

98TH CONGRESS
1ST SESSION

S. 633

Entitled the "Government Accountability Act of 1983".

IN THE SENATE OF THE UNITED STATES

MARCH 1 (legislative day, FEBRUARY 23), 1983

Mr. GRASSLEY (for himself, Mr. DOLE AND Mr. DENTON) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

Entitled the "Government Accountability Act of 1983".

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That subsection (b) of section 1346 of title 28, United States
4 Code, is amended—
5 (1) by inserting "(1)" after "jurisdiction of"; and
6 (2) by striking out the period at the end thereof
7 and inserting in lieu thereof ", or (2) civil actions on
8 claims against the United States, for money damages,
9 sounding in tort arising under the Constitution of the
10 United States for injury or loss of property, or personal
11 injury or death, caused by an act or omission of any

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1 employee of the Government while acting within the
2 scope of his office or employment, such liability to be
3 determined in accordance with applicable Federal
4 law.”.

5 SEC. 2. Section 2672 of title 28, United States Code, is
6 amended in the first paragraph—

7 (1) by inserting “(1)” after “United States” the
8 first place it appears;

9 (2) by striking out the colon after “occurred” and
10 inserting in lieu thereof “, or (2) for claims for money
11 damages sounding in tort arising under the Constitu-
12 tion of the United States for injury or loss of property,
13 or personal injury or death, caused by an act or omis-
14 sion of any employee of the Government while acting
15 within the scope of his office or employment, such lia-
16 bility to be determined in accordance with applicable
17 Federal law:”; and

18 (3) by inserting “or any award, compromise, or
19 settlement based on a claim arising under the Constitu-
20 tion of the United States” after “25,000”.

21 SEC. 3. Section 2674 of title 28, United States Code, is
22 amended—

23 (1) by striking out the comma after “claims” in
24 the first paragraph and inserting in lieu thereof “other

1 than those arising under the Constitution of the United
2 States,";

3 (2) by inserting "(a)(1)" at the beginning of the
4 first paragraph;

5 (3) by inserting "(2)" at the beginning of the
6 second paragraph; and

7 (4) by adding at the end thereof the following new
8 subsection:

9 "(b)(1) The United States shall be liable, respecting the
10 provisions of this title relating to tort claims arising under the
11 Constitution of the United States, to the extent recognized or
12 provided by applicable Federal law, and shall be entitled to
13 all defenses heretofore available to an employee of the United
14 States and to which the United States would otherwise be
15 entitled. The United States shall not be liable for interest
16 prior to judgment or for punitive damages.

17 "(2) Damages in any such case shall be the greater of
18 (A) actual damages or (B) liquidated damages of \$1,000 or,
19 in the case of a continuing tort, \$100 a day for each day of
20 violation up to a maximum of \$15,000."

21 SEC. 4. Subsection (a) of section 2675 of title 28,
22 United States Code, is amended by striking out the comma
23 after "employment" and inserting in lieu thereof "or upon a
24 claim against the United States for money damages for a tort
25 arising under the Constitution of the United States caused by

1 an act or omission of any employee of the Government while
2 acting within the scope of his office or employment,”.

3 SEC. 5. (a) Subsection (b) of section 2679 of title 28,
4 United States Code, is amended to read as follows:

5 “(b) The remedy against the United States provided by
6 sections 1346(b) and 2672 of this title for claims for injury or
7 loss of property or personal injury or death resulting from the
8 negligent or wrongful act or omission of any employee of the
9 Government while acting within the scope of his office or
10 employment and for claims arising under the Constitution of
11 the United States for an act or omission of any employee of
12 the Government while acting within the scope of his office or
13 employment, is exclusive of any other civil action or proceed-
14 ing arising out of or relating to the same subject matter
15 against the employee whose act or omission gave rise to the
16 claim, or against the estate of such employee, and shall also
17 be deemed an equally effective substitute for any recovery
18 against the employee in his individual capacity directly under
19 the Constitution.”.

20 (b) Subsection (d) of such section is amended to read as
21 follows:

22 “(d)(1) Upon certification by the Attorney General that
23 the defendant employee was acting within the scope of his
24 office or employment at the time of the incident out of which
25 the action arose, any such civil action or proceeding com-

1 menced in a United States district court shall be deemed an
2 action against the United States under the provisions of this
3 title and all reference thereto, and the United States shall be
4 substituted as the party defendant. After substitution, the
5 United States shall have available all defenses heretofore
6 available to the employee and all defenses to which it would
7 have been entitled if the action had originally been com-
8 menced against the United States under this chapter and sec-
9 tion 1346(b) of this title.

10 “(2) Upon certification by the Attorney General that the
11 defendant employee was acting within the scope of his office
12 or employment at the time of the incident out of which the
13 action arose, any such civil action or proceeding commenced
14 in a State court shall be removed without bond at any time
15 before trial by the Attorney General to the district court of
16 the United States for the district and division embracing the
17 place wherein it is pending. Such action shall be deemed an
18 action brought against the United States under the provisions
19 of this title and all references thereto, and the United States
20 shall be substituted as the party defendant. After substitution,
21 the United States shall have available all defenses heretofore
22 available to the employee and all defenses to which it would
23 have been entitled if the action had originally been com-
24 menced against the United States under this chapter and sec-
25 tion 1346(b) of this title. The certification of the Attorney

1 General shall conclusively establish scope of office or employ-
2 ment for purposes of removal.

3 “(3) The certification by the Attorney General under
4 subsection (d) (1) or (2) that the defendant employee was
5 acting within the scope of his office or employment shall be
6 binding and conclusive, except that in the event that the At-
7 torney General has not certified scope of office or employ-
8 ment, the employee may at any time before trial petition the
9 court to find and certify that the employee was acting within
10 the scope of his office or employment. A copy of the petition
11 shall be served upon the United States in accordance with
12 the provisions of rule 4(d)(4), Federal Rules of Civil Proce-
13 dure. In the event the petition is filed in a civil action or
14 proceeding pending in a State court, the action or proceeding
15 shall be removed without bond by the Attorney General to
16 the district court of the United States for the district and
17 division embracing the place wherein it is pending. Should
18 the district court determine that the employee was not acting
19 within the scope of his office or employment, the action or
20 proceeding shall be remanded to the State court.

21 “(4) Where a civil action or proceeding under this chap-
22 ter is precluded because of the availability of a remedy, com-
23 pensation, or other benefits from the United States as pro-
24 vided by any other law, the action or proceeding shall be
25 dismissed but in that event, the running of any limitation of

1 time for commencing or filing an application or claim in a
2 proceeding for any other such remedy, compensation, or
3 benefits shall be suspended during the pendency of the civil
4 action or administrative proceeding under this chapter.

5 “(5) Whenever an action brought against a defendant
6 employee in which the United States is substituted as the
7 party defendant under this subsection is dismissed for failure
8 first to present a claim to the appropriate Federal agency
9 pursuant to section 2675(a) of this title, the claim shall be
10 deemed to be timely presented under section 2401(b) of this
11 title, if (A) the claim would have been timely if filed on the
12 date the action against the defendant employee was com-
13 menced, and (B) the claim is presented to the appropriate
14 Federal agency within sixty days after dismissal of the
15 action.”.

16 (c) Such section is further amended by adding at the end
17 thereof the following new subsection:

18 “(f) If a civil action or proceeding under section 1346(b)
19 or 2672 of this title arising under the Constitution of the
20 United States results in a judgment against the United States
21 or an award, compromise, or settlement paid by the United
22 States, the Attorney General shall forward the matter to the
23 head of the department or agency which employed the em-
24 ployee at the time of the act or omission for such further

1 administrative investigation or disciplinary action as may be
2 appropriate.”.

3 SEC. 6. (a) Section 2680 of title 28, United States
4 Code, is amended—

5 (1) by striking out the section heading and insert-
6 ing in lieu thereof the following:

7 **“§ 2680. Exceptions; claims not arising under the Constitu-
8 tion of the United States”;**

9 (2) by inserting “, relating to tort claims other
10 than those arising under the Constitution of the United
11 States,” in the first paragraph immediately after
12 “title”; and

13 (3) by amending subsection (h) to read as follows:

14 “(h) Any claim arising out of libel, slander, misrepresen-
15 tation, deceit, or interference with contract rights.”.

16 (b) The item relating to section 2680 in the table of
17 sections at the beginning of chapter 171 of title 28, United
18 States Code, is amended to read as follows:

“2680. Exceptions; claims not arising under the Constitution of the United States.”.

19 SEC. 7. (a) Chapter 171 of title 28, United States Code,
20 is amended by adding at the end thereof the following new
21 section:

22 **“§ 2681. Exceptions; claims arising under the Constitution
23 of the United States.**

24 “The provisions of this chapter and of section 1346(b) of
25 this title which relate to tort claims arising under the Consti-

1 tution of the United States shall not apply to actions arising
2 from the activities of the Tennessee Valley Authority, the
3 Panama Canal Company, a Federal land bank, a Federal in-
4 termediate credit bank, or a bank for cooperatives.”.

5 (b) The table of sections at the beginning of chapter 171
6 of title 28, United States Code, is amended by adding at the
7 end thereof the following new item:

“2681. Exceptions; claims arising under the Constitution of the United States.”.

8 SEC. 8. (a)(1) Subsections (a) through (d) of section
9 4116 of title 38, United States Code, are repealed.

10 (2) Subsection (e) of such section is amended—

11 (A) by striking out “(e)”;

12 (B) by striking out “person to whom the immunity
13 provisions of this section apply (as described in subsec-
14 tion (a) of this section),” and inserting in lieu thereof
15 “employee of the Veterans’ Administration”; and

16 (C) by striking out “Department of Medicine and
17 Surgery” and inserting in lieu thereof “Veterans’ Ad-
18 ministration”.

19 (b)(1) Subsections (a) through (e) of section 224 of the
20 Public Health Service Act (42 U.S.C. 233) are repealed.

21 (2) Subsection (f) of such section is amended by striking
22 out “(f)”.

23 (c)(1) Subsections (a) through (e) of section 1089 of title
24 10, United States Code, are repealed.

1 (2) Subsection (f) of such section is amended by striking
2 out “person described in subsection (a)” and inserting in lieu
3 thereof “employee of the armed forces, the Department of
4 Defense, the United States Soldiers’ and Airmen’s Home, or
5 the Central Intelligence Agency”.

6 (3) Subsection (g) of such section is amended—

7 (A) by striking out “and” at the end of clause (2);

8 (B) by redesignating clause (3) as clause (4); and

9 (C) by inserting after clause (2) the following new
10 clause:

11 “(3) the Governor of the United States Soldiers’
12 and Airmen’s Home, in the case of an employee of the
13 United States Soldiers’ and Airmen’s Home; and”.

14 (4) Subsections (f) and (g) of such section are redesignat-
15 ed as subsections (a) and (b), respectively.

16 (d)(1) Subsections (a) through (e) of section 307 of the
17 National Aeronautics and Space Act of 1958 (42 U.S.C.
18 2458a) are repealed.

19 (2) Subsection (f) of such section is amended—

20 (A) by striking out “(f)”; and

21 (B) by striking out “person described in subsection
22 (a)” and inserting in lieu thereof “employee of the Na-
23 tional Aeronautics and Space Administration”.

24 (e)(1) Subsections (a) through (e) of section 1091 of the
25 Foreign Service Act of 1946 (22 U.S.C. 817) are repealed.

1 (2) Subsection (f) of such section is amended by striking
2 out "person to whom the immunity provisions of subsection
3 (a) of this section apply," and inserting in lieu thereof "em-
4 ployee of the Department of State (including the Agency for
5 International Development)".

6 (3) Subsections (f) and (g) of such section are redesignat-
7 ed as subsections (a) and (b), respectively.

8 SEC. 9. Section 2520 of title 18, United States Code, is
9 amended by adding at the end thereof the following new sen-
10 tence: "This section shall not apply to any civil cause of
11 action against an officer or employee of the United States
12 while acting within the scope of his office or employment."

13 SEC. 10. Section 1810 of Title 50, United States Code,
14 is amended by adding at the end thereof the following new
15 sentence: "This section shall not apply to any civil cause of
16 action against an officer or employee of the United States
17 while acting within the scope of his office or employment."

18 SEC. 11. (a) Except as provided in subsection (b), the
19 amendments made by this Act shall apply to all claims, civil
20 actions and proceedings pending on, or filed on or after, the
21 date of enactment of this Act.

22 (b)(1) With respect to any civil action or proceeding
23 pending on the date of enactment against a Federal employee
24 in his individual capacity, the plaintiff may, upon timely
25 demand, (A) retain his right to a trial by jury if the demand

1 for trial by jury is made prior to or on the date of enactment,
2 or (B) elect a trial by jury if the time for election of a trial by
3 jury pursuant to applicable law has not expired as of the date
4 of enactment, except that in any case in which a trial by jury
5 is elected under this paragraph, the provisions of section
6 2674(b) of this title, as added by section 3 of this Act, which
7 relate to liquidated damages, shall not apply.

8 (2) With respect to any civil action or proceeding pend-
9 ing against a Federal employee in his individual capacity on
10 appeal, or pending against a Federal employee in his individ-
11 ual capacity in a State court in which the time for removal
12 pursuant to section 2679(d) of this title has expired, the
13 amendments made by this Act shall not apply, except that
14 the United States shall be substituted for the defendant em-
15 ployee upon certification by the Attorney General that the
16 defendant employee was acting within the scope of his office
17 or employment at the time of the incident out of which the
18 action or proceeding arose.

19 (3) The provisions of section 2675(a) of this title shall
20 not apply to a civil action or proceeding against a Federal
21 employee in his individual capacity pending on the date of
22 enactment of this Act, if the provisions of section 2675(a)
23 were inapplicable to the action or proceeding when filed.

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