

28 USC 2671: Definitions

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From Title 28-JUDICIARY AND JUDICIAL PROCEDURE

PART VI-PARTICULAR PROCEEDINGS

CHAPTER 171-TORT CLAIMS PROCEDURE

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§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, the judicial and legislative branches, the military departments, independent establishments 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 (1) officers or employees of any federal agency, members of the military or naval forces of the United States, members of the National Guard while engaged in training or duty under section 115, 316, 502, 503, 504, or 505 of title 32, 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, and (2) any officer or employee of a Federal public defender organization, except when such officer or employee performs professional services in the course of providing representation under section 3006A of title 18.

"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 or a member of the National Guard as defined in section 101(3) of title 32, means acting in line of duty.

(June 25, 1948, ch. 646, 62 Stat. 982 ; May 24, 1949, ch. 139, §124, 63 Stat. 106 ; Pub. L. 89–506, §8, July 18, 1966, 80 Stat. 307 ; Pub. L. 97–124, §1, Dec. 29, 1981, 95 Stat. 1666 ; Pub. L. 100–694, §3, Nov. 18, 1988, 102 Stat. 4564 ; Pub. L. 106–398, §1 [[div. A], title VI, §665(b)], Oct. 30, 2000, 114 Stat. 1654 , 1654A-169; Pub. L. 106–518, title IV, §401, Nov. 13, 2000, 114 Stat. 2421 .)

HISTORICAL AND REVISION NOTES**1948 ACT**

Based on title 28, U.S.C., 1940 ed., §941 (Aug. 2, 1946, ch. 753, §402, 60 Stat. 842). Changes were made in phraseology.

1949 ACT

This section corrects a typographical error in section 2671 of title 28, U.S.C.

AMENDMENTS

2000-Pub. L. 106–518, in par. defining "Employee of the government", inserted "(1)" after "includes" and added cl. (2).

Pub. L. 106–398 inserted "115," after "members of the National Guard while engaged in training or duty under section" in par. defining "Employee of the government".

1988-Pub. L. 100–694 inserted "the judicial and legislative branches," after "departments," in first par.

1981-Pub. L. 97–124 inserted "members of the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32," in definition of "Employee of the government" and "or a member of the National Guard as defined in section 101(3) of title 32" in definition of "Acting within the scope of his office or employment".

1966-Pub. L. 89-506 expanded definition of "Federal agency" to include military departments.
 1949-Act May 24, 1949, corrected spelling of "office".

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-398, §1 [[div. A], title VI, §665(c)(2)], Oct. 30, 2000, 114 Stat. 1654 , 1654A-169, provided that: "The amendment made by subsection (b) [amending this section] shall apply with respect to acts and omissions occurring before, on, or after the date of the enactment of this Act [Oct. 30, 2000]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-694 effective Nov. 18, 1988, and applicable to all claims, civil actions, and proceedings pending on, or filed on or after, Nov. 18, 1988, see section 8 of Pub. L. 100-694, set out as a note under section 2679 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-124 applicable only with respect to claims arising on or after Dec. 29, 1981, see section 4 of Pub. L. 97-124, set out as a note under section 1089 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-506 applicable to claims accruing six months or more after July 18, 1966, see section 10 of Pub. L. 89-506, set out as a note under section 2672 of this title.

SHORT TITLE

This chapter is popularly known as the Federal Tort Claims Act. The Federal Tort Claims Act was previously the official short title of title IV of act [Aug. 2, 1946, ch. 753, 60 Stat. 842](#) , which was classified principally to chapter 20 (§§921, 922, 931-934, 941-946) of former Title 28, Judicial Code and Judiciary. Title IV of act [Aug. 2, 1946](#), was substantially repealed and reenacted as sections 1346(b) and 2671 et seq. of this title by act [June 25, 1948, ch. 646, 62 Stat. 992](#) , the first section of which enacted this title. For complete classification of title IV to the Code, see Tables. For distribution of former sections of Title 28 into this title, see Table at the beginning of this title.

SEVERABILITY

Pub. L. 100-694, §7, Nov. 18, 1988, 102 Stat. 4565 , provided that: "If any provision of this Act [see Short Title of 1988 Amendment note under section 1 of this title] or the amendments made by this Act or the application of the provision to any person or circumstance is held invalid, the remainder of this Act and such amendments and the application of the provision to any other person or circumstance shall not be affected by that invalidation."

LAW ENFORCEMENT OFFICER ACTING WITHIN SCOPE OF OFFICE OR EMPLOYMENT

Pub. L. 105-277, div. A, §101(h) [title VI, §627], Oct. 21, 1998, 112 Stat. 2681-480 , 2681-519, as amended by Pub. L. 106-58, title VI, §623, Sept. 29, 1999, 113 Stat. 471 , provided that:

"(a) Definitions.-In this section-

"(1) the term 'crime of violence' has the meaning given that term in section 16 of title 18, United States Code; and

"(2) the term 'law enforcement officer' means any employee described in subparagraph (A), (B), or (C) of section 8401(17) of title 5, United States Code; and any special agent in the Diplomatic Security Service of the Department of State.

"(b) Rule of Construction.-Effective on the date of the enactment of this Act [Oct. 21, 1998] and thereafter, and notwithstanding any other provision of law, for purposes of chapter 171 of title 28, United States Code, or any other provision of law relating to tort liability, a law enforcement officer shall be construed to be acting within the scope of his or her office or employment, if the

officer takes reasonable action, including the use of force, to-

- "(1) protect an individual in the presence of the officer from a crime of violence;
- "(2) provide immediate assistance to an individual who has suffered or who is threatened with bodily harm; or
- "(3) prevent the escape of any individual who the officer reasonably believes to have committed in the presence of the officer a crime of violence."

CONGRESSIONAL FINDINGS AND PURPOSES

Pub. L. 100-694, §2, Nov. 18, 1988, 102 Stat. 4563 , provided that:

"(a) Findings.-The Congress finds and declares the following:

"(1) For more than 40 years the Federal Tort Claims Act [see Short Title note above] has been the legal mechanism for compensating persons injured by negligent or wrongful acts of Federal employees committed within the scope of their employment.

"(2) The United States, through the Federal Tort Claims Act, is responsible to injured persons for the common law torts of its employees in the same manner in which the common law historically has recognized the responsibility of an employer for torts committed by its employees within the scope of their employment.

"(3) Because Federal employees for many years have been protected from personal common law tort liability by a broad based immunity, the Federal Tort Claims Act has served as the sole means for compensating persons injured by the tortious conduct of Federal employees.

"(4) Recent judicial decisions, and particularly the decision of the United States Supreme Court in *Westfall v. Erwin*, have seriously eroded the common law tort immunity previously available to Federal employees.

"(5) This erosion of immunity of Federal employees from common law tort liability has created an immediate crisis involving the prospect of personal liability and the threat of protracted personal tort litigation for the entire Federal workforce.

"(6) The prospect of such liability will seriously undermine the morale and well being of Federal employees, impede the ability of agencies to carry out their missions, and diminish the vitality of the Federal Tort Claims Act as the proper remedy for Federal employee torts.

"(7) In its opinion in *Westfall v. Erwin*, the Supreme Court indicated that the Congress is in the best position to determine the extent to which Federal employees should be personally liable for common law torts, and that legislative consideration of this matter would be useful.

"(b) Purpose.-It is the purpose of this Act [see Short Title of 1988 Amendment note under section 1 of this title] to protect Federal employees from personal liability for common law torts committed within the scope of their employment, while providing persons injured by the common law torts of Federal employees with an appropriate remedy against the United States."