Public Law 98-426
98th Congress

An Act

Entitled the "Longshore and Harbor Workers' Compensation Act Amendments of 1984".

Sept. 28, 1984
[S. 38]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Longshore and Harbor Workers' Compensation Act Amendments of 1984".

Longshore and Harbor Workers' Compensation Act Amendments of 1984.
33 USC 901 note.

(b) Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Longshoremen's and Harbor Workers' Compensation Act.

33 USC 901.

DEFINITIONS

SEC. 2. (a) Section 2(3) is amended to read as follows:

33 USC 902.

"(3) The term 'employee' means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor-worker including a ship repairman, shipbuilder, and ship-breaker, but such term does not include—

"(A) individuals employed exclusively to perform office clerical, secretarial, security, or data processing work;

"(B) individuals employed by a club, camp, recreational operation, restaurant, museum, or retail outlet;

"(C) individuals employed by a marina and who are not engaged in construction, replacement, or expansion of such marina (except for routine maintenance);

"(D) individuals who (i) are employed by suppliers, transporters, or vendors, (ii) are temporarily doing business on the premises of an employer described in paragraph (4), and (iii) are not engaged in work normally performed by employees of that employer under this Act;

"(E) aquaculture workers;

"(F) individuals employed to build, repair, or dismantle any recreational vessel under sixty-five feet in length;

"(G) a master or member of a crew of any vessel; or

"(H) any person engaged by a master to load or unload or repair any small vessel under eighteen tons net;

if individuals described in clauses (A) through (F) are subject to coverage under a State workers' compensation law.".

(b) Section 2(10) is amended by inserting before the period at the end thereof the following: "; but such term shall mean permanent impairment, determined (to the extent covered thereby) under the guides to the evaluation of permanent impairment promulgated and modified from time to time by the American Medical Association, in the case of an individual whose claim is described in section 10(d)(2)".

Post, p. 1647.

(c) Section 2(13) is amended to read as follows:

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"(13) The term 'wages' means the money rate at which the service rendered by an employee is compensated by an employer under the contract of hiring in force at the time of the injury, including the reasonable value of any advantage which is received from the employer and included for purposes of any withholding of tax under subtitle C of the Internal Revenue Code of 1954 (relating to employment taxes). The term wages does not include fringe benefits, including (but not limited to) employer payments for or contributions to a retirement, pension, health and welfare, life insurance, training, social security or other employee or dependent benefit plan for the employee's or dependent's benefit, or any other employee's dependent entitlement.".

26 USC 3101.

COVERAGE

33 USC 903.

SEC. 3. (a) Section 3 is amended to read as follows:

"COVERAGE

"SEC. 3. (a) Except as otherwise provided in this section, compensation shall be payable under this Act in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel).

"(b) No compensation shall be payable in respect of the disability or death of an officer or employee of the United States, or any agency thereof, or of any State or foreign government, or any subdivision thereof.

"(c) No compensation shall be payable if the injury was occasioned solely by the intoxication of the employee or by the willful intention of the employee to injure or kill himself or another.

"(d)(1) No compensation shall be payable to an employee employed at a facility of an employer if, as certified by the Secretary, the facility is engaged in the business of building, repairing, or dismantling exclusively small vessels (as defined in paragraph (3) of this subsection), unless the injury occurs while upon the navigable waters of the United States or while upon any adjoining pier, wharf, dock, facility over land for launching vessels, or facility over land for hauling, lifting, or drydocking vessels.

"(2) Notwithstanding paragraph (1), compensation shall be payable to an employee—

"(A) who is employed at a facility which is used in the business of building, repairing, or dismantling small vessels if such facility receives Federal maritime subsidies; or

"(B) if the employee is not subject to coverage under a State workers' compensation law.

"(3) For purposes of this subsection, a small vessel means—

"(A) a commercial barge which is under 900 lightship displacement tons; or

"(B) a commercial tugboat, towboat, crew boat, supply boat, fishing vessel, or other work vessel which is under 1,600 tons gross.".

(b) Section 3 is further amended by adding at the end thereof the following:

"(e) Notwithstanding any other provision of law, any amounts paid to an employee for the same injury, disability, or death for which benefits are claimed under this Act pursuant to any other workers' compensation law or section 20 of the Act of March 4, 1915 (38 Stat. 1185, chapter 153; 46 U.S.C. 688) (relating to recovery for injury to or death of seamen) shall be credited against any liability imposed by this Act.".

LIABILITY FOR COMPENSATION

SEC. 4. (a) Section 4(a) is amended to read as follows: 33 USC 904.

"SEC. 4. (a) Every employer shall be liable for and shall secure the payment to his employees of the compensation payable under sections 7, 8, and 9. In the case of an employer who is a subcontractor, only if such subcontractor fails to secure the payment of compensation shall the contractor be liable for and be required to secure the payment of compensation. A subcontractor shall not be deemed to have failed to secure the payment of compensation if the contractor has provided insurance for such compensation for the benefit of the subcontractor.". 33 USC 907-909.

(b) Section 5(a) is amended by adding at the end thereof the following new sentence: "For purposes of this subsection, a contractor shall be deemed the employer of a subcontractor's employees only if the subcontractor fails to secure the payment of compensation as required by section 4.". 33 USC 905.

THIRD PARTY LIABILITY

SEC. 5. (a)(1) The third sentence of section 5(b) is amended to read as follows: "If such person was employed to provide shipbuilding, repairing, or breaking services and such person's employer was the owner, owner pro hac vice, agent, operator, or charterer of the vessel, no such action shall be permitted, in whole or in part or directly or indirectly, against the injured person's employer (in any capacity, including as the vessel's owner, owner pro hac vice, agent, operator, or charterer) or against the employees of the employer.". 33 USC 905.

(2) Section 2(21) is amended by striking out "The" and inserting in lieu thereof "Unless the context requires otherwise, the". 33 USC 902.

(b) Section 5 is amended by adding at the end thereof the following new subsection: *Supra.*

"(c) In the event that the negligence of a vessel causes injury to a person entitled to receive benefits under this Act by virtue of section 4 of the Outer Continental Shelf Lands Act (43 U.S.C. 1333), then such person, or anyone otherwise entitled to recover damages by reason thereof, may bring an action against such vessel in accordance with the provisions of subsection (b) of this section. Nothing contained in subsection (b) of this section shall preclude the enforcement according to its terms of any reciprocal indemnity provision whereby the employer of a person entitled to receive benefits under this Act by virtue of section 4 of the Outer Continental Shelf Lands Act (43 U.S.C. 1333) and the vessel agree to defend and indemnify the other for cost of defense and loss or liability for damages arising out of or resulting from death or bodily injury to their employees.".

COMPENSATION

SEC. 6. (a) Section 6(b)(1) is amended to read as follows: 33 USC 906.

"(b)(1) Compensation for disability or death (other than compensation for death required by this Act to be paid in a lump sum) shall not exceed an amount equal to 200 per centum of the applicable national average weekly wage, as determined by the Secretary under paragraph (3).".

33 USC 906.

(b) Section 6 is amended—

(1) by striking out subsection (c) and redesignating subsection (d) as subsection (c); and

(2) by striking out "under this subsection" in subsection (c) (as redesignated) and inserting in lieu thereof "under subsection (b)(3)".

MEDICAL SERVICES AND SUPPLIES

33 USC 907.

SEC. 7. (a) The third sentence of section 7(b) is amended by inserting before the period the following: "or where the charges exceed those prevailing within the community for the same or similar services or exceed the provider's customary charges".

(b) Section 7(c) is amended to read as follows:

"(c)(1)(A) The Secretary shall annually prepare a list of physicians and health care providers in each compensation district who are not authorized to render medical care or provide medical services under this Act. The names of physicians and health care providers contained on the list required under this subparagraph shall be made available to employees and employers in each compensation district through posting and in such other forms as the Secretary may prescribe.

"(B) Physicians and health care providers shall be included on the list of those not authorized to provide medical care and medical services pursuant to subparagraph (A) when the Secretary determines under this section, in accordance with the procedures provided in subsection (j), that such physician or health care provider—

"(i) has knowingly and willfully made, or caused to be made, any false statement or misrepresentation of a material fact for use in a claim for compensation or claim for reimbursement of medical expenses under this Act;

"(ii) has knowingly and willfully submitted, or caused to be submitted, a bill or request for payment under this Act containing a charge which the Secretary finds to be substantially in excess of the charge for the service, appliance, or supply prevailing within the community or in excess of the provider's customary charges, unless the Secretary finds there is good cause for the bill or request containing the charge;

"(iii) has knowingly and willfully furnished a service, appliance, or supply which is determined by the Secretary to be substantially in excess of the need of the recipient thereof or to be of a quality which substantially fails to meet professionally recognized standards;

"(iv) has been convicted under any criminal statute (without regard to pending appeal thereof) for fraudulent activities in connection with any Federal or State program for which payments are made to physicians or providers of similar services, appliances, or supplies; or

"(v) has otherwise been excluded from participation in such program.

"(C) Medical services provided by physicians or health care providers who are named on the list published by the Secretary pursuant to subparagraph (A) of this section shall not be reimbursable under

this Act; except that the Secretary shall direct the reimbursement of medical claims for services rendered by such physicians or health care providers in cases where the services were rendered in an emergency.

"(D) A determination under subparagraph (B) shall remain in effect for a period of not less than three years and until the Secretary finds and gives notice to the public that there is reasonable assurance that the basis for the determination will not reoccur.

Public information.

"(E) A provider of a service, appliance, or supply shall provide to the Secretary such information and certification as the Secretary may require to assure that this subsection is enforced.

"(2) Whenever the employer or carrier acquires knowledge of the employee's injury, through written notice or otherwise as prescribed by the Act, the employer or carrier shall forthwith authorize medical treatment and care from a physician selected by an employee pursuant to subsection (b). An employee may not select a physician who is on the list required by paragraph (1) of this subsection. An employee may not change physicians after his initial choice unless the employer, carrier, or deputy commissioner has given prior consent for such change. Such consent shall be given in cases where an employee's initial choice was not of a specialist whose services are necessary for and appropriate to the proper care and treatment of the compensable injury or disease. In all other cases, consent may be given upon a showing of good cause for change.".

(c) Section 7(d) is amended to read as follows:

33 USC 907.

"(d)(1) An employee shall not be entitled to recover any amount expended by him for medical or other treatment or services unless—

"(A) the employer shall have refused or neglected a request to furnish such services and the employee has complied with subsections (b) and (c) and the applicable regulations; or

"(B) the nature of the injury required such treatment and services and the employer or his superintendent or foreman having knowledge of such injury shall have neglected to provide or authorize same.

"(2) No claim for medical or surgical treatment shall be valid and enforceable against such employer unless, within ten days following the first treatment, the physician giving such treatment furnishes to the employer and the deputy commissioner a report of such injury or treatment, on a form prescribed by the Secretary. The Secretary may excuse the failure to furnish such report within the ten-day period whenever he finds it to be in the interest of justice to do so.

Report.

"(3) The Secretary may, upon application by a party in interest, make an award for the reasonable value of such medical or surgical treatment so obtained by the employee.

"(4) If at any time the employee unreasonably refuses to submit to medical or surgical treatment, or to an examination by a physician selected by the employer, the Secretary or administrative law judge may, by order, suspend the payment of further compensation during such time as such refusal continues, and no compensation shall be paid at any time during the period of such suspension, unless the circumstances justified the refusal.".

(d) Section 7 is amended by adding at the end thereof the following new subsection:

"(j)(1) The Secretary shall have the authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this Act, which are necessary or appropriate to carry out the provisions of subsection (c), including the nature and extent

of the proof and evidence necessary for actions under this section and the methods of taking and furnishing such proof and evidence.

"(2) Any decision to take action with respect to a physician or health care provider under this section shall be based on specific findings of fact by the Secretary. The Secretary shall provide notice of these findings and an opportunity for a hearing pursuant to section 556 of title 5, United States Code, for a provider who would be affected by a decision under this section. A request for a hearing must be filed with the Secretary within thirty days after notice of the findings is received by the provider making such request. If a hearing is held, the Secretary shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse the findings of fact and proposed action under this section.

"(3) For the purpose of any hearing, investigation, or other proceeding authorized or directed under this section, the provisions of section 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act (15 U.S.C. 49, 50) shall apply to the jurisdiction, powers, and duties of the Secretary or any officer designated by him.

"(4) Any physician or health care provider, after any final decision of the Secretary made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision, but the pendency of such review shall not operate as a stay upon the effect of such decision. Such action shall be brought in the court of appeals of the United States for the judicial circuit in which the plaintiff resides or has his principal place of business, or the Court of Appeals for the District of Columbia. As part of his answer, the Secretary shall file a certified copy of the transcript of the record of the hearing, including all evidence submitted in connection therewith. The findings of fact of the Secretary, if based on substantial evidence in the record as a whole, shall be conclusive.".

Ante, p. 1643.

(e) Section 7 is further amended by adding at the end thereof the following new subsection:

"(k)(1) Nothing in this Act prevents an employee whose injury or disability has been established under this Act from relying in good faith on treatment by prayer or spiritual means alone, in accordance with the tenets and practice of a recognized church or religious denomination, by an accredited practitioner of such recognized church or religious denomination, and on nursing services rendered in accordance with such tenets and practice, without suffering loss or diminution of the compensation or benefits under this Act. Nothing in this subsection shall be construed to except an employee from all physical examinations required by this Act.

"(2) If an employee refuses to submit to medical or surgical services solely because, in adherence to the tenets and practice of a recognized church or religious denomination, the employee relies upon prayer or spiritual means alone for healing, such employee shall not be considered to have unreasonably refused medical or surgical treatment under subsection (d).".

COMPENSATION FOR DISABILITY

Claims.
33 USC 908.

SEC. 8. (a) Section 8(c)(13) is amended to read as follows:

"(13) Loss of hearing:

"(A) Compensation for loss of hearing in one ear, fifty-two weeks.

"(B) Compensation for loss of hearing in both ears, two-hundred weeks.

"(C) An audiogram shall be presumptive evidence of the amount of hearing loss sustained as of the date thereof, only if (i) such audiogram was administered by a licensed or certified audiologist or a physician who is certified in otolaryngology, (ii) such audiogram, with the report thereon, was provided to the employee at the time it was administered, and (iii) no contrary audiogram made at that time is produced.

"(D) The time for filing a notice of injury, under section 12 of this Act, or a claim for compensation, under section 13 of this Act, shall not begin to run in connection with any claim for loss of hearing under this section, until the employee has received an audiogram, with the accompanying report thereon, which indicates that the employee has suffered a loss of hearing.

Post, p. 1648.
33 USC 913.

"(E) Determinations of loss of hearing shall be made in accordance with the guides for the evaluation of permanent impairment as promulgated and modified from time to time by the American Medical Association.".

(b) Section 8(c)(20) is amended by striking out "$3,500" and inserting in lieu thereof "$7,500".

33 USC 908.

(c)(1) Section 8(c)(21) is amended to read as follows:

"(21) Other cases: In all other cases in the class of disability, the compensation shall be 66⅔ per centum of the difference between the average weekly wages of the employee and the employee's wage-earning capacity thereafter in the same employment or otherwise, payable during the continuance of partial disability.".

(2) Section 8(c) is further amended by adding at the end thereof the following new paragraph:

"(23) Notwithstanding paragraphs (1) through (22), with respect to a claim for permanent partial disability for which the average weekly wages are determined under section 10(d)(2), the compensation shall be 66⅔ per centum of such average weekly wages multiplied by the percentage of permanent impairment, as determined under the guides referred to in section 2(10), payable during the continuance of such impairment.".

Post, p. 1647.

Ante, p. 1639.

(d) Section 8(d) is amended by striking out paragraph (3) and redesignating paragraph (4) as paragraph (3).

(e) Section 8(f) is amended—

(1) by inserting before the period at the end of the second and fourth sentences of paragraph (1) the following: ", except that, in the case of an injury falling within the provisions of section 8(c)(13), the employer shall provide compensation for the lesser of such periods";

(2) by inserting "(A)" after "(2)" in paragraph (2);

(3) by inserting before the period at the end of such paragraph the following: ", except that the special fund shall not assume responsibility with respect to such benefits (and such payments shall not be subject to cessation) in the case of any employer who fails to comply with section 32(a)";

33 USC 932.

(4) by adding at the end of paragraph (2) the following new subparagraph:

"(B) After cessation of payments for the period of weeks provided for in this subsection, the employer or carrier responsible for payment of compensation shall remain a party to the claim, retain

access to all records relating to the claim, and in all other respects retain all rights granted under this Act prior to cessation of such payments."; and

(5) by adding at the end thereof the following new paragraph:

"(3) Any request, filed after the date of enactment of the Longshore and Harbor Workers' Compensation Amendments of 1984, for apportionment of liability to the special fund established under section 44 of this Act for the payment of compensation benefits, and a statement of the grounds therefore, shall be presented to the deputy commissioner prior to the consideration of the claim by the deputy commissioner. Failure to present such request prior to such consideration shall be an absolute defense to the special fund's liability for the payment of any benefits in connection with such claim, unless the employer could not have reasonably anticipated the liability of the special fund prior to the issuance of a compensation order.".

Ante, p. 1639.

33 USC 944.

33 USC 908.

(f) Subsection (i) of section 8 is amended to read as follows:

"(i)(1) Whenever the parties to any claim for compensation under this Act, including survivors benefits, agree to a settlement, the deputy commissioner or administrative law judge shall approve the settlement within thirty days unless it is found to be inadequate or procured by duress. Such settlement may include future medical benefits if the parties so agree. No liability of any employer, carrier, or both for medical, disability, or death benefits shall be discharged unless the application for settlement is approved by the deputy commissioner or administrative law judge. If the parties to the settlement are represented by counsel, then agreements shall be deemed approved unless specifically disapproved within thirty days after submission for approval.

"(2) If the deputy commissioner disapproves an application for settlement under paragraph (1), the deputy commissioner shall issue a written statement within thirty days containing the reasons for disapproval. Any party to the settlement may request a hearing before an administrative law judge in the manner prescribed by this Act. Following such hearing, the administrative law judge shall enter an order approving or rejecting the settlement.

"(3) A settlement approved under this section shall discharge the liability of the employer or carrier, or both. Settlements may be agreed upon at any stage of the proceeding including after entry of a final compensation order.".

(g) Such subsection (i) is further amended by adding at the end thereof the following new paragraph:

"(4) The special fund shall not be liable for reimbursement of any sums paid or payable to an employee or any beneficiary under such settlement, or otherwise voluntarily paid prior to such settlement by the employer or carrier, or both.".

(h) Section 8 is amended by adding at the end thereof the following new subsection:

"(j)(1) The employer may inform a disabled employee of his obligation to report to the employer not less than semiannually any earnings from employment or self-employment, on such forms as the Secretary shall specify in regulations.

"(2) An employee who—

"(A) fails to report the employee's earnings under paragraph (1) when requested, or

"(B) knowingly and willfully omits or understates any part of such earnings,

and who is determined by the deputy commissioner to have violated clause (A) or (B) of this paragraph, forfeits his right to compensation with respect to any period during which the employee was required to file such report.

"(3) Compensation forfeited under this subsection, if already paid, shall be recovered by a deduction from the compensation payable to the employee in any amount and on such schedule as determined by the deputy commissioner.".

COMPENSATION FOR DEATH

SEC. 9. (a) The matter preceding subsection (a) of section 9 is amended to read as follows: 33 USC 909.

"SEC. 9. If the injury causes death, the compensation therefore shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:".

(b) Section 9(a) is amended by striking out "$1,000" and inserting in lieu thereof "$3,000".

(c) Section 9(e) is amended to read as follows:

"(e) In computing death benefits, the average weekly wages of the deceased shall not be less than the national average weekly wage as prescribed in section 6(b), but— 33 USC 906.

"(1) the total weekly benefits shall not exceed the lesser of the average weekly wages of the deceased or the benefit which the deceased employee would have been eligible to receive under section 6(b)(1); and *Ante*, p. 1641.

"(2) in the case of a claim based on death due to an occupational disease for which the time of injury (as determined under section 10(i)) occurs after the employee has retired, the total weekly benefits shall not exceed one fifty-second part of the employee's average annual earnings during the 52-week period preceding retirement.". *Infra.*

DETERMINATION OF PAY

SEC. 10. (a)(1) Section 10(d) is amended by inserting "(1)" after "(d)" and by adding at the end thereof the following: 33 USC 910.

"(2) Notwithstanding paragraph (1), with respect to any claim based on a death or disability due to an occupational disease for which the time of injury (as determined under subsection (i)) occurs—

"(A) within the first year after the employee has retired, the average weekly wages shall be one fifty-second part of his average annual earnings during the 52-week period preceding retirement; or

"(B) more than one year after the employee has retired, the average weekly wage shall be deemed to be the national average weekly wage (as determined by the Secretary pursuant to section 6(b)) applicable at the time of the injury.". 33 USC 906.

(2) Section 10 is further amended by adding at the end thereof the following new subsection:

"(i) For purposes of this section with respect to a claim for compensation for death or disability due to an occupational disease which does not immediately result in death or disability, the time of injury shall be deemed to be the date on which the employee or claimant becomes aware, or in the exercise of reasonable diligence or by reason of medical advice should have been aware, of the

relationship between the employment, the disease, and the death or disability.".

33 USC 910. Effective date.

(b) Section 10(f) is amended to read as follows:

"(f) Effective October 1 of each year, the compensation or death benefits payable for permanent total disability or death arising out of injuries subject to this Act shall be increased by the lesser of—

"(1) a percentage equal to the percentage (if any) by which the applicable national weekly wage for the period beginning on such October 1, as determined under section 6(b), exceeds the applicable national average weekly wage, as so determined, for the period beginning with the preceding October 1; or

33 USC 906.

"(2) 5 per centum.".

NOTICE OF INJURY OR DEATH

33 USC 912.

SEC. 11. (a) Section 12(a) is amended to read as follows:

"SEC. 12. (a) Notice of an injury or death in respect of which compensation is payable under this Act shall be given within thirty days after the date of such injury or death, or thirty days after the employee or beneficiary is aware, or in the exercise of reasonable diligence or by reason of medical advice should have been aware, of a relationship between the injury or death and the employment, except that in the case of an occupational disease which does not immediately result in a disability or death, such notice shall be given within one year after the employee or claimant becomes aware, or in the exercise of reasonable diligence or by reason of medical advice should have been aware, of the relationship between the employment, the disease, and the death or disability. Notice shall be given (1) to the deputy commissioner in the compensation district in which the injury or death occurred, and (2) to the employer.".

(b) Section 12(c) is amended by adding at the end thereof the following: "Each employer shall designate those agents or other responsible officials to receive such notice, except that the employer shall designate as its representatives individuals among first line supervisors, local plant management, and personnel office officials. Such designations shall be made in accordance with regulations prescribed by the Secretary and the employer shall notify his employees and the Secretary of such designation in a manner prescribed by the Secretary in regulations.".

(c) Section 12(d) is amended—

(1) by striking out "(or his agent in charge of the business in the place where the injury occurred)" and inserting in lieu thereof the following: "(or his agent or agents or other responsible official or officials designated by the employer pursuant to subsection (c))";

(2) by striking out "injury or death and" and inserting in lieu thereof "injury or death, (2)";

(3) by striking out "or (2)" and inserting in lieu thereof "or (3)"; and

(4) by inserting after "the ground that" in the clause redesignated as clause (3) (by paragraph (3) of this subsection) the following: "(i) notice, while not given to a responsible official designated by the employer pursuant to subsection (c) of this section, was given to an official of the employer or the employer's insurance carrier, and that the employer or carrier was not prejudiced due to the failure to provide notice to a responsible

official designated by the employer pursuant to subsection (c), or (ii)".

TIME FOR FILING CLAIM BASED ON OCCUPATIONAL DISEASE

SEC. 12. Section 13(b) is amended by inserting "(1)" after "(b)" and adding at the end thereof the following: 33 USC 913.

"(2) Notwithstanding the provisions of subsection (a), a claim for compensation for death or disability due to an occupational disease which does not immediately result in such death or disability shall be timely if filed within two years after the employee or claimant becomes aware, or in the exercise of reasonable diligence or by reason of medical advice should have been aware, of the relationship between the employment, the disease, and the death or disability, or within one year of the date of the last payment of compensation, whichever is later.".

PAYMENT OF COMPENSATION

SEC. 13. (a) Section 14(b) is amended by striking out "employer" and inserting in lieu thereof "employer has been notified pursuant to section 12, or the employer". 33 USC 914.

(b) Section 14 is amended by striking out subsection (j) and by redesignating subsections (k) and (l) as subsections (j) and (k), respectively.

LIENS ON COMPENSATION

SEC. 14. Section 17 is amended— 33 USC 917.

(1) by striking out "(b)";

(2) by striking out "entitled to compensation under this Act" and inserting in lieu thereof "covered under this Act"; and

(3) by striking out "this Act, the Secretary may authorize" and inserting in lieu thereof "this Act or under a settlement, the Secretary shall authorize".

REVIEW OF COMPENSATION ORDER

SEC. 15. Section 21(b) is amended— 33 USC 921.

(1) by striking out "three" in paragraph (1) and inserting in lieu thereof "five";

(2) by adding the following sentence at the end of paragraph (1): "The Chairman shall have the authority, as delegated by the Secretary, to exercise all administrative functions necessary to operate the Board.";

(3) by striking out "two" each place it appears in paragraph (2) and inserting in lieu thereof "three"; and

(4) by adding the following new paragraph at the end thereof:

"(5) Notwithstanding paragraphs (1) through (4), upon application of the Chairman of the Board, the Secretary may designate up to four Department of Labor administrative law judges to serve on the Board temporarily, for not more than one year. The Board is authorized to delegate to panels of three members any or all of the powers which the Board may exercise. Each such panel shall have no more than one temporary member. Two members shall constitute a quorum of a panel. Official adjudicative action may be taken only on the affirmative vote of at least two members of a panel. Any party aggrieved by a decision of a panel of the Board may, within thirty days after the date of entry of the decision, petition the entire

permanent Board for review of the panel's decision. Upon affirmative vote of the majority of the permanent members of the Board, the petition shall be granted. The Board shall amend its Rules of Practice to conform with this paragraph. Temporary members, while serving as members of the Board, shall be compensated at the same rate of compensation as regular members.".

MODIFICATIONS OF AWARDS

33 USC 922.

SEC. 16. Section 22 is amended—

(1) by inserting "(including an employer or carrier which has been granted relief under section 8(f))" after "party in interest";

(2) by inserting "(including a case under which payments are made pursuant to section 44(i))" after "review a compensation case"; and

(3) by adding at the end thereof the following new sentence: "This section does not authorize the modification of settlements.".

FEES FOR SERVICES

33 USC 928.
Penalties.

SEC. 17. Section 28(e) is amended to read as follows:

"(e) A person who receives a fee, gratuity, or other consideration on account of services rendered as a representative of a claimant, unless the consideration is approved by the deputy commissioner, administrative law judge, Board, or court, or who makes it a business to solicit employment for a lawyer, or for himself, with respect to a claim or award for compensation under this Act, shall, upon conviction thereof, for each offense be punished by a fine of not more than $1,000 or be imprisoned for not more than one year, or both.".

REPORTS

33 USC 930.

SEC. 18. (a) Section 30(a) is amended—

(1) by inserting after "injury" the first place it appears a comma and the following: "which causes loss of one or more shifts of work,"; and

(2) by adding at the end thereof the following new sentence: "Notwithstanding the requirements of this subsection, each employer shall keep a record of each and every injury regardless of whether such injury results in the loss of one or more shifts of work.".

(b) Section 30(e) is amended to read as follows:

Penalty.

"(e) Any employer, insurance carrier, or self-insured employer who knowingly and willfully fails or refuses to send any report required by this section or knowingly or willfully makes a false statement or misrepresentation in any such report shall be subject to a civil penalty not to exceed $10,000 for each such failure, refusal, false statement, or misrepresentation.".

PENALTY FOR MISREPRESENTATION—PROSECUTION OF CLAIMS

33 USC 931.

SEC. 19. Section 31 is amended to read as follows:

"PENALTY FOR MISREPRESENTATION—PROSECUTION OF CLAIMS

"SEC. 31. (a)(1) Any claimant or representative of a claimant who knowingly and willfully makes a false statement or representation for the purpose of obtaining a benefit or payment under this Act

shall be guilty of a felony, and on conviction thereof shall be punished by a fine not to exceed $10,000, by imprisonment not to exceed five years, or by both.

"(2) The United States attorney for the district in which the injury is alleged to have occurred shall make every reasonable effort to promptly investigate each complaint made under this subsection.

"(b)(1) No representation fee of a claimant's representative shall be approved by the deputy commissioner, an administrative law judge, the Board, or a court pursuant to section 28 of this Act, if the claimant's representative is on the list of individuals who are disqualified from representing claimants under this Act maintained by the Secretary pursuant to paragraph (2) of this subsection. 33 USC 928.

"(2)(A) The Secretary shall annually prepare a list of those individuals in each compensation district who have represented claimants for a fee in cases under this Act and who are not authorized to represent claimants. The names of individuals contained on the list required under this subparagraph shall be made available to employees and employers in each compensation district through posting and in such other forms as the Secretary may prescribe.

"(B) Individuals shall be included on the list of those not authorized to represent claimants under this Act if the Secretary determines under this section, in accordance with the procedure provided in subsection (j) of section 7 of this Act, that such individual— *Post*, p. 1643.

"(i) has been convicted (without regard to pending appeal) of any crime in connection with the representation of a claimant under this Act or any workers' compensation statute;

"(ii) has engaged in fraud in connection with the presentation of a claim under this or any workers' compensation statute, including, but not limited to, knowingly making false representations, concealing or attempting to conceal material facts with respect to a claim, or soliciting or otherwise procuring false testimony;

"(iii) has been prohibited from representing claimants before any other workers' compensation agency for reasons of professional misconduct which are similar in nature to those which would be grounds for disqualification under this paragraph; or

"(iv) has accepted fees for representing claimants under this Act which were not approved, or which were in excess of the amount approved pursuant to section 28. 33 USC 928.

"(C) Notwithstanding subparagraph (B), no individual who is on the list required to be maintained by the Secretary pursuant to this section shall be prohibited from presenting his or her own claim or from representing without fee, a claimant who is a spouse, mother, father, sister, brother, or child of such individual.

"(D) A determination under subparagraph (A) shall remain in effect for a period of not less than three years and until the Secretary finds and gives notice to the public that there is reasonable assurance that the basis for the determination will not reoccur.

"(3) No employee shall be liable to pay a representation fee to any representative whose fee has been disallowed by reason of the operation of this paragraph.

"(4) The Secretary shall issue such rules and regulations as are necessary to carry out this section. Regulations.

"(c) A person including, but not limited to, an employer, his duly authorized agent, or an employee of an insurance carrier who knowingly and willfully makes a false statement or representation for the purpose of reducing, denying, or terminating benefits to an

33 USC 909. injured employee, or his dependents pursuant to section 9 if the injury results in death, shall be punished by a fine not to exceed $10,000, by imprisonment not to exceed five years, or by both.".

SECURITY FOR COMPENSATION

33 USC 932. SEC. 20. Section 32(a)(2) is amended by inserting "based on the employer's financial condition, the employer's previous record of payments, and other relevant factors," after "in an amount determined by the commission,".

COMPENSATION FOR INJURIES WHERE THIRD PERSONS ARE LIABLE

33 USC 933. SEC. 21. (a) Section 33(b) is amended to read as follows:

"(b) Acceptance of compensation under an award in a compensation order filed by the deputy commissioner, an administrative law judge, or the Board shall operate as an assignment to the employer of all rights of the person entitled to compensation to recover damages against such third person unless such person shall commence an action against such third person within six months after such acceptance. If the employer fails to commence an action against such third person within ninety days after the cause of action is assigned under this section, the right to bring such action shall revert to the person entitled to compensation. For the purpose of this subsection, the term 'award' with respect to a compensation order means a formal order issued by the deputy commissioner, an administrative law judge, or Board.".

(b) Section 33(e)(2) is amended by striking out ", less one-fifth of such excess which shall belong to the employer".

(c) Section 33(f) is amended—

(1) by inserting "net" before "amount recovered"; and

(2) by adding at the end thereof the following: "Such net amount shall be equal to the actual amount recovered less the expenses reasonably incurred by such person in respect to such proceedings (including reasonable attorneys' fees).".

(d) Section 33(g) is amended to read as follows:

"(g)(1) If the person entitled to compensation (or the person's representative) enters into a settlement with a third person referred to in subsection (a) for an amount less than the compensation to which the person (or the person's representative) would be entitled under this Act, the employer shall be liable for compensation as determined under subsection (f) only if written approval of the settlement is obtained from the employer and the employer's carrier, before the settlement is executed, and by the person entitled to compensation (or the person's representative). The approval shall be made on a form provided by the Secretary and shall be filed in the office of the deputy commissioner within thirty days after the settlement is entered into.

"(2) If no written approval of the settlement is obtained and filed as required by paragraph (1), or if the employee fails to notify the employer of any settlement obtained from or judgment rendered against a third person, all rights to compensation and medical benefits under this Act shall be terminated, regardless of whether the employer or the employer's insurer has made payments or acknowledged entitlement to benefits under this Act.

"(3) Any payments by the special fund established under section 33 USC 944. 44 shall be a lien upon the proceeds of any settlement obtained from

or judgment rendered against a third person referred to under subsection (a). Notwithstanding any other provision of law, such lien shall be enforceable against such proceeds, regardless of whether the Secretary on behalf of the special fund has agreed to or has received actual notice of the settlement or judgment.

"(4) Any payments by a trust fund described in section 17 shall be a lien upon the proceeds of any settlement obtained from or judgment recorded against a third person referred to under subsection (a). Such lien shall have priority over a lien under paragraph (3) of this subsection.". 33 USC 917.

PENALTY FOR FAILURE TO SECURE PAYMENT

SEC. 22. Section 38 is amended by striking out "$1,000" each place it appears in subsections (a) and (b) and inserting in lieu thereof "$10,000". 33 USC 938.

ANNUAL REPORT

SEC. 23. The Act is amended by inserting the following new section after section 41:

"ANNUAL REPORT

"SEC. 42. The Secretary shall make to Congress at the beginning of each regular session, commencing at the beginning of the second regular session after the enactment of the Longshore and Harbor Workers' Compensation Act Amendments of 1984, a report of the administration of this Act for the preceding fiscal year, including a detailed statement of receipts of and expenditures from the fund established in section 44, together with such recommendations as the Secretary deems advisable.". 33 USC 942. *Ante*, p. 1639. 33 USC 944.

SPECIAL FUND

SEC. 24. (a) Section 44(c)(2) is amended to read as follows: 33 USC 944.

"(2) At the beginning of each calendar year the Secretary shall estimate the probable expenses of the fund during that calendar year and the amount of payments required (and the schedule therefor) to maintain adequate reserves in the fund. Each carrier and self-insurer shall make payments into the fund on a prorated assessment by the Secretary determined by—

"(A) computing the ratio (expressed as a percent) of (i) the carrier's or self-insured's workers' compensation payments under this Act during the preceding calendar year, to (ii) the total of such payments by all carriers and self-insureds under this Act during such year;

"(B) computing the ratio (expressed as a percent) of (i) the payments under section 8(f) of this Act during the preceding calendar year which are attributable to the carrier or self-insured, to (ii) the total of such payments during such year attributable to all carriers and self-insureds; *Ante*, p. 1645.

"(C) dividing the sum of the percentages computed under subparagraphs (A) and (B) for the carrier or self-insured by two; and

"(D) multiplying the percent computed under subparagraph (C) by such probable expenses of the fund (as determined under the first sentence of this paragraph).".

33 USC 944.

(b) Section 44 is further amended by striking out subsection (e) and by redesignating subsections (f) through (k) as subsections (e) through (j), respectively.

(c) Section 44(h) (as redesignated pursuant to subsection (b)) is amended by inserting "and unpaid assessments" after "civil penalties".

(d) Section 44(i) (as redesignated pursuant to subsection (b)) is amended—

(1) in paragraph (1), by striking out "and 11", by inserting "certain" before "initial", and by striking out "which occurred prior to the effective date of this subsection"; and

(2) in paragraph (4), by inserting "(e)" after "section 7".

(e) Section 44(j) (as redesignated pursuant to subsection (b)) is amended to read as follows:

Audit.

Ante, p. 1653.

"(j) The fund shall be audited annually and the results of such audit shall be included in the annual report required by section 42.".

REPEALS

33 USC 945-947.

SEC. 25. Sections 45, 46, and 47 are repealed.

DISCRIMINATION AGAINST EMPLOYEES WHO BRING PROCEEDINGS

33 USC 948a.

SEC. 26. (a) Section 49 is amended by inserting after the first sentence the following new sentence: "The discharge or refusal to employ a person who has been adjudicated to have filed a fraudulent claim for compensation is not a violation of this section.".

(b) The second sentence of section 49 is amended—

(1) by striking out "$100" and inserting in lieu thereof "$1,000"; and

(2) by striking out "$1,000" and inserting in lieu thereof "$5,000".

CONFORMING AMENDMENTS

SEC. 27. (a) The Longshoremen's and Harbor Workers' Compensation Act is further amended—

33 USC 901.

33 USC 902.

(1) striking out paragraph (6) of section 2 and inserting in lieu thereof the following:

"(6) The term 'Secretary' means the Secretary of Labor.";

33 USC 901 *et seq.*

(2) by striking out "commission" each place it appears and inserting in lieu thereof "Secretary"; and

(3) by striking out "commission's" and inserting in lieu thereof "Secretary's".

33 USC 918.

(b) Section 18(b) is amended by striking out ", including the right of lien and priority provided for by section 17 of this Act,".

33 USC 939.

(c) Section 39(a) is amended by striking out "United States Employees' Compensation Commission" and inserting in lieu thereof "Secretary".

33 USC 901.

(d)(1) Section 1 is amended by striking out "Longshoremen's" and inserting in lieu thereof "Longshore".

33 USC 901 note.

(2) Reference in any other statute, regulation, order, or other document to the Longshoremen's and Harbor Workers' Compensation Act shall be deemed to refer to the Longshore and Harbor Workers' Compensation Act.

EFFECTIVE DATE

SEC. 28. (a) Except as otherwise provided in this section, the amendments made by this Act shall be effective on the date of enactment of this Act and shall apply both with respect to claims filed after such date and to claims pending on such date. 33 USC 901 note.

(b) The amendments made by sections 7(a), 7(e), 8(f), 11(b), 11(c), and 13 shall be effective 90 days after the date of enactment of this Act and shall apply both with respect to claims filed after such 90th day and to claims pending on such 90th day.

(c) The amendments made by sections 2(a), 3(a), 5, and 8(b) shall apply with respect to any injury after the date of enactment of this Act.

(d) The amendments made by sections 6(a), 8(d), and 9 shall apply with respect to any death after the date of enactment of this Act.

(e)(1) The amendments made by sections 2(c), 8(c)(1), 8(e)(4), 8(e)(5), 8(g), 10(b), 15 through 20, and 22 through 27 shall be effective on the date of enactment of this Act.

(2) The amendments made by sections 7(b), 7(c), 7(d), and 8(h) shall be effective 90 days after the date of enactment of this Act.

(f) The amendments made by section 6(b) shall apply with respect to any injury, disability, or death after the date of enactment of this Act.

(g) For the purpose of this section—

(1) in the case of an occupational disease which does not immediately result in a disability or death, an injury shall be deemed to arise on the date on which the employee or claimant becomes aware, or in the exercise of reasonable diligence or by reason of medical advice should have been aware, of the disease; and

(2) the term "disability" has the meaning given such term by section 2(10) of the Act as amended by this Act. *Ante*, p. 1639.

(h)(1) The amendments made by section 7 of this Act shall not apply to claims filed under the Black Lung Benefits Act (30 U.S.C. 901 et seq.). 33 USC 907 note.

(2) Section 422(a) of the Black Lung Benefits Act is amended by striking out "During" and inserting in lieu thereof "Subject to section 28(h)(1) of the Longshore and Harbor Workers' Compensation Act Amendments of 1984, during". 30 USC 932.

Approved September 28, 1984.

LEGISLATIVE HISTORY—S. 38:

HOUSE REPORTS: No. 98-570 and Part 2 (Comm. on Education and Labor) and No. 98-1027 (Comm. of Conference).
SENATE REPORT No. 98-81 (Comm. on Labor and Human Resources).
CONGRESSIONAL RECORD:
Vol. 129 (1983): June 16, considered and passed Senate.
Vol. 130 (1984): Apr. 9, 10, considered and passed House, amended.
Sept. 18, House agreed to conference report.
Sept. 20, Senate agreed to conference report.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 20, No. 39 (1984):
Sept. 28, Presidential statement.