

117TH CONGRESS
2D SESSION

S. 3810

To amend the Countermeasure Injury Compensation Program with respect to COVID–19 vaccines.

IN THE SENATE OF THE UNITED STATES

MARCH 10 (legislative day, MARCH 7), 2022

Mr. LEE (for himself, Mr. BRAUN, Mr. JOHNSON, and Mrs. HYDE-SMITH) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Countermeasure Injury Compensation Program with respect to COVID–19 vaccines.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Countermeasure Injury
5 Compensation Fund Amendment Act”.

6 **SEC. 2. AMENDMENT TO THE COUNTERMEASURE INJURY**
7 **COMPENSATION PROGRAM.**

8 Section 319F–4 of the Public Health Service Act (42
9 U.S.C. 247d–6e) is amended—

10 (1) in subsection (b)—

1 (A) in paragraph (1), by striking “under
2 319F–3(b)” and inserting “under section
3 319F–3(b)”;

4 (B) in paragraph (2)—

5 (i) by striking “and be in the same
6 amount” and all that follows through
7 “shall not apply” and inserting “be in the
8 same amount, and be subject to the same
9 conditions as is prescribed by section
10 2115”;

11 (C) by striking paragraphs (3) and (4) and
12 inserting the following:

13 “(3) DETERMINATION OF ELIGIBILITY AND
14 COMPENSATION.—Compensation shall be awarded
15 under this section to eligible individuals in accord-
16 ance with the procedure set forth in sections 2111,
17 2112, 2113, and 2121 for purposes of the National
18 Vaccine Injury Compensation Program, subject to
19 the other provisions of this section.”;

20 (D) by inserting before paragraph (5) the
21 following:

22 “(4) TIME FOR FILING PETITIONS.—

23 “(A) PREVIOUSLY SUBMITTED RE-
24 QUESTS.—

1 “(i) PENDING CLAIMS.—In the case of
2 a request for compensation submitted
3 under this section before the date of enact-
4 ment of the Countermeasure Injury Com-
5 pensation Fund Amendment Act for which
6 no compensation has been provided prior
7 to such date of enactment, in order to be
8 eligible for compensation under this sec-
9 tion, not later than 28 months after such
10 date of enactment, the individual shall sub-
11 mit a new petition under this section, con-
12 sistent with the amendments made by the
13 Countermeasure Injury Compensation
14 Fund Amendment Act.

15 “(ii) PREVIOUSLY PAID CLAIMS.—In
16 the case of a request for compensation sub-
17 mitted under this section and paid under
18 this section before the date of enactment of
19 the Countermeasure Injury Compensation
20 Fund Amendment Act that relates to a
21 COVID–19 countermeasure, the individual
22 receiving such compensation may submit a
23 subsequent petition under this section for
24 additional compensation in the amount the
25 individual would have received for such

1 claim under this section after such date of
2 enactment, less the amount already re-
3 ceived by the individual.

4 “(B) SUBSEQUENT PETITIONS.—In the
5 case of a an injury or death resulting from the
6 administration or use of a covered counter-
7 measure to which subparagraph (A) does not
8 apply, a petition for benefits or compensation
9 under this section shall be filed not later than—

10 “(i) subject to clause (ii)—

11 “(I) in the case of serious phys-
12 ical injury, 3 years after the first
13 symptom or manifestation of onset of
14 a significant aggravation of a covered
15 injury; or

16 “(II) in the case of death—

17 “(aa) 2 years after death
18 from the administration or use of
19 the covered countermeasure; and

20 “(bb) 4 years after the oc-
21 currence of the first symptom or
22 manifestation of onset or of the
23 significant aggravation of the in-
24 jury from which the death re-
25 sulted; and

1 “(ii) in the case that a covered coun-
2 termeasure is added to the table under
3 paragraph (5)(A) and the effect is to per-
4 mit an individual who was not, before such
5 addition, eligible to seek compensation
6 under this section, such individual may file
7 a petition for such compensation not later
8 than 2 years after the effective date of the
9 addition of such countermeasure.”;

10 (E) in paragraph (5), by striking subpara-
11 graphs (B) and (C) and inserting the following:

12 “(B) AMENDMENT WITH RESPECT TO
13 COVID–19 VACCINES.—

14 “(i) IN GENERAL.—Not later than 60
15 days after receipt of the report under sub-
16 paragraph (C)(iii), the Secretary, taking
17 into consideration such report, shall amend
18 the covered countermeasure injury table
19 established under subparagraph (A) to in-
20 clude all injuries related to COVID–19
21 vaccines that meet the standard described
22 in subparagraph (A). In amending such
23 table, the Secretary shall consider injuries
24 caused by use of any vaccine that is, or
25 was, the subject of an emergency use au-

1 thorization under section 564 of the Fed-
2 eral Food, Drug, and Cosmetic Act.

3 “(ii) EXPLANATION OF CERTAIN DE-
4 TERMINATIONS.—With respect to any rec-
5 ommendation of the COVID–19 Vaccine
6 Commission included in the report under
7 subparagraph (C)(iii) that the Secretary
8 does not adopt pursuant to this subpara-
9 graph, the Secretary, not later than 7 days
10 after the covered countermeasure injury
11 table has been amended pursuant to clause
12 (i), shall publish a written explanation of
13 the determination not to adopt such rec-
14 ommendation.

15 “(C) COVID–19 VACCINE COMMISSION.—

16 “(i) IN GENERAL.—There is estab-
17 lished a commission to be known as the
18 COVID–19 Vaccine Commission (referred
19 to in this subparagraph as the ‘Commis-
20 sion’) that is tasked with identifying cov-
21 ered injuries related to COVID–19 vac-
22 cines, for purposes of recommending to the
23 Secretary injuries for inclusion on the cov-
24 ered countermeasure injury table, as de-
25 scribed in subparagraph (B).

1 “(ii) MEMBERSHIP.—

2 “(I) IN GENERAL.—The Commis-
3 sion shall be composed of the fol-
4 lowing:

5 “(aa) The Secretary, or a
6 designee of the Secretary, to
7 serve as an ex officio member.

8 “(bb) The following mem-
9 bers, selected, not later than 30
10 days after the date of enactment
11 of the Countermeasure Injury
12 Compensation Fund Amendment
13 Act, in accordance with subclause
14 (II):

15 “(AA) 3 members ap-
16 pointed by the Chair of the
17 Committee on Health, Edu-
18 cation, Labor, and Pensions
19 of the Senate.

20 “(BB) 3 members ap-
21 pointed by the Ranking
22 Member of the Committee
23 on Health, Education,
24 Labor, and Pensions of the
25 Senate.

1 “(CC) 3 members ap-
2 pointed by the Chair of the
3 Committee on Energy and
4 Commerce of the House of
5 Representatives.

6 “(DD) 3 members ap-
7 pointed by the Ranking
8 Member of the Committee
9 on Energy and Commerce of
10 the House of Representa-
11 tives.

12 “(II) ELIGIBILITY.—Members se-
13 lected to serve on the Commission
14 pursuant to subclause (I)(bb) shall—

15 “(aa) be chosen on the basis
16 of their experience, integrity, im-
17 partiality, and good judgement;

18 “(bb) at the time of appoint-
19 ment, not be elected or appointed
20 officers or employees in the exec-
21 utive, legislative, or judicial
22 branch of the Federal Govern-
23 ment; and

24 “(cc) at the time of appoint-
25 ment, not be a member of the

1 board or an employee of an entity
2 whose product is under review, or
3 expected to be under review, by
4 the Commission.

5 “(III) NO COMPENSATION.—
6 Members of the Commission shall not
7 be compensated.

8 “(IV) CONFLICT OF INTEREST.—
9 Each member of the Commission shall
10 recuse themselves from advising on a
11 covered countermeasure for which the
12 member has a conflict of interest as
13 described in section 208 of title 18,
14 United States Code.

15 “(iii) REPORT.—No later than one
16 year after the date of enactment of the
17 Countermeasure Injury Compensation
18 Fund Amendment Act, the Commission
19 shall submit to the Secretary and make
20 publicly available a report identifying cov-
21 ered injuries considered for purposes of in-
22 clusion on the covered countermeasure in-
23 jury table pursuant to subparagraph (B),
24 and the vote counts and outcomes for each
25 such injury.

1 “(iv) SUNSET.—The Commission es-
2 tablished under this subparagraph shall be
3 terminated upon publication of the report
4 under clause (iii).”;

5 (F) by redesignating paragraph (6) as
6 paragraph (7);

7 (G) by inserting after paragraph (5) the
8 following:

9 “(6) ELECTRONIC FILING OF PETITIONS.—The
10 clerk of the United States Court of Federal Claims
11 shall provide an option for the electronic filing of a
12 petition to initiate a proceeding for compensation
13 under this section.”; and

14 (H) in paragraph (7), as so redesignated—

15 (i) by striking “sections 262, 263,
16 264, 265, and 266” and inserting “sec-
17 tions 2111, 2112, 2113, 2115, and 2121”;

18 (ii) in subparagraph (A), by striking
19 “terms ‘vaccine’ and ‘smallpox vaccine’”
20 and inserting “term ‘vaccine’”;

21 (iii) by amending subparagraph (B) to
22 read as follows:

23 “(B) the term ‘Vaccine Injury Table’ shall
24 be deemed to mean the table established under
25 paragraph (5)(A);”;

1 (iv) by redesignating subparagraph
2 (C) as subparagraph (F); and

3 (v) by inserting after subparagraph
4 (B) the following:

5 “(C) the term ‘factors unrelated to the ad-
6 ministration of the vaccine’ shall be deemed to
7 mean factors unrelated to the administration or
8 use of a covered countermeasure;

9 “(D)(i) the terms ‘petition’, ‘petition under
10 section 2111’, and ‘petition filed under section
11 2111’ shall be deemed to mean a request for
12 compensation under this section; and

13 “(ii) the term ‘petitioner’ shall be deemed
14 to mean a covered individual, as defined in sub-
15 section (e), who makes a request for benefits or
16 compensation under this section;

17 “(E) the term ‘vaccine-related injury or
18 death’ shall be deemed to mean a covered in-
19 jury, as defined in subsection (e); and”;
20 (2) in subsection (d)—

21 (A) in paragraph (1), by striking “, or if
22 the Secretary fails” and all that follows through
23 “319F–3(d)” and inserting a period; and

24 (B) in paragraph (5), by striking “under
25 subsection (a) the Secretary determines that a

1 covered individual qualifies for compensation”
2 and inserting “a covered individual is deter-
3 mined under subsection (a) to be eligible for
4 compensation under this section”.

○