(i) The determinations described in
24	subsection $(c)(1)$ .

1	(ii) An explanation of the scientific
2	evidence and reasoning that led to such de-
3	terminations.
4	(iii) Any recommendations of the Na-
5	tional Academies under subsection (d).
6	(2) Periodic updates.—Under an agreement
7	between the Secretary and the National Academies
8	under this section, not less frequently than once
9	every two years, the National Academies shall sub-
10	mit to the Secretary and the Committee on Vet-
11	erans' Affairs of the Senate and the Committee or
12	Veterans' Affairs of the House of Representatives and
13	updated report on the activities of the National
14	Academies under the agreement.
15	(g) Limitation on Authority.—The authority to
16	enter into agreements under this section shall be effective
17	for a fiscal year to the extent that appropriations are
18	available.
19	(h) Alternative Contract Scientific Organiza-
20	TION.—
21	(1) In general.—If the Secretary is unable
22	within the period prescribed in subsection (a)(2) to
23	enter into an agreement with the National Acad-
24	emies on terms acceptable to the Secretary, the Sec-
25	retary shall seek to enter into such an agreement

1	with another appropriate scientific organization
2	that—
3	(A) is not part of the Government;
4	(B) operates as a not-for-profit entity; and
5	(C) has expertise and objectivity com
6	parable to that of the National Academies.
7	(2) Treatment.—If the Secretary enters into
8	an agreement with another organization as described
9	in paragraph (1), any reference in this section, sec
10	tion 4, and section 1119 of title 38, United States
11	Code, as added by section 2(a), to the Nationa
12	Academies shall be treated as a reference to the
13	other organization.
14	(i) COVERED TOXIN DEFINED.—In this section, the
15	term "covered toxin" has the meaning given that term in
16	section 1119(e) of title 38, United States Code, as added
17	by section 2(a).
18	(j) Authorization of Appropriations.—There
19	are authorized to be appropriated to the Department of
20	Veterans Affairs such sums as may be necessary to carry
21	out this section.

1	SEC. 4. ACCESS OF THE NATIONAL ACADEMIES OF
2	SCIENCES, ENGINEERING, AND MEDICINE TO
3	INFORMATION FROM THE DEPARTMENT OF
4	DEFENSE.
5	(a) In General.—Upon request by the National
6	Academies of Sciences, Engineering, and Medicine (re-
7	ferred to in this section as the "National Academies"),
8	the Secretary of Defense shall provide to the National
9	Academies information in the possession of the Depart-
10	ment of Defense that the National Academies determines
11	useful in conducting a review under section 3(b).
12	(b) Inclusions.—The information described in sub-
13	section (a) shall include, at a minimum—
14	(1) all environmental sampling data relative to
15	any location included in the review; and
16	(2) a list of all forward deployed positions at
17	which members of the Armed Forces were deployed
18	or stationed.
19	SEC. 5. PRESUMPTION RELATING TO PERSONAL INJURY OF
20	CERTAIN FEDERAL EMPLOYEES.
21	(a) In General.—Section 8102 of title 5, United
22	States Code, is amended by adding at the end the fol-
23	lowing:
24	"(c)(1) In this subsection, the term 'covered em-
25	ployee' means an employee who, on or after January 1,
26	1990, carried out the job responsibilities of the employee

- 1 for not fewer than 15 total days in a country or territory
- 2 listed under subparagraph (B) of paragraph (4) of section
- 3 1119(a) of title 38 in support of a military operation de-
- 4 scribed in that paragraph.
- 5 "(2) Disability or death from a disease described in
- 6 paragraph (2) of such section suffered by a covered em-
- 7 ployee is deemed to have resulted from personal injury
- 8 sustained while in the performance of the duty of the cov-
- 9 ered employee, whether or not the covered employee was
- 10 engaged in the course of employment when the disability
- 11 or disability resulting in death occurred.".
- 12 (b) Effective Date.—The amendment made by
- 13 subsection (a) shall take effect on the date that is 180
- 14 days after the date of enactment of this Act.