

111TH CONGRESS  
1ST SESSION

# S. 236

To amend the Longshore and Harbor Workers' Compensation Act to improve the compensation system, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JANUARY 14, 2009

Mr. ISAKSON introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend the Longshore and Harbor Workers' Compensation Act to improve the compensation system, 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; REFERENCES.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Longshore and Harbor Workers' Compensation Act  
6 Amendments of 2009”.

7 (b) REFERENCES.—Except as otherwise expressly  
8 provided, whenever in this Act an amendment or repeal  
9 is expressed in terms of an amendment to, or repeal of,  
10 a section or other provision, the reference shall be consid-

1 ered to be made to a section or other provision of the  
 2 Longshore and Harbor Workers' Compensation Act (33  
 3 U.S.C. 901 et seq.).

4 **SEC. 2. INTENT OF CONGRESS; NEUTRAL INTERPRETATION.**

5 The Act (33 U.S.C. 901 et seq.) is amended by in-  
 6 serting after section 1 the following:

7 **“SEC. 1A. CONGRESSIONAL INTENT OF NEUTRAL INTER-  
 8 PRETATION.**

9 “It is the intent of Congress that—

10 “(1) in a dispute concerning the facts in a  
 11 claim brought under this Act, the facts are not to  
 12 be given a broad liberal construction in favor of the  
 13 employee or of the employer, and the laws pertaining  
 14 to a claim brought under this Act are to be con-  
 15 strued in accordance with the basic principles of  
 16 statutory construction and not liberally in favor of  
 17 either the employee or employer;

18 “(2) the system established under this Act shall  
 19 be an efficient and self-executing system that is not  
 20 an economic or administrative burden; and

21 “(3) the Department of Labor and the Benefits  
 22 Review Board shall administer this Act in a manner  
 23 which facilitates the self-execution of the system es-  
 24 tablished under this Act and the process of ensuring  
 25 a prompt and cost-effective delivery of payments.”.

1 **SEC. 3. DEFINITIONS.**

2 Section 2 (33 U.S.C. 902) is amended—

3 (1) in paragraph (1), by striking “association.”  
4 and inserting “association, but does not include the  
5 Secretary.”;

6 (2) in paragraph (2), by adding after the period  
7 at the end the following: “Physical or mental condi-  
8 tions caused in part or in whole by an employer’s  
9 personnel actions shall not be considered an injury  
10 or disease compensable under this Act. Physical or  
11 mental conditions caused in part or in whole by an  
12 employer’s personnel action may only be compen-  
13 sable under applicable State or Federal employment  
14 laws other than workers’ compensation laws.”;

15 (3) in paragraph (3)(A)—

16 (A) by striking “employed exclusively to  
17 perform” and inserting “primarily performing”;  
18 and

19 (B) by inserting “on the day of the injury”  
20 before the semicolon at the end;

21 (4) in paragraph (13), by inserting before the  
22 period at the end the following: “, or an incentive or  
23 1-time payment, severance pay, a settlement of an  
24 employment law claim, a bonus that is not guaran-  
25 teed, container royalties, stock, or stock options”;

1           (5) in paragraph (14), by striking “(19)” and  
2           inserting “(18)”;

3           (6) by redesignating paragraphs (21) and (22)  
4           as paragraphs (26) and (27), respectively; and

5           (7) by inserting after paragraph (20) the fol-  
6           lowing:

7           “(21) The term ‘participating network’ means a net-  
8           work of physicians and other health care providers that  
9           has been designated by a carrier to provide medical serv-  
10          ices to an employee under this Act.

11          “(22) The term ‘health care panel’ means 3 or more  
12          physicians or other health care providers in a common geo-  
13          graphic region who practice in the same or similar medical  
14          specialty, which panel is designated by a carrier to provide  
15          medical services to an employee under this Act.

16          “(23) The term ‘nationally recognized evidence-based  
17          treatment standards’ means the treatment standards in  
18          the Occupational Medicine Practice Guidelines published  
19          by the American College of Occupational and Environ-  
20          mental Medicine. Any subsequent revision of these stand-  
21          ards by the American College of Occupational and Envi-  
22          ronmental Medicine shall be effective with respect to all  
23          treatment decisions under this Act on the date that is 90  
24          days after the promulgation of the revision, unless the Sec-  
25          retary determines that the revision is inconsistent with

1 this Act’s policy of ensuring treatment pursuant to evi-  
2 dence-based standards.

3 “(24) The term ‘objective relevant medical findings’  
4 means those objective findings that correlate to the objec-  
5 tive complaints of an injured employee and are confirmed  
6 by physical examination findings or diagnostic testing.

7 “(25) The term ‘fraud’ means the act of knowingly,  
8 and with intent to defraud—

9 “(A) providing material false information that  
10 could result in the obtaining or denying, in whole or  
11 in part, of compensation under this Act; or

12 “(B) failing to provide material information  
13 that could result in the obtaining or denying, in  
14 whole or in part, of compensation under this Act.

15 “(26) The term ‘major contributing cause’, when  
16 used with respect to an injury, means the cause consti-  
17 tuting greater than 50 percent of the total of all causes.

18 “(27) The term ‘standard premium’ means the prod-  
19 uct of an employer’s payroll and the filed manual rate ap-  
20 plicable to the employer multiplied by the employer’s cur-  
21 rent experience modification factor, if applicable. The cal-  
22 culation may not include any deductible credit. For poli-  
23 cies written using retrospective rating, the standard pre-  
24 mium must be calculated in accordance with this definition  
25 regardless of the actual retrospective premium calculation.

1       “(28) The term ‘filed manual rate’ means the pre-  
 2 mium rate for each unit of exposure, as a function of the  
 3 applicable basis of premium, for the occupational classes  
 4 assigned to the employer’s business, filed pursuant to the  
 5 insurance laws of the applicable jurisdiction.

6       “(29) The term ‘experience modification factor’  
 7 means the adjustment to a policyholder’s premium rate  
 8 for a specific exposure period, resulting from a rating pro-  
 9 cedure utilizing the past insurance experience of the indi-  
 10 vidual policyholder to forecast future losses by measuring  
 11 the policyholder’s loss experience against the loss experi-  
 12 ence of policyholders in the same classification to produce  
 13 a prospective premium credit, debit, or unity modifica-  
 14 tion.”.

15 **SEC. 4. COVERAGE.**

16       Section 3 (33 U.S.C. 903) is amended—

17           (1) in subsection (c), by striking “solely”;

18           (2) by redesignating subsection (e) as sub-  
 19 section (f);

20           (3) by inserting after subsection (d) the fol-  
 21 lowing:

22       “(e) COMPENSATION LIMITATION.—No compensation  
 23 shall be payable to an employee for dentures, eyeglasses,  
 24 a hearing aid, a prosthetic device, or an artificial limb un-

1 less the dentures, eyeglasses, hearing aid, prosthetic de-  
 2 vice, or artificial limb—

3 “(1) is part of the medical treatment for a dis-  
 4 ability compensated under section 8; or

5 “(2) was damaged as part of, or in concert  
 6 with, an accident that resulted in a traumatic injury  
 7 to the employee.”; and

8 (4) in subsection (f) (as redesignated by para-  
 9 graph (2))—

10 (A) by inserting “this Act,” after “pursu-  
 11 ant to”;

12 (B) by striking “law or section” and in-  
 13 serting “law, or section”; and

14 (C) by inserting “)” after “death of sea-  
 15 men”.

16 **SEC. 5. LIABILITY FOR COMPENSATION.**

17 Section 4 (33 U.S.C. 904) is amended to read as fol-  
 18 lows:

19 **“SEC. 4. LIABILITY FOR COMPENSATION.**

20 “(a) IN GENERAL.—Every employer shall be liable  
 21 for, and shall secure the payment to the employer’s em-  
 22 ployees of, the compensation payable under sections 7, 8,  
 23 and 9.

1       “(b) PAYMENT IRRESPECTIVE OF FAULT.—Com-  
2       pensation shall be payable irrespective of fault as a cause  
3       for the injury.

4       “(c) PROPORTIONAL PAYMENT.—

5             “(1) IN GENERAL.—Except as provided in sub-  
6       section (e) and section 8(a)(13), in making com-  
7       pensation determinations under this Act, compensa-  
8       tion shall be reduced by an amount attributable to  
9       the percentage of—

10            “(A) the disability rating for a prior per-  
11       manent injury; and

12            “(B) the anatomical physical impairment  
13       that resulted from nonoccupational factors  
14       (such as aging, prior or subsequent anatomical  
15       physical impairment, or personal habits, includ-  
16       ing smoking and alcohol use).

17            “(2) LIMITATION.—In no case shall compensa-  
18       tion be calculated under this Act by deducting the  
19       dollar amount of compensation paid or payable for  
20       a prior injury described in paragraph (1).

21            “(3) DETERMINATIONS.—A determination  
22       under this subsection shall be based upon the find-  
23       ings of the treating physician upon a review of the  
24       available records. The treating physician designated  
25       in section 7 shall make a determination under this



1 paragraph by finding what percentage of the em-  
2 ployee's disability was a result of an injury arising  
3 out of and occurring in the course of the employ-  
4 ment involved and what percentage of such disability  
5 was the result of prior injury and other nonoccupa-  
6 tional factors.

7 “(d) BORROWED EMPLOYEES.—

8 “(1) IN GENERAL.—Subject to paragraph (2),  
9 in the case of the injury or death of an employee  
10 who is working for another employer at the direction  
11 of the employee's primary employer, all employers of  
12 the employee at the time of the injury shall be treat-  
13 ed as a single employer for purposes of this Act, in-  
14 cluding with respect to the obligation to pay com-  
15 pensation under this section and the exclusiveness of  
16 the remedy under section 5.

17 “(2) INDEMNIFICATION AGREEMENT.—Nothing  
18 in paragraph (1) shall be construed to supercede an  
19 express contractual indemnification agreement be-  
20 tween the borrowing and lending employer.

21 “(e) LAST EMPLOYER DOCTRINE; INTERVENING  
22 NONMARITIME EMPLOYMENT; NONCONTRIBUTING EXPO-  
23 SURE.—

24 “(1) LAST EMPLOYER DOCTRINE.—

1           “(A) IN GENERAL.—Except as provided in  
2           section 8(a)(13), if more than 1 employer or  
3           employment exposure contributed to the injury  
4           or death of an employee, the last employer to  
5           have contributed to the injury or death of the  
6           employee shall be responsible for benefits under  
7           this Act.

8           “(B) RIGHTS AND DEFENSES.—The em-  
9           ployer responsible for the benefits under this  
10          section shall retain all rights and defenses that  
11          any employer who contributed to the injury or  
12          death would otherwise have had. The employee  
13          shall retain all burdens of production, burdens  
14          of persuasion, and presumptions that the em-  
15          ployee would otherwise have had.

16          “(2) INTERVENING EMPLOYMENT.—If the last  
17          employment exposure that contributed to an injury  
18          or death was the result of employment that was not  
19          covered under this Act, no benefits shall be payable  
20          under this Act for the injury or death.

21          “(3) NONCONTRIBUTING EMPLOYMENT EXPO-  
22          SURE.—For purposes of this Act, employment expo-  
23          sure did not contribute to the injury or death of an  
24          employee if—

1           “(A) the medical condition that resulted in  
2           the injury or death was diagnosed before em-  
3           ployment commenced; or

4           “(B) the employer did not expose the em-  
5           ployee to conditions capable of causing or con-  
6           tributing to the injury or death.”.

7 **SEC. 6. EXCLUSIVENESS OF LIABILITY.**

8           Section 5 (33 U.S.C. 905) is amended—

9           (1) in subsection (a)—

10           (A) in the first sentence, by striking “or in  
11           admiralty” each place the term occurs and in-  
12           serting “in admiralty, or otherwise,”; and

13           (B) by striking the third sentence; and

14           (2) by adding at the end the following:

15           “(d) PREEMPTION.—

16           “(1) STATE LAW PREEMPTION.—Any State law  
17           that provides additional or alternative remedies for  
18           an injured employee, the employee’s legal represent-  
19           ative, husband or wife, parents, dependents, or next  
20           of kin, or anyone otherwise entitled to recover from  
21           such employer on account of such injury or death  
22           against the employer, at law or in admiralty, or oth-  
23           erwise, is expressly preempted when the carrier—

24           (A) has voluntarily paid compensation  
25           under this Act;

1           “(B) has settled a claim for compensation  
2           under this Act;

3           “(C) is contesting a claim for compensa-  
4           tion under this Act;

5           “(D) is appealing an order under this Act;

6           “(E) is subject to an order under this Act;

7           or

8           “(F) has notified the Secretary that a  
9           claim for compensation should have been  
10          brought under this Act.

11          “(2) STATE JURISDICTION PREEMPTION.—Any  
12          State proceeding (including a judicial or administra-  
13          tive proceeding) involving the claims of an injured  
14          employee, the employee’s legal representative, hus-  
15          band or wife, parents, dependents, or next of kin, or  
16          anyone otherwise entitled to recover damages from  
17          such employer at law or in admiralty, or otherwise,  
18          on account of such injury or death, shall be pre-  
19          empted when the carrier has taken an action de-  
20          scribed in subparagraphs (A) through (F) of para-  
21          graph (1).

22          “(3) ADMINISTRATIVE STAY.—

23                 “(A) PROCESS FOR STAY.—In order to ef-  
24                 fectuate this subsection and protect the admi-  
25                 ralty and maritime jurisdiction of the Federal

1 Government, an employer who is party to a  
2 State proceeding may notify the Secretary of  
3 the proceeding and any reason why this sub-  
4 section preempts the State proceeding. Within  
5 10 days after receiving the notification, the Sec-  
6 retary shall issue an administrative stay order  
7 to the State that shall remain in effect until a  
8 final determination has been made by the Sec-  
9 retary that this subsection does not preempt the  
10 State proceeding.

11 “(B) INJUNCTION.—If a State does not  
12 comply with a stay order issued by the Sec-  
13 retary under subparagraph (A), within 10 days  
14 after the State’s refusal to comply, the Sec-  
15 retary shall seek, in a Federal district court, an  
16 injunction against further State proceedings re-  
17 garding the claim that may be preempted by  
18 this subsection.

19 “(C) TIMELY RESPONSE.—If the Secretary  
20 does not fulfill the Secretary’s obligations under  
21 this paragraph in a timely manner, the em-  
22 ployer may seek an order in a Federal district  
23 court compelling the Secretary to so act.

24 “(e) GOVERNMENT RESPONSIBILITY.—The exclusive  
25 remedy for any person injured, in whole or in part, by

1 exposure to ionizing or nonionizing radiation from equip-  
2 ment required to be used by Federal law or regulation or  
3 owned by a Federal Government entity shall be found  
4 under the Federal Tort Claims Act, and this Act shall not  
5 apply to any injury or death resulting from such expo-  
6 sure.”.

7 **SEC. 7. MEDICAL SERVICES AND SUPPLIES.**

8 Section 7 (33 U.S.C. 907) is amended—

9 (1) in subsection (a)—

10 (A) by striking “(a)” and inserting  
11 “(a)(1)”;

12 (B) by striking “furnish such” and insert-  
13 ing “furnish medical services and supplies, in-  
14 cluding”; and

15 (C) by adding at the end the following:

16 “(2) Notwithstanding any other provision of this Act,  
17 in the case where nationally recognized evidence-based  
18 treatment standards apply to the employee’s medical con-  
19 dition, the medical treatment shall include only the care  
20 provided pursuant to such treatment standards.”;

21 (2) by striking subsection (i);

22 (3) by redesignating subsections (c) through  
23 (e), (f) through (h), (j), and (k), as subsections (d)  
24 through (f), (h) through (j), (k), and (l), respec-  
25 tively;

1 (4) by striking subsection (b) and inserting the  
2 following:

3 “(b) PHYSICIAN SELECTION.—

4 “(1) CARRIER USING PARTICIPATING NET-  
5 WORKS OR HEALTH CARE PANELS.—

6 “(A) IN GENERAL.—A carrier may des-  
7 ignate 1 or more participating networks or 1 or  
8 more health care panels, or both, for purposes  
9 of providing medical services to employees  
10 under this Act. An injured employee served by  
11 a carrier that has designated an approved par-  
12 ticipating network under subparagraph (C) or a  
13 health care panel under subparagraph (D) shall  
14 not be entitled to recover any amount expended  
15 by the employee for medical services and sup-  
16 plies unless the employee has secured such med-  
17 ical services and supplies through a physician or  
18 other health care provider that is a participant  
19 in such network or panel, respectively.

20 “(B) GEOGRAPHIC EXCEPTION.—Subpara-  
21 graph (A) shall not apply if the injured em-  
22 ployee can demonstrate that the carrier’s par-  
23 ticipating network or health care panel does not  
24 include a physician capable of treating the em-

1           employee within 100 miles of the employee’s resi-  
2           dence.

3           “(C) PARTICIPATING NETWORKS.—

4                   “(i) IN GENERAL.—The Secretary  
5           shall establish a process for approving par-  
6           ticipating networks, in accordance with  
7           clause (ii), that shall include an automatic  
8           approval for a participating network that  
9           has been authorized by a State workers’  
10          compensation program.

11                   “(ii) QUALIFICATIONS.—In order to  
12          be approved under clause (i), a partici-  
13          pating network shall establish an internal  
14          review process to address any disputes  
15          with respect to the provision of medical  
16          care or treatment to an employee. Such  
17          process shall conform to the utilization re-  
18          view standards for workers’ compensation  
19          described in subsection (m).

20           “(D) DESIGNATION OF HEALTH CARE PAN-  
21          ELS.—To designate a health care panel for pur-  
22          poses of this subsection, a carrier shall submit  
23          the names of the health care panel participants  
24          to the Secretary.



1           “(2) CARRIER NOT USING PANELS OR NET-  
2           WORKS.—If a carrier has not provided medical serv-  
3           ices or supplies in accordance with paragraph (1),  
4           the employee shall have the right to choose an at-  
5           tending physician authorized by the Secretary to  
6           provide medical care under this Act as hereinafter  
7           provided. If, due to the nature of the injury, the em-  
8           ployee is unable to select a physician and the nature  
9           of the injury requires immediate medical treatment  
10          and care, the employer shall select a physician for  
11          the employee.

12          “(c) SUPERVISION AND CHANGE OF PHYSICIANS.—  
13          The Secretary, consistent with the nationally recognized  
14          evidence-based standards provided for under subsection  
15          (a)(2)—

16                 “(1) shall actively supervise the medical care  
17                 rendered to injured employees;

18                 “(2) shall require periodic reports as to the  
19                 medical care being rendered to injured employees;

20                 “(3) shall have authority to determine the ne-  
21                 cessity, character, and sufficiency of any medical aid  
22                 furnished or to be furnished;

23                 “(4) may, on the Secretary’s own initiative or  
24                 at the request of the employer, order a change of  
25                 physicians or hospitals when, in the Secretary’s

1 judgment, such change is desirable or necessary in  
2 the interest of the employee or where the charges ex-  
3 ceed those prevailing within the community for the  
4 same or similar services or exceed the provider's cus-  
5 tomary charges; and

6 “(5) shall permit, in accordance with regula-  
7 tions promulgated by the Secretary, the change of  
8 physicians at the request of an employee (except  
9 that such change may be approved not more fre-  
10 quently than twice annually unless otherwise author-  
11 ized by the carrier).”;

12 (5) in subsection (d) (as redesignated by para-  
13 graph (3))—

14 (A) in paragraph (1)(B), by striking “(j)”  
15 and inserting “(k)”; and

16 (B) in paragraph (2), by striking “by an  
17 employee”;

18 (6) in subsection (e)(4) (as redesignated by  
19 paragraph (3))—

20 (A) by striking “employer” and inserting  
21 “employer or designated by the Secretary”; and

22 (B) by striking “may” and inserting  
23 “shall”;

24 (7) in subsection (f) (as redesignated by para-  
25 graph (3)), by striking the third sentence;

1           (8) by inserting after subsection (f) (as redesignated by paragraph (3)) the following:

2           “(g) USE OF MEDICAL RECORDS.—When there is the  
3 need for any review, hearing, investigation, or other proceeding authorized or directed under this section relating  
4 to medical care or treatment, the finder of fact shall rely  
5 on the medical record and the findings of qualified medical  
6 professionals that are based on the medical record.”; and

7           (9) by adding at the end the following:

8           “(m) APPLICABILITY OF UTILIZATION REVIEW  
9 STANDARDS.—Notwithstanding any other provision of  
10 this Act, any utilization review, whether within a participating network, health care panel, or otherwise, carried  
11 out under this Act shall be conducted pursuant to the utilization review standards applicable to workers’ compensation promulgated by URAC, as such standards were in  
12 effect on the date of enactment of the Longshore and Harbor Workers’ Compensation Act Amendments of 2009.  
13 Any subsequent revision of the standards shall be effective, with respect to all utilization review determinations  
14 under this Act, on the date that is 90 days after the promulgation of the revised standards, unless the Secretary  
15 determines that the revised standards are inconsistent  
16 with this Act’s policy of ensuring utilization review in accordance with nationally recognized standards.”.

1 **SEC. 8. COMPENSATION FOR DISABILITY.**

2 (a) COMPENSATION FOR DISABILITY.—Section 8 (33  
3 U.S.C. 908) is amended—

4 (1) in subsection (a), by striking “66 $\frac{2}{3}$  per cen-  
5 tum of the average weekly wages” and inserting “75  
6 percent of the spendable earnings”;

7 (2) in subsection (b), by striking “66 $\frac{2}{3}$  per cen-  
8 tum of the average weekly wages” and inserting “75  
9 percent of the spendable earnings”;

10 (3) in subsection (c)—

11 (A) in the matter preceding paragraph (1),  
12 by striking “66 $\frac{2}{3}$  per centum of the average  
13 weekly wages” and inserting “75 percent of the  
14 spendable earnings”;

15 (B) by striking paragraph (13) and insert-  
16 ing the following:

17 “(13) LOSS OF HEARING.—

18 “(A) COMPENSATION.—

19 “(i) TOTAL LOSS OF HEARING.—

20 “(I) ONE EAR.—The compensa-  
21 tion for total loss of hearing in 1 ear  
22 shall be 52 weeks.

23 “(II) BOTH EARS.—The com-  
24 pensation for total loss of hearing in  
25 both ears shall be 200 weeks.

1           “(ii) PARTIAL LOSS OF HEARING.—

2           For the partial loss of hearing in 1 or both  
3           ears, compensation shall be paid for a pe-  
4           riod proportionate to the degree of the  
5           loss, in accordance with clause (i).

6           “(B) MEASUREMENT.—

7           “(i) EMPLOYMENT-RELATED LOSS.—

8           The employer shall pay compensation only  
9           for any hearing loss caused by an injury  
10          arising out of and in the course of employ-  
11          ment with such employer, and shall not be  
12          liable for that part of the employee’s hear-  
13          ing loss caused by presbycusis, nonoccupa-  
14          tional causes, and documented preemploy-  
15          ment hearing loss. The percentage of loss  
16          caused by those conditions shall be de-  
17          ducted from the percentage of the employ-  
18          ee’s hearing loss before determining the  
19          employer’s liability.

20          “(ii) DETERMINATION OF LOSS.—Ex-

21          cept as provided in clause (iii), determina-  
22          tions of loss of hearing shall be made in  
23          accordance with the guides for the evalua-  
24          tion of permanent impairment, as promul-

1 gated and modified from time to time by  
2 the American Medical Association.

3 “(iii) MEASUREMENT.—The measure-  
4 ment of presbycusis shall be in accordance  
5 with the methodology adopted in section  
6 1910.95 of title 29, Code of Federal Regu-  
7 lations, appendix F, applied to the applica-  
8 ble decibel levels for hearing loss deter-  
9 minations as provided in clause (ii).

10 “(iv) AUDIOGRAM STANDARDS.—In  
11 determining the amount of hearing loss for  
12 purposes of this paragraph, an audiogram  
13 that is administered by a licensed or cer-  
14 tified technician, an audiologist who is cer-  
15 tified, or a physician who is certified in  
16 otolaryngology, and is interpreted by an  
17 audiologist who is certified or a physician  
18 who is certified in otolaryngology, shall  
19 prevail over an audiogram that is not per-  
20 formed in accordance with these criteria.”;

21 (C) by striking paragraph (21) and insert-  
22 ing the following:

23 “(21) In all other cases in the class of dis-  
24 ability, the compensation shall be 75 percent of the  
25 difference between the injured employee’s spendable

1 earnings before the injury and the amount of spend-  
 2 able earnings the employee is able to earn after the  
 3 injury in the same or another employment, payable  
 4 during the continuance of partial disability.”; and

5 (D) in paragraph (23)—

6 (i) by striking “66<sup>2</sup>/<sub>3</sub> per centum” and  
 7 inserting “75 percent”; and

8 (ii) by striking “average weekly  
 9 wages” each place the term occurs and in-  
 10 serting “spendable earnings”;

11 (4) by striking subsection (e) and inserting the  
 12 following:

13 “(e) TEMPORARY PARTIAL DISABILITY.—In the case  
 14 of temporary partial disability resulting in decrease of  
 15 earning capacity, the compensation shall be 75 percent of  
 16 the difference between the injured employee’s spendable  
 17 earnings before the injury and the amount of spendable  
 18 earnings the employee is able to earn after the injury in  
 19 the same or another employment, to be paid during the  
 20 continuance of such disability, but shall not be paid for  
 21 a period exceeding 5 years.”;

22 (5) in subsection (f), by adding at the end the  
 23 following:

24 “(4) LIMITATION.—After the date of enactment of  
 25 the Longshore and Harbor Workers’ Compensation Act

1 Amendments of 2009, no order for relief under this sub-  
2 section shall be entered except—

3 “(A) an order for modification of benefits for  
4 which an order has been entered prior to such date  
5 of enactment; or

6 “(B) an order for relief, in respect of a survivor  
7 of an employee, being paid from the special fund at  
8 the date of death.”;

9 (6) in subsection (j)(1), by striking “a disabled  
10 employee” and inserting “an employee”; and

11 (7) by adding at the end the following:

12 “(k) MULTIPLE-INJURY MAXIMUM.—Notwith-  
13 standing any other provision of this Act, when an em-  
14 ployee qualifies for compensation for disability caused by  
15 2 or more injuries, in no case shall the amount of com-  
16 pensation payable for all such injuries when combined ex-  
17 ceed the lesser of—

18 “(1) 75 percent of spendable earnings at the  
19 time of the last injury; or

20 “(2) the maximum rate of compensation, as de-  
21 termined under section 6(b), at the time of the last  
22 injury.”.

23 (b) NONAPPLICABILITY UNTIL PUBLICATION OF  
24 TABLE.—Not later than 90 days after the date of enact-  
25 ment of this Act, the Secretary of Labor shall promulgate



1 regulations and publish a table of compensation imple-  
2 menting the amendments made by this section. A carrier  
3 shall not be required to adjust payments made by the car-  
4 rier under the Longshore and Harbor Workers' Com-  
5 pensation Act to comply with the amendments made by  
6 this section until such table is published.

7 **SEC. 9. COMPENSATION FOR DEATH.**

8 (a) COMPENSATION FOR DEATH.—Section 9 (33  
9 U.S.C. 909) is amended—

10 (1) in subsection (a), by striking “\$3,000” and  
11 inserting “\$7,500”;

12 (2) by redesignating subsections (e) through (g)  
13 as subsections (f) through (h), respectively;

14 (3) by striking subsections (b) through (d) and  
15 inserting the following:

16 “(b) WIDOW OR WIDOWER WITHOUT CHILDREN.—

17 If there be a widow or widower and no surviving child of  
18 the deceased, the widow or widower shall receive 75 per-  
19 cent of the spendable earnings of the deceased during wid-  
20 owhood or widowerhood, except that upon remarriage of  
21 the widow or widower, the widow or widower shall receive  
22 2 years' worth of such payments in a lump sum.

23 “(c) WIDOW OR WIDOWER WITH CHILDREN.—If

24 there be a widow or widower and 1 or more surviving chil-  
25 dren of the deceased—

1           “(1) the widow or widower shall receive 50 per-  
2           cent of the spendable earnings of the deceased dur-  
3           ing widowhood or widowerhood, except that upon re-  
4           marriage of the widow or widower, the widow or wid-  
5           ower shall receive 2 years’ worth of such payments  
6           in a lump sum; and

7           “(2) each child of the deceased shall receive a  
8           pro rata share of 25 percent of the spendable earn-  
9           ings of the deceased.

10          “(d) SURVIVING CHILDREN.—If there be 1 or more  
11         surviving children of the deceased, but no widow or wid-  
12         ower, then each child shall receive a pro rata share of 75  
13         percent of the spendable earnings of the deceased.

14          “(e) NO WIDOW, WIDOWER, OR SURVIVING CHILD.—  
15         If there be no widow or widower or surviving child, then  
16         for the support of grandchildren, brothers and sisters, par-  
17         ents, and grandparents, if dependent upon the deceased  
18         at the time of the injury, and any other persons who sat-  
19         isfy the definition of the term ‘dependent’ in section 152  
20         of title 26 of the United States Code, but are not otherwise  
21         eligible under this section, 25 percent of spendable earn-  
22         ings for the support of each such person during such de-  
23         pendency, but in no case shall the aggregate amount pay-  
24         able under this subsection exceed 75 percent of the spend-  
25         able earnings of the deceased.”; and

1 (4) by adding at the end the following:

2 “(i) APPOINTMENT OF GUARDIAN.—The deputy com-  
3 missioner having jurisdiction over a claim for compensa-  
4 tion under this section shall have discretion to require the  
5 appointment of a guardian for the purpose of receiving  
6 the compensation of a minor child. In the absence of such  
7 a requirement, the appointment of a guardian for such  
8 purpose shall not be necessary.”.

9 (b) NONAPPLICABILITY UNTIL PUBLICATION OF  
10 TABLE.—Not later than 90 days after the date of enact-  
11 ment of this Act, the Secretary of Labor shall promulgate  
12 regulations and publish a table of compensation imple-  
13 menting the amendments made by this section. A carrier  
14 shall not be required to adjust payments made under the  
15 Longshore and Harbor Workers’ Compensation Act to  
16 comply with the amendments made by this section until  
17 such table is published.

18 **SEC. 10. DETERMINATION OF PAY.**

19 (a) DETERMINATION OF PAY.—Section 10 (33  
20 U.S.C. 910) is amended—

21 (1) in the matter preceding subsection (a)—

22 (A) by striking “average weekly wage” and  
23 inserting “spendable earnings”; and

24 (B) by inserting “as provided in sections 8  
25 and 9” after “compensation”;

1           (2) by striking subsections (a) through (e) and  
2 inserting the following:

3           “(a) AVERAGE WEEKLY WAGE CALCULATION.—

4           “(1) IN GENERAL.—If the injured employee was  
5 available to work, as determined under paragraph  
6 (3), in 40 of the 52 weeks immediately preceding the  
7 injury, or if the employee was employed in a sea-  
8 sonal position when the injury occurred, the average  
9 weekly wage shall be calculated by dividing the ac-  
10 tual earnings of the employee for the previous 52  
11 weeks by 52.

12           “(2) RULE FOR CERTAIN INDIVIDUALS.—If the  
13 injured employee was available for work, as deter-  
14 mined under paragraph (3), in less than 40 of the  
15 52 weeks immediately preceding the injury, the aver-  
16 age weekly wage shall be based on the average week-  
17 ly wage of other employees in the same classifica-  
18 tion, who worked in the same job, with the same se-  
19 niority, and at the same location for the 52 weeks  
20 immediately preceding the injury.

21           “(3) AVAILABILITY TO WORK.—An injured em-  
22 ployee shall be considered available to work in a  
23 week if the injured employee—

24           “(A) actually worked not less than 1 day  
25 during the week;

1           “(B) voluntarily withdrew from the work-  
2           force for the week;

3           “(C) was not offered work during a week  
4           for reasons of seniority; or

5           “(D) was unable to work during a week for  
6           any reason other than a work-related injury.

7           “(4) SPECIAL METHOD OF CALCULATION.—If  
8           either of the methods of arriving at the average  
9           weekly wages of the injured employee described in  
10          paragraphs (1) and (2) cannot reasonably and fairly  
11          be applied, the average weekly wages shall be such  
12          sum as, having regard to the previous earnings of  
13          the injured employee in the employment in which the  
14          employee was working at the time of the injury, and  
15          of other employees of the same or most similar class  
16          working in the same or most similar employment in  
17          the same or neighboring locality, or other employ-  
18          ment of such employee, including the reasonable  
19          value of the services of the employee if engaged in  
20          self-employment, shall reasonably represent the an-  
21          nual earning capacity of the injured employee, di-  
22          vided by 52.

23          “(5) MINOR EMPLOYEES.—If it is established  
24          that the injured employee was a minor when injured,  
25          and that under normal conditions the employee’s

1 wages should be expected to increase during the pe-  
2 riod of disability, the fact may be considered in ar-  
3 riving at the employee's average weekly wages.

4 “(b) RETIRED EMPLOYEES.—

5 “(1) EMPLOYEES INJURED WITHIN THE FIRST  
6 YEAR OF RETIREMENT.—With respect to any claim  
7 based on a death or disability due to an occupational  
8 disease for which the time of injury (as determined  
9 under subsection (g)) occurs within the first year  
10 after the employee has retired, the average weekly  
11 wage shall be calculated in accordance with sub-  
12 section (a).

13 “(2) EMPLOYEES INJURED AFTER THE FIRST  
14 YEAR OF RETIREMENT.—With respect to any claim  
15 based on a death or disability due to an occupational  
16 disease for which the time of injury (as determined  
17 under subsection (g)) occurs more than 1 year after  
18 the employee has retired, the average weekly wage  
19 shall be deemed to be the national average weekly  
20 wage (as determined by the Secretary pursuant to  
21 section 6(b)) applicable at the time of the injury.

22 “(c) SPENDABLE EARNINGS.—

23 “(1) METHOD OF CALCULATION.—The spend-  
24 able earnings of an employee shall be the average  
25 weekly wage, as calculated under subsection (a), re-

1       duced by subtracting the Federal, State, and local  
2       taxes that would have been withheld based on stand-  
3       ard deductions and on the domicile of the employee  
4       at the time of the injury, and reduced by subtracting  
5       the tax that would have been withheld under section  
6       3101 of the Internal Revenue Code of 1986.

7               “(2) ANNUAL TABLE.—The Secretary shall an-  
8       nually publish a table for calculating spendable earn-  
9       ings under this subsection.”; and

10              (3) by redesignating subsections (f) through (i)  
11       as subsections (d) through (g), respectively.

12       (b) NONAPPLICABILITY UNTIL PUBLICATION OF  
13 TABLE.—Not later than 90 days after the date of enact-  
14 ment of this Act, the Secretary of Labor shall promulgate  
15 regulations and publish a table of average weekly wages,  
16 and the associated amount of spendable earnings, imple-  
17 menting the amendments made by this section. A carrier  
18 shall not be required to adjust payments made under the  
19 Longshore and Harbor Workers’ Compensation Act to  
20 comply with the amendments made by this section until  
21 such table is published.

22 **SEC. 11. NOTICE OF INJURY OR DEATH.**

23       Section 12 (33 U.S.C. 912) is amended—

24              (1) by striking subsection (a) and inserting the  
25       following:

1 “(a) TIMING AND RECIPIENTS OF NOTICE.—

2 “(1) TRAUMATIC INJURY OR DEATH.—Notice of  
3 a traumatic injury or death in respect of which com-  
4 pensation is payable under this Act shall be given  
5 not later than 30 days after the date of the trauma,  
6 or 30 days after the employee or beneficiary is aware  
7 that the trauma resulted in injury or death (or in  
8 the exercise of reasonable diligence or by reason of  
9 medical advice should have been aware) of a rela-  
10 tionship among the trauma, the injury or death, and  
11 the employment, but in no case shall the notice be  
12 given more than 1 year after the trauma occurs.

13 “(2) NON-TRAUMATIC INJURY OR DEATH RE-  
14 SULTING FROM INJURY.—Except as provided in  
15 paragraph (3), in the case of a non-traumatic injury  
16 that does not immediately result in a disability or  
17 death, and in the case of death from a non-trau-  
18 matic injury, such notice shall be given not later  
19 than 1 year after the employee or claimant becomes  
20 aware (or in the exercise of reasonable diligence or  
21 by reason of medical advice should have been aware)  
22 of the relationship between the non-traumatic injury  
23 or death and employment, provided that in no case  
24 shall the notice be given more than 1 year after the



1 diagnosis of a non-traumatic injury or a death re-  
2 sulting from such injury.

3 “(3) HEARING LOSS.—Notice of hearing loss  
4 shall be given not later than the date specified in  
5 paragraph (2) or 1 year after the last date of em-  
6 ployment, whichever occurs first.

7 “(4) INDIVIDUALS RECEIVING NOTICE.—Notice  
8 under this subsection shall be given—

9 “(A) to the deputy commissioner in the  
10 compensation district in which the injury or  
11 death occurred; and

12 “(B) to the employer.”;

13 (2) in subsection (b), by adding at the end the  
14 following: “In order to facilitate prompt settlement  
15 of cases, notice of an injury shall also include an op-  
16 portunity for the employer to have the employee an-  
17 swer questions under oath, so that the employer may  
18 determine if and how much compensation should be  
19 paid. The opportunity for questioning shall occur at  
20 a reasonable time and place that provides the em-  
21 ployee with sufficient opportunity to obtain legal  
22 counsel before such questioning, should the employee  
23 so choose. Failure by an employee to be available for  
24 such questioning (unless waived by the employer in  
25 writing), or failure to fully and truthfully answer

1 material questions, shall be considered a failure to  
2 give notice under this Act.”; and

3 (3) by striking subsection (d) and inserting the  
4 following:

5 “(d) FAILURE TO GIVE NOTICE.—Failure to give  
6 timely notice in accordance with this section shall not bar  
7 any claim for compensation under this Act if—

8 “(1)(A) the employer (or the employer’s agent  
9 or other responsible official designated by the em-  
10 ployer pursuant to subsection (c)) or the carrier had  
11 knowledge of the injury or death;

12 “(B) the deputy commissioner determines that  
13 the employer or carrier has not been prejudiced by  
14 failure to give such notice; or

15 “(C) the deputy commissioner excuses such fail-  
16 ure on the ground that—

17 “(i) notice, while not given to a responsible  
18 official designated by the employer pursuant to  
19 subsection (c), was given to an official of the  
20 employer or the employer’s insurance carrier,  
21 and the employer or carrier was not prejudiced  
22 due to the failure to provide notice to a respon-  
23 sible official designated by the employer pursu-  
24 ant to subsection (c); or

1           “(ii) for some satisfactory reason such no-  
2           tice could not be given;

3           “(2) objection to such failure is raised before  
4           the deputy commissioner at the first hearing of a  
5           claim for compensation in respect of such injury or  
6           death; and

7           “(3) notice that meets the requirements of this  
8           section is given not more than 1 year after the in-  
9           jury or death.”.

10 **SEC. 12. FILING OF CLAIMS.**

11           Section 13 (33 U.S.C. 913) is amended—

12           (1) by striking subsection (a) and inserting the  
13           following:

14           “(a) **TIME TO FILE.**—The right to compensation for  
15           disability or death under this Act shall be barred unless  
16           a claim therefore is filed not later than 90 days after pro-  
17           viding notice under section 12. If payment of compensa-  
18           tion has been made without an award on account of such  
19           injury or death, a claim may be filed not later than 90  
20           days after the date of the last payment. Such claim shall  
21           be filed with the deputy commissioner in the compensation  
22           district in which such injury or death occurred.”;

23           (2) by striking subsection (b);

24           (3) by redesignating subsections (c) and (d) as  
25           subsections (b) and (c), respectively; and

1           (4) in subsection (c) (as redesignated by para-  
2           graph (3)), by inserting “, provided that such suit  
3           was filed in accordance with subsection (a)” before  
4           the period at the end.

5 **SEC. 13. PAYMENT OF COMPENSATION.**

6           Section 14(f) (33 U.S.C. 914(f)) is amended—

7           (1) by striking “within ten days after it be-  
8           comes due” and inserting “within 10 business days  
9           after receipt by the employer or carrier of a priority  
10          mailing containing the order”; and

11          (2) by adding at the end the following: “For  
12          purposes of this section, the date on which com-  
13          pensation is paid shall be the earlier of the date on  
14          which the employer or carrier actually delivers the  
15          compensation to the employee (or the representative  
16          designated by the employee) or the postmark date on  
17          which the compensation was mailed to such em-  
18          ployee (or representative).”.

19 **SEC. 14. ASSIGNMENT AND EXEMPTION FROM CLAIMS OF**  
20 **CREDITORS.**

21          Section 16 (33 U.S.C. 916) is amended—

22          (1) by striking “No assignment” and inserting  
23          the following:

24          “(a) IN GENERAL.—Except as provided in subsection  
25 (b), no assignment”; and

1 (2) by adding at the end the following:

2 “(b) LIMITATION.—Benefits due or payable under  
3 this Act shall be subject to withholding and any other legal  
4 process in the same form and manner, and to the same  
5 extent, as withholding and other legal processes apply  
6 under section 206 of the Employment Retirement Income  
7 Security Act of 1974 (29 U.S.C. 1056).”.

8 **SEC. 15. PRESUMPTIONS, BURDENS, AND RULES OF EVI-**  
9 **DENCE.**

10 Section 20 (33 U.S.C. 920) is amended to read as  
11 follows:

12 **“SEC. 20. PRESUMPTIONS, BURDENS, AND RULES OF EVI-**  
13 **DENCE.**

14 “(a) PRESUMPTIONS.—

15 “(1) REBUTTABLE PRESUMPTIONS.—In any  
16 proceeding for the enforcement of a claim for com-  
17 pensation under this Act, it shall be a rebuttable  
18 presumption—

19 “(A) that the claim comes within the provi-  
20 sions of this Act;

21 “(B) that sufficient notice of such claim  
22 has been given;

23 “(C) that the injury was not occasioned  
24 solely by the intoxication of the injured em-  
25 ployee; and

1           “(D) that the injury was not occasioned by  
2           the willful intention of the injured employee to  
3           injure or kill the employee or another.

4           “(2) REBUTTING PRESUMPTIONS.—A presump-  
5           tion described in paragraph (1) shall not be consid-  
6           ered evidence once rebutted. Once a presumption has  
7           been rebutted, the burden of production of evidence  
8           and burden of persuasion shall be governed by sec-  
9           tion 556(d) of title 5, United States Code.

10          “(3) REBUTTING NONINTOXICATION PRESUMP-  
11          TION.—The presumption described in paragraph  
12          (1)(C) shall be rebutted by evidence that the em-  
13          ployee—

14                 “(A) refused a drug or alcohol test;

15                 “(B) did not make himself available for a  
16                 drug or alcohol test;

17                 “(C) tested positive for illegal drugs; or

18                 “(D) tested as having a blood alcohol con-  
19                 centration level above the permitted driving  
20                 limit as established by the State where the in-  
21                 jury occurred.

22          “(4) EXCLUSION OF OTHER PRESUMPTIONS.—  
23          No other presumptions shall be authorized under  
24          this Act.

25          “(b) FALSE STATEMENTS.—

1           “(1) AFFIRMATIVE AND COMPLETE DE-  
2 FENSE.—It shall be an affirmative and complete de-  
3 fense to any employee claim under this Act that the  
4 employee or employee’s agent knowingly made a  
5 false statement that is material to obtaining a ben-  
6 efit or payment.

7           “(2) CREDIBILITY.—If any individual know-  
8 ingly makes a false statement, whether in writing or  
9 under oath, such false statement shall go to the  
10 credibility of the individual on all other issues.

11       “(c) RULES OF EVIDENCE.—

12           “(1) EVIDENCE OF INJURY.—With respect to  
13 proof of injury for any claim for compensation under  
14 this Act—

15           “(A) the injury, its occupational cause, and  
16 any resulting manifestations or disability must  
17 be proven to a reasonable degree of medical cer-  
18 tainty, based on objective relevant medical find-  
19 ings;

20           “(B) notwithstanding section 4(c) or sec-  
21 tion 8(c)(13)(B), the employment exposure or  
22 accident shall be the major contributing cause  
23 of any injury;

24           “(C) a causal relationship between a com-  
25 pensable accident or injury, and conditions that

1 are not readily observable, shall be by medical  
2 evidence only, as proven by physical examina-  
3 tion findings or diagnostic testing;

4 “(D) the fact that the injury was the  
5 major contributing cause shall be proven by  
6 medical evidence only;

7 “(E) in cases involving occupational dis-  
8 ease or repetitive exposure, both causation and  
9 sufficient exposure to support causation shall be  
10 proven by clear and convincing evidence; and

11 “(F) pain or other subjective complaints  
12 alone, in the absence of objective relevant med-  
13 ical findings, is not compensable.

14 “(2) JUNK SCIENCE.—

15 “(A) EXPERT TESTIMONY.—With respect  
16 to a claim under this Act, expert testimony  
17 shall not be considered if it does not meet the  
18 requirements of Rule 702 of the Federal Rules  
19 of Evidence.

20 “(B) MEDICAL OPINION.—In order to be  
21 considered with respect to a claim under this  
22 Act, a medical opinion shall be based on not  
23 less than 1 peer-reviewed study that—

24 “(i) has been published in a major  
25 medical journal; and



1                   “(ii) is accepted by the majority of the  
2                   scientific community.”.

3 **SEC. 16. REVIEW OF COMPENSATION ORDERS.**

4       Section 21 (33 U.S.C. 921) is amended—

5                   (1) in subsection (b)—

6                   (A) in paragraph (3)—

7                   (i) in the fourth sentence, by striking  
8                   “the amounts required by an award shall  
9                   not” and inserting “disputed amounts re-  
10                  quired by an award shall”; and

11                  (ii) by striking the fifth sentence;

12                  (B) in paragraph (4), by adding at the end  
13                  the following: “An employee may request that  
14                  the Board hold an expedited hearing with re-  
15                  spect to an appeal under this subsection.”; and

16                  (C) by adding at the end the following:

17       “(6) TIMING FOR DECISIONS.—

18                  “(A) ONE-YEAR APPEAL PERIOD.—If the Board  
19                  fails to resolve an appeal during the 1-year period  
20                  following the date on which the appeal was filed, the  
21                  decision that was the basis of the appeal is auto-  
22                  matically affirmed and such affirmation shall be con-  
23                  sidered a final order by the Board.

24                  “(B) NINETY-DAY MOTION TO RECONSIDER PE-  
25                  RIOD.—If the Board issues a decision on an appeal

1 during the 1-year period following the date on which  
2 the appeal was filed and a timely motion for recon-  
3 sideration is filed, the Board may consider the mo-  
4 tion for reconsideration. If the Board fails to rule  
5 upon the motion for reconsideration during the 90-  
6 day period following the filing of such motion, the  
7 motion for reconsideration shall be deemed denied.”;  
8 and

9 (2) in subsection (c), by adding at the end the  
10 following: “A litigating position of the Secretary  
11 shall not be entitled to any deference, unless such  
12 position has been expressly adopted by the Secretary  
13 as a rule made on the record after opportunity for  
14 an agency hearing (pursuant to sections 556 and  
15 557 of title 5, United States Code).”.

16 **SEC. 17. MODIFICATION OF COMPENSATION CASES.**

17 Section 22 (33 U.S.C. 922) is amended—

18 (1) by striking “22. Upon” and inserting “22.

19 (a) MODIFICATION OF AWARDS.—Upon”;

20 (2) in the last sentence of subsection (a) (as in-  
21 serted by paragraph (1)), by striking “modification  
22 of settlements.” and inserting “modification of set-  
23 tlements, except as provided in subsection (b) or  
24 (c).”; and

25 (3) by adding at the end the following:

1       “(b) FRAUD.—Notwithstanding subsection (a), if any  
2 payment of compensation has been made as a result of  
3 fraud, a carrier may at any time seek an order for imme-  
4 diate—

5               “(1) termination or suspension of all future  
6 payments; and

7               “(2) full restitution of all amounts paid as a re-  
8 sult of the fraud.

9       “(c) OVERPAYMENT.—If a carrier makes a payment  
10 under this Act to a person in amounts in excess of the  
11 amounts owed, the carrier may seek an order for repay-  
12 ment by such person, including a credit against any future  
13 payment due under this Act or wages paid to the em-  
14 ployee. This subsection shall apply regardless of whether  
15 such excess amounts resulted from voluntary payments,  
16 a settlement, or an order.”.

17 **SEC. 18. PENALTY FOR MISREPRESENTATION.**

18       Section 31 (33 U.S.C. 931) is amended by adding  
19 at the end the following:

20       “(d) REPORTS OF FRAUD.—A carrier shall report  
21 credible incidents of fraud to the Secretary for investiga-  
22 tion. The Secretary shall report any credible incident of  
23 fraud involving more than \$10,000 to the appropriate  
24 United States Attorney. In the absence of a finding by  
25 the Secretary that a report of fraud under this subsection

1 was made with knowledge that the information was false  
2 or was disclosed in reckless disregard of whether it was  
3 false, no person reporting fraud under this subsection  
4 shall be subject to civil liability for libel, slander, or any  
5 other cause of action arising from such report.”.

6 **SEC. 19. SPECIAL FUND.**

7 Section 44 (33 U.S.C. 944) is amended—

8 (1) by redesignating subsections (d) through (j)  
9 as subsections (e) through (k), respectively;

10 (2) by striking subsection (c) and inserting the  
11 following:

12 “(c) PAYMENTS INTO FUND.—Payments into such  
13 fund shall be made as follows:

14 “(1) Whenever the Secretary determines that  
15 there is no person entitled under this Act to com-  
16 pensation for the death of an employee that would  
17 otherwise be compensable under this Act, the appro-  
18 priate employer shall pay \$5,000 as compensation  
19 for the death of such an employee.

20 “(2) At the beginning of each calendar year,  
21 the Secretary shall estimate the probable expenses of  
22 the fund during that calendar year and the amount  
23 of payments required (and the schedule therefore) to  
24 maintain adequate reserves in the fund.

1           “(3) Each self-insurer shall make payments  
2 into the fund on a prorated assessment by the Sec-  
3 retary determined by—

4           “(A) computing the ratio (expressed as a  
5 percent) of—

6           “(i) the self-insurer’s compensation  
7 payments under sections 8 and 9 during  
8 the preceding calendar year, to

9           “(ii) the total of such payments by all  
10 carriers and self-insurers under such sec-  
11 tions during the preceding calendar year;

12           “(B) computing the ratio (expressed as a  
13 percent) of—

14           “(i) the payments under section 8(f)  
15 of this Act during the preceding calendar  
16 year that are attributable to the self-in-  
17 surer, to

18           “(ii) the total of such payments dur-  
19 ing such year attributable to all carriers  
20 and self-insurers;

21           “(C) dividing the sum of the percentages  
22 computed under subparagraphs (A) and (B) for  
23 the self-insurer by 2; and

24           “(D) multiplying the percentage computed  
25 under subparagraph (C) by such probable ex-

1           penses of the fund (as determined under para-  
2           graph (2)).

3           “(4) Each employer who is not self-insured  
4           shall make payments into the fund through a sur-  
5           charge based on the standard premium, to be com-  
6           puted and collected as follows:

7                   “(A) Carriers that are not self-insurers  
8                   shall report the amount of all standard pre-  
9                   miums for insurance for the payment of com-  
10                  pensation under this Act to the Secretary by  
11                  April 1 of each year.

12                  “(B) The Secretary shall compute an  
13                  amount for each carrier that is not a self-in-  
14                  surer, using the methodology described in sub-  
15                  paragraph (3) for self-insurers.

16                  “(C) The Secretary shall determine the  
17                  ratio (expressed as a percent) of the total of the  
18                  assessments computed for all such carriers  
19                  under subparagraph (B), to the total amount of  
20                  the standard premiums for insurance for the  
21                  payment of compensation under this Act for all  
22                  carriers during the preceding calendar year.  
23                  This ratio shall be the premium surcharge rate.

24                  “(D) Each such carrier shall collect a  
25                  share of the assessment from each employer in-

1           sured by the carrier through a premium sur-  
2           charge equal to the product of the premium  
3           surcharge rate multiplied by the standard pre-  
4           mium for the insured employer. The premium  
5           surcharge is the amount payable by each in-  
6           sured employer to satisfy its obligation to the  
7           fund.

8           “(E) Assessments collected as a premium  
9           surcharge under this paragraph shall not con-  
10          stitute an element of loss for the purpose of es-  
11          tablishing rates for workers’ compensation in-  
12          surance but, for the purpose of collection, shall  
13          be treated as separate costs imposed upon in-  
14          sured employers. The total of the assessment  
15          imposed by this paragraph shall be stated as a  
16          separate cost on an insured employer’s policy  
17          (or on a separate document submitted to the in-  
18          sured employer) and shall be identified as the  
19          ‘workers’ compensation policyholder surcharge’.  
20          Each such assessment shall be shown as a per-  
21          centage of the total workers’ compensation pol-  
22          icyholder premium. The premium surcharge  
23          shall be collected at the same time and in the  
24          same manner that the premium for the cov-  
25          erage is collected. The premium surcharge shall

1 not be considered as part of the premium, but  
2 an insurer may cancel a policy for coverage  
3 under this Act for the nonpayment of the pre-  
4 mium surcharge in accordance with the proce-  
5 dures applicable to the nonpayment of the pre-  
6 mium.

7 “(F) Each such carrier shall report and  
8 remit premium surcharges to the Secretary  
9 semiannually on January 1 and July 1 of the  
10 calendar year following the year in which the  
11 assessment is based, and such surcharges shall  
12 be final except for adjustments made as a result  
13 of an audit by the Secretary.

14 “(d) NOTIFICATION OF PAYMENT RATES.—The Sec-  
15 retary shall notify carriers of the premium surcharge rate  
16 to be effective for policies written or renewed on or after  
17 the date of enactment of the Longshore and Harbor Work-  
18 ers’ Compensation Act Amendments of 2009, and annu-  
19 ally thereafter. At the same time as such notification to  
20 carriers, the Secretary shall notify each self-insured em-  
21 ployer of the amount to be assessed against such employer  
22 under this section for the following calendar year.”; and

23 (3) in subsection (i) (as redesignated by para-  
24 graph (1)), by adding at the end the following:

25 “Such civil suit for collections shall be brought



1 against the control group of the employer, as such  
2 term is defined under section 3(40)(B) of the Em-  
3 ployee Retirement Income Security Act of 1974 (29  
4 U.S.C. 1002(40(B)).”.

5 **SEC. 20. CONFORMING AMENDMENTS.**

6 (a) SECTION 7.—The Act (33 U.S.C. 901 et seq.) is  
7 amended—

8 (1) in section 7—

9 (A) in subsection (e)(1)(A) (as redesign-  
10 nated by section 7(3)), by striking “and (c)”  
11 and inserting “and (d)”;

12 (B) in subsection (h) (as redesignated by  
13 section 7(3)), by striking “(e)” and inserting  
14 “(f)”;

15 (C) in subsection (k)(1) (as redesignated  
16 by section 7(3)), by striking “(e)” and inserting  
17 “(d)”;

18 (D) in subsection (l)(2) (as redesignated  
19 by section 7(3)), by striking “(d)” and inserting  
20 “(e)”;

21 (2) in section 28(b), by striking “7(e)” and in-  
22 serting “7(f)”;

23 (3) in section 31(b)(2)(B), by striking “(j)” and  
24 inserting “(k)”;

1 (4) in section 44(j)(4) (as redesignated by sec-  
2 tion 19(1)), by striking “7(e)” and inserting “7(f)”.

3 (b) SECTION 10.—The Act (33 U.S.C. 901 et seq.)  
4 is amended—

5 (1) in section 10—

6 (A) in subsection (e) (as redesignated by  
7 section 10(a)(3)), by striking “(f)” and insert-  
8 ing “(d)”; and

9 (B) in subsection (f)(3) (as redesignated  
10 by section 10(a)(3)), by striking “(f) and (g)”  
11 and inserting “(d) and (e)”;

12 (2) in section 2(10) and section 8(c)(23), by  
13 striking “(10)(d)(2)” each place the term appears  
14 and inserting “10(b)(2)”; and

15 (3) in section 9(f)(2) (as redesignated by sec-  
16 tion 9(a)(2)), by striking “10(i)” and inserting  
17 “10(f)”.

18 (c) SECTION 44.—The Act (33 U.S.C. 901 et seq.)  
19 is amended—

20 (1) in section 44(j)(3) (as redesignated by sec-  
21 tion 19(1)), by striking “(d)” and inserting “(e)”;  
22 and

23 (2) in section 22(a) (as inserted by section  
24 17(1)), by striking “(i)” and inserting “(j)”.

1 **SEC. 21. EFFECTIVE DATES.**

2 (a) REFERENCES.—A reference in subsection (b) to  
3 a provision of the Longshore and Harbor Workers' Com-  
4 pensation Act (33 U.S.C. 901 et seq.) shall be considered  
5 to be a reference to such provision as added, amended,  
6 or redesignated by this Act.

7 (b) EFFECTIVE DATES.—The amendments made to  
8 the Longshore and Harbor Workers' Compensation Act  
9 (referred to in this section as “the Act”) (33 U.S.C. 901  
10 et seq.) by this Act shall take effect on the date of enact-  
11 ment of this Act, except that—

12 (1) the amendments made to paragraphs (3)(A)  
13 and (13) of section 2, subsections (c) and (e) of sec-  
14 tion 3, subsections (c), (d), and (e) of section 4, sub-  
15 sections (a) and (e) of section 5, section 7(g), sec-  
16 tion 13, and subsections (b) and (c) of section 20 of  
17 the Act shall apply with respect to any claim under  
18 the Act filed on or after the date of enactment of  
19 this Act;

20 (2) the amendments made to section 2(25) of  
21 the Act shall take effect on the date of enactment  
22 of this Act, and shall apply regardless of the date  
23 that the fraudulent act occurred;

24 (3) in section 5(d) of the Act—

25 (A) the amendments made to paragraph

26 (1) shall apply with respect to any claim under

1 a Federal or State workers' compensation law  
2 filed on or after the date of enactment of this  
3 Act; and

4 (B) the amendments made to paragraphs  
5 (2) and (3) shall apply with respect to any  
6 claim under a Federal or State workers' com-  
7 pensation law, and any action under the Mer-  
8 chant Marine Act, 1920 (commonly referred to  
9 as the "Jones Act") (46 U.S.C. App.) or in  
10 tort, filed on or after the date of enactment of  
11 this Act;

12 (4) the amendments made to section 7 (not in-  
13 cluding subsection (g)) of the Act shall apply with  
14 respect to any medical care delivered, or examination  
15 conducted, under the Act on or after the date of en-  
16 actment of this Act;

17 (5) the amendments made to sections 8, 9, and  
18 10 of the Act shall apply with respect to any claim  
19 under the Act filed on or after the date of enactment  
20 of this Act, subject to sections 8(b), 9(b), and 10(b)  
21 of this Act;

22 (6) the amendments made to section 11 (not in-  
23 cluding subsection (a)) of the Act shall apply with  
24 respect to any claim under the Act filed on or after  
25 the date of enactment of this Act;

1           (7) the amendments made to section 14 of the  
2 Act shall apply with respect to any claim for com-  
3 pensation under the Act for which the carrier re-  
4 ceives notice of the claim for compensation on or  
5 after the date of enactment of this Act;

6           (8) the amendments made to section 20(a)(3)  
7 of the Act shall apply with respect to any injury cov-  
8 ered under the Act that occurs on or after the date  
9 of enactment of this Act;

10          (9) the amendments made to section 21(b)(3)  
11 of the Act shall apply to any proceeding conducted  
12 under the Act on or after the date of enactment of  
13 this Act;

14          (10) the amendments made to section 22 of the  
15 Act shall apply with respect to any payment of com-  
16 pensation under the Act on or after the date of en-  
17 actment of this Act;

18          (11) the amendments made to section 31 of the  
19 Act shall apply with respect to any instance of  
20 known or suspected fraud involving a claim under  
21 the Act that is detected on or after the date of en-  
22 actment of this Act; and

1           (12) the amendments made to section 44 of the  
2    Act shall take effect on the January 1st following  
3    the date of enactment of this Act.

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