

111TH CONGRESS  
1ST SESSION

# H. R. 635

To establish the National Commission on State Workers' Compensation Laws.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 22, 2009

Mr. BACA introduced the following bill; which was referred to the Committee on Education and Labor

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## A BILL

To establish the National Commission on State Workers' Compensation Laws.

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 “National Commission  
5       on State Workers' Compensation Laws Act of 2009”.

6       **SEC. 2. FINDINGS.**

7       The Congress finds the following:

8               (1) The full protection of American workers  
9       from job-related injury or death requires an ade-  
10       quate, prompt, and equitable system of workers'

1 compensation as well as an effective program of oc-  
2 cupational health and safety regulation.

3 (2) The vast majority of American workers and  
4 their families are dependent on workers' compensa-  
5 tion for their basic economic security in the event  
6 such workers suffer injury or death in the course of  
7 employment.

8 (3) In 1972, the National Commission on State  
9 Workmen's Compensation Laws found that the sys-  
10 tem of State workers' compensation laws was "in-  
11 equitable and inadequate". Since that time, changes  
12 in reductions in State workers' compensation laws  
13 have increased the inadequacy and inequitable levels  
14 of workers' compensation benefits. Serious questions  
15 exist concerning the fairness and adequacy of  
16 present workers' compensation laws in light of the  
17 growth of the economy, changing nature of the labor  
18 force, misclassification of workers as independent  
19 contractors, and as leased employees, as well as ero-  
20 sion of remedies for the bad faith handling and  
21 delay in payment of benefits and medical care to  
22 workers and their families, increases in medical  
23 knowledge, changes in the hazards associated with  
24 various employment, new risks to health and safety

1 created by new technology, and increases in the gen-  
2 eral level of wages and in the cost of living.

3 **SEC. 3. ESTABLISHMENT OF COMMISSION.**

4 There is established a commission to be known as the  
5 “National Commission on State Workers’ Compensation  
6 Laws” (hereinafter in this Act referred to as the “Com-  
7 mission”).

8 **SEC. 4. DUTIES OF COMMISSION.**

9 (a) IN GENERAL.—The duties of the Commission  
10 shall be—

11 (1) to review the findings of the previous Na-  
12 tional Commission on State Workmen’s Compensa-  
13 tion Laws and its recommendations;

14 (2) to study and evaluate State workers’ com-  
15 pensation laws in order to determine if such laws  
16 provide an adequate, prompt, and equitable system  
17 of compensation for injury or death arising out of or  
18 in the course of employment; and

19 (3) to study and evaluate whether additional  
20 remedies should be recommended to ensure prompt  
21 and good faith payment of benefits and medical care  
22 to injured workers and their families.

23 (b) MATTERS TO BE EVALUATED AND STUDIED.—

24 The study and evaluation under subsection (a)(2) shall in-  
25 clude—

1           (1) the amount of permanent and temporary  
2           disability benefits and the criteria for determining  
3           the maximum limitations of such benefits or the  
4           elimination of such maximum limitations;

5           (2) a study and evaluation of State workers'  
6           compensation laws in order to determine if, and en-  
7           sure that, such laws provide an adequate, prompt,  
8           and equitable system of compensation and medical  
9           care for injuries or death arising out of in the course  
10          of employment;

11          (3) a study of whether other adequate remedies  
12          are available to ensure the prompt payment of bene-  
13          fits and to reduce or eliminate bad faith delays in  
14          payments of benefits, providing medical care, and  
15          discouraging misclassification of workers as inde-  
16          pendent contractors and or leased employees to  
17          avoid paying workers' compensation benefits;

18          (4) the amount and duration of medical benefits  
19          and provisions ensuring adequate medical care and  
20          free choice of physician;

21          (5) rehabilitation;

22          (6) standards for determining assurance of ben-  
23          efits caused by aggravation or acceleration of pre-  
24          existing injuries or disease;

25          (7) time limits on filing claims;

- 1 (8) waiting periods;
- 2 (9) compulsory or elective coverage;
- 3 (10) administration;
- 4 (11) ensuring prompt hearings and due process
- 5 evidentiary rights in the resolution of claims;
- 6 (12) the relationship between workers' com-
- 7 pensation on the one hand, and old-age, disability,
- 8 and survivors insurance and other types of insurance
- 9 (public or private) on the other hand; and
- 10 (13) methods of communicating the rec-
- 11 ommendations of the Commission.

12 **SEC. 5. MEMBERSHIP.**

13 (a) NUMBER AND APPOINTMENT.—The Commission  
14 shall be composed of 14 members, as follows:

15 (1) 1 member, appointed by the President, who  
16 shall serve as chairman of the Commission.

17 (2) 1 member, appointed by the majority leader  
18 of the Senate in consultation with the majority lead-  
19 er of the House of Representatives, who shall serve  
20 as vice chairman of the Commission.

21 (3) 2 members appointed by the majority leader  
22 of the House of Representatives.

23 (4) 2 members appointed by the minority leader  
24 of the House of Representatives.

1           (5) 2 members appointed by the majority leader  
2 of the Senate.

3           (6) 2 members appointed by the minority leader  
4 of the Senate.

5           (7) The Secretary of Labor, the Secretary of  
6 Commerce, the Secretary of Health and Human  
7 Services, and the Secretary of Education shall be ex  
8 officio members of the Commission.

9           (b) AFFILIATIONS.—

10           (1) Not more than 6 appointed members of the  
11 Commission shall be from the same political party.

12           (2) There shall be at all times at least 3 mem-  
13 bers that represent injured workers, 3 members that  
14 represent insurance carriers or employers, and 1  
15 member of the general public.

16           (c) QUALIFICATIONS.—It is the sense of Congress  
17 that individuals appointed to the Commission should be  
18 United States citizens—

19           (1) with significant depth of experience—

20                   (A) as members of State workers' com-  
21 pensation boards;

22                   (B) as representatives of insurance car-  
23 riers, employers, and injured workers; and

24                   (C) in the general fields of business and  
25 labor;

1           (2) who are members of the medical profession  
2           with experience in industrial medicine or in workers'  
3           compensation cases; and

4           (3) who are educators having special expertise  
5           in the field of workers' compensation.

6           (d) VACANCIES.—Any member appointed to fill a va-  
7           cancy occurring before the expiration of the term for which  
8           the member's predecessor was appointed shall be ap-  
9           pointed only for the remainder of that term. A member  
10          may serve after the expiration of that member's term until  
11          a successor has taken office. A vacancy in the Commission  
12          shall not affect its powers, but shall be filled in the same  
13          manner in which the original appointment was made.

14          (e) QUORUM.—Eight members of the Commission  
15          shall constitute a quorum.

16          (f) MEETINGS.—

17                (1) The Commission shall hold its initial meet-  
18                ing as soon as practicable.

19                (2) After its initial meeting, the Commission  
20                shall meet upon the call of the chairman or a major-  
21                ity of its members.

22          (g) TRAVEL EXPENSES.—While away from their  
23          homes or regular places of business in the performance  
24          of services for the Commission, members of the Commis-  
25          sion shall be allowed travel expenses, including per diem

1 in lieu of subsistence, in the same manner as persons em-  
2 ployed intermittently in the Government service are al-  
3 lowed expenses under section 5703(b) of title 5, United  
4 States Code.

5 (h) COMPENSATION.—

6 (1) BASIC PAY.—Each member of the Commis-  
7 sion may be compensated at a level not to exceed the  
8 daily equivalent of the annual rate of basic pay in  
9 effect for a position at level IV of the Executive  
10 Schedule under section 5315 of title 5, United  
11 States Code, for each day during which that member  
12 is engaged in the actual performance of the duties  
13 of the Commission.

14 (2) PROHIBITION OF COMPENSATION OF FED-  
15 ERAL EMPLOYEES.—Members of the Commission  
16 who are full-time officers or employees of the United  
17 States or Members of Congress may not receive ad-  
18 ditional pay, allowances, or benefits by reason of  
19 their service on the Commission.

20 **SEC. 6. STAFF OF COMMISSION.**

21 (a) DIRECTOR.—The Chairman of the Commission,  
22 in consultation with the vice chairman and in accordance  
23 with the rules agreed upon by the Commission, may ap-  
24 point a Director. The Director shall be paid at a rate not  
25 to exceed the equivalent of that payable for a position at



1 level V of the Executive Schedule under section 5316 of  
2 title 5, United States Code.

3 (b) STAFF.—The Chairman, in consultation with the  
4 vice chairman and in accordance with rules agreed upon  
5 by the Commission, may appoint and fix the compensation  
6 of additional personnel as may be necessary to enable the  
7 Commission to carry out its functions, without regard to  
8 the provisions of title 5, United States Code, governing  
9 appointments in the competitive service and without re-  
10 gard to the provisions of chapter 51 and subchapter III  
11 of chapter 53 of such title relating to classification and  
12 general schedules pay rates, except that no rate of pay  
13 fixed under this subsection may exceed the equivalent of  
14 that payable for a position at level V of the Executive  
15 Schedule under section 5316 of title 5, United States  
16 Code.

17 (c) EXPERTS AND CONSULTANTS.—The Commission  
18 is authorized to procure the services of experts and con-  
19 sultants in accordance with section 3109 of title 5, United  
20 States Code, but at rates not to exceed the daily rate paid  
21 to a person occupying a position at level IV of the Execu-  
22 tive Schedule under section 5315 of title 5, United States  
23 Code.

24 (d) DETAILEES.—Any Federal Government employee  
25 may be detailed to the Commission without reimbursement

1 from the Commission and such detailee shall retain the  
2 rights, status, and privileges of his or her regular employ-  
3 ment without interruption.

4 (e) **PERSONNEL AS FEDERAL EMPLOYEES.**—The ex-  
5 ecutive director and any personnel of the Commission who  
6 are employees of the Commission shall be treated as em-  
7 ployees under section 2105 of title 5, United States Code,  
8 for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and  
9 90 of that title. The preceding sentence shall not apply  
10 to members of the Commission.

11 **SEC. 7. POWERS OF THE COMMISSION.**

12 (a) **HEARINGS AND EVIDENCE.**—The Commission, or  
13 on the authority of the Commission, any subcommittee or  
14 member thereof, may, for the purpose of carrying out this  
15 Act—

16 (1) hold hearings, take testimony, receive evi-  
17 dence, administer oaths; and

18 (2) subject to subsection (b)(1), require, by sub-  
19 poena or otherwise, the attendance and testimony of  
20 witnesses and the production of books, records, cor-  
21 respondence, memoranda, papers and documents.

22 (b) **SUBPOENA POWER.**—

23 (1) **ISSUANCE.**—

24 (A) **IN GENERAL.**—A subpoena may be  
25 issued under this subsection only—

1 (i) by the agreement of the chairman  
2 and the vice chairman of the Commission;

3 or

4 (ii) by the affirmative vote of 6 mem-  
5 bers of the Commission.

6 (B) SIGNATURE.—Subject to clause (i) of  
7 paragraph (1)(A), subpoenas issued under this  
8 subsection may be issued under the signature of  
9 the chairman or any member designated by a  
10 majority of the Commission, and may be served  
11 by any person designated by the chairman or by  
12 a member designated by a majority of the Com-  
13 mission.

14 (2) FAILURE TO OBEY A SUBPOENA.—

15 (A) IN GENERAL.—In the case of contu-  
16 macy or failure to obey a subpoena issued  
17 under paragraph (1), the United States district  
18 court for the judicial district in which the sub-  
19 poenaed person resides, is served, or may be  
20 found, or wherever the subpoena is returnable,  
21 may issue an order requiring such person to ap-  
22 pear at any designated place to testify or to  
23 produce documentary or other evidence. Any  
24 failure to obey the order of the court may be  
25 punished as contempt of that court.

1           (B) ADDITIONAL ENFORCEMENT.—In the  
2 case of a failure of any witness to comply with  
3 a subpoena or to testify when summoned under  
4 authority of this subsection, the Committee  
5 may, by a majority vote, certify a statement of  
6 fact constituting such failure to the appropriate  
7 United States attorney, who may bring the  
8 matter before the grand jury for action, under  
9 the same authority and procedures as if the  
10 United States attorney had received a certifi-  
11 cation under section 192 through 194 of title 2  
12 of the Revised Statutes of the United States  
13 Code.

14           (3) CONTRACTING.—The Commission may, to  
15 such extent and in such amounts as are made avail-  
16 able in appropriation Acts, enter into contracts to  
17 enable the Commission to discharge its duties under  
18 this Act.

19           (4) INFORMATION FROM FEDERAL AGENCIES.—  
20 The Commission is authorized to secure directly  
21 from any executive department, bureau, agency,  
22 board, commission, office, independent establish-  
23 ment, or instrumentality of the Government, infor-  
24 mation, suggestions, estimates, and statistics for the  
25 purposes of this Act. Each such department, bureau,

1 agency, board, commission, office, independent es-  
2 tablishment, or instrumentality shall, to the extent  
3 authorized by law, furnish such information, sugges-  
4 tions, estimates, and statistics directly to the Com-  
5 mission, upon request of the chairman of the Com-  
6 mission, the chairman of any subcommittee created  
7 by a majority of the Commission, or any member  
8 designated by a majority of the Commission.

9 **SEC. 8. REPORTS.**

10 (a) INTERIM REPORTS.—The Commission may sub-  
11 mit to the President and Congress interim reports con-  
12 taining such findings, conclusions, and recommendations  
13 for enhancements and improvements in benefit levels,  
14 medical care, and administration of State workers' com-  
15 pensation systems, for improvements in insurance prac-  
16 tices, and for improvements in dues process and evi-  
17 dentiary hearings and reduction of bad faith and handling  
18 of delays, as have been agreed to by a majority of Commis-  
19 sion members.

20 (b) FINAL REPORTS.—Not later than 18 months  
21 after the date of the enactment of this Act, the Commis-  
22 sion shall submit to the President and Congress a final  
23 report containing such findings, conclusions, and rec-  
24 ommendations for enhancements and improvements in  
25 benefit levels, medical care, and administration of State

1 workers' compensation systems, for improvements in in-  
2 surance practices, and for improvements in due process  
3 and evidentiary hearings and reduction of bad faith han-  
4 dling and delays, as have been agreed to by a majority  
5 of Commission members.

6 **SEC. 9. TERMINATION.**

7       The Commission, and all the authorities of this Act,  
8 shall terminate 19 days after the date on which the final  
9 report is submitted under section 8(b).

10 **SEC. 10. AUTHORIZATION OF APPROPRIATION.**

11       There are hereby authorized to be appropriated such  
12 sums as may be necessary to carry out the provisions of  
13 this Act.

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