

# Union Calendar No. 296

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5503

**[Report No. 111-521, Part I]**

To revise laws regarding liability in certain civil actions arising from maritime incidents, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 10, 2010

Mr. CONYERS (for himself, Mr. MELANCON, Mr. NADLER of New York, Ms. JACKSON LEE of Texas, Ms. WATERS, Mr. COHEN, Mr. JOHNSON of Georgia, Ms. CHU, Mr. DEUTCH, Mr. WEINER, Ms. LINDA T. SÁNCHEZ of California, and Mr. BRALEY of Iowa) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Transportation and Infrastructure, 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

JUNE 30, 2010

Reported from the Committee on the Judiciary with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

JUNE 30, 2010

Additional sponsors: Mr. GUTIERREZ, Mr. HINCHEY, Mr. QUIGLEY, Mr. CONNOLLY of Virginia, Mr. BERMAN, Ms. LORETTA SANCHEZ of California, Mr. MAFFEI, Ms. MATSUI, Mr. BACA, Mr. THOMPSON of Mississippi, Mr. HOLT, Mr. PAYNE, Mrs. MALONEY, Mr. SHERMAN, and Ms. HIRONO

JUNE 30, 2010

Committee on Transportation and Infrastructure discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on June 10, 2010]

# **A BILL**

To revise laws regarding liability in certain civil actions arising from maritime incidents, 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 “Securing Protections*  
5 *for the Injured from Limitations on Liability Act”.*

6 **SEC. 2. AMENDMENTS TO DEATH ON THE HIGH SEAS ACT.**

7        *The Death on the High Seas Act (chapter 303 of title*  
8 *46, United States Code), is amended—*

9            (1) *in section 30302—*

10                  (A) *by inserting “or law” after “admi-*  
11 *rality”;*

12                  (B) *by striking “3 nautical miles” and in-*  
13 *serting “12 nautical miles”; and*

14                  (C) *by striking the last sentence;*

15            (2) *in section 30303—*

16                  (A) *by inserting “and nonpecuniary loss”*  
17 *after “pecuniary loss”;*

18                  (B) *by striking “by” and all that follows*  
19 *through the end, and inserting “, plus a fair*  
20 *compensation for the decedent’s pain and suf-*  
21 *fering.”; and*

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

1           (3) in section 30305 by inserting “or law” after  
2           “admiralty”;

3           (4) in section 30306, by inserting “or law” after  
4           “admiralty”;

5           (5) by striking section 30307, and redesignating  
6           section 30308 as section 30307;

7           (6) in section 30307, as so redesignated, by  
8           amending subsection (b) to read as follows:

9           “(b) *INTERNAL AND TERRITORIAL WATERS.*—*This*  
10 *chapter does not apply to the waters of the Great Lakes*  
11 *or waters within the territorial limits of a State that do*  
12 *not exceed 12 nautical miles from the shore of the United*  
13 *States. In such waters, the rules applicable under Federal,*  
14 *State, maritime, and other appropriate law shall apply.”;*

15 *and*

16           (7) in the table of sections at the beginning of  
17           such chapter, by striking the items relating to sections  
18           30307 and 30308 and inserting the following:

          “30307. *Nonapplication.*”.

19 **SEC. 3. AMENDMENTS TO JONES ACT.**

20           *Title 46, United States Code, is amended—*

21           (1) in section 30104, by adding at the end the  
22           following: “*In addition to other amounts authorized*  
23           *under such laws, the recovery for a seaman who so*  
24           *dies shall include recovery for loss of care, comfort,*  
25           *and companionship.”; and*

1           (2) by striking section 30105 and the item relat-  
2           ing to that section in the table of sections at the be-  
3           ginning of chapter 301.

4 **SEC. 4. REPEAL OF LIMITATION OF LIABILITY ACT.**

5           Chapter 305 of title 46, United States Code, is amend-  
6           ed by repealing sections 30505, 30506, 30507, 30511, and  
7           30512 and the items relating to those sections in the table  
8           of sections at the beginning of chapter 305.

9 **SEC. 5. AMENDMENT TO CLASS ACTION FAIRNESS ACT.**

10          Title 28, United States Code, is amended—

11           (1) in section 1711(2), by inserting “, but does  
12           not include an action brought by a State or subdivi-  
13           sion of a State on behalf of its citizens” before the pe-  
14           riod;

15           (2) in section 1332(d)(1)(B), by inserting “, but  
16           does not include an action brought by a State or sub-  
17           division of a State on behalf of its citizens” before the  
18           semicolon; and

19           (3) in section 1332(d)(11)(B)(ii)—

20                 (A) by striking “or” at the end of subclause  
21                 (III);

22                 (B) by striking the period at the end of sub-  
23                 clause (IV) and inserting “; or”; and

24                 (C) by adding at the end the following:

1           “(V) *the claims are made by a State or subdivi-*  
2           *sion of a State on behalf of its citizens.*”

3 **SEC. 6. UNENFORCEABILITY OF CERTAIN SECRECY AGREE-**  
4           **MENTS.**

5           *(a) IN GENERAL.—Part VI of title 28, United States*  
6 *Code, is amended by adding at the end the following:*

7           **“CHAPTER 181—UNENFORCEABILITY OF**  
8           **CERTAIN SECRECY AGREEMENTS**

          “Sec.

          “4101. *Unenforceability of certain secrecy agreements.*

9 **“§4101. Unenforceability of certain secrecy agree-**  
10           **ments**

11           *“(a) IN GENERAL.—Subject to subsection (b), an*  
12 *agreement, promise, or directive to restrict the dissemina-*  
13 *tion of information regarding the cause of a discharge into*  
14 *waters off the shore of the United States of a substance that*  
15 *contaminates a marine or coastal environment or endan-*  
16 *gers public health, regarding the nature or extent of such*  
17 *a discharge, regarding the damage caused or threatened by*  
18 *such a discharge, or regarding the efforts to remediate the*  
19 *effects of such a discharge, shall be void as against public*  
20 *policy and unenforceable in any legal proceeding.*

21           *“(b) EXCEPTION.—*

22           *“(1) GENERALLY.—Subsection (a) does not*  
23 *apply with respect to a directive contained in a court*  
24 *order, or issued by a Government agency with author-*

1 *ity to enforce such a directive in a court, restricting*  
 2 *dissemination of information as necessary to protect*  
 3 *public health or safety.*

4 “(2) *PROCEDURE RELATING TO EXCEPTION.*—

5 “(A) *A court shall not grant judicial en-*  
 6 *forcement of a directive or order described in*  
 7 *paragraph (1) unless the proponent of the direc-*  
 8 *tive or order proves by clear and convincing evi-*  
 9 *dence that such enforcement is permitted under*  
 10 *paragraph (1).*

11 “(B) *If a court grants judicial enforcement*  
 12 *of any directive or order described in paragraph*  
 13 *(1), the court shall state the court’s factual find-*  
 14 *ings and conclusions of law relating to that en-*  
 15 *forcement on the record.”.*

16 (b) *CLERICAL AMENDMENT.*—*The table of chapters for*  
 17 *part VI of title 28, United States Code, is amended by add-*  
 18 *ing at the end the following new item:*

“**181. Unenforceability of Certain Secrecy Agreements ..... 4101**”.

19 **SEC. 7. AMENDMENTS TO TITLE 11 OF THE UNITED STATES**

20 **CODE.**

21 (a) *TREATMENT OF CERTAIN PROPERTY IN BANK-*  
 22 *RUPTCY.*—

23 (1) *LIMITATION ON SALE OR LEASE OF CERTAIN*  
 24 *PROPERTY IN BANKRUPTCY.*—*Section 363 of title 11,*

1 *United States Code, is amended by adding at the end*  
2 *the following:*

3 *“(q) Notwithstanding any other provision of this sec-*  
4 *tion, if the debtor is liable under any law for a claim aris-*  
5 *ing from an incident (as defined in section 1001 of the Oil*  
6 *Pollution Act of 1990, and that gives rise to liability under*  
7 *such Act), the trustee may not sell or lease all or substan-*  
8 *tially all property of the estate of the debtor (or, to the ex-*  
9 *tent that the court has or can obtain jurisdiction over any*  
10 *affiliate of the debtor, property of such affiliate) unless the*  
11 *entity that acquires such property (including any affiliate*  
12 *of such entity) assumes the obligation to pay the amount*  
13 *of allowed unsecured claims arising from such incident that*  
14 *is not paid by the debtor, or unless creditors holding at least*  
15 *two-thirds in amount, and more than one-half in number,*  
16 *of such claims consent to different treatment.”.*

17 *(2) LIMITATION ON TREATMENT OF CERTAIN*  
18 *PROPERTY UNDER A PLAN OF REORGANIZATION.—Sec-*  
19 *tion 1129(b)(2)(B) of title 11, United States Code, is*  
20 *amended—*

21 *(A) in clause (i) by striking “or” at the*  
22 *end;*

23 *(B) in clause (ii) by striking the period at*  
24 *the end and inserting “; or”; and*

25 *(C) by adding at the end the following:*



1           “(iii) that includes claims of the kind de-  
2           scribed in section 363(q), if the plan provides for  
3           a sale or lease of all or substantially all of prop-  
4           erty of the estate, the plan requires the entity  
5           that acquires such property (including any affil-  
6           iate of such entity) to assume the obligation to  
7           pay the amount of allowed unsecured claims  
8           arising from an incident described in section  
9           363(q) that is not paid by the debtor, or credi-  
10          tors holding at least two-thirds in amount, and  
11          more than one-half in number, of such claims  
12          consent to different treatment.”.

13          (b) CONFORMING AMENDMENT.—Section 303(f) of title  
14 11, United States Code, is amended by adding at the end  
15 the following: “If the debtor is liable under any law for a  
16 claim arising from an incident (as defined in section 1001  
17 of the Oil Pollution Act of 1990, and that gives rise to li-  
18 ability under such Act), the debtor may not sell or lease  
19 all or substantially all property of the debtor (or, to the  
20 extent that the court has or can obtain jurisdiction over  
21 any affiliate of the debtor, property of such affiliate) unless  
22 the entity that acquires such property (including any affil-  
23 iate of such entity) assumes the obligation to pay the  
24 amount of allowed unsecured claims arising from such inci-  
25 dent that is not paid by the debtor, or creditors holding

1 *at least two-thirds in amount, and more than one-half in*  
2 *number, of such claims consent to different treatment.”.*

3 **SEC. 8. EFFECTIVE DATE.**

4 *This Act and the amendments made by this Act shall*  
5 *take effect on the date of enactment of this Act and shall*  
6 *apply to cases pending on or after such date.*



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