

103^D CONGRESS
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H. R. 3743

To provide for payments to individuals who were the subjects of radiation experiments conducted by the Federal Government.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 26, 1994

Mr. FROST introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide for payments to individuals who were the subjects of radiation experiments conducted by the Federal Government.

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 “Radiation Experimen-
5 tation Compensation Act of 1994”.

6 **SEC. 2. FINDINGS, PURPOSE, AND APOLOGY.**

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

8 (1) since the 1940’s, the Federal Government
9 has intentionally conducted secret radiation experi-
10 ments in the United States without the informed

1 consent or knowledge of the individuals on whom the
2 experiments were performed;

3 (2) such radiation experiments included, but
4 were not limited to, experiments involving injections
5 of plutonium, ingestion of irradiated food, exposure
6 to atmospheric radiation, and the prescription of ra-
7 dioactive medication to pregnant women;

8 (3) the Federal Government performed such ex-
9 periments not in order to achieve medical or health
10 benefits for the individuals used in the tests, but for
11 research purposes, to allow Federal Government sci-
12 entists and health specialists to study the effects of
13 radiation on the human body;

14 (4) at the time of such experiments and in the
15 years following the experiments, the Federal Govern-
16 ment failed to inform the individuals tested, or their
17 families, about the nature and effects of the tests;

18 (5) the Federal Government has harmed the
19 subjects of such radiation experiments;

20 (6) the Congress presumes that the exposure to
21 radiation of the subjects of such experiments has
22 generated an excess of cancers and other debilitating
23 diseases and health problems for such subjects;

24 (7) the Federal Government should recognize
25 that the lives and health of the innocent individuals

1 who were the subjects of such experiments were put
2 at risk by the individuals' unknowing and involun-
3 tary participation in radiation experiments; and

4 (8) the Federal Government should assume re-
5 sponsibility for the harm caused by its actions re-
6 garding the experiments.

7 (b) PURPOSE.—It is the purpose of this Act to estab-
8 lish a procedure to make partial restitution to the individ-
9 uals described in subsection (a) for the burdens they have
10 borne for the Nation as a whole, although monetary com-
11 pensation can never fully compensate them.

12 (c) APOLOGY.—The Congress apologizes on behalf of
13 the Nation to the individuals described in subsection (a)
14 and their families for the hardships they have endured be-
15 cause of the experiments described in subsection (a).

16 **SEC. 3. TRUST FUND.**

17 (a) ESTABLISHMENT.—There is established in the
18 Treasury of the United States a trust fund to be known
19 as the “Radiation Experimentation Compensation Trust
20 Fund” (in this Act referred to as the “Fund”), which shall
21 be administered by the Secretary of the Treasury.

22 (b) INVESTMENT OF AMOUNTS IN FUND.—Amounts
23 in the Fund shall be invested in accordance with section
24 9702 of title 31, United States Code, and any interest on,

1 and proceeds from, any such investment shall be credited
2 to and become a part of the Fund.

3 (c) AVAILABILITY OF FUND.—Amounts in the Fund
4 shall be available only for disbursement by the Attorney
5 General under section 5.

6 (d) TERMINATION.—

7 (1) TIME OF TERMINATION.—The Fund shall
8 terminate not later than the earlier of—

9 (A) the date on which the amount author-
10 ized to be appropriated to the Fund by sub-
11 section (e), and any income earned on such
12 amount, have been expended from the Fund; or

13 (B) 22 years after the date of the enact-
14 ment of this Act.

15 (2) AMOUNTS REMAINING IN FUND.—At the
16 end of the 22-year period referred to in paragraph
17 (1)(B), if all of the amounts in the Fund have not
18 been expended, investments of amounts in the Fund
19 shall be liquidated, the receipts of such liquidation
20 shall be deposited in the Fund, and all funds re-
21 maining in the Fund shall be deposited in the mis-
22 cellaneous receipts account in the Treasury.

23 (e) AUTHORIZATION OF APPROPRIATIONS.—There
24 are authorized to be appropriated to the Fund
25 \$100,000,000. Any amount appropriated pursuant to this

1 subsection is authorized to remain available until ex-
2 pended.

3 **SEC. 4. CLAIMS ELIGIBLE FOR PAYMENT.**

4 (a) IN GENERAL.—Any individual who, without the
5 individual’s informed consent, was intentionally exposed to
6 radiation as a subject in an experiment of the Federal
7 Government at any time during the period beginning on
8 January 1, 1940, and ending on December 31, 1974, shall
9 receive \$50,000 if—

10 (1) a claim for such payment is filed with the
11 Attorney General by or on behalf of such individual;
12 and

13 (2) the Attorney General determines, in accord-
14 ance with section 5(b), that the claim meets the re-
15 quirements of this Act.

16 (b) DEFINITIONS.—For purposes of this section:

17 (1) The term “experiment” means a test or
18 other action that is conducted primarily for research
19 purposes to determine the effect of exposure to radi-
20 ation on the human body.

21 (2) The term “exposed to radiation” means
22 caused to come into contact with any radioactive
23 substance or material by means including, but not
24 limited to, injection, ingestion, inhalation, or pre-

1 scription of, or skin exposure to, any radioactive
2 substance or material.

3 (3) The term “Federal Government” means—

4 (A) the legislative, judicial, or executive
5 branch of the government of the United States,
6 or any agency or instrumentality of such a
7 branch;

8 (B) any person or entity whose actions re-
9 garding an experiment under which humans
10 were exposed to radiation were funded in any
11 manner, approved, authorized, supervised, or
12 contracted for, by an entity referred to in sub-
13 paragraph (A); or

14 (C) any person or entity that was funded
15 in any manner, approved, authorized, super-
16 vised, or contracted with, wholly or partially, by
17 an entity referred to in subparagraph (A) dur-
18 ing a time period in which an entity referred to
19 in subparagraph (A) had knowledge that such
20 person or entity was conducting any experiment
21 under which humans were exposed to radiation.

22 (4) The term “informed consent” means con-
23 sent by an individual (or the individual’s parent or
24 legal guardian, in the case of an individual who was
25 a minor or was incompetent at the relevant time), to

1 the individual's participation in an experiment, after
2 a full disclosure of the nature and purpose of the ex-
3 periment and its possible consequences that was suf-
4 ficient to allow the individual (or the individual's
5 parent or legal guardian, in the case of an individual
6 who was a minor or was incompetent at the relevant
7 time) to intelligently exercise judgment to decide
8 whether the individual should participate in the ex-
9 periment.

10 **SEC. 5. DETERMINATION AND PAYMENT OF CLAIMS.**

11 (a) ESTABLISHMENT OF FILING PROCEDURES.—The
12 Attorney General shall establish procedures under which
13 individuals may submit claims for payments under this
14 Act.

15 (b) DETERMINATION OF CLAIMS.—For each claim
16 filed under this Act, the Attorney General shall determine
17 whether the claim meets the requirements of section 4(a).

18 (c) PAYMENT OF CLAIMS.—

19 (1) IN GENERAL.—The Attorney General shall
20 pay, from amounts available in the Fund, each claim
21 that the Attorney General determines meets the re-
22 quirements of this Act.

23 (2) OFFSET OF PAYMENT.—

24 (A) OFFSET OF PAYMENT MADE UNDER
25 THIS ACT.—A payment under this Act to or on

1 behalf of an individual described in section 4(a)
2 shall be offset by the amount of any payment
3 made to or on behalf of the individual pursuant
4 to a final award or settlement on a claim (other
5 than a claim for worker's compensation)
6 against any person, that is based on the individ-
7 ual's participation in an experiment that is the
8 basis for the payment under this Act, including
9 any payment under the Radiation Exposure
10 Compensation Act (42 U.S.C. 2210 note).

11 (B) OFFSET OF PAYMENT MADE UNDER
12 RADIATION EXPOSURE COMPENSATION ACT.—
13 For purposes of section 6(c)(2) of the Radiation
14 Exposure Compensation Act (42 U.S.C. 2210
15 note), a payment made under this Act shall be
16 considered to be a final award or settlement on
17 a claim described in subparagraphs (A) and (B)
18 of such section.

19 (3) RIGHT OF SUBROGATION.—Upon payment
20 of a claim under this section, the Federal Govern-
21 ment is subrogated, for the amount of the payment,
22 to a right or claim that the individual to whom the
23 payment was made may have against any person on
24 account of participation in an experiment that is the
25 basis for the payment made under this Act.

1 (4) PAYMENTS IN CASE OF DECEASED PER-
2 SONS.—

3 (A) IN GENERAL.—In the case of an indi-
4 vidual who is deceased at the time of payment
5 under this section, such payment may be made
6 only as follows:

7 (i) If the individual is survived by a
8 spouse who is living at the time of pay-
9 ment, such payment shall be made to such
10 surviving spouse.

11 (ii) If the individual is not survived by
12 a spouse described in clause (i), such pay-
13 ment shall be made in equal shares to the
14 children of the individual who are living at
15 the time of payment.

16 (iii) If the individual is not survived
17 by a person described in clause (i) or (ii),
18 such payment shall be made in equal
19 shares to the parents of the individual who
20 are living at the time of payment.

21 (iv) If the individual is not survived
22 by a person described in any of clauses (i)
23 through (iii), such payment shall be made
24 in equal shares to the grandchildren of the

1 individual who are living at the time of
2 payment.

3 (v) If the individual is not survived by
4 a person described in any of clauses (i)
5 through (iv), such payment shall be made
6 in equal shares to the siblings of the indi-
7 vidual who are living at the time of pay-
8 ment.

9 (vi) If the individual is not survived
10 by a person described in any of clauses (i)
11 through (v), then such payment shall be
12 made in equal shares to the grandparents
13 of the individual who are living at the time
14 of payment.

15 (B) FILING OF CLAIM BY SURVIVOR.—If
16 an individual eligible for payment under this
17 Act dies before filing a claim under this Act, a
18 survivor of the individual who may receive pay-
19 ment under subparagraph (A) may file a claim
20 for such payment on the individual's behalf.

21 (C) DEFINITIONS.—For purposes of this
22 paragraph:

23 (i) The term “child” includes a recog-
24 nized natural child, a stepchild who lived

1 with an individual in a regular parent-child
2 relationship, and an adopted child.

3 (ii) The term “grandchild of the indi-
4 vidual” means a child of a child of the in-
5 dividual.

6 (iii) The term “grandparent of the in-
7 dividual” means a parent of a parent of
8 the individual.

9 (iv) The term “parent” includes fa-
10 thers and mothers through adoption.

11 (v) The term “sibling of the individ-
12 ual” means a child of the parent or par-
13 ents of the individual.

14 (vi) The term “spouse” means a per-
15 son who was married to the relevant indi-
16 vidual for at least the 12 months imme-
17 diately preceding the death of the individ-
18 ual.

19 (d) ACTION ON CLAIMS.—Within 18 months after the
20 filing of any claim under this Act—

21 (1) the Attorney General shall make the deter-
22 mination required by subsection (b) regarding the
23 claim; and

24 (2) if the claim is determined to meet the re-
25 quirements of section 4(a), the Attorney General

1 shall make the payment required by subsection
2 (c)(1).

3 (e) SETTLEMENT IN FULL OF CLAIMS AGAINST
4 UNITED STATES.—Payment under this Act, when accept-
5 ed by an individual, or the individual’s survivors, shall be
6 in full satisfaction of all claims of or on behalf of the indi-
7 vidual against the United States that arise out of the par-
8 ticipation in the experiment that is the basis for the pay-
9 ment made under this Act.

10 (f) ADMINISTRATIVE COSTS NOT DEDUCTED FROM
11 PAYMENT.—No costs incurred by the Attorney General in
12 carrying out this Act may be paid from, set off against,
13 or otherwise deducted from any payment made under sub-
14 section (c)(1).

15 (g) TERMINATION OF DUTIES OF ATTORNEY GEN-
16 ERAL.—The duties of the Attorney General under this sec-
17 tion shall cease when the Fund terminates.

18 (h) TREATMENT OF PAYMENTS UNDER OTHER
19 LAWS.—A payment under subsection (c)(1) to an individ-
20 ual—

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

24 (2) shall not be considered as income or re-
25 sources for purposes of determining the individual’s

1 eligibility to receive benefits described in section
2 3803(c)(2)(C) of title 31, United States Code, or the
3 amount of such benefits.

4 (i) USE OF EXISTING RESOURCES.—The Attorney
5 General should, to the extent available, use funds and re-
6 sources available to the Attorney General to carry out the
7 Attorney General’s functions under this Act.

8 (j) REGULATORY AUTHORITY.—The Attorney Gen-
9 eral may issue regulations necessary to carry out this Act.

10 (k) ISSUANCE OF REGULATIONS AND PROCE-
11 DURES.—The initial regulations and procedures to carry
12 out this Act shall be issued not later than 120 days after
13 the date of the enactment of this Act.

14 (l) JUDICIAL REVIEW.—An individual whose claim
15 for compensation under this Act is denied may seek initial
16 judicial review solely in a district court of the United
17 States. The court shall review the denial on the adminis-
18 trative record and shall hold unlawful and set aside the
19 denial if it is arbitrary, capricious, an abuse of discretion,
20 or otherwise not in accordance with law. Such an individ-
21 ual may appeal the decision of the district court to the
22 appropriate higher Federal courts.

23 **SEC. 6. CLAIMS NOT ASSIGNABLE OR TRANSFERABLE.**

24 No claim under this Act shall be assignable or trans-
25 ferable.

1 **SEC. 7. LIMITATION ON CLAIMS.**

2 An individual, or the individual's survivors, may not
3 receive payment under section 5(c)(1) unless a claim by
4 or on behalf of the individual is filed under this Act within
5 20 years after the date of the enactment of this Act.

6 **SEC. 8. ATTORNEY OR AGENT FEES.**

7 The agent, attorney, or other representative of an in-
8 dividual or of an individual's survivor may not receive, for
9 services rendered in connection with a claim made under
10 this Act, an amount equal to more than 10 percent of the
11 payment made under this Act on such claim. Any person
12 who violates this section shall be guilty of an infraction
13 and shall be subject to a fine in the amount provided in
14 title 18, United States Code.

15 **SEC. 9. CERTAIN CLAIMS NOT AFFECTED BY PAYMENT.**

16 A payment made under section 5(c)(1) shall not be
17 considered a form of compensation, or reimbursement for
18 a loss, for purposes of imposing liability on the individual
19 who receives the payment to repay any insurance carrier
20 for insurance payments, or to repay any person on account
21 of worker's compensation payments. A payment under this
22 Act shall not affect any claim against an insurance carrier
23 with respect to insurance, or against any person with re-
24 spect to worker's compensation.

1 **SEC. 10. BUDGET COMPLIANCE.**

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

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