

APPROVED AND SIGNED BY THE GOVERNOR

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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1982

— ● —

# ENROLLED

*Committee Substitute for*  
HOUSE BILL No. *1228*

(By Mr. *Tucker & Mr. Hutchinson*)

— ● —

Passed *March 13,* 1982

In Effect *ninety days from* Passage



**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**  
**H. B. 1228**  
**(By MR. TUCKER and MR. HUTCHINSON)**

[Passed March 13, 1982; in effect ninety days from passage.]

AN ACT 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 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. ASSISTANCE TO KOREAN AND VIETNAM VETERANS  
EXPOSED TO CERTAIN CHEMICAL DEFOLIANTS  
OR HERBICIDES OR OTHER CAUSATIVE AGENTS,  
INCLUDING AGENT ORANGE.**

**§16-28-1. Definitions.**

1 As used in this article, unless otherwise indicated by the  
2 context:

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

10 (2) "Agent orange" means the herbicide composed pri-  
11 marily of trichlorophenoxyacetic acid and dichlorophenoxy-  
12 acetic acid;

13 (3) "Department" means the West Virginia department of  
14 health; and

15 (4) "Director" means the director of the department of  
16 health.

**§16-28-2. Reports to the department of health.**

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; studies on veterans; consent required.**

1 (a) The department, in consultation and cooperation with  
2 a board-certified medical toxicologist, shall compile and evalu-  
3 ate information submitted under this article into a report to be  
4 distributed annually to members of the Legislature and to the  
5 veterans administration, the West Virginia Department of  
6 Veterans Affairs, and other veterans' groups. The report shall  
7 contain current research findings on the effects of exposure to  
8 chemical defoliants or herbicides or other causative agents,  
9 including agent orange, and statistical information compiled  
10 from reports submitted by physicians or hospitals.

11 (b) The department, in consultation and cooperation with a  
12 board-certified medical toxicologist, shall conduct epidemiolog-  
13 ical 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 this article who com-  
2 plies with this article may not be held civilly or criminally  
3 liable for providing the information required.

**§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 of health, the West Virginia Univer-  
2 sity school of medicine, the Marshall University school of  
3 medicine, and the West Virginia school of osteopathic medi-  
4 cine, shall institute a cooperative program to:

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

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

15 (b) The director of the department of health shall adopt  
16 rules necessary to the administration of the programs autho-  
17 rized by this section.

**§16-28-8. Application.**

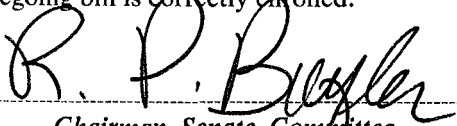
1 Sections two and three of this article apply to all cases  
2 of veterans treated on or after the first day of January,

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.


The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

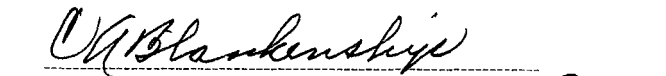

  
Chairman Senate Committee


  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

  
Clerk of the Senate

  
Clerk of the House of Delegates  
  
President of the Senate

  
Speaker House of Delegates

The within enrolled this the 23  
day of March, 1982.

  
Governor

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