

Calendar No. 655

109TH CONGRESS
2D SESSION**S. 3982**

To amend the Public Health Service Act to provide assured compensation for first responders injured by experimental vaccines and drugs.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28, 2006

Mr. KENNEDY introduced the following bill; which was read the first time

SEPTEMBER 30 (legislative day, SEPTEMBER 29), 2006

Read the second time and placed on the calendar

A BILL

To amend the Public Health Service Act to provide assured compensation for first responders injured by experimental vaccines and drugs.

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 “Assured Compensation
5 for First Responders Act”.

1 **SEC. 2. ASSURED COMPENSATION FOR FIRST RESPONDERS**
 2 **INJURED BY EXPERIMENTAL VACCINES AND**
 3 **DRUGS.**

4 (a) REPEAL.—The Public Readiness and Emergency
 5 Preparedness Act (division C of the Department of De-
 6 fense, Emergency Supplemental Appropriations to Ad-
 7 dress Hurricanes in the Gulf of Mexico, and Pandemic In-
 8 fluenza Act, 2006 (Public Law 109–148)) is repealed.

9 (b) NATIONAL BIODEFENSE INJURY COMPENSATION
 10 PROGRAM.—

11 (1) ESTABLISHMENT.—Section 224 of the Pub-
 12 lic Health Service Act (42 U.S.C. 233) is amended
 13 by adding at the end the following:

14 “(q) BIODEFENSE INJURY COMPENSATION PRO-
 15 GRAM.—

16 “(1) ESTABLISHMENT.—There is established
 17 the Biodefense Injury Compensation Program (re-
 18 ferred to in this subsection as the ‘Compensation
 19 Program’) under which compensation may be paid
 20 for death or any injury, illness, disability, or condi-
 21 tion that is likely (based on best available evidence)
 22 to have been caused by the administration of a cov-
 23 ered countermeasure to an individual pursuant to a
 24 declaration under subsection (p)(2).

25 “(2) ADMINISTRATION AND INTERPRETA-
 26 TION.—The statutory provisions governing the Com-

1 pensation Program shall be administered and inter-
2 preted in consideration of the program goals de-
3 scribed in paragraph (4)(B)(iii).

4 “(3) PROCEDURES AND STANDARDS.—The Sec-
5 retary shall by regulation establish procedures and
6 standards applicable to the Compensation Program
7 that follow the procedures and standards applicable
8 under the National Vaccine Injury Compensation
9 Program established under section 2110, except that
10 the regulations promulgated under this paragraph
11 shall permit a person claiming injury or death re-
12 lated to the administration of any covered counter-
13 measure to file either—

14 “(A) a civil action for relief under sub-
15 section (p); or

16 “(B) a petition for compensation under
17 this subsection.

18 “(4) INJURY TABLE.—

19 “(A) INCLUSION.—For purposes of receiv-
20 ing compensation under the Compensation Pro-
21 gram with respect to a countermeasure that is
22 the subject of a declaration under subsection
23 (p)(2), the Vaccine Injury Table under section
24 2114 shall be deemed to include death and the
25 injuries, disabilities, illnesses, and conditions

1 specified by the Secretary under subparagraph
2 (B)(ii).

3 “(B) INJURIES, DISABILITIES, ILLNESSES,
4 AND CONDITIONS.—

5 “(i) INSTITUTE OF MEDICINE.—Not
6 later than 30 days after making a declara-
7 tion described in subsection (p)(2), the
8 Secretary shall enter into a contract with
9 the Institute of Medicine, under which the
10 Institute shall, within 180 days of the date
11 on which the contract is entered into, and
12 periodically thereafter as new information,
13 including information derived from the
14 monitoring of those who were administered
15 the countermeasure, becomes available,
16 provide its expert recommendations on the
17 injuries, disabilities, illnesses, and condi-
18 tions whose occurrence in one or more in-
19 dividuals are likely (based on best available
20 evidence) to have been caused by the ad-
21 ministration of a countermeasure that is
22 the subject of the declaration.

23 “(ii) SPECIFICATION BY SEC-
24 RETARY.—Not later than 30 days after the
25 receipt of the expert recommendations de-

1 scribed in clause (i), the Secretary shall,
2 based on such recommendations, specify
3 those injuries, disabilities, illnesses, and
4 conditions deemed to be included in the
5 Vaccine Injury Table under section 2114
6 for the purposes described in subparagraph
7 (A).

8 “(iii) PROGRAM GOALS.—The Insti-
9 tute of Medicine, under the contract under
10 clause (i), shall make such recommenda-
11 tions, the Secretary shall specify, under
12 clause (ii), such injuries, disabilities, ill-
13 nesses, and conditions, and claims under
14 the Compensation Program under this sub-
15 section shall be processed and decided tak-
16 ing into account the following goals of such
17 program:

18 “(I) To encourage persons to de-
19 velop, manufacture, and distribute
20 countermeasures, and to administer
21 covered countermeasures to individ-
22 uals, by limiting such persons’ liability
23 for damages related to death and such
24 injuries, disabilities, illnesses, and
25 conditions.

1 “(II) To encourage individuals to
2 consent to the administration of a
3 covered countermeasure by providing
4 adequate and just compensation for
5 damages related to death and such in-
6 juries, disabilities, illnesses, or condi-
7 tions.

8 “(III) To provide individuals
9 seeking compensation for damages re-
10 lated to the administration of a coun-
11 termeasure with a non-adversarial ad-
12 ministrative process for obtaining ade-
13 quate and just compensation.

14 “(iv) USE OF BEST AVAILABLE EVI-
15 DENCE.—The Institute of Medicine, under
16 the contract under clause (i), shall make
17 such recommendations, the Secretary shall
18 specify, under clause (ii), such injuries,
19 disabilities, illnesses, and conditions, and
20 claims under the Compensation Program
21 under this subsection shall be processed
22 and decided using the best available evi-
23 dence, including information from adverse
24 event reporting or other monitoring of
25 those individuals who were administered

1 the countermeasure, whether evidence from
 2 clinical trials or other scientific studies in
 3 humans is available.

4 “(v) APPLICATION OF SECTION
 5 2115.—With respect to section 2115(a)(2)
 6 as applied for purposes of this subsection,
 7 an award for the estate of the deceased
 8 shall be—

9 “(I) if the deceased was under
 10 the age of 18, an amount equal to the
 11 amount that may be paid to a sur-
 12 vivor or survivors as death benefits
 13 under the Public Safety Officers’ Ben-
 14 efits Program under subpart 1 of part
 15 L of title I of the Omnibus Crime
 16 Control and Safe Streets Act of 1968
 17 (42 U.S.C. 3796 et seq.); or

18 “(II) if the deceased was 18
 19 years of age or older, the greater of—

20 “(aa) the amount described
 21 in subclause (I); or

22 “(bb) the projected loss of
 23 employment income, except that
 24 the amount under this item may
 25 not exceed an amount equal to

1 400 percent of the amount that
2 applies under item (aa).

3 “(vi) APPLICATION OF SECTION
4 2116.—Section 2116(b) shall apply to in-
5 juries, disabilities, illnesses, and conditions
6 initially specified or revised by the Sec-
7 retary under clause (ii), except that the ex-
8 ceptions contained in paragraphs (1) and
9 (2) of such section shall not apply.

10 “(C) RULE OF CONSTRUCTION.—Section
11 13632 (a)(3) of Public Law 103–66 (107 Stat.
12 646) (making revisions by Secretary to the Vac-
13 cine Injury Table effective on the effective date
14 of a corresponding tax) shall not be construed
15 to apply to any revision to the Vaccine Injury
16 Table made under regulations under this para-
17 graph.

18 “(5) APPLICATION.—The Compensation Pro-
19 gram applies to any death or injury, illness, dis-
20 ability, or condition that is likely (based on best
21 available evidence) to have been caused by the ad-
22 ministration of a covered countermeasure to an indi-
23 vidual pursuant to a declaration under subsection
24 (p)(2).

25 “(6) SPECIAL MASTERS.—

1 “(A) HIRING.—In accordance with section
2 2112, the judges of the United States Claims
3 Court shall appoint a sufficient number of spe-
4 cial masters to address claims for compensation
5 under this subsection.

6 “(B) BUDGET AUTHORITY.—There are ap-
7 propriated to carry out this subsection such
8 sums as may be necessary for fiscal year 2006
9 and each fiscal year thereafter. This subpara-
10 graph constitutes budget authority in advance
11 of appropriations and represents the obligation
12 of the Federal Government.

13 “(7) COVERED COUNTERMEASURE.—For pur-
14 poses of this subsection, the term ‘covered counter-
15 measure’ has the meaning given to such term in sub-
16 section (p)(7)(A).

17 “(8) FUNDING.—Compensation made under the
18 Compensation Program shall be made from the same
19 source of funds as payments made under subsection
20 (p).”.

21 “(2) EFFECTIVE DATE.—This subsection shall
22 take effect as of November 25, 2002 (the date of en-
23 actment of the Homeland Security Act of 2002
24 (Public Law 107–296; 116 Stat. 2135)).

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