

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 944 of this title; title 5 section 8152; title 30 section 936.

§ 943. Repealed. Pub. L. 89-348, § 1(15), Nov. 8, 1965, 79 Stat. 1311

Section, act Mar. 4, 1927, ch. 509, § 43, 44 Stat. 1444, required Secretary to make a report to Congress at beginning of each regular session of the administration of this chapter for preceding fiscal year, including a detailed statement of receipts of and expenditures from funds established in sections 944 and 945 of this title.

§ 944. Special fund

(a) Establishment; administration; custody, trust

There is established in the Treasury of the United States a special fund. Such fund shall be administered by the Secretary. The Treasurer of the United States shall be the custodian of such fund, and all moneys and securities in such fund shall be held in trust by such Treasurer and shall not be money or property of the United States.

(b) Disbursements; bond of custodian

The Treasurer is authorized to disburse moneys from such fund only upon order of the Secretary. He shall be required to give bond in an amount to be fixed and with securities to be approved by the Secretary of the Treasury and the Comptroller General of the United States conditioned upon the faithful performance of his duty as custodian of such fund.

(c) Payments into fund

Payments into such fund shall be made as follows:

(1) Whenever the Secretary determines that there is no person entitled under this chapter to compensation for the death of an employee which would otherwise be compensable under this chapter, the appropriate employer shall pay \$5,000 as compensation for the death of such an employee.

(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 chapter during the preceding calendar year, to (ii) the total of such payments by all carriers and self-insureds under this chapter during such year;

(B) computing the ratio (expressed as a percent) of (i) the payments under section 908(f) of this title 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;

(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 ex-

penses of the fund (as determined under the first sentence of this paragraph).

(3) All amounts collected as fines and penalties under the provisions of this chapter shall be paid into such fund.

(d) Investigations; records, availability; record-keeping; provisions of sections 49 and 50 of title 15 applicable to Secretary

(1) For the purpose of making rules, regulations, and determinations under this section under and for providing enforcement thereof, the Secretary may investigate and gather appropriate data from each carrier and self-insurer. For that purpose, the Secretary may enter and inspect such places and records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate.

(2) Each carrier and self-insurer shall make, keep, and preserve such records, and make such reports and provide such additional information, as prescribed by regulation or order of the Secretary, as the Secretary deems necessary or appropriate to carry out his responsibilities under this section.

(3) For the purpose of any hearing or investigation related to determinations or the enforcement of the provisions of this section, the provisions of sections 49 and 50 of title 15 (relating to the attendance of witnesses and the production of books, papers, and documents) are hereby made applicable to the jurisdiction, powers, and duties of the Secretary of Labor.

(e) Depositories; investments

The Treasurer of the United States shall deposit any moneys paid into such fund into such depository banks as the Secretary may designate and may invest any portion of the funds which, in the opinion of the Secretary, is not needed for current requirements, in bonds or notes of the United States or of any Federal land bank.

(f) Limitation of liability

Neither the United States nor the Secretary shall be liable in respect of payments authorized under section 908 of this title in an amount greater than the money or property deposited in or belonging to such fund.

(g) Audit by Comptroller General; finality of payment determinations; credits of disbursing officers

The Comptroller General of the United States shall audit the account for such fund, but the action of the Secretary in making payments from such fund shall be final and not subject to review, and the Comptroller General is authorized and directed to allow credit in the accounts of any disbursing officer of the Secretary for payments made from such fund authorized by the Secretary.

(h) Civil actions for civil penalties and unpaid assessments

All civil penalties and unpaid assessments provided for in this chapter shall be collected by civil suit brought by the Secretary.

(i) Proceeds available for certain payments

The proceeds of this fund shall be available for payments:

(1) Pursuant to sections¹ 910 of this title with respect to certain initial and subsequent annual adjustments in compensation for total permanent disability or death.

(2) Under section 908(f) and (g), under section 918(b), and under section 939(c) of this title.

(3) To repay the sums deposited in the fund pursuant to subsection (d) of this section.

(4) To defray the expense of making examinations as provided in section 907(e) of this title.

(j) Audit to Congress

The fund shall be audited annually and the results of such audit shall be included in the annual report required by section 942 of this title.

(Mar. 4, 1927, ch. 509, § 44, 44 Stat. 1444; July 26, 1956, ch. 735, § 8, 70 Stat. 656; Pub. L. 92-576, § 8, Oct. 27, 1972, 86 Stat. 1256; Pub. L. 98-426, §§ 24, 27(a)(2), Sept. 28, 1984, 98 Stat. 1653, 1654.)

AMENDMENTS

1984—Subsecs. (a), (b). Pub. L. 98-426, § 27(a)(2), substituted “Secretary” for “commission”. See Transfer of Functions note set out under section 902 of this title.

Subsec. (c)(2). Pub. L. 98-426, § 24(a), substituted provisions requiring that, at the beginning of each calendar year the Secretary 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 and that each carrier and self-insurer 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 chapter during the preceding calendar year, to (ii) the total of such payments by all carriers and self-insureds under this chapter during such year; (B) computing the ratio (expressed as a percent) of (i) the payments under section 908(f) of this title 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; (C) dividing the sum of the percentages computed under (A) and (B) for the carrier or self-insured by two; and (D) multiplying the percent computed under (C) by such probable expenses of the fund (as determined under the first sentence of this paragraph) for provisions which had formerly required that at the beginning of each calendar year the Secretary estimate the probable expenses of the fund during that calendar year and each carrier or self-insurer make payments into the fund on a prorated assessment by the Secretary in the proportion that the total compensation and medical payments made on risks covered by this chapter by each carrier and self-insurer bore to the total of such payments made by all carriers and self-insurers under the chapter in the prior calendar year in accordance with a formula and schedule to be determined from time to time by the Secretary to maintain adequate reserves in the fund.

Subsec. (e). Pub. L. 98-426, § 24(b), redesignated subsec. (f) as (e). Former subsec. (e), which authorized the appropriation to the Secretary of the sum of \$2,000,000 which the Secretary was required to deposit into the fund and directed that, upon deposit in the fund such moneys would be treated as the property of such fund, that the sum, without additional payments for interest, would be repaid from the money or property belonging to the fund on a schedule of repayment set by the Secretary, that full repayment had to be made no later than five years from the date of deposit into the fund, and that each such repayment, as made, would be covered into the Treasury of the United States as miscellaneous receipts, was struck out.

Pub. L. 98-426, § 27(a)(2), substituted “Secretary” for “commission”. See Transfer of Functions note set out under section 902 of this title.

Subsec. (f). Pub. L. 98-426, § 24(b), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Pub. L. 98-426, § 27(a)(2), substituted “Secretary” for “commission”. See Transfer of Functions note set out under section 902 of this title.

Subsec. (g). Pub. L. 98-426, § 24(b), redesignated subsec. (h) as (g). Former subsec. (g) redesignated (f).

Pub. L. 98-426, § 27(a)(2), substituted “Secretary” for “commission”. See Transfer of Functions note set out under section 902 of this title.

Subsec. (h). Pub. L. 98-426, § 24(b), redesignated subsec. (i) as (h). Former subsec. (h) redesignated (g).

Pub. L. 98-426, § 24(c), inserted “and unpaid assessments” after “civil penalties”.

Pub. L. 98-426, § 27(a)(2), substituted “Secretary” for “commission”. See Transfer of Functions note set out under section 902 of this title.

Subsec. (i). Pub. L. 98-426, § 24(b), redesignated subsec. (j) as (i). Former subsec. (i) redesignated (h).

Subsec. (i)(1). Pub. L. 98-426, § 24(d)(1), struck out “and 911” after “sections 910”, inserted “certain” before “initial”, and struck out “which occurred prior to the effective date of this subsection” after “disability or death”.

Subsec. (i)(4). Pub. L. 98-426, § 24(d)(2), inserted “(e)” after “section 907”.

Subsec. (j). Pub. L. 98-426, § 24(b), redesignated (k) as (j). Former subsec. (j) redesignated (i).

Pub. L. 98-426, § 24(e), substituted “The fund shall be audited annually and the results of such audit shall be included in the annual report required by section 942 of this title” for “At the close of each fiscal year the Secretary shall submit to the Congress a complete audit of the fund”.

Subsec. (k). Pub. L. 98-426, § 24(b), redesignated subsec. (k) as (j).

1972—Subsec. (a). Pub. L. 92-576, § 8(a), substituted “special fund” for “special fund for the purpose of making payments in accordance with the provisions of subsections (f) and (g) of section 908, of subsection (b) of section 918, and of subsection (c) of section 939 of this title”.

Subsec. (c)(1). Pub. L. 92-576, § 8(b), increased compensation payment for death to \$5,000 from \$1,000; inserted provision for compensation which would otherwise be compensable under this chapter; deleted second sentence, less two provisos, now incorporated in subsec. (j)(2) of this section; deleted first such proviso for priority of payments authorized by subsec. (f) over other payments authorized from the fund; and deleted second such proviso, now incorporated in subsec. (k) of this section.

Subsec. (c)(2), (3). Pub. L. 92-576, § 8(b), added par. (2) and redesignated former par. (2) as (3).

Subsec. (d). Pub. L. 92-576, § 8(b), added subsec. (d). Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 92-576, § 8(b), added subsec. (e). Former subsec. (e) redesignated (g).

Subsecs. (f) to (i). Pub. L. 92-576, § 8(b), redesignated former subsecs. (d) to (g) as (f) to (i), respectively.

Subsec. (j). Pub. L. 92-576, § 8(d), added pars. (1), (3), and (4), and incorporated former part of first sentence of subsec. (a) and former second sentence, less provisos, of subsec. (c)(1), in provisions designated as par. (2).

Subsec. (k). Pub. L. 92-576, § 8(d), incorporated former provisions of subsec. (c)(1), last proviso, in provisions designated as subsec. (k).

1956—Subsec. (a). Act July 26, 1956, § 8(a), substituted “, of subsection (b) of section 918 of this title, and of subsection (c) of section 939 of this title” for “of this title.”

Subsec. (c)(1). Act July 26, 1956, § 8(b), substituted provisions relating to availability of fund for payments under sections 908(f) and (g), 918(b), and 939(c) of this title, proviso that subsec. (f) payments have priority, and further proviso requiring annual audit, for former provision that fifty per centum of each payment shall

¹ So in original. Probably should be “section”.

be available for the payments under section 908(f) and (g) of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-576 effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92-576, set out as a note under section 902 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Treasury, with certain exceptions, to Secretary of the Treasury with power to delegate, see Reorg. Plan No. 26 of 1950, §§1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. Functions of Coast Guard, and Commandant of Coast Guard, were excepted from transfer when Coast Guard is operating as part of Navy under sections 1 and 3 of Title 14, Coast Guard.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 907, 908, 910, 918, 922, 933, 939, 942, 948a of this title; title 30 section 932.

§§ 945 to 947. Repealed. Pub. L. 98-426, § 25, Sept. 28, 1984, 98 Stat. 1654

Section 945, act Mar. 4, 1927, ch. 509, § 45, 44 Stat. 1445, provided for creation of a fund to provide for payment of all expenses connected with administration of this chapter. See section 944 of this title.

Section 946, act Mar. 4, 1927, ch. 509, § 46, 44 Stat. 1445, appropriated \$250,000 to be available for expenses of administration of this chapter for fiscal years ending June 30, 1927, and June 30, 1928.

Section 947, act Mar. 4, 1927, ch. 509, § 47, 44 Stat. 1445, provided for availability of appropriations for salaries and contingent expenses in administration of this chapter.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as an Effective Date of 1984 Amendment note under section 901 of this title.

§ 948. Laws inapplicable

Nothing in sections 183, 184 to 186, 188, or 189 of title 46, Appendix, shall be held to limit the amount for which recovery may be had (1) in any suit at law or in admiralty where an employer has failed to secure compensation as required by this chapter, or (2) in any proceeding for compensation, any addition to compensation, or any civil penalty.

(Mar. 4, 1927, ch. 509, § 48, 44 Stat. 1446.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 30 section 932.

§ 948a. Discrimination against employees who bring proceedings; penalties; deposit of payments in special fund; civil actions; entitlement to restoration of employment and compensation, qualifications requirement; liability of employer for penalties and payments; insurance policy exemption from liability

It shall be unlawful for any employer or his duly authorized agent to discharge or in any other manner discriminate against an employee

as to his employment because such employee has claimed or attempted to claim compensation from such employer, or because he has testified or is about to testify in a proceeding under this chapter. 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. Any employer who violates this section shall be liable to a penalty of not less than \$1,000 or more than \$5,000, as may be determined by the deputy commissioner. All such penalties shall be paid to the deputy commissioner for deposit in the special fund as described in section 944 of this title, and if not paid may be recovered in a civil action brought in the appropriate United States district court. Any employee so discriminated against shall be restored to his employment and shall be compensated by his employer for any loss of wages arising out of such discrimination: *Provided*, That if such employee shall cease to be qualified to perform the duties of his employment, he shall not be entitled to such restoration and compensation. The employer alone and not his carrier shall be liable for such penalties and payments. Any provision in an insurance policy undertaking to relieve the employer from the liability for such penalties and payments shall be void.

(Mar. 4, 1927, ch. 509, § 49, as added Pub. L. 92-576, § 19, Oct. 27, 1972, 86 Stat. 1263; amended Pub. L. 98-426, § 26, Sept. 28, 1984, 98 Stat. 1654.)

AMENDMENTS

1984—Pub. L. 98-426 inserted after first 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.”, substituted “\$1,000” for “\$100”, and substituted “\$5,000” for “\$1,000”.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98-426, set out as a note under section 901 of this title.

EFFECTIVE DATE

Section effective 30 days after Oct. 27, 1972, see section 22 of Pub. L. 92-576, set out as an Effective Date of 1972 Amendment note under section 902 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 30 section 932.

§ 949. Effect of unconstitutionality

If any part of this chapter is adjudged unconstitutional by the courts, and such adjudication has the effect of invalidating any payment of compensation under this chapter, the period intervening between the time the injury was sustained and the time of such adjudication shall not be computed as a part of the time prescribed by law for the commencement of any action against the employer in respect of such injury; but the amount of any compensation paid under this chapter on account of such injury shall be deducted from the amount of damages awarded in such action in respect of such injury.

(Mar. 4, 1927, ch. 509, § 50 formerly § 49, 44 Stat. 1446; renumbered § 50, Pub. L. 92-576, § 19, Oct. 27, 1972, 86 Stat. 1263.)