

Summary and Legislative Context of 38 U.S.C. § 1103 – Tobacco-Related VA Claims Prohibition

Statutory Overview

38 U.S.C. § 1103 – Special Provisions Relating to Claims Based Upon Effects of Tobacco Products

Enacted: June 9, 1998

Public Law: 105-178, Title VIII, Subtitle G, § 8202 (Transportation Equity Act for the 21st Century)

Effective Date: Applies to claims filed after June 9, 1998

38 U.S.C. § 1103 is the federal statute that prohibits the Department of Veterans Affairs (VA) from granting service connection for disabilities or deaths resulting from the use of tobacco products during active military service. It was enacted in 1998, not 1988, as part of the Transportation Equity Act for the 21st Century (TEA-21).

Statutory Language (Summary)

- Section 1103(a): VA compensation or dependency and indemnity compensation (DIC) may not be paid if the disability or death results from a disease or injury attributable to the use of tobacco products by the veteran during service.
- Section 1103(b): The prohibition does not apply if the disease or death is otherwise service-connected, or falls under presumptive service connection provisions such as those in 38 U.S.C. §§ 1112 or 1116.

Legislative Intent

Congress enacted §1103 in response to VA Office of General Counsel opinions issued in the mid-1990s that had opened the door to large-scale compensation for tobacco-related illnesses. Lawmakers sought to prevent what they viewed as excessive liability by closing the door to new claims based solely on smoking during service.

Regulatory Implementation

The VA implemented this statute through 38 C.F.R. §3.300, which states that a disease or injury will not be considered service-connected if it is attributable to the use of tobacco products during service. The regulation mirrors the statute's language and applies to all claims received after June 9, 1998.

Key Implications

1. Grandfathered Claims – Veterans who filed tobacco-related claims before June 9, 1998, may still be eligible under prior rules.
2. Institutional Exposure Arguments – Section 1103 only restricts claims based on personal use of tobacco. It does not explicitly address harm caused by institutional policies, such as

the military's distribution of free cigarettes or exposure to smoke in shared facilities.

3. Secondary Service Connection – Diseases secondary to another service-connected condition remain potentially compensable under 38 C.F.R. §3.310.

Legislative Context and Vote Counts

The tobacco-related prohibition was contained within the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178. The specific provision was included as Section 8202 under Title VIII, Subtitle G of the bill.

Final Congressional Votes on TEA-21:

- Senate: 88 – 5 (7 not voting)
- House of Representatives: 297 – 86

The bill was passed by both chambers and signed into law by President Bill Clinton on June 9, 1998.

Advocacy Perspective (VIEI Context)

While §1103 prevents direct compensation for personal tobacco use during service, it leaves open potential arguments for institutional liability—where exposure resulted from government policy, duty requirements, or environmental conditions. The Veterans Institutional Exposure Initiative (VIEI) can focus on establishing that such exposures were institutional, not voluntary, to argue for compensation or legislative reform.

Citation

38 U.S.C. § 1103 – Special provisions relating to claims based upon effects of tobacco products.

Added by Pub. L. 105–178, Title VIII, §8202(a), June 9, 1998, 112 Stat. 495.

Available at: <https://www.law.cornell.edu/uscode/text/38/1103>