AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3114
OFFERED BY MR. MRVAN OF INDIANA

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.
2 This Act may be cited as the “Longshore and Harbor
3 Workers’ COVID–19 Compensation Act of 2022”.
4 SEC. 2. CLAIMS RELATED TO COVID–19.
5 (a) IN GENERAL.—A covered employee who receives
6 a diagnosis of COVID–19 or is subject to an order de-
7 scribed in subsection (b)(2) and who provides notice of or
8 files a claim under the Longshore and Harbor Workers’
9 Compensation Act (33 U.S.C. 901 et seq.) relating to such
10 diagnosis or order shall be conclusively presumed to have
11 an injury arising out of or in the course of employment
12 for the purpose of compensation under the Longshore and
13 Harbor Workers’ Compensation Act.
14 (b) COVERED EMPLOYEE.—In this Act, the term
15 “covered employee” means an individual who, at any time
16 during the period beginning January 27, 2020, and ending
17 on January 27, 2024, is an employee engaged in maritime
18 employment as defined in section 2 of the Longshore and
Harbor Workers’ Compensation Act (33 U.S.C. 902(3))

and who—

(1)(A) is diagnosed with COVID–19; and

(B) during a covered exposure period with re-

spect to the date of such diagnosis carried out duties

which—

(i) required contact with members of the

public, co-workers, or other individuals associ-

ated with the course of employment; or

(ii) included a risk of exposure to the novel

coronavirus; or

(2) is ordered not to return to work by the em-

ployee’s employer or by a local, State, or Federal

agency because of exposure, or the risk of exposure,

to 1 or more individuals diagnosed with COVID–19

in the workplace.

(c) CLARIFICATION OF MARITIME EMPLOYMENT.—

For the purposes of subsection (b), maritime employment

does not include employment under—

(1) the Defense Base Act (42 U.S.C. 1651 et

seq.);

(2) the Outer Continental Shelf Lands Act (43

U.S.C. 1333(b)); and

(3) section 8171 of title 5, United States Code.
(d) LIMITATION.—This Act shall not apply with respect to a covered employee who—

(1) provides notice or files a claim described in subsection (a) on or before the date of enactment of this Act; and

(2) is determined to be entitled to the compensation described in subsection (a) or is awarded such compensation if such determination or award is made on or before the date of enactment of this Act.

(e) DENIALS ON OR BEFORE THE DATE OF ENACTMENT.—Subsection (a) shall apply with respect to a covered employee who is determined not to be entitled to, or who is not awarded, compensation described in subsection (a) if such determination or decision not to award such compensation is made on or before the date of enactment of this Act.

(f) EXCLUSION.—The Secretary shall not consider any compensation paid with respect to a notice or claim to which subsection (a) applies, including disability compensation, death benefits, funeral and burial expenses, and medical expenses, in calculating the annual assessments under section 44(c)(2) of the Longshore and Harbor Workers’ Compensation Act (33 U.S.C. 944(e)(2)).

SEC. 3. REIMBURSEMENT.

(a) IN GENERAL.—
(1) Entitlement.—An employer of a covered employee or the employer’s carrier shall be entitled to reimbursement pursuant to this Act for any compensation paid with respect to a notice or claim described in section 2(a), including disability compensation, death benefits, funeral and burial expenses, medical or other related costs for treatment and care, and reasonable and necessary allocated claims expenses.

(2) Safety and health requirements.—To be entitled to reimbursement under paragraph (1)—

(A) an employer shall be in compliance with all applicable safety and health guidelines and standards that are related to the prevention of occupational exposure to the novel coronavirus, including such guidelines and standards issued by the Occupational Safety and Health Administration, State plans approved under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667), the Centers for Disease Control and Prevention, and the National Institute for Occupational Safety and Health; and

(B) a carrier—
(i) shall be a carrier for an employer that is in compliance with subparagraph (A); and

(ii) shall not adjust the experience rating or the annual premium of the employer based upon the compensation paid by the carrier with respect to a notice or claim described in section 2(a).

(b) REIMBURSEMENT PROCEDURES.—

(1) IN GENERAL.—To receive reimbursement under subsection (a), a claim for such reimbursement shall be submitted to the Secretary of Labor—

(A) not earlier than the date on which a compensation order (as described in section 19(e) of the Longshore and Harbor Workers’ Compensation Act (33 U.S.C. 919(e))) is issued that fixes entitlement to benefits; or

(B) not later than one year after the final payment of compensation to a covered employee pursuant to this Act; and

(C) in accordance with a rule issued by the Secretary that the Secretary determines to be similar to the process established under part 61 of title 20, Code of Federal Regulations (as in effect on the date of enactment of this Act).
(2) RECORDS.—An employer and the employer’s carrier shall make, keep, and preserve such records and provide such information as the Secretary of Labor determines necessary or appropriate to carry out this Act.

(3) FINAL AGENCY ACTION.—The action of the Secretary in allowing or denying reimbursement under this section shall be the final Agency action with respect to such reimbursement.

(c) APPROPRIATIONS.—

(1) IN GENERAL.—A reimbursement under this section shall be paid out of the Longshore COVID–19 Fund.

(2) FUNDS.—In addition to amounts otherwise available, there are authorized to be appropriated, and there are appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to the Longshore COVID–19 Fund for each reimbursement paid out of such Fund under this section.

(d) REPORT.—Not later than 60 days after the end of each of fiscal years 2022, 2023, and 2024, the Secretary of Labor shall submit to the Committee on Education and Labor of the House of Representatives and the
Committee on Health, Education, Labor, and Pensions of the Senate, an annual report enumerating—

(1) the number of claims filed pursuant to section 2(a);

(2) of such filed claims—

(A) the number and types of claims under the Longshore and Harbor Workers Compensation Act (33 U.S.C. 901 et seq.) with respect to which the presumption under section 2(a) is made;

(B) the number and types of such claims denied; and

(C) the number and types of such claims pending; and

(3) the total number of claims for reimbursement and the total amounts paid for such reimbursement from the Longshore COVID–19 Fund under subsection (c)(1) for the fiscal year for which the report is being submitted.

(e) REGULATIONS.—The Secretary of Labor may promulgate such regulations as may be necessary to carry out this Act.

(f) DEFINITIONS.—In this Act:

(1) COVERED EXPOSURE PERIOD.—The term “covered exposure period” with respect to the date
of a diagnosis described in section 2(b)(1)(A), means
the period of days—

(A) ending on the date of such diagnosis;
and

(B) equal to the maximum number of days
that the Secretary of Labor, with the concur-
rence of the Director of the National Institute
of Occupational Safety and Health, determines
could occur between an exposure to the novel
coronavirus and a diagnosis of COVID–19 re-
resulting from such exposure.

(2) LHWCA TERMS.—The terms “carrier”,
“compensation”, “employee”, and “employer” have
the meanings given the terms in section 2 of the
Longshore and Harbor Workers’ Compensation Act
(33 U.S.C. 902).

(3) LONGSHORE COVID-19 FUND.—The term
“Longshore COVID-19 Fund” means the fund es-
established in section 45 of the Longshore and Harbor
Workers’ Compensation Act (as added by section 4
of this Act).

(4) NOVEL CORONAVIRUS.—The term “novel
coronavirus” means SARS–CoV–2, a variant of
SARS–CoV–2, or any other coronavirus declared to
be a pandemic by public health authorities.
SEC. 4. LONGSHORE COVID–19 FUND.

The Longshore and Harbor Workers’ Compensation Act (33 U.S.C. 901 et seq.) is amended by adding after section 44 the following:

“SEC. 45. LONGSHORE COVID–19 FUND.

“(a) IN GENERAL.—There is established in the Treasury of the United States the Longshore COVID–19 Fund (in this section, referred to as the ‘Fund’), which consists of sums that are appropriated to the Fund under section 3(c) of the Longshore and Harbor Workers’ COVID–19 Compensation Act of 2022.

“(b) EXPENDITURES.—Amounts in the Fund shall be available for the reimbursement of an employer or the employer’s carrier for compensation payments and expenses approved under section 3 of the Longshore and Harbor Workers’ COVID–19 Compensation Act of 2022, including disability compensation, death benefits, funeral and burial expenses, medical or other related costs for treatment and care, and reasonable and necessary allocated claims expenses paid under this Act when reimbursement is required under section 3 of the Longshore and Harbor Workers’ COVID–19 Compensation Act of 2022, subject to any limitations in such section.”.