

98TH CONGRESS  
1ST SESSION

# H. R. 595

To amend title 28 of the United States Code to provide for an exclusive remedy against the United States in suits based upon acts or omissions of United States employees, to provide a remedy against the United States with respect to constitutional torts, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 1983

Mr. SAM B. HALL, JR., introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 28 of the United States Code to provide for an exclusive remedy against the United States in suits based upon acts or omissions of United States employees, to provide a remedy against the United States with respect to constitutional torts, 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 **TITLE I—FEDERAL TORT CLAIMS AMENDMENTS**

4 **EXCLUSIVITY OF REMEDY**

5 **SEC. 101.** Section 2679(b) of title 28, United States  
6 Code, is amended to read as follows:

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1       “(2) Upon certification by the Attorney General that the  
2 defendant employee was acting within the scope of his office  
3 or employment at the time of the incident out of which the  
4 suit arose, any civil action or proceeding described in subsec-  
5 tion (c) which is commenced in a State court shall be re-  
6 moved, without bond, at any time before trial, by the Attor-  
7 ney General to the district court of the United States of the  
8 district and division in which the action or proceeding is  
9 pending and shall be deemed an action brought against the  
10 United States under the provisions of this title and all refer-  
11 ences thereto, and the United States shall be substituted as  
12 the party defendant. After such substitution the United  
13 States shall have available all defenses to which it would  
14 have been entitled if the action had originally been com-  
15 menced against the United States under this chapter and sec-  
16 tion 1346(b)(1). The certification of the Attorney General  
17 shall conclusively establish scope of office or employment for  
18 purposes of such removal.

19       “(3) The certification by the Attorney General under  
20 paragraph (1) or (2) of this subsection that the defendant em-  
21 ployee was acting within the scope of his office or employ-  
22 ment shall be binding and conclusive on the United States  
23 and the defendant employee. In the event that the Attorney  
24 General has not made such a certification, the defendant em-  
25 ployee may request the district court of the United States

1 before which the suit has been filed or removed to find and  
2 certify that such employee was acting within the scope of his  
3 office or employment. In a suit removed from a State court  
4 under paragraph (2), should the district court determine on a  
5 hearing on a motion to remand held before a trial on the  
6 merits that the employee whose act or omission gave rise to  
7 the suit was not acting within the scope of his office or em-  
8 ployment, the case shall be remanded to the State court. Any  
9 case so remanded shall be subject to any right of the employ-  
10 ee to have the case removed to the appropriate district court  
11 under section 1442 or 1442a of this title, and the thirty-day  
12 period provided in section 1446(b) of this title for filing a  
13 petition for removal shall be deemed to begin on the date on  
14 which the case is remanded to the State court.

15 “(4) Whenever an action or proceeding under this chap-  
16 ter is precluded because of the availability of a remedy, com-  
17 pensation, or other benefits from the United States as pro-  
18 vided by any other law, the action or proceeding shall be  
19 dismissed, but in that event the running of any limitation of  
20 time for commencing or filing an application or claim in a  
21 proceeding for such other remedy, compensation, or benefits  
22 shall be deemed to have been suspended during the period in  
23 which the action or proceeding was pending under this chap-  
24 ter.

1       “(5) Whenever an action brought against a defendant  
2 employee in which the United States is substituted as the  
3 party defendant under this subsection is dismissed for failure  
4 to first present a claim to the appropriate Federal agency  
5 under section 2675(a) of this title, the claim shall be deemed  
6 to be timely presented under section 2401(b)(1) of this title if  
7 (A) the claim would have been timely if filed on the date the  
8 action against the defendant employee was commenced, and  
9 (B) the claim is presented to the appropriate Federal agency  
10 within sixty days after dismissal of the action.”.

11                               **DEFINITION OF FEDERAL AGENCY**

12       **SEC. 103.** Section 2671 of title 28, United States Code,  
13 is amended to read as follows:

14       **“§ 2671. Definitions**

15       “As used in this chapter and sections 1346(b)(1) and  
16 2401(b)(1) of this title—

17               “(1) the term ‘Federal agency’ includes the  
18 United States Senate, the United States House of Rep-  
19 resentatives, the courts of the United States (including  
20 the United States Claims Court, the courts of the terri-  
21 tories of the United States, and any agency of the judi-  
22 cial branch), any executive department, military de-  
23 partment, independent establishment of the United  
24 States, corporation primarily acting as an instrumental-  
25 ity or agency of the United States, and any other es-

1       tablishment of the United States (including the Execu-  
2       tive Office of the President), but does not include any  
3       contractor with the United States;

4               “(2) the term ‘employee of the government’ in-  
5       cludes officers or employees in the executive, judicial,  
6       and legislative branches of the Federal Government,  
7       members of the military or naval forces of the United  
8       States, members of the National Guard while engaged  
9       in training or duty under section 316, 502, 503, 504,  
10      or 505 of title 32, and persons acting on behalf of a  
11      Federal agency in an official capacity, temporarily or  
12      permanently in the service of the United States,  
13      whether with or without compensation; and

14              “(3) the term ‘acting within the scope of his office  
15      or employment’, in the case of a member of the mili-  
16      tary or naval forces of the United States or a member  
17      of the National Guard as defined in section 101(3) of  
18      title 32, means acting in the line of duty.

19   For purposes of this chapter, the functions of the head of a  
20   Federal agency for the judicial branch shall be performed by  
21   the Director of the Administrative Office of the United States  
22   Courts.”.

1           **TITLE II—CONSTITUTIONAL TORTS**

2                   **JURISDICTION OF DISTRICT COURTS**

3           **SEC. 201.** Section 1346(b) of title 28, United States  
4 Code, is amended—

5                   (1) by inserting “(1)” after “(b)”;

6                   (2) by striking out “the United States District  
7 Court for the District of the Canal Zone and”; and

8                   (3) by adding at the end thereof the following new  
9 paragraph:

10           “(2) Subject to the provisions of chapter 172 of this  
11 title, the district courts, together with the District Court of  
12 the Virgin Islands, shall have exclusive jurisdiction of civil  
13 actions on claims for money damages based on constitutional  
14 torts.”.

15                   **CONSTITUTIONAL TORTS PROCEDURE**

16           **SEC. 202.** Title 28 of the United States Code is amend-  
17 ed by inserting after chapter 171 the following new chapter:

18                   **“CHAPTER 172—CONSTITUTIONAL TORTS**

“Sec.

“2691. Definitions.

“2692. Administrative adjustment of claims.

“2693. Liability of the United States.

“2694. Disposition by Federal agency as prerequisite; evidence.

“2695. Jury trial.

“2696. Judgment as bar.

“2697. Compromise.

“2698. Attorney fees; penalty.

“2699. Exclusiveness of remedy.

“2700. Administrative action concerning employee.

“2701. Exceptions.

1 **“§ 2691. Definitions**

2 “As used in this chapter and sections 1346(b)(2) and  
3 2401(b)(2) of this title—

4 “(1) the term ‘Federal agency’ includes the  
5 United States Senate, the United States House of Rep-  
6 resentatives, the courts of the United States (including  
7 the United States Claims Court, the courts of the terri-  
8 tories of the United States, and any agency of the judi-  
9 cial branch), any executive department, military de-  
10 partment, independent establishment of the United  
11 States, corporation primarily acting as an instrumentality  
12 or agency of the United States, and any other es-  
13 tablishment of the United States (including the Execu-  
14 tive Office of the President), but does not include any  
15 contractor with the United States;

16 “(2) the term ‘employee of the government’ in-  
17 cludes officers or employees in the executive, judicial,  
18 and legislative branches of the Federal Government,  
19 members of the military or naval forces of the United  
20 States, members of the National Guard while engaged  
21 in training or duty under section 316, 502, 503, 504,  
22 or 505 of title 32, and persons acting on behalf of a  
23 Federal agency in an official capacity, temporarily or  
24 permanently in the service of the United States,  
25 whether with or without compensation;



1           “(3) the term ‘acting within the scope of his office  
2           or employment’, in the case of a member of the mili-  
3           tary or naval forces of the United States or a member  
4           of the National Guard as defined in section 101(3) of  
5           title 32, means acting in the line of duty; and

6           “(4) the term ‘constitutional tort’ means a tort  
7           arising under the Constitution of the United States  
8           which is caused by the act or omission of an employee  
9           of the government while acting within the scope of his  
10          office or employment.

11 For purposes of this chapter, the functions of the head of a  
12 Federal agency for the judicial branch shall be performed by  
13 the Director of the Administrative Office of the United States  
14 Courts.

15 **“§ 2692. Administrative adjustment of claims**

16          “(a) The head of each Federal agency may, in accord-  
17          ance with regulations prescribed by the Attorney General,  
18          compromise and settle any claim for money damages based  
19          on a constitutional tort. No award, compromise, or settle-  
20          ment may be made under this section without the prior writ-  
21          ten approval of the Attorney General.

22          “(b) Any award, compromise, settlement, or determina-  
23          tion made under this section shall be final and conclusive on  
24          the United States, except when procured by means of fraud.

1           “(c) Payment of any award, compromise, or settlement  
2 made under this section or made by the Attorney General in  
3 any amount under section 2697 of this title shall be paid in a  
4 manner similar to judgments and compromises in like causes.  
5 Appropriations or funds available for the payment of such  
6 judgments and compromises shall be available for the pay-  
7 ment of awards, compromises, or settlements under this  
8 chapter.

9           “(d) The acceptance by a claimant of any award, com-  
10 promise, or settlement made under this section or section  
11 2697 of this title shall be final and conclusive on the claim-  
12 ant, and shall constitute a complete release of any claim  
13 against the United States and against the employee of the  
14 government whose act or omission gave rise to the claim, by  
15 reason of the same subject matter.

16 **“§ 2693. Liability of the United States**

17           “‘The United States shall be liable, with respect to a  
18 constitutional tort, to the extent that liability for such tort is  
19 recognized or provided by applicable Federal law, but shall  
20 not be liable for interest prior to judgment or for punitive  
21 damages. With respect to any claim for money damages  
22 based on a constitutional tort, the United States shall be  
23 liable for the greater of either (1) actual damages or (2) liqui-  
24 dated damages in an amount which is the greater of (A)  
25 \$2,000 or (B) in the case of a continuing violation, \$200 per

1 day for each violation. If the conduct giving rise to the tort  
2 claim was undertaken with the malicious intention to cause a  
3 deprivation of constitutional rights or with reckless disregard  
4 for the plaintiff's constitutional rights, the court shall award,  
5 in addition, damages of not more than \$100,000. The United  
6 States may assert as a defense to a claim based on a constitu-  
7 tional tort under this chapter the absolute or qualified immu-  
8 nity of the employee of the government whose act or omis-  
9 sion gave rise to the claim, or his reasonable good faith belief  
10 in the lawfulness of his conduct.

11 **“§ 2694. Disposition by Federal agency as prerequisite;**  
12 **evidence**

13 “(a) An action shall not be instituted upon a claim  
14 against the United States for money damages based on a  
15 constitutional tort unless the claimant shall have first pre-  
16 sented the claim to the appropriate Federal agency and that  
17 claim shall have been finally denied by the agency in writing  
18 and sent to the claimant by certified or registered mail. The  
19 failure of an agency to make final disposition of a claim  
20 within six months after it is filed shall, at the option of the  
21 claimant any time thereafter, be deemed a final denial of the  
22 claim for purposes of this section. The provisions of this sub-  
23 section shall not apply to such claims as may be asserted  
24 under the Federal Rules of Civil Procedure by third party  
25 complaint, cross-claim, or counterclaim.

1           “(b) An action under this section shall not be instituted  
2 for any sum in excess of the amount of the claim presented to  
3 the Federal agency, except where the increased amount is  
4 based upon newly discovered evidence not reasonably discov-  
5 erable at the time of presenting the claim to the Federal  
6 agency, or upon allegation and proof of intervening facts, re-  
7 lating to the amount of the claim.

8           “(c) Disposition of any constitutional tort claim by the  
9 Attorney General or other head of a Federal agency under  
10 this chapter shall not be competent evidence of liability or  
11 amount of damages.

12   **“§ 2695. Jury trial**

13           “Any action brought pursuant to this chapter upon a  
14 claim for money damages based on a constitutional tort shall,  
15 at the request of any party to such action, be tried by the  
16 court with a jury.

17   **“§ 2696. Judgment as bar**

18           “‘The judgment in an action under section 1346(b)(2) of  
19 this title shall constitute a complete bar to any action by the  
20 claimant involved, by reason of the same subject matter,  
21 against the employee of the government whose act or omis-  
22 sion gave rise to the claim.

23   **“§ 2697. Compromise**

24           “‘The Attorney General or his designee may arbitrate,  
25 compromise, or settle any claim cognizable under section

1 1346(b)(2) of this title, after the commencement of an action  
2 on that claim.

3 **“§ 2698. Attorney fees; penalty**

4       “(a) Any claimant to whom a judgment is awarded  
5 under section 1346(b)(2) of this title, or to whom an award,  
6 compromise, or settlement is made under section 2697 or  
7 2692 of this title shall, in addition to such judgment, award,  
8 compromise, or settlement, be entitled to receive a reason-  
9 able attorney’s fee and other litigation costs reasonably in-  
10 curred, including attorney fees and costs attributable to proc-  
11 essing an administrative claim under section 2692. The  
12 amount of such attorney’s fee may not exceed 25 per centum  
13 of any judgment rendered under section 1346(b)(2) of this  
14 title or any award, compromise, or settlement made under  
15 section 2697 of this title, or 20 per centum of any award,  
16 compromise, or settlement made under section 2692 of this  
17 title.

18       “(b) Any attorney who charges, demands, receives, or  
19 collects for services rendered in connection with a judgment,  
20 award, compromise, or settlement described in subsection (a)  
21 any amount in excess of that allowed under subsection (a)  
22 shall, if recovery be had, be fined not more than \$2,000 or  
23 imprisoned not more than one year, or both.

1 **“§ 2699. Exclusiveness of remedy**

2       “(a) The authority of any Federal agency to sue and be  
3 sued in its own name shall not be construed to authorize suits  
4 against such Federal agency on claims which are cognizable  
5 under section 1346(b)(2) of this title, and the remedies pro-  
6 vided by this title in such cases shall be exclusive.

7       “(b) The remedy against the United States provided by  
8 sections 1346(b)(2) and 2692 of this title for claims for money  
9 damages based on constitutional torts is exclusive of any  
10 other civil action or proceeding arising out of or relating to  
11 the same subject matter against the employee of the govern-  
12 ment whose act or omission gave rise to the claim, or against  
13 the estate of such employee.

14       “(c) The Attorney General shall defend any civil action  
15 or proceeding brought in any court against any employee of  
16 the government or against the estate of such employee for  
17 money damages based on any constitutional tort. The em-  
18 ployee against whom such civil action or proceeding is  
19 brought (or the administrator or executor of the employee’s  
20 estate against which the action or proceeding is brought)  
21 shall deliver, within such time after the date of service or  
22 knowledge of service as determined by the Attorney General,  
23 all process served upon the employee or an attested true copy  
24 thereof to the person designated to receive such papers by  
25 the head of the Federal agency which employed the employee  
26 at the time of the employee’s alleged act or omission that

1 gave rise to the action or proceeding, or to the person who is  
2 or was the immediate superior of that employee in that Fed-  
3 eral agency. Such person shall promptly furnish copies of the  
4 pleadings and process in the action or proceeding to the  
5 United States attorney for the district in which the proceed-  
6 ing is brought, to the Attorney General, and to the head of  
7 that Federal agency.

8       “(d)(1) Upon certification by the Attorney General that  
9 the defendant employee was acting within the scope of his  
10 office or employment at the time of the incident out of which  
11 the suit arose, any civil action or proceeding described in  
12 subsection (c) which is commenced in a United States district  
13 court shall be deemed an action against the United States  
14 under the provisions of this title and all references thereto,  
15 and the United States shall be substituted as the party de-  
16 fendant. After such substitution the United States shall have  
17 available all defenses to which it would have been entitled if  
18 the action had originally been commenced against the United  
19 States under this chapter and section 1346(b)(2).

20       “(2) Upon certification by the Attorney General that the  
21 defendant employee was acting within the scope of his office  
22 or employment at the time of the incident out of which the  
23 suit arose, any civil action or proceeding described in subsec-  
24 tion (c) which is commenced in a State court shall be re-  
25 moved, without bond, at any time before trial, by the Attor-

1 ney General to the district court of the United States of the  
2 district and division in which the action or proceeding is  
3 pending, and shall be deemed an action brought against the  
4 United States under the provisions of this title and all refer-  
5 ences thereto, and the United States shall be substituted as  
6 the party defendant. After such substitution the United  
7 States shall have available all defenses to which it would  
8 have been entitled if the action had originally been com-  
9 menced against the United States under this chapter and sec-  
10 tion 1346(b)(2). The certification of the Attorney General  
11 shall conclusively establish scope of office or employment for  
12 purposes of such removal.

13       “(3) The certification by the Attorney General under  
14 paragraph (1) or (2) of this subsection that the defendant em-  
15 ployee was acting within the scope of his office or employ-  
16 ment shall be binding and conclusive on the United States  
17 and the defendant employee. In the event that the Attorney  
18 General has not made such a certification, the defendant em-  
19 ployee may request the district court of the United States  
20 before which the suit has been filed or removed to find and  
21 certify that such employee was acting within the scope of his  
22 office or employment. In a suit removed from a State court  
23 under paragraph (2), should the district court determine on a  
24 hearing on a motion to remand held before a trial on the  
25 merits that the employee whose act or omission gave rise to



1 the suit was not acting within the scope of his office or em-  
2 ployment, the case shall be remanded to the State court. Any  
3 case so remanded shall be subject to any right of the employ-  
4 ee to have the case removed to the appropriate district court  
5 under section 1442 or 1442a of this title, and the thirty-day  
6 period provided in section 1446(b) of this title for filing a  
7 petition for removal shall be deemed to begin on the date on  
8 which the case is remanded to the State court.

9       “(4) Whenever an action or proceeding brought against  
10 a defendant employee in which the United States is substitut-  
11 ed as the party defendant under this subsection is dismissed  
12 for failure to first present a claim to the appropriate Federal  
13 agency under section 2694(a) of this title, the claim shall be  
14 deemed to be timely presented under section 2401(b)(2) of  
15 this title if (A) the claim would have been timely if filed on  
16 the date the action against the defendant employee was com-  
17 menced, and (B) the claim is presented to the appropriate  
18 Federal agency within sixty days after dismissal of the  
19 action.

20       “(e) The Attorney General may compromise or settle  
21 any claim asserted in any civil action or proceeding described  
22 in subsection (c), in the manner provided in section 2697 of  
23 this title, and with the same effect.

1 **“§ 2700. Administrative action concerning employee**

2 “Where an action or proceeding under section  
3 1346(b)(2) or 2692 of this title based on a constitutional tort  
4 results in a judgment against the United States or an award,  
5 compromise, or settlement paid by the United States, the At-  
6 torney General shall forward the matter to the head of the  
7 Federal agency which employed the employee at the time of  
8 the employee’s alleged act or omission giving rise to the  
9 claim upon which the action or proceeding was based, for  
10 such further administrative investigation or disciplinary  
11 action as may be appropriate. In any administrative proceed-  
12 ing relating to such investigation or disciplinary action the  
13 employee may assert as a defense his reasonable good faith  
14 belief in the lawfulness of his conduct.

15 **“§ 2701. Exceptions**

16 “The provisions of this chapter and section 1346(b)(2) of  
17 this title shall not apply to—

18 “(1) any claim arising from the activities of the  
19 Tennessee Valley Authority;

20 “(2) any claim arising from the activities of the  
21 Panama Canal Commission; or

22 “(3) any claim arising from the activities of a  
23 Federal land bank, a Federal intermediate credit bank,  
24 or a bank for cooperatives.”

1

JURY TRIAL

2 SEC. 203. Section 2402 of title 28, United States Code,  
3 is amended by inserting “or 1346(b)(2)” after “1346(a)(1)”.

4 TECHNICAL AND CONFORMING AMENDMENTS TO TITLE 28,  
5 UNITED STATES CODE

6 SEC. 204. (a) The table of chapters for part VI of title  
7 28, United States Code, is amended by inserting after the  
8 item relating to chapter 171 the following new item:

“172. Constitutional Torts ..... 2691”.

9 (b) Section 2401(b) of title 28, United States Code, is  
10 amended—

11 (1) by inserting “cognizable under section  
12 1346(b)(1) or chapter 171 of this title” after “United  
13 States”;

14 (2) by inserting “(1)” immediately after “(b)”; and

15 (3) by adding at the end thereof the following:

16 “(2) A claim for money damages based on a constitu-  
17 tional tort against the United States cognizable under section  
18 1346(b)(2) or chapter 172 of this title shall be forever barred  
19 unless it is presented in writing to the appropriate Federal  
20 agency within two years after such claim accrues or unless  
21 action is begun within six months after the date of mailing,  
22 by certified or registered mail, of notice of final denial of the  
23 claim by the agency to which it was presented.”.

1 (c) Section 2674 of title 28, United States Code, is  
2 amended by inserting immediately after “claims” the follow-  
3 ing: “to which section 1346(b)(1) of this title applies”.

4 (d) Sections 2676, 2677, 2678, and 2679 of title 28,  
5 United States Code, are amended by striking out “1346(b)”  
6 each place it appears and inserting in lieu thereof  
7 “1346(b)(1)”.

8 (e) Section 2680 of title 28, United States Code, is  
9 amended—

10 (1) by striking out “1346(b)” and inserting in lieu  
11 thereof “1346(b)(1)”; and

12 (2) by amending subsection (h) to read as follows:

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

15 (f) Section 1402(b) of title 28, United States Code, is  
16 amended by striking out “subsection (b)” and inserting in lieu  
17 thereof “subsections (b)(1) and (b)(2)”.

18 **TITLE III—AMENDMENTS TO OTHER LAWS;**

19 **APPLICABILITY OF ACT**

20 **MEDICAL MALPRACTICE PROVISIONS**

21 **SEC. 301.** (a)(1) Subsections (a) through (d) of section  
22 4116 of title 38, United States Code, are repealed.

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

24 (A) by striking out “(e)”;

1 (B) by striking out “person to whom the immunity  
2 provisions of this section apply (as described in subsec-  
3 tion (a) of this section),” and inserting in lieu thereof  
4 “employee of the Department of Medicine and Sur-  
5 gery”; and

6 (C) by striking out “1346(b)” and inserting in lieu  
7 thereof “1346(b)(1)”.

8 (3) The section heading of section 4116 of title 38,  
9 United States Code, is amended to read as follows:

10 **“§ 4116. Malpractice protection”.**

11 (4) The table of sections for chapter 73 of title 38,  
12 United States Code, is amended by amending the item relat-  
13 ing to section 4116 to read as follows:

“4116. Malpractice protection.”.

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

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

18 (3) The section heading of section 224 of the Public  
19 Health Service Act is amended to read as follows:

20 **“MALPRACTICE PROTECTION”.**

21 (c)(1) Subsections (a) through (e) of section 30 of the  
22 State Department Basic Authorities Act of 1956 (22 U.S.C.  
23 2702) are repealed.

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

1 (A) by striking out “person to whom the immunity  
2 provisions of subsection (a) of this section apply,” and  
3 inserting in lieu thereof “employee of the Department  
4 of State”;

5 (B) by striking out “1346(b)” and inserting in lieu  
6 thereof “1346(b)(1)”; and

7 (C) by redesignating such subsection as subsection  
8 (a).

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

10 (A) by inserting “and section 1346(b)(1) and chap-  
11 ter 171 of title 28, United States Code” immediately  
12 after “For purposes of this section”; and

13 (B) by redesignating such subsection as subsection  
14 (b).

15 (d)(1) Subsections (a) through (e) of section 1089 of title  
16 10, United States Code, are repealed.

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

18 (A) by striking out “person described in subsection  
19 (a)” and inserting in lieu thereof “employee of the  
20 armed forces, the National Guard while engaged in  
21 training or duty under section 316, 502, 503, 504, or  
22 505 of title 32, the Department of Defense, the United  
23 States Soldiers’ and Airmen’s Home, or the Central  
24 Intelligence Agency”;

1 (B) by striking out “1346(b)” and inserting in lieu  
2 thereof “1346(b)(1)”; and

3 (C) by redesignating such subsection as subsection  
4 (a).

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

6 (A) by striking out “and” at the end of paragraph

7 (2);

8 (B) by redesignating paragraph (3) as paragraph

9 (4);

10 (C) by inserting after paragraph (2) the following  
11 new paragraph:

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

15 (D) by redesignating such subsection as subsection  
16 (b).

17 (4) The section heading of section 1089 of title 10,  
18 United States Code, is amended to read as follows:

19 “§ 1089. Malpractice protection”.

20 (5) The table of sections for chapter 55 of title 10,  
21 United States Code, is amended by amending the item relat-  
22 ing to section 1089 to read as follows:

“1089. Malpractice protection.”.

23 (e)(1) Subsections (a) through (e) of section 307 of the  
24 National Aeronautics and Space Act of 1958 (42 U.S.C.  
25 2458a) are repealed.

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

2 (A) by striking out “(f)”; and

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

6 (3) The section heading of section 307 of the National  
7 Aeronautics and Space Act of 1958 is amended to read as  
8 follows:

9 “MALPRACTICE PROTECTION”.

10 (f) Section 415(f) of the Domestic Volunteer Service Act  
11 (42 U.S.C. 5055(f)) is repealed.

12 OTHER TECHNICAL AMENDMENTS

13 SEC. 302. (a) Section 1401(e) of the Panama Canal Act  
14 of 1979 (22 U.S.C. 3761(e)) is amended by striking out  
15 “chapter 171” and inserting in lieu thereof “chapters 171  
16 and 172”.

17 (b)(1) Section 5(h) of the Peace Corps Act (22 U.S.C.  
18 2504(h)) is amended by striking out “the Federal Tort  
19 Claims Act and any other Federal tort liability statute,” and  
20 inserting in lieu thereof “section 1346(b)(1) and chapter 171  
21 of title 28, United States Code, and any other Federal tort  
22 liability statute (other than section 1346(b)(2) and chapter  
23 172 of such title 28),”.

24 (2) Section 10(j) of the Peace Corps Act (22 U.S.C.  
25 2509(j)) is amended in the second sentence—



1 (A) by striking out “references to the Secretary in  
2 subsection (b) of such section shall be deemed to be  
3 references to the Director of the Peace Corps,”;

4 (B) by striking out “(f)” and inserting in lieu  
5 thereof “(a)”; and

6 (C) by striking out “(g)” and inserting in lieu  
7 thereof “(b)”.

8 (c) Section 465(a)(3) of the Comprehensive Employment  
9 and Training Act (29 U.S.C. 938(a)(3)) is amended by strik-  
10 ing out “the Federal tort claims provisions in title 28” and  
11 inserting in lieu thereof “section 1346(b)(1) and chapter 171  
12 of title 28”.

13 (d) Section 351 of title 38, United States Code, is  
14 amended by striking out “1346(b)” and inserting in lieu  
15 thereof “1346(b)(1)”.

16 (e) Section 171 of the Atomic Energy Act of 1954 (42  
17 U.S.C. 2221) is amended by striking out “1346” and insert-  
18 ing in lieu thereof “1346(a)”.

19 (f)(1) Section 168 of the Energy Security Act (42  
20 U.S.C. 8768) is amended by striking out “Federal Tort  
21 Claims Act (28 U.S.C. 2671 et seq.)” and inserting in lieu  
22 thereof “provisions of section 1346(b)(1) and chapter 171 of  
23 title 28, United States Code,”.

24 (2) Section 171(a)(5) of the Energy Security Act (42  
25 U.S.C. 8771(a)(5)) is amended by striking out “the Federal

1 Tort Claims Act (28 U.S.C. 2671 et seq.),” and inserting in  
2 lieu thereof “section 1346(b)(1) and chapter 171 of title 28,  
3 United States Code,”.

4 (g) Section 902(d) of the Merchant Marine Act, 1936  
5 (46 U.S.C. 1242(d)), is amended in the first paragraph by  
6 striking out “section 24, paragraph 20, and section 145 of  
7 the Judicial Code (U.S.C. 1946 edition, title 28, secs. 41(20)  
8 and 250)” and inserting in lieu thereof “sections 1346(a) and  
9 1491 of title 28, United States Code”.

10 (h) Section 606(e) of the Communications Act of 1934  
11 (47 U.S.C. 606(e)) is amended by striking out “paragraph 20  
12 of section 24, or by section 145, of the Judicial Code, as  
13 amended” and inserting in lieu thereof “sections 1346(a) and  
14 1491 of title 28, United States Code”.

15 **APPLICABILITY OF ACT**

16 **SEC. 303. (a)** The amendments made by this Act shall  
17 apply to all claims and suits filed after the date of the enact-  
18 ment of this Act, and to all claims and suits pending on such  
19 date of enactment, except that the provisions of section 2694  
20 of title 28, United States Code, as added by section 202 of  
21 this Act, shall not apply with respect to suits commenced  
22 before such date of enactment.

23 (b) With respect to any suit which, on the date of the  
24 enactment of this Act, is pending against a Federal employee  
25 in his individual capacity on appeal or pending against a Fed-

1 eral employee in his individual capacity in a State court in  
2 which the time for removal pursuant to section 2679(d)(2) or  
3 2699(d)(2) of title 28, United States Code (as amended and  
4 added by this Act), has expired, the case shall be remanded  
5 (in the case of a pending appeal) or removed (in the case of a  
6 suit pending in a State court) to the appropriate district court  
7 for further proceedings in accordance with section 1346(b)  
8 and chapters 171 and 172 of title 28, United States Code (as  
9 amended and added by this Act), upon certification by the  
10 Attorney General that the defendant employee was acting  
11 within the scope of his office or employment at the time of  
12 the incident out of which the suit arose. In the event that any  
13 such appeal was taken from a judgment rendered in favor of  
14 a plaintiff, the judgment shall be binding on the United States  
15 if it is substituted as a defendant.

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