

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 3743

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

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IN THE HOUSE OF REPRESENTATIVES

JANUARY 26, 1994

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

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## 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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