

Diabolical Vaccine Law Proposed



Dawn Richardson from PROVE provided the following request:

Last month we asked you to write letters to your Congressional Senators to oppose the diabolical Frist Bill (S 2053) which completely exempts vaccine manufacturers from any liability and creates many other problems for the vaccine injured.

Well, recess has come and gone, and not only is it back, but it is multiplying and has a House companion bill HR 5282.

Please write to your Congressional Representative by linking to <http://www.house.gov/writerep/> urging him or her to DEFEAT HR 5282 and instead, support the Congressman Burton and Waxman's HR 3741!

You could even cut and paste the supporting documentation below into your note. If you can take a few extra minutes and contact the committee chairs listed below also, that would go a long way to derailing this monster.

If you are really feeling spunky, you could even save a copy of your letter to your Representative and get it to your local newspaper and encourage them to do a story on this. Politicians who make policy decisions based on political contributions often change their tune and respond when they know the public is watching.

Thank you Jeff Sell for putting this together for us.

Sincerely, Dawn Richardson, [PROVE](#)

HR 5282 By the Numbers...Again

Representative James Greenwood (R-PA) has introduced the "Improved Vaccine Affordability and Availability Act" or HR 5282, to amend the National Vaccine Injury Compensation Program ("Program"). While undoing every gain that petitioners' families have made over the past several years, HR5282 also represents an attack on the very spirit of the Vaccine Program as it sacrifices the best interests of our children for the sake of protecting the vaccine manufacturers.

Unlike its counterpart bill in the House of Representatives, HR 3741, the Frist amendment in the Senate does little if anything to protect or defend, let alone extend the rights of children in this country who have been injured by their recommended childhood vaccinations. Rather, it is determined, almost cynical, in its apparent disregard of those rights. This week he changed HR 5282 again, and launches a new and improved assault, not only on the children of this country, but their families too. While nearly every section of the amendment is disheartening, several sections stand out. The latest version is contrasted below.

Reducing Public Awareness

SEC. 201: Administrative Revision of the Vaccine Injury Table HR 5282 cuts in half the time allowed for public comment (from 180 days to 90 days) when a change in the Vaccine Injury Table is proposed. It further eliminates the Secretary of HHS' obligation to hold a public hearing on the issue.

The effect is to drastically reduce the already scant public awareness of this Program, and thus, limit the number of potential petitioners. In this new version, Frist further reduces the time allowed for the public's input to a mere 60 days. Again, the effect is a drastic reduction in public awareness, and the public's ability to challenge these changes.

Removing All "OPT-OUT" Actions

SEC. 202: Equitable Relief HR 5282 begins, here in Sec. 202, the first of its several-pronged attack, and ultimately, elimination of, the various forms of civil actions currently ongoing throughout the country, including the class actions seeking medical monitoring. By including the language "equitable relief" in the damages or awards sought section, HR 5282 clearly removes the possibility of civil suits seeking medical monitoring, or other, non-monetary awards. Medical monitoring suits are specifically eliminated in SEC. 214. The effect of this provision, along with Sections 203-204 and 214-217 is to make sure that anyone with an injury from a vaccine MUST go through the Program first.

A new twist was added with this latest version. With the addition of the "past injury" concept, Frist manages to pull a whole new class of injured into the Program as well. Whether your injury is past or present - you MUST GO THROUGH THE PROGRAM. This concept is carried throughout the changes. Again, everyone must go through the Program.

SEC. 203: Parent, Legal Guardian or Spouse Petitions for Compensation HR 5282 eliminates parental claims for loss of consortium, society, companionship or services, loss of earnings, medical or other expenses, and emotional distress until after a claim has been made through the Program.

The effect of this provision is to, again, make sure everyone has to go through the Program first, and eliminates another form of the civil suits ongoing across the country. An added boost to the manufacturers here - while the bill had originally forced parents to wait until the child's claim had been filed in the Program, now the child MUST ALSO PREVAIL on his claim and be awarded compensation.

Then the Parent must file a newly-created "derivative" petition within 60 days of the final judgment of the child's case AND get their OWN judgment (or have elected to withdraw their derivative petition). But here's the real catch - if the child wins AND accepts the award...the parents, legal guardians, and spouses, are BLOCKED from filing civil suits. As for the parents' judgments in a derivative suit - they are capped at the lesser of \$250,000 or the equal of the child's awarded compensation. HR 5282 then creates a new group of those "eligible to file": Parents, legal guardians or spouses. This group may file derivative petitions, which requires the following:

1. An affidavit, and supporting documentation, demonstrating that: a. the child was previously awarded compensation in a final judgment b. the derivative petition was filed NOT LATER THAN 60 days after the date which the child's judgment became final c. the parent suffered a loss compensable under section 2115(b) i.e. lost earnings, pain & suffering & attorneys fees, as a result of the vaccine-related injury or death sustained by such child, AND d. such parent has not previously collected an award or settlement of a civil action.

SEC. 214: Clarification of Standards of Responsibility HR 5282 requires, in this section, a "present physical injury", preventing any actions for medical monitoring. The section further specifically adds the "equitable relief" language and eliminates actions for claims of "medical monitoring, or increased risk of harm". He adds "past physical injury".

SEC'S. 215-217: Clarification of Definitions of Manufacturer, Vaccine-Related Injury or Death and Vaccine HR 5282 in these three sections, affirmatively states that an "adulterant or contaminant shall

not include any component or ingredient listed in a vaccine's product license application or product label." The purpose of these clarifications is to eliminate the legal theory that Thimerosal is a contaminant or adulterant.

SEC. 204: Jurisdiction to Dismiss Actions Improperly Brought HR 5282 gives the manufacturers the right to remove to the US Court of Federal Claims any civil action against the manufacturer, brought by a family without first going through the Program, and requires the USCFC to dismiss the action.

SEC. 204 works in tandem with 202-203 and 214-217 in preventing direct actions against the manufacturers. With parental claims, medical monitoring and Thimerosal as adulterant representing the only options for families outside of the Program, the bill acts as a three strikes and you're "in" bill, effectively preventing any direct action against a vaccine manufacturer without first going through the Program. The bill adds the derivative petitioners here - parental, legal guardian, and spousal claims
MAY BE REMOVED AND DISMISSED.

Strengthening Goliath's Position

SEC. 206: Clarification of When Injury is Caused By Factors Unrelated to Administration of Vaccine HR 5282 gives the Government additional weapons in its arsenal to knock down petitioners' arguments and ultimately deny claims. It does so by creating "new" causes for the injury that HR 5282 deems "unrelated" to the vaccine. This provision now gives the government the power to deny compensation if a child has any structural lesion, genetic abnormality, toxin, infection, trauma, or metabolic disturbance, **AND THE GOVERNMENT DOESN'T EVEN HAVE TO PROVE THE CAUSE OF THESE FACTORS OR THAT THEY ARE POTENTIAL CAUSES OF THE INJURY ALLEGED.** The absurdity of this is evident.

Obviously, there are genetic and other differences in children that explain why some children react to a vaccine and some do not. If that were not the case, then every child would react identically. This section will have the effect of denying compensation for most children who file in this program.

Weakening David's Position

SEC. 208: Basis for Calculating Projected Lost Earnings HR 5282 destroys Petitioners' hard-fought and grudgingly conceded progress in getting realistic and "real world" compensation for injured children. The amendment reinforces the Program's original language and gives the Secretary of HHS the sole right to determine what is an "appropriate" formula for determining projected lost earnings.

In the past this "discretion" has led to the absurd and contradictory result of injured children's projected earnings being reduced by Social Security taxes, though they will never work and pay into Social Security, **AND** being reduced by the **FULL COST OF A HEALTH INSURANCE POLICY** (sometimes thousands of dollars) despite the fact that "average" workers are **NOT** responsible for the full cost, but rather a sharply reduced amount as their employer pays the balance. It has further allowed the Government to selectively use data from the Bureau of Labor Statistics while refusing to provide Petitioners with data.

Other Key Points

HR 5282 fails to provide a "look back" provision, as in HR 3741 that will allow hundreds of families to exercise their rights under the Program. HR 5282 fails to extend the statute of limitations for death cases - death cases must still be filed within two years of the date of death. HR 5282 fails to provide for interim attorneys fees. The families of injured children have a right to effective counsel.

The children injured by vaccines face an adversary of nearly unlimited financial and scientific resources. Their cases reach levels of complexity, both medical and legal, that would rival any toxic-tort class action. Their lawyers are, in effect, pro bono representatives throughout the course of the case, often for years, and unable to meet or even approach a level playing field with the Government's lawyers. HR 5282 also FAILS to provide for interim costs with a neat semantics trick: changing his prior language of allowing interim costs (not including attorneys fees), Rep. Greenwood, in his benevolence, now says that the Special Master may award interim costs SO LONG AS THE SPECIAL MASTER OR COURT HAS DETERMINED THAT THE PETITIONER IS ENTITLED TO COMPENSATION UNDER THE PROGRAM.

The only problem is that entitlement is decided AT THE END-which is clearly NOT in the interim. HR 5282 creates a brutal and unforgiving legal battle, ostensibly in the "best interests" of injured children, strips them of their defenses and then forces them onto the field. In short, S 2053 not only bloodies the battlefield, it fails to render even basic aid to the wounded.

Other changes:

HR 5282 changes the definition of "timely resolutions of claims". For purposes of this provision the petition shall be deemed to be filed on the date on which all petition contents and supporting documents are served on the Clerk of the Court. That means that you wait out the deadline period and then withdraw the case and file civilly.

In order to file a civil suit, you have to file a complete vaccine case - not just wait out the time period. HR 5282 amends the provisions related to the Trust Fund as follows: In section 9510(c)(1) of the Internal Revenue Code by first adding the phrase "or related loss" to bring in derivative claims. It further changes the following text:

Amounts in the fund shall be available for the payment of all expenses of administration (striking 'but not in excess of \$9,500,000 for any fiscal year') incurred by the Federal Government in administering such subtitle (adding (i) 125 percent of the base amount for any fiscal year in which the total number of claims pending under such subtitle exceeds 150 percent of the average number of claims pending in the preceding 5 years, (ii) same language but for 175 percent/200 percent split, (iii) same 225 percent/250 percent, (iv) or 275 percent/300 percent.) HR 5282 now applies to all pending and subsequent actions or proceedings to the enactment date unless a court has entered judgment (regardless of whether the time to appeal has expired) in such action or proceeding disposing of the entire action or proceeding.

PLAN OF ACTION

Rep. James Greenwood (R-PA) has introduced HR 5282 in the House. This is the companion bill to the Senate version that was introduced by Sen. Bill Frist, the infamous S 2053. The House version has the same problems the the Frist Bill has so, the same analysis applies. Contact Rep. Greenwood's office if you care to comment (hint, hint).

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or by e-mail http://www.house.gov/greenwood/IMA/get_address.htm

Also, this bill may soon be taken up by the House Subcommittee on Health, Chaired by Rep. Michael Bilirakis (R-FL). Take the time to contact his office and let the Subcommittee know how you feel. Chairman Michael Bilirakis Sub-Committee on Health The Committee on Energy and Commerce 2125 Rayburn House Office Building Washington, DC 20515 (202) 225-2927 (202) 225-1919(fax) Feedback link: <http://energycommerce.house.gov/107/feedback.htm>

Also, to reach Chairman Bilirakis directly via e-mail, you need to jump through a few hoops. Go to http://www.house.gov/htbin/wrep_findrep or , if that doesn't work, go to <http://www.house.gov/bilirakis/> , then go to the E-mail Congressman Bilirakis section and type in a local zip-code such as: 34639 - 4437 and you should be able to send him an e-mail. He is difficult to reach if you don't live in his District.

PLEASE, remind them that HR 3741--the Burton/Waxman bill is preferred by all those who truly care for children.

Thank you.

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