

this chapter 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 chapter which were not approved, or which were in excess of the amount approved pursuant to section 928 of this title.

(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.

(c) False statements or representation to reduce, deny, or terminate benefits

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 injured employee, or his dependents pursuant to section 909 of this title 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.

(Mar. 4, 1927, ch. 509, §31, 44 Stat. 1439; Pub. L. 98-426, §19, Sept. 28, 1984, 98 Stat. 1650.)

AMENDMENTS

1984—Pub. L. 98-426 designated existing provisions as subsec. (a)(1), substituted "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 chapter 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" for "Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining any benefit or payment under this chapter shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not to exceed \$1,000 or by imprisonment of not to exceed one year, or by both such fine and imprisonment", and added subsecs. (a)(2), (b), and (c).

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.

§ 932. Security for compensation

(a) Every employer shall secure the payment of compensation under this chapter—

(1) By insuring and keeping insured the payment of such compensation with any stock company or mutual company or association, or with any other person or fund, while such person or fund is authorized (A) under the laws of the United States or of any State, to insure workmen's compensation, and (B) by the Secretary, to insure payment of compensation under this chapter; or

(2) By furnishing satisfactory proof to the Secretary of his financial ability to pay such compensation and receiving an authorization from the Secretary to pay such compensation directly. The Secretary may, as a condition to such authorization, require such employer to deposit in a depository designated by the Secretary either an indemnity bond or securities (at the option of the employer) of a kind and in an amount determined by the Secretary, based on the employer's financial condition, the employer's previous record of payments, and other relevant factors, and subject to such conditions as the Secretary may prescribe, which shall include authorization to the Secretary in case of default to sell any such securities sufficient to pay compensation awards or to bring suit upon such bonds, to procure prompt payment of compensation under this chapter. Any employer securing compensation in accordance with the provisions of this paragraph shall be known as a self-insurer.

(b) In granting authorization to any carrier to insure payment of compensation under this chapter the Secretary may take into consideration the recommendation of any State authority having supervision over carriers or over workmen's compensation, and may authorize any carrier to insure the payment of compensation under this chapter in a limited territory. Any marine protection and indemnity mutual insurance corporation or association, authorized to write insurance against liability for loss or damage from personal injury and death, and for other losses and damages, incidental to or in respect of the ownership, operation, or chartering of vessels on a mutual assessment plan, shall be deemed a qualified carrier to insure compensation under this chapter. The Secretary may suspend or revoke any such authorization for good cause shown after a hearing at which the carrier shall be entitled to be heard in person or by counsel and to present evidence. No suspension or revocation shall affect the liability of any carrier already incurred.

(Mar. 4, 1927, ch. 509, §32, 44 Stat. 1439; Pub. L. 98-426, §§20, 27(a)(2), Sept. 28, 1984, 98 Stat. 1652, 1654.)

AMENDMENTS

1984—Subsec. (a)(1). 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. (a)(2). Pub. L. 98-426, §20, inserted “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.”

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. (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.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 908 of this title; title 8 section 1288.

§ 933. Compensation for injuries where third persons are liable

(a) Election of remedies

If on account of a disability or death for which compensation is payable under this chapter the person entitled to such compensation determines that some person other than the employer or a person or persons in his employ is liable in damages, he need not elect whether to receive such compensation or to recover damages against such third person.

(b) Acceptance of compensation operating as assignment

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.

(c) Payment into section 944 fund operating as assignment

The payment of such compensation into the fund established in section 944 of this title shall operate as an assignment to the employer of all right of the legal representative of the deceased (hereinafter referred to as “representative”) to recover damages against such third person.

(d) Institution of proceedings or compromise by assignee

Such employer on account of such assignment may either institute proceedings for the recovery of such damages or may compromise with such third person either without or after instituting such proceeding.

(e) Recoveries by assignee

Any amount recovered by such employer on account of such assignment, whether or not as

the result of a compromise, shall be distributed as follows:

(1) The employer shall retain an amount equal to—

(A) the expenses incurred by him in respect to such proceedings or compromise (including a reasonable attorney’s fee as determined by the deputy commissioner or Board);

(B) the cost of all benefits actually furnished by him to the employee under section 907 of this title;

(C) all amounts paid as compensation;

(D) the present value of all amounts thereafter payable as compensation, such present value to be computed in accordance with a schedule prepared by the Secretary, and the present value of the cost of all benefits thereafter to be furnished under section 907 of this title, to be estimated by the deputy commissioner, and the amounts so computed and estimated to be retained by the employer as a trust fund to pay such compensation and the cost of such benefits as they become due, and to pay any sum finally remaining in excess thereof to the person entitled to compensation or to the representative; and

(2) The employer shall pay any excess to the person entitled to compensation or to the representative.

(f) Institution of proceedings by person entitled to compensation

If the person entitled to compensation institutes proceedings within the period prescribed in subsection (b) of this section the employer shall be required to pay as compensation under this chapter a sum equal to the excess of the amount which the Secretary determines is payable on account of such injury or death over the net amount recovered against such third person. 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).

(g) Compromise obtained by person entitled to compensation

(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) of this section for an amount less than the compensation to which the person (or the person’s representative) would be entitled under this chapter, the employer shall be liable for compensation as determined under subsection (f) of this section 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 chapter shall be terminated, regardless of whether the employer or the employer's insurer has made payments or acknowledged entitlement to benefits under this chapter.

(3) Any payments by the special fund established under section 944 of this title shall be a lien upon the proceeds of any settlement obtained from or judgment rendered against a third person referred to under subsection (a) of this section. 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 917 of this title shall be a lien upon the proceeds of any settlement obtained from or judgment recorded against a third person referred to under subsection (a) of this section. Such lien shall have priority over a lien under paragraph (3) of this subsection.

(h) Subrogation

Where the employer is insured and the insurance carrier has assumed the payment of the compensation, the insurance carrier shall be subrogated to all the rights of the employer under this section.

(i) Right to compensation as exclusive remedy

The right to compensation or benefits under this chapter shall be the exclusive remedy to an employee when he is injured, or to his eligible survivors or legal representatives if he is killed, by the negligence or wrong of any other person or persons in the same employ: *Provided*, That this provision shall not affect the liability of a person other than an officer or employee of the employer.

(Mar. 4, 1927, ch. 509, §33, 44 Stat. 1440; June 25, 1938, ch. 685, §§12, 13, 52 Stat. 1168; Pub. L. 86-171, Aug. 18, 1959, 73 Stat. 391; Pub. L. 92-576, §15(f)-(h), Oct. 27, 1972, 86 Stat. 1262; Pub. L. 98-426, §21, Sept. 28, 1984, 98 Stat. 1652.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-426, §21(a), substituted "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" for "Acceptance of such compensation under an award in a compensation order filed by the deputy commissioner or Board shall operate as an assignment to the employer of all right 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 award" and inserted at end "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."

Subsec. (e)(2). Pub. L. 98-426, §21(b), struck out "less one-fifth of such excess which shall belong to the employer" after "or to the representative".

Subsec. (f). Pub. L. 98-426, §21(c)(1), inserted "net" before "amount recovered".

Pub. L. 98-426, §21(c)(2), inserted at end "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)."

Subsec. (g). Pub. L. 98-426, §21(d), designated existing provisions as par. (1), substituted "If the person entitled to compensation (or the person's representative) enters into a settlement with a third person referred to in subsection (a) of this section for an amount less than the compensation to which the person (or the person's representative) would be entitled under this chapter, the employer shall be liable for compensation as determined under subsection (f) of this section 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)" for "If compromise with such third person is made by the person entitled to compensation or such representative of an amount less than the compensation to which such person or representative would be entitled to under this chapter the employer shall be liable for compensation as determined in subsection (f) of this section only if the written approval of such compromise is obtained from the employer and its insurance carrier by the person entitled to compensation or such representative at the time of or prior to such compromise on a form provided by the Secretary and filed in the office of the deputy commissioner having jurisdiction of such injury or death within thirty days after such compromise is made", inserted at end "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.", and added pars. (2) to (4).

1972—Subsecs. (b), (e)(1)(A). Pub. L. 92-576, §15(f), (g), inserted "or Board" after "deputy commissioner".

Subsec. (g). Pub. L. 92-576, §15(h), substituted "if the written approval of such compromise is obtained from the employer and its insurance carrier by the person entitled to compensation or such representative at the time of or prior to such compromise on a form provided by the Secretary and filed in the office of the deputy commissioner having jurisdiction of such injury or death within thirty days after such compromise is made" for "if such compromise is made with his written approval".

1959—Subsec. (a). Pub. L. 86-171 inserted "or a person or persons in his employ" after "employer" and substituted "he need not elect whether" for "he may elect, by giving notice to the deputy commissioner in such manner as the Secretary may provide,".

Subsec. (b). Pub. L. 86-171 inserted "unless such person shall commence an action against such third person within six months after such award".

Subsec. (c). Pub. L. 86-171 struck out "whether or not the representative has notified the deputy commissioner of his election" after "third person".

Subsec. (d). Pub. L. 86-171 reenacted subsec. (d) without change.

Subsec. (e). Pub. L. 86-171 substituted "Secretary" for "Commission" in par. (1)(D) and inserted in par. (2) "less one-fifth of such excess which shall belong to the employer".

Subsec. (f). Pub. L. 86-171 struck out "or the representative elects to recover damages against such third person and notifies the Secretary of his election and" before "institutes" and substituted "subsection (b) of this section" for "section 913 of this title" and "Secretary" for "Commission".

Subsec. (g). Pub. L. 86-171 corrected reference to "subsection (e)" to read "subsection (f)".

Subsecs. (h), (i). Pub. L. 86-171 redesignated subsec. (i) as (h) and struck out former subsec. (h) that permitted the deputy commissioner to make an election for a minor or to authorize the parent or guardian to make the election.