

110TH CONGRESS
1ST SESSION

S. 2026

To amend title 38, United States Code, chapter 11, to clarify that an award of benefits based on a regulatory presumption established pursuant to 38 U.S.C. 1116 after September 30, 2002, cannot be made effective earlier than the date the regulatory presumption was established; and to clarify that the presumption of herbicide exposure provided by 38 U.S.C. 1116(f) applies only to veterans who served in Vietnam on land or on Vietnam's inland waterways and not to those who served only in waters offshore or in airspace above.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 6, 2007

Mr. AKAKA (by request) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, chapter 11, to clarify that an award of benefits based on a regulatory presumption established pursuant to 38 U.S.C. 1116 after September 30, 2002, cannot be made effective earlier than the date the regulatory presumption was established; and to clarify that the presumption of herbicide exposure provided by 38 U.S.C. 1116(f) applies only to veterans who served in Vietnam on land or on Vietnam's inland waterways and not to those who served only in waters offshore or in airspace above.

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; REFERENCES TO TITLE 38,**
4 **UNITED STATES CODE.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Agent Orange Equitable Compensation Act”.

7 (b) REFERENCES.—Wherever in this Act an amend-
8 ment is expressed in terms of an amendment to a section
9 or other provision, the reference shall be considered to be
10 made to a section or other provision of title 38, United
11 States Code.

12 **SEC. 2. CLARIFICATION OF AUTHORITY TO ESTABLISH PRE-**
13 **SUMPTIONS BASED ON HERBICIDE EXPO-**
14 **SURE; PROHIBITION ON RETROACTIVE PAY-**
15 **MENT.**

16 (a) Section 1116 is amended by adding at the end
17 the following new subsection:

18 “(g) Presumptions established pursuant to this sec-
19 tion after September 30, 2002, shall not be considered to
20 be presumptions established pursuant to the Agent Or-
21 ange Act of 1991. Awards based on such presumptions
22 are subject to section 5110 of this title and shall not in
23 any event be made effective earlier than the effective date
24 of the regulation establishing the presumption.”.

1 (b) APPLICABILITY.—The provisions of section
2 1116(g) as added by this Act apply to any determination
3 made on or after the date of enactment of this Act con-
4 cerning a person’s entitlement to benefits administered by
5 the Secretary.

6 **SEC. 3. CLARIFICATION OF DEFINITION OF SERVICE IN**
7 **THE REPUBLIC OF VIETNAM.**

8 (a) Paragraph (f) of section 1116 is amended by add-
9 ing to the end of that paragraph the following:
10 “For the purposes of this presumption, a veteran will be
11 considered to have served in the Republic of Vietnam only
12 if the veteran was physically present on land in Vietnam,
13 or on its inland waterways and not if the veteran served
14 only on the waters offshore or in airspace above.”.

15 (b) APPLICABILITY.—The provisions of section
16 1116(f), as amended by this Act, apply to any claim filed
17 on or after February 6, 1991, that is still pending on the
18 date of enactment of this Act, including a claim to reopen
19 or revise a previously denied claim, and to any claim filed
20 on or after the date of enactment of this Act. A claim
21 is pending if it has not been the subject of a final VA
22 decision granting or denying benefits, or if such a decision
23 is currently on appeal before a court.

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