

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-275 effective 90 days after Nov. 2, 2002, see section 4 of Pub. L. 107-275, set out as a note under section 902 of this title.

EXTENSION OF ADJUDICATION PERIOD THROUGH
MARCH 1, 1979

Pub. L. 95-239, §7(i), Mar. 1, 1978, 92 Stat. 100, authorized individuals appointed to hear and determine claims for benefits under this part and under section 925 of this title pursuant to this section, notwithstanding the provisions of section 932(a) of this title, to continue to adjudicate such claims during the one-year period following Mar. 1, 1978.

§ 933. Duties of operators in States not qualifying under workmen's compensation laws**(a) Securing of benefits for miners; self-insurers; mutual companies**

During any period in which a State workmen's compensation law is not included on the list published by the Secretary under section 931(b) of this title each operator of a coal mine in such State shall secure the payment of benefits for which he is liable under section 932 of this title by (1) qualifying as a self-insurer in accordance with regulations prescribed by the Secretary, or (2) insuring and keeping insured the payment of such benefits with any stock company or mutual company or association, or with any other person or fund, including any State fund, while such company, association, person or fund is authorized under the laws of any State to insure workmen's compensation.

(b) Required provisions of insurance contracts

In order to meet the requirements of clause (2) of subsection (a) of this section, every policy or contract of insurance must contain—

- (1) a provision to pay benefits required under section 932 of this title, notwithstanding the provisions of the State workmen's compensation law which may provide for lesser payments;
- (2) a provision that insolvency or bankruptcy of the operator or discharge therein (or both) shall not relieve the carrier from liability for such payments; and
- (3) such other provisions as the Secretary, by regulation, may require.

(c) Cancellation of insurance contracts

No policy or contract of insurance issued by a carrier to comply with the requirements of clause (2) of subsection (a) of this subsection¹ shall be canceled prior to the date specified in such policy or contract for its expiration until at least thirty days have elapsed after notice of cancellation has been sent by registered or certified mail to the Secretary and to the operator at his last known place of business.

(d) Penalties for failure to secure payment of benefits

(1) Any employer required to secure the payment of benefits under this section who fails to secure such benefits shall be subject to a civil penalty assessed by the Secretary of not more than \$1,000 for each day during which such failure occurs. In any case where such employer is

a corporation, the president, secretary, and treasurer thereof also shall be severally liable to such civil penalty as provided in this subsection for the failure of such corporation to secure the payment of benefits. Such president, secretary, and treasurer shall be severally personally liable, jointly with such corporation, for any benefit which may accrue under this subchapter in respect to any disability which may occur to any employee of such corporation while it shall so fail to secure the payment of benefits as required by this section.

(2) Any employer of a miner who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secrets,² or destroys any property belonging to such employer, after any miner employed by such employer has filed a claim under this subchapter, and with intent to avoid the payment of benefits under this subchapter to such miner or his or her dependents, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$1,000, or by imprisonment for not more than one year, or both. In any case where such employer is a corporation, the president, secretary, and treasurer thereof also shall be severally liable for such penalty of imprisonment as well as jointly liable with such corporation for such fine.

(3) This subsection shall not affect any other liability of the employer under this part.

(Pub. L. 91-173, title IV, §423, Dec. 30, 1969, 83 Stat. 797; Pub. L. 92-303, §3(b), May 19, 1972, 86 Stat. 153; Pub. L. 95-239, §8, Mar. 1, 1978, 92 Stat. 100.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95-239 added subsec. (d).

1972—Subsec. (a). Pub. L. 92-303 substituted "a coal mine" for "an underground coal mine".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-239 effective Mar. 1, 1978, see section 20(a) of Pub. L. 95-239, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-303 effective Dec. 30, 1969, see section 3(c) of Pub. L. 92-303, set out as a note under section 901 of this title.

§ 934. "Fund" defined; liability of operators to United States for repayments to fund; procedures applicable; rate of interest

(a) For purposes of this section, the term "fund" has the meaning set forth in section 902(h) of this title.

(b)(1) If—

(A) an amount is paid out of the fund to an individual entitled to benefits under section 932 of this title, and

(B) the Secretary determines, under the provisions of sections 932 and 933 of this title, that an operator was required to secure the payment of all or a portion of such benefits,

then the operator is liable to the United States for repayment to the fund of the amount of such benefits the payment of which is properly attributed to him plus interest thereon. No opera-

¹ So in original. Probably should be "section".

² So in original. Probably should be "secretes".

tor or representative of operators may bring any proceeding, or intervene in any proceeding, held for the purpose of determining claims for benefits to be paid by the fund, except that nothing in this section shall affect the rights, duties, or liabilities of any operator in proceedings under section 932 or section 933 of this title. In a case where no operator responsibility is assigned pursuant to sections 932 and 933 of this title, a determination by the Secretary that the fund is liable for the payment of benefits shall be final.

(2) If any operator liable to the fund under paragraph (1) refuses to pay, after demand, the amount of such liability (including interest), then there shall be a lien in favor of the United States for such amount upon all property and rights to property, whether real or personal, belonging to such operator. The lien arises on the date on which such liability is finally determined, and continues until it is satisfied or becomes unenforceable by reason of lapse of time.

(3)(A) Except as otherwise provided under this subsection, the priority of the lien shall be determined in the same manner as under section 6323 of title 26. That section shall be applied for such purposes—

(i) by substituting “lien imposed by section 424(b)(2) of the Federal Mine Safety and Health Act of 1977” for “lien imposed by section 6321”; “operator liability lien” for “tax lien”; “operator” for “taxpayer”; “lien arising under section 424(b)(2) of the Federal Mine Safety and Health Act of 1977” for “assessment of the tax”; “payment of the liability is made to the Black Lung Disability Trust Fund” for “satisfaction of a levy pursuant to section 6332(b)”; and “satisfaction of operator liability” for “collection of any tax under this title” each place such terms appear; and

(ii) by treating all references to the “Secretary” as references to the Secretary of Labor.

(B) In the case of a bankruptcy or insolvency proceeding, the lien imposed under paragraph (2) shall be treated in the same manner as a lien for taxes due and owing to the United States for purposes of the Bankruptcy Act or section 3713(a) of title 31.

(C) For purposes of applying section 6323(a) of title 26 to determine the priority between the lien imposed under paragraph (2) and the Federal tax lien, each lien shall be treated as a judgment lien arising as of the time notice of such lien is filed.

(D) For purposes of this subsection, notice of the lien imposed under paragraph (2) shall be filed in the same manner as under subsections (f) and (g) of section 6323 of title 26.

(4)(A) In any case where there has been a refusal or neglect to pay the liability imposed under paragraph (2), the Secretary may bring a civil action in a district court of the United States to enforce the lien of the United States under this section with respect to such liability or to subject any property, of whatever nature, of the operator, or in which he has any right, title, or interest, to the payment of such liability.

(B) The liability imposed by paragraph (1) may be collected at a proceeding in court if the proceeding is commenced within 6 years after the

date on which the liability was finally determined, or before the expiration of any period for collection agreed upon in writing by the operator and the United States before the expiration of such 6-year period. The running of the period of limitation provided under this subparagraph shall be suspended for any period during which the assets of the operator are in the custody or control of any court of the United States, or of any State, or the District of Columbia, and for 6 months thereafter, and for any period during which the operator is outside the United States if such period of absence is for a continuous period of at least 6 months.

(5) The rate of interest under this subsection—

(A) for any period during calendar year 1982, shall be 15 percent, and

(B) for any period after calendar year 1982, shall be the rate established by section 6621 of title 26 which is in effect for such period.

(Pub. L. 91-173, title IV, § 424, Dec. 30, 1969, 83 Stat. 798; Pub. L. 92-303, § 1(c)(1), May 19, 1972, 86 Stat. 151; Pub. L. 95-227, § 3(d), Feb. 10, 1978, 92 Stat. 13; Pub. L. 96-222, title I, § 108(b)(2)(A), Apr. 1, 1980, 94 Stat. 226; Pub. L. 97-119, title I, § 104(a)(1), (2), (b)(6), Dec. 29, 1981, 95 Stat. 1639; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

Section 424(b)(2) of the Federal Mine Safety and Health Act of 1977, referred to in subsec. (b)(3)(A)(i), is subsec. (b)(2) of this section.

Section 6321, referred to in subsec. (b)(3)(A)(i), means section 6321 of Title 26, Internal Revenue Code.

Section 6332(b), referred to in subsec. (b)(3)(A)(i), means section 6332(b) of Title 26.

The Bankruptcy Act, referred to in subsec. (b)(3)(B), is act July 1, 1898, ch. 541, 30 Stat. 544, as amended, which was classified generally to former Title 11, Bankruptcy. The Act was repealed effective Oct. 1, 1979, by Pub. L. 95-598, §§ 401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11.

CODIFICATION

In subsec. (b)(3)(B), “section 3713(a) of title 31” substituted for “section 3466 of the Revised Statutes (31 U.S.C. 191)” on authority of Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1986—Subsec. (b)(3)(A), (C), (D), (5)(B). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

1981—Subsec. (a). Pub. L. 97-119, § 104(b)(6), substituted provision defining “fund” as used in this section for provision specifying payments, repayments, and reimbursements which funds from the Black Lung Disability Trust Fund would be available to pay.

Subsec. (b)(1). Pub. L. 97-119, § 104(a)(2), inserted “plus interest thereon” after “attributed to him”.

Subsec. (b)(5). Pub. L. 97-119, § 104(a)(1), added par. (5).

1980—Subsec. (b)(3)(A)(i). Pub. L. 96-222 substituted “Federal Mine Safety and Health Act of 1977” for “Federal Coal Mine Health and Safety Act of 1969”.

1978—Pub. L. 95-227 added subsec. (a), redesignated existing provisions constituting entire section as subsec. (b) and expanded applicability and set out procedures for enforcement of rights of United States against operators liable to the Fund.

1972—Pub. L. 92-303 substituted “widow, child, parent, brother, or sister” for “widow” wherever appearing.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 104(a)(3) of Pub. L. 97-119 provided that: “The amendment made by paragraph (1) [amending this sec-

tion] shall take effect on January 1, 1982, and shall apply to amounts outstanding on such date or arising thereafter.”

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-222 effective as if included in the provisions of Pub. L. 95-227, which amended this section effective Apr. 1, 1978, see section 108(b)(4) of Pub. L. 96-222, set out as a note under section 192 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 3(e) of Pub. L. 95-227 provided that: “This section [enacting section 934a of this title and amending this section] shall take effect on April 1, 1978.”

§ 934a. Repealed. Pub. L. 97-119, title I, § 103(b), Dec. 29, 1981, 95 Stat. 1638

Section, Pub. L. 95-227, § 3(a)-(c), Feb. 10, 1978, 92 Stat. 12; Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 96-222, title I, § 108(b)(2)(A), (3)(A), Apr. 1, 1980, 94 Stat. 226, established a Black Lung Disability Trust Fund, designated trustees for the fund, and provided for operation of the fund. See section 9501 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1982, see section 103(d)(1) of Pub. L. 97-119, set out as an Effective Date note under section 9501 of Title 26, Internal Revenue Code.

PROVISIONS RELATING TO PAYMENT OF BENEFITS TO MINERS AND ELIGIBLE SURVIVORS OF MINERS TO TAKE EFFECT AS RULES AND REGULATIONS OF SECRETARY OF LABOR

Pub. L. 95-239, § 20(b), Mar. 1, 1978, 92 Stat. 106, provided that in the event that the payment of benefits to miners and to eligible survivors of miners cannot be made from the Black Lung Disability Trust Fund established by section 3(a) of the Black Lung Benefits Revenue Act of 1977 [former subsec. (a) of this section], the provisions of the Act relating to the payment of benefits to miners and to eligible survivors of miners, as in effect immediately before the date of the enactment of this Act [Mar. 1, 1978], shall take effect, as rules and regulations of the Secretary of Labor until such provisions are revoked, amended, or revised by law, and that the Secretary of Labor may promulgate additional rules and regulations to carry out such provisions and shall make benefit payments to miners and to eligible survivors of miners in accordance with such provisions.

§ 935. Utilization of services of State and local agencies

With the consent and cooperation of State agencies charged with administration of State workmen's compensation laws, the Secretary may, for the purpose of carrying out his functions and duties under section 932 of this title, utilize the services of State and local agencies and their employees and, notwithstanding any other provision of law, may advance funds to or reimburse such State and local agencies and their employees for services rendered for such purposes.

(Pub. L. 91-173, title IV, § 425, Dec. 30, 1969, 83 Stat. 798.)

§ 936. Regulations and reports

(a) Promulgation; applicability of section 553 of title 5

The Secretary of Labor and the Secretary of Health and Human Services are authorized to

issue such regulations as each deems appropriate to carry out the provisions of this subchapter. Such regulations shall be issued in conformity with section 553 of title 5, notwithstanding subsection (a) thereof.

(b) Annual reports to Congress

At the end of fiscal year 2003 and each succeeding fiscal year, the Secretary of Labor shall submit to the Congress an annual report on the subject matter of this part and part B of this subchapter. Each such report shall be prepared and submitted to Congress in accordance with the requirement with respect to submission under section 942 of title 33.

(c) Compliance with State workmen's compensation laws; conflicts between State and Federal provisions

Nothing in this subchapter shall relieve any operator of the duty to comply with any State workmen's compensation law, except insofar as such State law is in conflict with the provisions of this subchapter and the Secretary by regulation, so prescribes. The provisions of any State workmen's compensation law which provide greater benefits than the benefits payable under this subchapter shall not thereby be construed or held to be in conflict with the provisions of this subchapter.

(Pub. L. 91-173, title IV, § 426, Dec. 30, 1969, 83 Stat. 798; Pub. L. 92-303, § 5(3), May 19, 1972, 86 Stat. 155; Pub. L. 103-296, title I, § 108(i)(3), Aug. 15, 1994, 108 Stat. 1488; Pub. L. 104-66, title I, § 1102(b)(2), Dec. 21, 1995, 109 Stat. 723; Pub. L. 107-275, § 2(b)(4), Nov. 2, 2002, 116 Stat. 1926.)

REFERENCES IN TEXT

Section 942 of title 33, referred to in subsec. (b), was in the original “section 42 of the Longshore Harbor Worker's Compensation Act” and was translated as reading “section 42 of the Longshore and Harbor Workers' Compensation Act” to reflect the probable intent of Congress.

AMENDMENTS

2002—Subsec. (a). Pub. L. 107-275, § 2(b)(4)(A), struck out “, the Commissioner of Social Security,” after “The Secretary of Labor”.

Subsec. (b). Pub. L. 107-275, § 2(b)(4)(B), amended first sentence generally. Prior to amendment, first sentence read as follows: “At the end of each fiscal year, the Commissioner of Social Security shall submit to the Congress an annual report upon the subject matter of part B of this subchapter, and, after January 1, 1974, the Secretary of Labor shall also submit such a report upon the subject matter of this part.”

1995—Subsec. (b). Pub. L. 104-66 substituted “At the end of each fiscal year, the” for “Within 120 days following the convening of each session of Congress the” and inserted at end “Each such report shall be prepared and submitted to Congress in accordance with the requirement with respect to submission under section 942 of title 33.”

1994—Subsec. (a). Pub. L. 103-296, § 108(i)(3)(A), substituted “, the Commissioner of Social Security, and the Secretary of Health and Human Services” for “and the Secretary of Health, Education, and Welfare”.

Subsec. (b). Pub. L. 103-296, § 108(i)(3)(B), substituted “Commissioner of Social Security” for “Secretary of Health, Education, and Welfare”.

1972—Subsec. (b). Pub. L. 92-303 substituted “January 1, 1974” for “January 1, 1973”.