

118TH CONGRESS
2D SESSION

H. R. 9828

To amend the Public Health Service Act to end the liability shield for vaccine manufacturers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 25, 2024

Mr. GOSAR (for himself, Ms. GREENE of Georgia, Mr. CRANE, Mr. NEHLS, Mrs. MILLER of Illinois, Ms. HAGEMAN, Ms. BOEBERT, Mr. COLLINS, Mr. MOORE of Alabama, Mr. BIGGS, Mr. GAETZ, Mr. MASSIE, Mr. HIGGINS of Louisiana, Mrs. SPARTZ, Mr. BURLISON, Mr. WEBER of Texas, Mr. BRECHEEN, Mr. NORMAN, Mr. GOOD of Virginia, Mr. OGLES, Mr. DONALDS, Mrs. LUNA, Mr. HARRIS, Mr. BURCHETT, Mr. DAVIDSON, Mr. POSEY, Mr. MILLS, Mr. ROY, Mr. SELF, Ms. MACE, and Mr. JACKSON of Texas) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Public Health Service Act to end the liability shield for vaccine manufacturers, and for other purposes.

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 “End the Vaccine
5 Carveout Act”.

1 **SEC. 2. ENDING LIABILITY SHIELD FOR VACCINE MANU-**
2 **FACTURERS.**

3 (a) NATIONAL VACCINE INJURY COMPENSATION
4 PROGRAM.—

5 (1) PETITIONS FOR COMPENSATION.—Section
6 2111 of the Public Health Service Act (42 U.S.C.
7 300aa–11) is amended—

8 (A) in subsection (a)—

9 (i) by striking paragraphs (2), (3),
10 (5), and (6);

11 (ii) by inserting after paragraph (1)
12 the following:

13 “(2) Beginning on the date of enactment of the
14 End the Vaccine Carveout Act, and subject to para-
15 graph (4)(B), irrespective of whether a person has
16 filed a petition for compensation under the Program
17 in relation to a vaccine-related injury or death, such
18 person may bring a civil action against a vaccine ad-
19 ministrator or manufacturer in a State or Federal
20 court for damages arising from such injury or
21 death.”;

22 (iii) by redesignating paragraph (4) as
23 paragraph (3);

24 (iv) by redesignating paragraphs (7)
25 through (10) as paragraphs (4) through
26 (7), respectively; and

1 (v) by amending paragraph (4) (as so
2 redesignated) to read as follows:

3 “(4)(A) If in a civil action brought against a
4 vaccine administrator or manufacturer for a vaccine-
5 related injury or death damages are awarded under
6 a judgment of a court or a settlement of such action,
7 the person who brought such action may not file a
8 petition under subsection (b) for such injury or
9 death, and any pending petition for such injury or
10 death shall be dismissed.

11 “(B) If compensation is awarded for a petition
12 filed under the Program for a vaccine-related injury
13 or death, the person who filed such petition may not
14 bring a civil action against a vaccine administrator
15 or manufacturer for such injury or death, and any
16 pending civil action for such injury or death shall be
17 dismissed.”; and

18 (B) in subsection (c)(1)(B)(i)(III), by
19 striking “not later than 6 months”.

20 (2) LIMITATIONS OF ACTIONS.—

21 (A) IN GENERAL.—Section 2116 of the
22 Public Health Service Act (42 U.S.C. 300aa-
23 16) is amended—

24 (i) in subsection (a)—

1 (I) in paragraph (2), by striking
2 “no petition may be filed for com-
3 pensation under the Program for such
4 injury after the expiration of 36
5 months after the date of the occur-
6 rence of the first symptom or mani-
7 festation of onset or of the significant
8 aggravation of such injury” and in-
9 serting “unless prohibited by section
10 2111(a)(4)(A), a petition may be filed
11 for compensation under the Program
12 for such injury at any time”; and

13 (II) in paragraph (3), by striking
14 “no petition may be filed for com-
15 pensation under the Program for such
16 death after the expiration of 24
17 months from the date of the death
18 and no such petition may be filed
19 more than 48 months after the date
20 of the occurrence of the first symptom
21 or manifestation of onset or of the
22 significant aggravation of the injury
23 from which the death resulted” and
24 inserting “unless prohibited by section
25 2111(a)(4)(A), a petition may be filed

1 for compensation under the Program
2 for such death at any time”; and

3 (ii) in subsection (b)—

4 (I) by striking “notwithstanding
5 section 2111(b)(2)” and inserting
6 “notwithstanding section 2111(b)(2),
7 and unless prohibited by section
8 2111(a)(4)(A)”;

9 (II) by striking “not later than 2
10 years after the effective date of the re-
11 vision” and inserting “at any time”;

12 (III) by striking “table if—” and
13 inserting “table if such vaccine-related
14 injury or death occurred before the ef-
15 fective date of this part.”; and

16 (IV) by striking paragraphs (1)
17 and (2).

18 (B) RETROACTIVITY.—The amendments
19 made by subparagraph (A) shall apply as if in-
20 cluded in the enactment of section 2116 of the
21 Public Health Service Act (42 U.S.C. 300aa-
22 16).

23 (3) REPEALS.—

1 (A) ELECTION.—Section 2121(a) of the
2 Public Health Service Act (42 U.S.C. 300aa–
3 21(a)) is repealed.

4 (B) STANDARDS OF RESPONSIBILITY.—
5 Section 2122 of the Public Health Service Act
6 (42 U.S.C. 300aa–22) is repealed.

7 (C) TRIAL.—Section 2123 of the Public
8 Health Service Act (42 U.S.C. 300aa–23) is re-
9 pealed.

10 (4) CONFORMING AMENDMENTS.—

11 (A) ATTORNEYS’ FEES.—Section 2115(e)
12 of the Public Health Service Act (42 U.S.C.
13 300aa–15(e)) is amended—

14 (i) by striking paragraph (2); and
15 (ii) by redesignating paragraph (3) as
16 paragraph (2).

17 (B) PAYMENT OF COMPENSATION.—Sec-
18 tion 2115(f) of the Public Health Service Act
19 (42 U.S.C. 300aa–15(f)) is amended—

20 (i) by striking paragraph (1);
21 (ii) by redesignating paragraphs (2)
22 through (4) as paragraphs (1) through (3),
23 respectively;

24 (iii) in paragraph (1) (as so redesign-
25 ated), by striking “Such compensation

1 may not be paid after an election under
2 section 2121(a) to file a civil action for
3 damages for the vaccine-related injury or
4 death for which such compensation was
5 awarded.”; and

6 (iv) in paragraph (3)(B) (as so reded-
7 ignated), by striking “If the appropriations
8 under subsection (j) are insufficient to
9 make a payment of an annual installment,
10 the limitation on civil actions prescribed by
11 section 2121(a) shall not apply to a civil
12 action for damages brought by the peti-
13 tioner entitled to the payment.”.

14 (C) STATE LIMITATIONS OF ACTIONS.—
15 Section 2116(c) of the Public Health Service
16 Act (42 U.S.C. 300aa–16(c)) is amended by
17 striking “an election is made under section
18 2121(a) to file the civil action” and inserting
19 “judgment is entered by the United States
20 Court of Federal Claims (or, if an appeal is
21 taken under section 2112(f), the appellate
22 court’s mandate is issued) with respect to the
23 petition”.

1 (D) TERMINATION OF PROGRAM.—Section
2 2134(b)(1) of the Public Health Service Act
3 (42 U.S.C. 300aa–34(b)(1)) is amended—

4 (i) by striking “and accepted under
5 section 2121(a)”;

6 (ii) by striking “Section 2111(a) and
7 part B shall not apply to civil actions for
8 damages for a vaccine-related injury or
9 death for which a petition may not be filed
10 because of subparagraph (B).”.

11 (b) EXCLUDING COVID–19 VACCINES FROM DEFINI-
12 TION OF COVERED COUNTERMEASURE.—Section 319F–
13 3(i)(1) of the Public Health Service Act (42 U.S.C. 247d–
14 6d(i)(1)) is amended to read as follows:

15 “(1) COVERED COUNTERMEASURE.—The term
16 ‘covered countermeasure’—

17 “(A) means—

18 “(i) a qualified pandemic or epidemic
19 product (as defined in paragraph (7));

20 “(ii) a security countermeasure (as
21 defined in section 319F–2(c)(1)(B));

22 “(iii) a drug (as such term is defined
23 in section 201(g)(1) of the Federal Food,
24 Drug, and Cosmetic Act (21 U.S.C.
25 321(g)(1)), biological product (as such

1 term is defined by section 351(i) of this
2 Act), or device (as such term is defined by
3 section 201(h) of the Federal Food, Drug
4 and Cosmetic Act (21 U.S.C. 321(h)) that
5 is authorized for emergency use in accord-
6 ance with section 564, 564A, or 564B of
7 the Federal Food, Drug, and Cosmetic
8 Act; or

9 “(iv) a respiratory protective device
10 that is approved by the National Institute
11 for Occupational Safety and Health under
12 part 84 of title 42, Code of Federal Regu-
13 lations (or any successor regulations), and
14 that the Secretary determines to be a pri-
15 ority for use during a public health emer-
16 gency declared under section 319; and

17 “(B) does not include any vaccine used to
18 mitigate, prevent, or treat COVID–19.”

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