

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 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.

#### §§ 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 4283, 4284, 4285, 4286, or 4289 of the Revised Statutes, as amended, nor in section 18 of the Act entitled "An act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade, and for other purposes," approved June 26, 1884, as amended, 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.)

#### REFERENCES IN TEXT

Sections 4283, 4284, 4285, 4286, and 4289 of the Revised Statutes, referred to in text, were classified to sections 183, 184, 185, 186, and 188, respectively, of the former Appendix to Title 46, Shipping, and were repealed and restated in chapter 305 of Title 46, Shipping, by Pub. L. 109-304, §§6(c), 19, Oct. 6, 2006, 120 Stat. 1509, 1710. For disposition of sections of the former Appendix to Title 46, see Disposition Table preceding section 101 of Title 46.

Section 18 of the Act entitled "An act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade, and for other purposes," approved June 26, 1884, as amended, referred to in text, is section 18 of act June 26, 1884, ch. 121, 23 Stat. 57, which was classified to section 189 of the former Appendix to Title 46, Shipping, and was repealed and restated in section 30505 of Title 46, Shipping, by Pub. L. 109-304, §§6(c), 19, Oct. 6, 2006, 120 Stat. 1509, 1710.

#### § 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.

#### § 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.)

#### § 950. Separability

If any provision of this chapter is declared unconstitutional or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of the chapter and the applicability of such provision to other persons and circumstances shall not be affected thereby.

(Mar. 4, 1927, ch. 509, §51 formerly §50, 44 Stat. 1446; renumbered §51, Pub. L. 92-576, §19, Oct. 27, 1972, 86 Stat. 1263.)