

EFFECTIVE DATE

Section effective Feb. 15, 1981, except as otherwise provided, see section 2403 of Pub. L. 96-465, set out as a note under section 3901 of this title.

§ 2702. Malpractice protection**(a) Exclusiveness of designated remedies**

The remedy—

(1) against the United States provided by sections 1346(b) and 2672 of title 28, or

(2) through proceedings for compensation or other benefits from the United States as provided by any other law, where the availability of such benefits precludes a remedy under such sections,

for damages for personal injury, including death, allegedly arising from malpractice or negligence of a physician, dentist, nurse, pharmacist, or paramedical (including medical and dental assistants and technicians, nursing assistants, and therapists) or other supporting personnel of the Department of State in furnishing medical care or related services, including the conducting of clinical studies or investigations, while in the exercise of his or her duties in or for the Department of State or any other Federal department, agency, or instrumentality shall be exclusive of any other civil action or proceeding by reason of the same subject matter against such physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or his or her estate) whose act or omission gave rise to such claim.

(b) Defense of civil actions by United States; delivery of process; furnishing of copies of pleadings

The United States Government shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or his or her estate) for any such damage or injury. Any such person against whom such civil action or proceeding is brought shall deliver, within such time after date of service or knowledge of service as may be determined by the Attorney General, all process served upon him or her or an attested true copy thereof to whomever was designated by the Secretary to receive such papers. Such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the Secretary.

(c) Removal of actions; remand or dismissal; suspension of limitations

Upon a certification by the Attorney General that the defendant was acting within the scope of his or her employment in or for the Department of State or any other Federal department, agency, or instrumentality at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28, and all references

thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (a) of this section is not available against the United States, the case shall be remanded to the State court except that where such remedy is precluded because of the availability of a remedy through proceedings for compensation or other benefits from the United States as provided by any other law, the case shall be dismissed, but in that event, the running of any limitation of time for commencing, or filing an application or claim in, such proceedings for compensation or other benefits shall be deemed to have been suspended during the pendency of the civil action or proceeding under this section.

(d) Compromise or settlement of claims

The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, and with the same effect.

(e) Inapplicability of section 2680(h) of title 28

For purposes of this section, the provisions of section 2680(h) of title 28, shall not apply to any tort enumerated therein arising out of negligence in the furnishing of medical care or related services, including the conducting of clinical studies or investigations.

(f) Holding harmless or providing for liability insurance

The Secretary may, to the extent he deems appropriate, hold harmless or provide liability insurance for any person to whom the immunity provisions of subsection (a) of this section apply, for damages for personal injury, including death, negligently caused by any such person while acting within the scope of his or her office or employment and as a result of the furnishing of medical care or related services, including the conducting of clinical studies or investigations, if such person is assigned to a foreign area or detailed for service with other than a Federal agency or institution, or if the circumstances are such as are likely to preclude the remedies of third persons against the United States provided by sections 1346(b) and 2672 of title 28, for such damage or injury.

(g) Medical care or related service within scope of employment

For purposes of this section, any medical care or related service covered by this section and performed abroad by a covered person at the direction or with the approval of the United States chief of mission or other principal representative of the United States in the area shall be deemed to be within the scope of employment of the individual performing the service.

(Aug. 1, 1956, ch. 841, title I, §30, as added Pub. L. 96-465, title II, §2201(a), Oct. 17, 1980, 94 Stat. 2155; renumbered title I, Pub. L. 97-241, title II, §202(a), Aug. 24, 1982, 96 Stat. 282.)

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§ 2703. Services and facilities for employees at posts abroad

(a) Non-Government-operated services; applicability of other provisions of law

The Secretary of State may authorize and assist in the establishment, maintenance, and operation by civilian officers and employees of the Government of non-Government-operated services and facilities at posts abroad, including the furnishing of space, utilities, and properties owned or leased by the Government for use by its diplomatic, consular, and other missions and posts abroad. The provisions of the Foreign Service Buildings Act, 1926 (22 U.S.C. 292–300) and section 2684 of this title may be utilized by the Secretary in providing such assistance.

(b) Emergency commissary and mess services

The Secretary may establish and maintain emergency commissary or mess services in places abroad where, in the judgment of the Secretary, such services are necessary temporarily to insure the effective and efficient performance of official duties and responsibilities. Reimbursements incident to the maintenance and operation of commissary or mess service under this subsection shall be at not less than cost as determined by the Secretary and shall be used as working funds, except that an amount equal to the amount expended for such services shall be covered into the Treasury as miscellaneous receipts.

(c) Availability; duplication of facilities and services

Services and facilities established under this section shall be made available, insofar as practicable, to officers and employees of all agencies and their dependents who are stationed in the locality abroad, and, where determined by the Secretary to be appropriate due to exceptional circumstances, to United States citizens hired outside of the host country to serve as teaching staff for such dependents abroad. Such services and facilities shall not be established in localities where another agency operates similar services or facilities unless the Secretary determines that additional services or facilities are necessary. Other agencies shall to the extent practicable avoid duplicating the facilities and services provided or assisted by the Secretary under this section.

(d) Charges

Charges at any post abroad for a service or facility provided, authorized or assisted under this section shall be at the same rate for all civilian personnel of the Government serviced thereby, and all charges for supplies furnished to such a service or facility abroad by any agency shall be at the same rate as that charged by the furnishing agency to its comparable civilian services and facilities.

(e) Child care facilities

The Secretary of State may make grants to child care facilities, to offset in part the cost of such care, in Moscow and at no more than five other posts abroad where the Secretary determines that due to extraordinary circumstances such facilities are necessary to the efficient op-

eration of the post. In making that determination, the Secretary shall take into account factors such as—

(1) whether Foreign Service spouses are encouraged to work at the post because—

(A) the number of members of the post is subject to a ceiling imposed by the receiving country; and

(B) Foreign Service nationals are not employed at the post; and

(2) whether local child care is available.

(Aug. 1, 1956, ch. 841, title I, §31, as added Pub. L. 96–465, title II, §2201(a), Oct. 17, 1980, 94 Stat. 2156; renumbered title I, Pub. L. 97–241, title II, §202(a), Aug. 24, 1982, 96 Stat. 282; amended Pub. L. 101–246, title I, §147, Feb. 16, 1990, 104 Stat. 38; Pub. L. 102–138, title I, §§121, 144, Oct. 28, 1991, 105 Stat. 658, 668; Pub. L. 103–236, title I, §124, Apr. 30, 1994, 108 Stat. 393.)

REFERENCES IN TEXT

The Foreign Service Buildings Act, 1926, referred to in subsec. (a), is act May 7, 1926, ch. 250, 44 Stat. 403, as amended, which is classified generally to chapter 8 (§292 et seq.) of this title. For complete classification of this Act to the Code, see section 299 of this title and Tables.

AMENDMENTS

1994—Subsec. (e). Pub. L. 103–236 substituted “The” for “For the fiscal years 1992 and 1993, the” in introductory provisions.

1991—Subsec. (c). Pub. L. 102–138, §144, inserted before period at end of first sentence “, and, where determined by the Secretary to be appropriate due to exceptional circumstances, to United States citizens hired outside of the host country to serve as teaching staff for such dependents abroad”.

Subsec. (e). Pub. L. 102–138, §121, substituted “1992 and 1993” for “1990 and 1991” in introductory provisions.

1990—Subsec. (e). Pub. L. 101–246 added subsec. (e).

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AUTHORITY TO PROVIDE ACCOMMODATION AND SUBSISTENCE TO INDIVIDUALS SERVING IN IRAQ AND AFGHANISTAN

Pub. L. 109–234, title I, §1602(e), June 15, 2006, 120 Stat. 442, provided that: “The Secretary of State may provide during any fiscal year, with or without reimbursement, accommodation and subsistence to personnel in Iraq and Afghanistan for whom the Chief of Mission is responsible.”

§ 2704. Subsistence expenses

The Secretary of State may pay, without regard to section 5702 of title 5, subsistence expenses of (1) special agents of the Department of State who are on authorized protective missions, whether at or away from their duty stations, and (2) members of the Foreign Service and employees of the Department who are required to spend extraordinary amounts of time in travel status. The authorities available to the Secretary of State under this section with respect to the Department of State shall be available to the Broadcasting Board of Governors and the Administrator of the Agency for International Development with respect to their respective agencies, except that the authority of