

Calendar No. 544

112TH CONGRESS }
2d Session }

SENATE

{ REPORT
112-245 }

DEEPWATER HORIZON SURVIVORS'
FAIRNESS ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 183



DECEMBER 5, 2012.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

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DECEMBER 5, 2012.—Ordered to be printed

Mr. ROCKEFELLER, from the Committee on Commerce, Science, and
Transportation, submitted the following

REPORT

[To accompany S. 183]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 183) to clarify the applicability of certain maritime laws with respect to the blowout and explosion of the mobile offshore drilling unit *Deepwater Horizon*, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The Deepwater Horizon Survivors' Fairness Act is intended to address the inability for the widows and families of *Deepwater Horizon* workers to secure fair compensation for their loss. Under current law the relatives of *Deepwater Horizon* victims are entitled to only lost wages for the accident beyond what is available under current law. This bill would expand the remedies available to the families by allowing them to seek nonpecuniary losses and fair compensation for pain. The bill is intended to bring compensation for families of *Deepwater Horizon* victims in line with their available remedies if the accident had occurred on land.

BACKGROUND AND NEEDS

On April 20, 2010, at approximately 10:00 p.m., the mobile offshore drilling unit *Deepwater Horizon*, owned and operated by Transocean Ltd. on behalf of British Petroleum (BP), suffered an explosion in the Gulf of Mexico, 42 miles southeast of Venice, LA. Search and Rescue operations were immediately commenced, and

115 of the 126 crew members were recovered. Eleven crew members were killed in the explosion.

In the aftermath of the accident, much attention has turned to the need to reconsider the current laws governing the recovery of damages for injury and death under maritime law. The sufficiency of remedies for wrongful death is an issue of great significance for the widows and families of the 11 deceased *Deepwater Horizon* workers. In a wrongful death action brought under applicable maritime law, a litany of factors (e.g., nature of employment, location of the accident) determines the levels of compensation available to survivors of the deceased. Yet even under the most egregious circumstances, current law prevents most survivors from recovering damages beyond the sum of lost lifetime wages (pecuniary damages).

SUMMARY OF PROVISIONS

The *Deepwater Horizon* Survivors' Fairness Act (S. 183) would modify existing maritime law for the surviving family members of the 11 *Deepwater Horizon* workers. Under current law, survivors of those killed aboard the *Deepwater Horizon* can only collect the sum of lost lifetime wages. This stands in stark contrast to the remedies that would be available to survivors if this accident occurred at a similar land-based facility. The legislation is narrow in scope, and provides equitable relief only to the survivors of the 11 workers killed aboard the *Deepwater Horizon*.

LEGISLATIVE HISTORY

The legislation was introduced by Senator Rockefeller on January 25, 2011, with Senators Whitehouse and Schumer as original cosponsors. Last Congress, Senator Rockefeller was the lead sponsor of S. 3755, the Fairness in Admiralty and Maritime Law Act. Though S. 3755 was not passed by the Committee, there was a request for unanimous consent to pass S. 3755 on the Floor that was denied. S. 183 passed the Committee by voice vote at an Executive Session held on June 8, 2011, with an amendment in the nature of a substitute from Senator Rockefeller that made technical and clarifying changes to the bill. There were no other amendments.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

S. 183—Deepwater Horizon Survivors' Fairness Act

S. 183 would amend several laws related to private liability that apply to the injury or death of workers on ocean-going vessels or on certain other facilities located in the ocean. CBO estimates that enacting the legislation would have no significant impact on the federal budget.

Enacting S. 183 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

The bill would expand both the Death on the High Seas Act (DOHSA) and the Jones Act to enable the surviving family mem-

bers of a deceased worker to receive monetary compensation for nonmonetary damages as a result of the death of a relative on an ocean-going vessel or certain other facilities located in the ocean (such as oil-drilling rigs). S. 183 also would extend the distance from shore that would make ships subject to the provisions of DOHSA, and it would repeal the Limitation of Liability Act, a law that limits the value of certain damages that can be charged to vessel owners. Because those provisions would affect the liability of private firms, CBO estimates that enacting them would have no significant impact on the federal budget.

S. 183 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

By retroactively removing various limits on the liability that owners and operators of vessels face as a result of the Deepwater Horizon explosion, the bill would impose a mandate as defined in UMRA. The costs of the mandate to owners and operators of vessels would be the difference in compensation for damages they would have to pay under current law compared to the amount that they would have to pay under the bill. Because those costs would depend on future judicial proceedings, CBO cannot determine whether the aggregate cost of the mandate would exceed the annual threshold established in UMRA for private-sector mandates (\$142 million in 2011, adjusted annually for inflation).

The CBO staff contacts for this estimate are Sarah Puro (for federal costs) and Sam Wice (for the private-sector impact). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

The bill is limited in scope to the relatives of the 11 crew members who perished in the *Deepwater Horizon* accident.

ECONOMIC IMPACT

The bill's economic impact is limited to possible civil actions that would be undertaken by relatives of those 11 crew members.

PRIVACY

This bill will not have any adverse impact on the personal privacy of individuals.

PAPERWORK

This bill will not provide any requirements for additional paperwork.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions

contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 provides that the bill may be cited as the “Deepwater Horizon Survivors’ Fairness Act”.

Section 2. Amendment of Shipowners’ Liability Act of 1851

Under existing law, an owner of a vessel can limit liability for all claims arising from an incident involving the vessel to its post-voyage value and that of its cargo. Under current provisions of title 46, United States Code, governing maritime liability, the owner of a vessel may bring a civil action in Federal district court to limit owner liability with respect to: (1) damage done to goods onboard the vessel; (2) damage by collision to other vessels and their cargo; and (3) any other damage or forfeiture done or incurred without the privity or knowledge of the owner (including personal injury and death). This section would amend the relevant sections in chapter 305 of title 46, United States Code, which comprise this law, to clarify that claims for personal injury or wrongful death arising from the blowout and explosion of the mobile offshore drilling unit *Deepwater Horizon* that occurred on April 20, 2010, are not subject to the limitation.

Section 3. Amendment of the Death on the High Seas Act

Section 3 would amend chapter 303 of title 46, United States Code, to enhance remedies against any negligent parties for wrongful death on the high seas for the surviving families of the 11 deceased workers aboard the *Deepwater Horizon*. This section would provide the families of the 11 workers the ability to recover fair compensation for the deceased’s pecuniary and nonpecuniary loss, plus a fair compensation for their pain and suffering. Current law provides decedents the ability to recover only pecuniary damages (lost lifetime wages) from negligent parties.

Section 4. Amendment of Jones Act

Section 4 would amend chapter 301 of title 46, United States Code, to provide the families of the 11 deceased workers aboard the *Deepwater Horizon* the ability to recover nonpecuniary losses (loss of care, comfort, companionship, and society) from employers. Chapter 301 of title 46—commonly known as the Jones Act—provides the same rights to recovery for seamen as is available to railway employees under the Federal Employers’ Liability Act (Railroad). Only a seaman can recover damages under chapter 301 of title 46 (a seaman is defined as an individual with a substantial connection to a vessel or a fleet of commonly owned vessels). Current law provides the survivors of certain seamen killed as a result of their employer’s negligence with wrongful death and survival claims. Section 4 would provide the families of the 11 workers the ability to recover fair compensation for the deceased’s pecuniary and nonpecuniary loss, plus a fair compensation for their pain and suffering against a negligent employer.

Section 5. Effective date

Section 5 would provide that all amendments to existing statutes shall apply to causes of action and claims arising after April 19, 2010, and actions commenced before the date of enactment of this Act that have not been finally adjudicated.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 46. SHIPPING

SUBTITLE III. MARITIME LIABILITY

CHAPTER 301. GENERAL LIABILITY PROVISIONS

§ 30104. Personal injury to or death of seamen

A seaman injured in the course of employment or, if the seaman dies from the injury, the personal representative of the seaman may elect to bring a civil action at law, with the right of trial by jury, against the employer. Laws of the United States regulating recovery for personal injury to, or death of, a railway employee apply to an action under this section. *If the action under this chapter arises from the blowout and explosion of the mobile offshore drilling unit Deepwater Horizon that occurred on April 20, 2010, the recovery for a seaman who dies may include fair compensation for nonpecuniary loss, plus a fair compensation for the decedent's pain and suffering. In this section, the term "nonpecuniary loss" means the loss of care, comfort, companionship, and society.*

TITLE 46. SHIPPING

SUBTITLE III. MARITIME LIABILITY

CHAPTER 303. DEATH ON THE HIGH SEAS

§ 30302. Cause of action

When the death of an individual is caused by wrongful act, neglect, or default occurring on the high seas beyond 3 nautical miles from the shore of the United States, the personal representative of the decedent may bring a civil action in admiralty against the person or vessel responsible. *If the death was attributable to the blowout and explosion of the mobile offshore drilling unit Deepwater Horizon that occurred on April 20, 2010, the action may be brought in law or in admiralty.* The action shall be for the exclusive benefit of the decedent's spouse, parent, child, or dependent relative.

§ 30303. Amount and apportionment of recovery

The recovery in an action under this chapter shall be a fair compensation for the pecuniary loss sustained by the individuals for whose benefit the action is brought. The court shall apportion the

recovery among those individuals in proportion to the loss each has sustained. *If the action under this chapter arises from the blowout and explosion of the mobile offshore drilling unit Deepwater Horizon that occurred on April 20, 2010, the recovery may include fair compensation for nonpecuniary loss, plus a fair compensation for the decedent's pain and suffering. In this section, the term "nonpecuniary loss" means the loss of care, comfort, companionship, and society.*

* * * * *

§ 30305. Death of plaintiff in pending action

If a civil action in admiralty is pending in a court of the United States to recover for personal injury caused by wrongful act, neglect, or default described in section 30302 of this title, and the individual dies during the action as a result of the wrongful act, neglect, or default, the personal representative of the decedent may be substituted as the plaintiff and the action may proceed under this chapter for the recovery authorized by this chapter. *If a civil action in law is pending in a court of the United States to recover for personal injury caused by wrongful act, neglect, or default described in the second sentence of section 30302 of this title and the individual dies during the action as a result of that wrongful act, neglect, or default, the personal representative of the decedent may be substituted as the plaintiff and the action may proceed under this chapter for the recovery authorized by this chapter.*

TITLE 46. SHIPPING

SUBTITLE III. MARITIME LIABILITY

CHAPTER 305. EXONERATION AND LIMITATION OF LIABILITY

§ 30505. General limit of liability

(a) **IN GENERAL.**—Except as provided in section 30506 of this title, the liability of the owner of a vessel for any claim, debt, or liability described in subsection (b) shall not exceed the value of the vessel and pending freight. If the vessel has more than one owner, the proportionate share of the liability of any one owner shall not exceed that owner's proportionate interest in the vessel and pending freight.

(b) **CLAIMS SUBJECT TO LIMITATION.**—Unless otherwise excluded by law, claims, debts, and liabilities subject to limitation under subsection (a) are those arising from any embezzlement, loss, or destruction of any property, goods, or merchandise shipped or put on board the vessel, any loss, damage, or injury by collision, or any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of the owner.

[(c) WAGES.—Subsection (a) does not apply to a claim for wages.]

(c) **CLAIMS NOT SUBJECT TO LIMITATION.**—Subsection (a) does not apply—

(1) *to a claim for wages; or*

(2) to a claim for personal injury or wrongful death arising from the blowout and explosion of the mobile offshore drilling unit Deepwater Horizon that occurred on April 20, 2010.

* * * * *

§ 30511. Action by owner for limitation

(a) IN GENERAL.—The owner of a vessel may bring a civil action in a district court of the United States for limitation of liability under this chapter. The action must be brought within 6 months after a claimant gives the owner written notice of a claim.

(b) CREATION OF FUND.—When the action is brought, the owner (at the owner's option) shall—

(1) deposit with the court, for the benefit of claimants—

(A) an amount equal to the value of the owner's interest in the vessel and pending freight, or approved security; and

(B) an amount, or approved security, that the court may fix from time to time as necessary to carry out this chapter; or

(2) transfer to a trustee appointed by the court, for the benefit of claimants—

(A) the owner's interest in the vessel and pending freight; and

(B) an amount, or approved security, that the court may fix from time to time as necessary to carry out this chapter.

(c) CESSATION OF OTHER ACTIONS.—When an action has been brought under this section and the owner has complied with subsection (b), all claims and proceedings against the owner related to the matter in question *that are subject to limitation under section 30505* shall cease.