

COMMITTEE SUBSTITUTE
FOR
H. B. 1228

(By MR. TUCKER and MR. HUTCHINSON)

(Originating in the Committee on the Judiciary)

A BILL to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-eight, relating to reports concerning veterans who may have been exposed to certain chemical defoliants or herbicides or other causative agents and assistance to those veterans; providing definitions; reports made to West Virginia state department of health; reports by department of health; confidentiality of reports; physician or hospital to be immune from civil or criminal liability; attorney general authorized to represent veterans in class action suit; institution of assistance programs authorized if funding is available; providing dates for application by

EXHIBIT B

veterans; and termination of programs and duties of the department of health.

Be it enacted by the Legislature of West Virginia:

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article twenty-eight, to read as follows:

ARTICLE 28. AGENT ORANGE CLAIMS.

§16-28-1. Definitions.

1 In this article:

2 (a) "Veteran" means a person who was a resident of this
3 state at the time of his induction into the armed forces of
4 the United States of America, or was a resident of this
5 state as of the thirty-first day of March, one thousand nine
6 hundred eighty-one, who served in Vietnam, Cambodia, or
7 Laos during the Vietnam conflict.

8 (b) "Agent Orange" means the herbicide composed pri-
9 marily of trichlorophenoryacetic acid and dishlorophenorya-
10 cetic.

11 (c) "Department" means the West Virginia department of
12 health.

§16-28-2. Reports to the department.

1 (a) A physician who has primary responsibility for treat-
2 ing a veteran who believes he may have been exposed to
3 chemical defoliants or herbicides or other causative agents,
4 including agent orange, while serving in the armed forces of
5 the United States, shall, at the request of the veteran, sub-
6 mit a report to the department on a form provided by the
7 department. If there is no physician having primary respon-
8 sibility for treating the veteran, the hospital treating the veteran
9 shall, at the request of the veteran, submit the report to the
10 department.

11 (b) The form provided by the department to the physician
12 shall request the following information:

13 (1) Symptoms of the veteran which may be related to ex-
14 posure to a chemical defoliant or herbicide or other causative
15 agent, including agent orange;

16 (2) Diagnosis of the veteran; and

17 (3) Methods of treatment prescribed.

18 (c) The department may require the veteran to provide
19 such other information as determined by the director.

§16-28-3. Reports by the department.

1 (a) The department, in consultation and cooperation with

2 a certified medical toxicologist, shall compile and evaluate
3 information submitted under this article into a report to be
4 distributed annually to members of the Legislature and to
5 the department of veterans affairs and other veterans' groups.
6 The report shall contain current research findings on the
7 effects of exposure to chemical defoliants or herbicides or
8 other causative agents, including agent orange, and statistical
9 information compiled from reports submitted by physicians
10 or hospitals.

11 (b) The department, in consultation and cooperation with
12 a certified medical toxicologist, shall conduct epidemiological
13 studies on veterans who have cancer or other medical prob-
14 lems associated with exposure to a chemical defoliant or
15 herbicide or any other causative agent, including agent orange,
16 or who have children born with birth defects after the veter-
17 ans' suspected exposure to a chemical defoliant or herbicide
18 or any other causative agent, including agent orange. The
19 department must obtain consent from each veteran to be
20 studied under this subsection. The department shall compile
21 and evaluate information obtained from these studies into
22 a report to be distributed as provided by subsection (a) of

23 this section.

§16-28-4. Confidentiality.

1 The identity of a veteran about whom a report has been
2 made under section two or three of this article may not be
3 disclosed unless the veteran consents to the disclosure. Sta-
4 tistical information collected under this article is public in-
5 formation.

§16-28-5. Immunity from liability.

1 A physician or a hospital subject to the provisions of this
2 article who complies with this article may not be held civilly
3 or criminally liable for providing the information required
4 by this article.

§16-28-6. Class action representation by attorney general.

1 The attorney general may represent a class of individuals
2 composed of veterans who may have been injured because
3 of contact with chemical defoliants or herbicides or other
4 causative agents, including agent orange, in a suit for re-
5 lease of information relating to exposure to such chemicals
6 during military service and for release of individual medical
7 records.

§16-28-7. Assistance programs.

1 (a) The department, to the extent the director determines
2 that there are funds available under current funding, and the
3 West Virginia University school of medicine, to the extent
4 that the dean determines that there are funds available under
5 current funding, and the Marshall University school of medi-
6 cine, to the extent that the dean determines that there are
7 funds available under current funding, shall institute a co-
8 operative program to:

9 (1) Refer veterans to appropriate state and federal agencies
10 for the purpose of filing claims to remedy medical and
11 financial problems caused by the veterans' exposure to chemi-
12 cal defoliants or herbicides or other causative agents, including
13 agent orange; and

14 (2) Provide veterans with fat tissue biopsies, genetic coun-
15 seling and genetic screening to determine if the veteran has
16 suffered physical damage as a result of substantial exposure to
17 chemical defoliants or herbicides or other causative agents,
18 including agent orange.

19 (b) The director of the department of health shall adopt
20 rules necessary to the administration of the programs autho-
21 rized by this section.

§16-28-8. Application.

1 Sections two and three of this article apply to all cases
2 of veterans treated on or after the first day of January,
3 one thousand nine hundred eighty-two, for symptoms typical
4 of a person who has been exposed to a chemical defoliant
5 or herbicide or any other causative agent, including agent
6 orange. Sections six and seven of this article apply to all
7 veterans.

§16-28-9. Termination of programs and duties.

1 If the director of the department of health determines that
2 an agency of the federal government is performing the referral
3 and screening functions required by section seven of this
4 article, the director may discontinue any program required
5 by this article or any duty required of a physician or hos-
6 pital under this article.

NOTE: The purpose of this bill is to assist Vietnam veterans in making claims for exposure to chemical defoliants or herbicides such as Agent Orange.