

111TH CONGRESS
2^D SESSION

H. R. 5676

To provide equitable means for ensuring that damages for injuries are efficiently secured, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 1, 2010

Ms. JACKSON LEE of Texas introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committees on Ways and Means, Natural Resources, the Judiciary, Energy and Commerce, and Science and Technology, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide equitable means for ensuring that damages for injuries are efficiently secured, 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.**

4 This Act may be cited as the “Omnibus Right to Eq-
5 uitable Means of Ensuring Damages for Injuries are Effi-
6 ciently Secured Act of 2010”, also known as the “REM-
7 EDIES Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) the Deepwater Horizon explosion and its
4 collapse in the Gulf of Mexico resulted in the largest
5 environmental disaster in United States History;

6 (2) the incident led to 11 deaths, 17 serious in-
7 juries, permanent damage and injury to wildlife and
8 the environment, and greatly impaired the tourism,
9 fishing, shrimping, oystering, and oil industries in
10 Gulf Coast communities;

11 (3) in the 72 days since the explosion, over
12 80,000,000 gallons of crude oil has leaked into the
13 Gulf;

14 (4) the full extent of the material, economic,
15 and environmental damage caused by the Gulf Coast
16 oil spill incident is expected to total in the tens of
17 billions of dollars;

18 (5) under current law, many of the victims may
19 not be able to receive full and complete compensa-
20 tion for the loss of their loved ones, their livelihoods,
21 or the damage to our natural resources;

22 (6) lax permitting standards on the part of
23 Federal agencies enabled such disaster; and

24 (7) the independent compensation apparatus set
25 up by BP plc has been inadequate.

1 **SEC. 3. LIABILITY UNDER OIL POLLUTION ACT OF 1990.**

2 (a) INCREASE IN LIABILITY LIMITATIONS UNDER
3 OIL POLLUTION ACT OF 1990.—Section 1004(a) of the
4 Oil Pollution Act of 1990 (33 U.S.C. 2704(a)) is amend-
5 ed—

6 (1) in paragraph (1)(A) by striking “\$3,000”
7 and inserting “\$6,000”;

8 (2) in paragraph (1)(B) by striking “\$1,900”
9 and inserting “\$3,800”;

10 (3) in paragraph (1)(C)(i)(I) by striking
11 “\$22,000,000” and inserting “\$44,000,000”;

12 (4) in paragraph (1)(C)(i)(II) by striking
13 “\$16,000,000” and inserting “\$32,000,000”;

14 (5) in paragraph (1)(C)(ii)(I) by striking
15 “\$6,000,000” and inserting “\$12,000,000”;

16 (6) in paragraph (1)(C)(ii)(II) by striking
17 “\$4,000,000” and inserting “\$8,000,000”;

18 (7) in paragraph (2) by striking “\$800,000”
19 and inserting “\$1,600,000”;

20 (8) in paragraph (3) by striking “\$75,000,000”
21 and inserting “\$300,000,000”; and

22 (9) in paragraph (4) by striking “\$75,000,000”
23 and inserting “\$150,000,000”.

24 (b) TIERED LIABILITY.—Section 1004 of the Oil Pol-
25 lution Act of 1990 (33 U.S.C. 2704) is amended by adding
26 at the end the following:

1 “(e) EXCESS LIABILITY.—

2 “(1) IN GENERAL.—The President shall pay to
3 any person to whom a responsible party is liable
4 under this Act the amount of any such liability that
5 is not recoverable from the responsible party because
6 of the application of the limitations under subsection
7 (a).

8 “(2) PAYMENT FROM TRUST FUND.—The
9 President shall pay the amount referred to in para-
10 graph (1)—

11 “(A) first from the Trust Fund, except
12 that the amount paid under this subparagraph
13 shall not exceed \$10,300,000,000 for any inci-
14 dent; and

15 “(B) after payment under subparagraph
16 (A), from amounts received by the United
17 States as a levy under paragraph (3).

18 “(3) IMPOSITION OF LEVY.—The President may
19 establish, assess, and collect from persons in the oil
20 industry a levy to recover the amount of liability to
21 be paid under paragraph (2)(B) for an incident.”.

22 (c) This section will not be retroactive.

1 **SEC. 4. AMENDMENTS RELATING TO OIL SPILL LIABILITY**

2 **TRUST FUND.**

3 (a) INCREASE IN SIZE OF THE OIL SPILL LIABILITY
4 TRUST FUND.—Paragraph (1) of section 4611(f) of the
5 Internal Revenue Code of 1986 is amended by striking
6 “\$2,000,000,000” and inserting “\$10,000,000,000”.

7 (b) INCREASE IN PER-INCIDENT CLEANUP CAP.—
8 Subparagraph (A) of section 9509(c)(2) of such Code is
9 amended—

10 (1) by striking “\$1,000,000,000” both places it
11 appears in the heading and text and inserting
12 “\$10,000,000,000”, and

13 (2) in clause (ii) by striking “\$500,000,000”
14 and inserting “\$5,000,000,000”.

15 (c) INCREASE IN TAX.—Subparagraph (B) of section
16 4611(c)(2) of such Code is amended—

17 (1) in clause (i) by striking “8 cents” and in-
18 serting “30 cents”, and

19 (2) in clause (ii) by striking “9 cents” and in-
20 serting “40 cents”.

21 (d) REPEAL OF SUNSET OF OIL SPILL LIABILITY
22 TRUST FUND FINANCING RATE.—Section 4611(f) of such
23 Code is amended—

24 (1) by striking paragraph (2), and

25 (2) by striking “(1) IN GENERAL.—Except”
26 and inserting “Except”.

1 (e) UPDATE EXPENDITURES FROM TRUST FUND.—
2 Subsection (f) of section 9509 of such Code is amended
3 by striking “the date of the enactment of this subsection”
4 and inserting “the date of the enactment of the Omnibus
5 Right to Equitable Means of Ensuring Damages for Inju-
6 ries are Efficiently Secured Act of 2010”.

7 (f) EFFECTIVE DATE.—The amendments made by
8 this section shall take effect on the date of the enactment
9 of this Act, and these amendments will not be retroactive.

10 **SEC. 5. AMENDMENT TO JONES ACT.**

11 (a) IN GENERAL.—Section 30104 of title 46, United
12 States Code, is amended—

13 (1) in the section heading, by striking “**sea-**
14 **men**” inserting “**covered maritime employ-**
15 **ees**”;

16 (2) by striking “seaman” each place it appears
17 and inserting “covered maritime employee”;

18 (3) by striking “personal representative of” and
19 inserting “spouse, parent, child, sibling, or depend-
20 ent relative of”;

21 (4) by inserting “or any person whose act or
22 omission was a cause of the injury or death” after
23 “the employer”;

24 (5) by inserting “(a) IN GENERAL” before the
25 first sentence; and

1 (6) by adding at the end of the section the fol-
2 lowing:

3 “(b) COVERED MARITIME EMPLOYEE DEFINED.—In
4 this section the term ‘covered maritime employee’
5 means—

6 “(1) a seaman; or

7 “(2) an individual employed on an offshore fa-
8 cility (as that term is defined in section 1001 of the
9 Oil Pollution Act of 1990 (33 U.S.C. 2701)) or a
10 mobile offshore drilling unit.”.

11 (b) CONFORMING AMENDMENT.—The chapter anal-
12 ysis at the beginning of chapter 301 of title 46, United
13 States Code, is amended by striking the item relating to
14 such section and inserting the following:

“30104. Personal injury or death of covered maritime employee.”.

15 **SEC. 6. AMENDMENTS TO DEATH ON THE HIGH SEAS ACT.**

16 The Death on the High Seas Act (chapter 303 of title
17 46, United States Code), is amended—

18 (1) by striking “personal representative” each
19 place it appears and inserting “spouse, parent, child,
20 sibling, or dependent relative”;

21 (2) in section 30303—

22 (A) by inserting “and nonpecuniary loss”
23 after “pecuniary loss”;

24 (B) by striking “by” and all that follows
25 through the end, and inserting “, plus a fair

1 compensation for the decedent’s pain and suf-
2 fering, and may include punitive damages if the
3 death resulted from gross negligence or willful
4 misconduct of the defendant.”; and

5 (C) by adding at the end the following: “In
6 this section, the term ‘nonpecuniary loss’ means
7 loss of care, comfort, and companionship.”; and

8 (3) in section 30306, by inserting “(a)” before
9 the first sentence, and by adding at the end of the
10 section the following:

11 “(b) RESTRICTION ON RECOVERY BY NONCITIZEN
12 AND NONRESIDENT ALIEN WORKERS FOR INCIDENTS
13 ARISING DURING INTERNATIONAL VOYAGES OF FOREIGN
14 VESSELS.—

15 “(1) IN GENERAL.—Except as provided in para-
16 graph (2), a civil action for maintenance and cure
17 for damages for personal injury or death may not be
18 brought under a maritime law of the United States
19 if—

20 “(A) the individual suffering the injury or
21 death was not a citizen or permanent resident
22 alien of the United States at the time of the in-
23 cident giving rise to the action; and

24 “(B) the incident occurred during an inter-
25 national voyage of a vessel, duly registered

1 under the laws of a foreign nation, upon which
2 the individual suffering the injury or death was
3 employed.

4 “(2) NONAPPLICATION.—Paragraph (1) does
5 not apply if the individual bringing the action estab-
6 lishes that a remedy is not available under the laws
7 of—

8 “(A) the country in which the vessel is reg-
9 istered; or

10 “(B) the country in which the individual
11 suffering the injury or death maintained citi-
12 zenship or residency at the time of the inci-
13 dent.”.

14 **SEC. 7. REQUIREMENT FOR REDUNDANCY IN RESPONSE**
15 **PLANS.**

16 (a) REQUIREMENT.—Section 311(j)(5)(D) of the
17 Federal Water Pollution Control Act (33 U.S.C.
18 1331(j)(5)(D)) is amended by redesignating clauses (v)
19 and (vi) as clauses (vii) and (viii), and by inserting after
20 clause (iv) the following new clauses:

21 “(v) include redundancies that specify
22 response actions that will be taken if other
23 response actions specified in the plan fail;

24 “(vi) be vetted by impartial experts;”.

1 (b) CONDITION OF PERMIT.—The Outer Continental
2 Shelf Lands Act (43 U.S.C. 1331 et seq.) is amended by
3 adding at the end the following new section:

4 **“SEC. 32. RESPONSE PLAN REQUIRED FOR PERMIT OR LI-**
5 **CENSE AUTHORIZING DRILLING FOR OIL AND**
6 **GAS.**

7 “The Secretary may not issue any license or permit
8 authorizing drilling for oil and gas on the outer Conti-
9 nental Shelf unless the applicant for the license or permit
10 has a response plan approved under section 311(j)(5)(D)
11 of the Federal Water Pollution Control Act (33 U.S.C.
12 1331(j)(5)(D)) for the vessel or facility that will be used
13 to conduct such drilling.”.

14 **SEC. 8. SUSPENSION OF DRILLING PERMIT FOR EXCESSIVE**
15 **OSHA OR OTHER SAFETY VIOLATIONS.**

16 Section 5(a)(1)(B) of the Outer Continental Shelf
17 Lands Act (43 U.S.C. 1334(a)(1)(B)) is amended by in-
18 serting after “human environment” the following: “, in-
19 cluding in any case in which 5 or more violations of the
20 Occupational Safety and Health Act of 1970 (29 U.S.C.
21 651 et seq.), the regulations under that Act, or other safe-
22 ty laws or regulations occur in operations under the lease
23 or permit within a 1-year period”.

1 **SEC. 9. PROCESSING OF CLAIMS BY RESPONSIBLE PAR-**
2 **TIES.**

3 Section 1013 of the Oil Pollution Act of 1990 (33
4 U.S.C. 2713) is amended by adding at the end the fol-
5 lowing new subsection:

6 “(g) **PROCESSING OF CLAIMS BY RESPONSIBLE PAR-**
7 **TIES.**—In processing claims under this section for loss of
8 income, a responsible party shall—

9 “(1) consider claims for loss of income accord-
10 ing to categories of business of the claimants;

11 “(2) make determinations based on the unique
12 practices within each category; and

13 “(3) treat fisherman as a separate category.”.

14 **SEC. 10. CLASS ACTION FAIRNESS ACT.**

15 Title 28, United States Code, is amended—

16 (1) in section 1711(2), by inserting “, but does
17 not include an action brought by a State or subdivi-
18 sion of a State on behalf of its citizens” before the
19 period; and

20 (2) in section 1332(d)(1)(B), by inserting “,
21 but does not include an action brought by a State
22 or subdivision of a State on behalf of its citizens”
23 before the semicolon.

24 **SEC. 11. MULTI-PARTY LITIGATION.**

25 Section 1407 of title 28, United States Code, is
26 amended by adding at the end the following:

1 “(i) This section does not apply to any action—
2 “(1) under chapter 301 of title 46, United
3 States Code (commonly called the Jones Act);
4 “(2) under the Death on the High Seas Act
5 (chapter 303 of title 46, United States Code); or
6 “(3) brought by a State or a subdivision of a
7 State on behalf of its citizens.”.

8 **SEC. 12. INDEPENDENT CLAIMS SYSTEM.**

9 The Secretary of Homeland Security shall have the
10 authority to require any entity that is liable for damages
11 under the Oil Pollution Act of 1990 (33 U.S.C. 2701 et
12 seq.) to establish an independent claims system for all
13 claims under that Act and for any other claims against
14 such entity in regard to the same incident that gave rise
15 to that liability. Such system shall include a categorization
16 of claimants according to the type of loss for which the
17 claim is made and guidelines for the type of proof nec-
18 essary based on the category involved.

19 **SEC. 13. EMERGENCY OIL SPILL COORDINATION TEAM.**

20 The President shall establish an emergency oil spill
21 coordination team that includes the Commandant of the
22 Coast Guard, the Administrator of the Environmental
23 Protection Agency, the Secretary of Energy, the Secretary
24 of Commerce, the Secretary of the Interior, and chief of
25 the Army Corps of Engineers, to respond to oil spills in

1 the United States. In addition, the President shall estab-
2 lish the chain of command for such team.

3 **SEC. 14. RESEARCH AND DEVELOPMENT TEAM.**

4 The President shall appoint a research and develop-
5 ment team to review and recommend new technologies
6 that prevent oil spills, especially deep water drilling oil
7 spills. The oil industry shall establish a \$1,000,000,000
8 research and development fund to develop the latest tech-
9 nologies related to oil spill recovery, remediation, and
10 cleanup. The team shall be comprised of representatives
11 of government, industry, research, and academia who have
12 expertise in research and development activities regarding
13 deep water oil drilling.

14 **SEC. 15. PTSD COUNSELING.**

15 The Secretary of Homeland Security shall make ex-
16 tensive post-traumatic stress disorder counseling available
17 to victims of significant oil spill disasters, including indi-
18 rect victims suffering severe economic damages.

19 **SEC. 16. PANEL OF EXPERTS TO ASSESS AND EVALUATE**
20 **THE LONG-TERM ENVIRONMENTAL IMPACTS**
21 **OF THE GULF OIL SPILL.**

22 The Administrator of the Environmental Protection
23 Agency shall establish a panel of experts to assess and
24 evaluate the long-term environmental impacts of the oil
25 spill in the Gulf of Mexico resulting from the explosion

1 on and sinking of the mobile offshore drilling unit Deep-
2 water Horizon.

3 **SEC. 17. ESTABLISHMENT OF A LIABILITY STRUCTURE.**

4 The President shall issue regulations that establish
5 limitations on liability under the Oil Pollution Act of 1990
6 that are substantially similar to the limitations established
7 by section 170 of the Act of August 1, 1946 (ch. 724;
8 42 U.S.C. 2210), popularly known as the Price-Anderson
9 Act. Such regulations shall apply with respect to such li-
10 ability in lieu of any limitation on liability established by
11 the Oil Pollution Act of 1990. This section shall not be
12 retroactive.

13 **SEC. 18. EFFECTIVE DATE.**

14 This Act shall take effect April 15, 2010.

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