

LEGISLATIVE HISTORY

Reviser's Note.—Based on section 1517 of title 19, U. S. C., 1940 ed., Customs Duties (June 17, 1930, ch. 497, title IV, § 517, 46 Stat. 737).

The second proviso relating to review of assessment of penalty for frivolous appeal is omitted as unnecessary in view of section 1541 of this title.

Changes were made in phraseology.

§ 2642. Amendment of protests, appeals and pleadings.

The Customs Court under its rules and in its discretion may permit amendment of protests, appeals for reappraisal, applications for review, petitions for remission and pleadings. (Added May 24, 1949, ch. 139, § 123, 63 Stat. 106.)

Chapter 171.—TORT CLAIMS PROCEDURE

Sec.

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SENATE REVISION AMENDMENT

As printed in this report, this chapter should have read "173" and not "171". It was properly numbered "173" in the bill. However, the chapter was renumbered "171", without change in its section numbers, by Senate amendment. See 80th Congress Senate Report No. 1559.

CROSS REFERENCES

Costs in tort claims cases, see section 2412 of this title.

Interest on judgments against the United States, computation, see section 2411 of this title.

Jurisdiction of district courts in tort claims cases, see section 1346 of this title.

Jury trial denied in action against the United States, see section 2402 of this title.

Review of tort claims cases, see sections 1291 and 1504 of this title.

Settlement of claims incident to activities of the Coast Guard, see section 645 of Title 14, Coast Guard.

Time for commencing tort action against the United States, see section 2401 of this title.

Venue in tort claims actions, see section 1402 of this title.

§ 2671. Definitions.

As used in this chapter and sections 1346 (b) and 2401 (b) of this title, the term—

"Federal agency" includes the executive departments and independent establishment of the United States, and corporations primarily acting as, instrumentalities or agencies of the United States but does not include any contractor with the United States.

"Employee of the government" includes officers or employees of any federal agency, members of the military or naval forces of the United States, and persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation.

"Acting within the scope of his office or employment", in the case of a member of the military or naval forces of the United States, means acting in line of duty. (June 25, 1948, ch. 646, 62 Stat. 982; May 24, 1949, ch. 139, § 124, 63 Stat. 106.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on title 28, U. S. C., 1940 ed., § 941 (Aug. 2, 1946, ch. 753, § 403, 60 Stat. 842). Changes were made in phraseology.

AMENDMENTS

1949—Act May 24, 1949, amended section by correcting spelling of "office."

AIR FORCE

For transfer of certain functions relating to claims and litigation, insofar as they pertain to the Air Force, from the Secretary of the Army to the Secretary of the Air Force, see Secretary of Defense Transfer Order No. 34 [§ 1a(2) (4)], eff. July 1, 1949.

§ 2672. Administrative adjustment of claims of \$1,000 or less.

The head of each Federal agency, or his designee for the purpose, acting on behalf of the United States, may consider, ascertain, adjust, determine, and settle any claim for money damages of \$1,000 or less against the United States accruing on and after January 1, 1945, for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

Subject to the provisions of this title relating to civil actions on tort claims against the United States, any such award or determination shall be final and conclusive on all officers of the government, except when procured by means of fraud.

Any award made pursuant to this section, and any award, compromise, or settlement made by the Attorney General pursuant to section 2677 of this title, shall be paid by the head of the federal agency concerned out of appropriations available to such agency.

The acceptance by the claimant of any such award, compromise, or settlement shall be final and conclusive on the claimant, and shall constitute a complete release of any claim against the United States and against the employee of the government whose act or omission gave rise to the claim, by reason of the same subject matter. (June 25, 1948, ch. 646, 62 Stat. 983; Apr. 25, 1949, ch. 92, § 2 (b), 63 Stat. 62; May 24, 1949, ch. 139, § 125, 63 Stat. 106; Sept. 23, 1950, ch. 1010, § 9, 64 Stat. 987.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on title 28, U. S. C., 1940 ed., § 921 (Aug. 2, 1946, ch. 753, § 403, 60 Stat. 843).

The phrase "accruing on and after January 1, 1945" was omitted because executed as of the date of the enactment of this revised title.

Changes were made in phraseology.

AMENDMENTS

1950—Section amended by act Sept. 23, 1950, to eliminate the requirement for specific authorization for payment of tort claims in appropriation acts.

1949—Act Apr. 25, 1949, amended first par. of section by inserting "accruing on or after January 1, 1945" following "United States".

Act May 24, 1949, amended third par. of section by substituting "2677" for "2678".

LAWS UNAFFECTED

Section 424 (b) of act Aug. 2, 1948, ch. 753, title IV, 60 Stat. 856, provided that: "Nothing contained herein shall be deemed to repeal any provision of law authorizing any Federal agency to consider, ascertain, adjust, settle, determine, or pay any claim on account of damage to or

loss of property or on account of personal injury or death, in cases in which such damage, loss, injury, or death was not caused by any negligent or wrongful act or omission of an employee of the Government while acting within the scope of his office or employment, or any other claim not cognizable under part 2 of this title."

CROSS REFERENCES

Allowance of claims for property loss, personal injury, or death incident to noncombat activities of Army, Navy, or Air Force, see section 2733 (b) (2) of Title 10, Armed Forces.

§ 2673. Reports to Congress.

The head of each federal agency shall report annually to Congress all claims paid by it under section 2672 of this title, stating the name of each claimant, the amount claimed, the amount awarded, and a brief description of the claim. (June 25, 1948, ch. 646, 62 Stat. 983.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on title 28, U. S. C., 1940 ed., § 922 (Aug. 2, 1946, ch. 753, § 404, 60 Stat. 843). Changes were made in phraseology.

§ 2674. Liability of United States.

The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.

If, however, in any case wherein death was caused, the law of the place where the act or omission complained of occurred provides, or has been construed to provide, for damages only punitive in nature, the United States shall be liable for actual or compensatory damages, measured by the pecuniary injuries resulting from such death to the persons respectively, for whose benefit the action was brought, in lieu thereof. (June 25, 1948, ch. 646, 62 Stat. 983.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on title 28, U. S. C., 1940 ed., § 931 (a) (Aug. 2, 1946, ch. 753, § 410 (a), 60 Stat. 843).

Section constitutes the liability provisions in the second sentence of section 931 (a) of title 28, U. S. C., 1940 ed.

Other provisions of section 931 (a) of title 28, U. S. C., 1940 ed., are incorporated in sections 1346 (b), 1402, 2402, 2411, and 2412 of this title, but the provision of such section 931 (a) that the United States shall not be liable for interest prior to judgment was omitted as unnecessary in view of section 2411 of this title, which provides that interest on judgments against the United States shall be computed from the date of judgment. Such section 2411 is made applicable to tort-claim actions by section 932 of title 28, U. S. C., 1940 ed.

Changes were made in phraseology.

SENATE REVISION AMENDMENT

For Senate amendment to this section, see 80th Congress Senate Report No. 1559, amendment No. 60.

CROSS REFERENCES

Interest on judgments, computation, see section 2411 of this title.

§ 2675. Disposition by federal agency as prerequisite; evidence.

(a) An action shall not be instituted upon a claim against the United States which has been presented to a federal agency, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of an employee of the government while acting within the

scope of his authority, unless such federal agency has made final disposition of the claim.

(b) The claimant, however, may, upon fifteen days written notice, withdraw such claim from consideration of the federal agency and commence action thereon. Action under this section shall not be instituted for any sum in excess of the amount of the claim presented to the federal agency, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time of presenting the claim to the federal agency, or upon allegation and proof of intervening facts, relating to the amount of the claim.

(c) Disposition of any claim by the Attorney General or other head of a federal agency shall not be competent evidence of liability or amount of damages. (June 25, 1948, ch. 646, 62 Stat. 983; May 24, 1949, ch. 139, § 126, 63 Stat. 107.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on title 28, U. S. C., 1940 ed., § 931 (b) (Aug. 2, 1946, ch. 753, § 410 (b), 60 Stat. 844).

Section constitutes all of section 931 (b), except the first sentence, of title 28, U. S. C., 1940 ed. The remainder of such section 931 (b) is incorporated in section 2677 of this title.

Changes were made in phraseology.

AMENDMENTS

1949—Subsec. (b) amended by act May 24, 1949, which substituted "section" in lieu of "subsection."

CROSS REFERENCES

District courts, jurisdiction of tort claims cases, see section 1346 of this title.

Jury trial denied in actions against the United States, see section 2402 of this title.

Time for commencing tort action against the United States, see section 2401 of this title.

Venue in tort claims actions, see section 1402 of this title.

§ 2676. Judgment as bar.

The judgment in an action under section 1346 (b) of this title shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee of the government whose act or omission gave rise to the claim. (June 25, 1948, ch. 646, 62 Stat. 984.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on title 28, U. S. C., 1940 ed., § 931 (b) (Aug. 2, 1946, ch. 753, § 410 (b), 60 Stat. 844).

Section constitutes the first sentence of section 931 (b) of title 28, U. S. C., 1940 ed. Other provisions of such section 931 (b) are incorporated in section 2675 of this title.

Changes were made in phraseology.

SENATE REVISION AMENDMENT

This section was eliminated by Senate amendment. See 80th Congress Senate Report No. 1559.

§ 2677. Compromise.

The Attorney General, with the approval of the court, may arbitrate, compromise, or settle any claim cognizable under section 1346 (b) of this title, after the commencement of an action thereon. (June 25, 1948, ch. 646, 62 Stat. 984.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on title 28, U. S. C., 1940 ed., § 934 (Aug. 2, 1946, ch. 753, § 413, 60 Stat. 845).

Changes were made in phraseology.

SENATE REVISION AMENDMENT

This section was renumbered "2678" by Senate amendment. See 80th Congress Senate Report No. 1559.

§ 2678. Attorney fees; penalty.

The court rendering a judgment for the plaintiff pursuant to section 1346 (b) of this title, or the head of the federal agency or his designee making an award pursuant to section 2672 of this title, or the Attorney General making a disposition pursuant to section 2677 of this title, may, as a part of such judgment, award, or settlement, determine and allow reasonable attorney fees, which, if the recovery is \$500 or more, shall not exceed 10 per centum of the amount recovered under section 2672 of this title, or 20 per centum of the amount recovered under section 1346 (b) of this title, to be paid out of but not in addition to the amount of judgment, award, or settlement recovered, to the attorneys representing the claimant.

Any attorney who charges, demands, receives, or collects for services rendered in connection with such claim any amount in excess of that allowed under this section, if recovery be had, shall be fined not more than \$2,000 or imprisoned not more than one year, or both. (June 25, 1948, ch. 646, 62 Stat. 984.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on title 28, U. S. C., 1940 ed., § 944 (Aug. 2, 1946, ch. 753, § 422, 60 Stat. 846).

Words "shall be guilty of a misdemeanor" and "shall, upon conviction thereof", in the second sentence, were omitted in conformity with revised title 18, U. S. C., Crimes and Criminal Procedure (H. R. 1600, 80th Cong.). See sections 1 and 2 of said revised title 18.

Changes were made in phraseology.

SENATE REVISION AMENDMENT

This section was renumbered "2677" by Senate amendment. See 80th Congress Senate Report No. 1559.

§ 2679. Exclusiveness of remedy.

The authority of any federal agency to sue and be sued in its own name shall not be construed to authorize suits against such federal agency on claims which are cognizable under section 1346 (b) of this title, and the remedies provided by this title in such cases shall be exclusive. (June 25, 1948, ch. 646, 62 Stat. 984.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on title 28, U. S. C., 1940 ed., § 945 (Aug. 2, 1946, ch. 753, § 423, 60 Stat. 846).

Changes were made in phraseology.

SENATE REVISION AMENDMENT

The catchline and text of this section were changed and the section was renumbered "2678" by Senate amendment. See 80th Congress Senate Report No. 1559.

CROSS REFERENCES

Court of Claims, appellate jurisdiction in tort claims cases, see section 1504 of this title.

Courts of appeals, review of final decisions of district courts, see section 1291 of this title.

§ 2680. Exceptions.

The provisions of this chapter and section 1346 (b) of this title shall not apply to—

(a) Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon

the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused.

(b) Any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter.

(c) Any claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of customs or excise or any other law-enforcement officer.

(d) Any claim for which a remedy is provided by sections 741—752, 781—790 of Title 46, relating to claims or suits in admiralty against the United States.

(e) Any claim arising out of an act or omission of any employee of the Government in administering the provisions of sections 1—31 of Title 50, Appendix.

(f) Any claim for damages caused by the imposition or establishment of a quarantine by the United States.

(g) Repealed. Sept. 26, 1950, ch. 1049, § 13 (5), 64 Stat. 1043.

(h) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.

(i) Any claim for damages caused by the fiscal operations of the Treasury or by the regulation of the monetary system.

(j) Any claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war.

(k) Any claim arising in a foreign country.

(l) Any claim arising from the activities of the Tennessee Valley Authority.

(m) Any claim arising from the activities of the Panama Canal Company. (June 25, 1948, ch. 646, 62 Stat. 984; July 16, 1949, ch. 340, 63 Stat. 444; Sept. 26, 1950, ch. 1049, §§ 2 (a) (2), 13 (5), 64 Stat. 1038.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on title 28, U. S. C., 1940 ed., § 943 (Aug. 2, 1946, ch. 753, § 421, 60 Stat. 845).

Changes were made in phraseology.

Section 946 of title 28, U. S. C., 1940 ed., which was derived from section 424 (b) of the Federal Tort Claims Act, was omitted from this revised title. It preserved the existing authority of federal agencies to settle tort claims not cognizable under section 2672 of this title. Certain enumerated laws granting such authority were specifically repealed by section 424 (a) of the Federal Tort Claims Act, which section was also omitted from this revised title. These provisions were not included in this revised title as they are not properly a part of a code of general and permanent law.

SENATE REVISION AMENDMENT

Sections 2680 and 2681 were renumbered "2679" and "2680", respectively, by Senate amendment. See 80th Congress Senate Report No. 1559.

AMENDMENTS

1950—Subpar. (g) repealed by act Sept. 26, 1950, § 13 (5).

Subpar. (m) amended by act Sept. 26, 1950, § 2, to substitute Panama Canal Company for Panama Railroad Company.

1949—Subsec. (m) added by act July 16, 1949.

EFFECTIVE DATE OF 1950 AMENDMENT

Section 14 of act Sept. 26, 1950, provided that the repeal of subpar. (g) and amendment of subpar. (m) of this section by that act should take effect upon the effective date of the transfer to the Panama Canal Company, pursuant to the provisions of section 256 of the Canal Zone Code, as added by section 10 of that act, of the Panama Canal together with the facilities and appurtenances related thereto.

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions of the Coast Guard, and of the Commandant thereof, when the Coast Guard is operating as a part of the Navy under section 3 of Title 14, Coast Guard, were excepted from the transfer of functions of officers, agencies, and employees of the Department of the Treasury to the Secretary of the Treasury, made by 1950 Reorg. Plan No. 28, § 1, eff. July 31, 1950, 15 F. R. 4935, 64 Stat. 1280, set out in note under section 241 of Title 5, Executive Departments and Government Officers and Employees.

AIR FORCE

For transfer of certain functions relating to claims and litigation, insofar as they pertain to the Air Force, from the Secretary of the Army to the Secretary of the

Air Force, see Secretary of Defense Transfer Order No. 34 [§ 1a(2)(4)], eff. July 1, 1949.

CONTINUATION OF PROVISIONS UNTIL AUGUST 1, 1953

Section 1 (a), (32) of Joint Res. July 3, 1952, ch. 570, 66 Stat. 333, as amended by Joint Res. Mar. 31, 1953, ch. 13, § 1, 67 Stat. 13, and Joint Res. June 30, 1953, ch. 172, 67 Stat. 132, provided that this section should continue in force until six months after the termination of the national emergency proclaimed by the President on Dec. 16, 1950, by 1950 Proc. No. 2914, 15 F. R. 9029, set out as a note preceding section 1 of Appendix to Title 50, War and National Defense, or such earlier date or dates as may be provided for by Congress, but in no event beyond August 1, 1953. Section 7 of Joint Res. July 3, 1952, provided that it should become effective June 16, 1952.

REPEAL OF PRIOR ACTS CONTINUING SUBSEC. (J)

Section 6 of Joint Res. July 3, 1952, referred to above, repealed Joint Res. Apr. 14, 1952, ch. 204, 66 Stat. 54 as amended by Joint Res. May 28, 1952, ch. 339, 66 Stat. 96; Joint Res. June 14, 1952, ch. 437, 66 Stat. 137; Joint Res. June 30, 1952, ch. 526, 66 Stat. 296, which continued provisions of subsec. (j) of this section (see note above) until July 3, 1952. This repeal was made effective June 16, 1952, by section 7 of Joint Res. July 3, 1952.