

5115; Pub. L. 102-572, title IV, §402, Oct. 29, 1992, 106 Stat. 4511; Pub. L. 110-406, §3(a), Oct. 13, 2008, 122 Stat. 4292.)

#### HISTORICAL AND REVISION NOTES

##### 1948 ACT

Based on title 28, U.S.C., 1940 ed., §§ 600, 600a, 600b, 608, and sections 11-1512 and 11-1513 of the D.C. Code, 1940 ed., (R.S. §§ 236, 323; Apr. 26, 1926, ch. 183, §§ 1, 2, 44 Stat. 323; May 17, 1932, ch. 190, 47 Stat. 158; Oct. 13, 1941, ch. 431, § 2, 55 Stat. 736).

Section consolidates section 600 of title 28, U.S.C., 1940 ed., and sections 11-1512 and 11-1513 of the D.C. Code, 1940 ed., with part of section 608 of title 28, U.S.C., 1940 ed. The remainder of such section 608, relating to payment of witnesses' compensation, is the basis of section 1825 of this title.

Words "place of service" were substituted for references to attendance at court, in view of the earlier reference to service before commissioners.

The Advisory Committee to the House Committee on Revision of the Laws in revision of this title, recommends a careful study of the compensation of witnesses and jurors. Furthermore, provision should be made for the subsistence of jurors and witnesses serving at such distance from their homes as precludes daily travel to and from the court.

Changes were made in phraseology.

##### 1949 ACT

This section incorporates in section 1871 of title 28, U.S.C., with changes in phraseology, the provisions of act of June 25, 1948 (ch. 652, 62 Stat. 1016), which became law subsequent to the enactment of the revision.

#### AMENDMENTS

2008—Subsec. (b)(2). Pub. L. 110-406 substituted "ten days" for "thirty days" in two places.

1992—Subsec. (c)(5). Pub. L. 102-572 added par. (5).

1990—Subsec. (b). Pub. L. 101-650 substituted "\$40" for "\$30" in par. (1) and "\$10" for "\$5" in pars. (2) and (3).

1978—Subsecs. (a) to (g). Pub. L. 95-572, in revising text, substituted subsecs. (a) to (g) for prior five unnumbered paragraphs, and among other changes, deleted reference to fees for service before United States commissioners, now provided for in chapter 43 (section 631 et seq.) of this title relating to United States magistrates; increased to \$30 from \$20 allowance for actual attendance; continued the discretionary additional fee for extended service, increasing to forty-five from thirty days the basic service requirement; generalized travel allowance provisions in place of 10 cents per mile travel allowance from residence to place of service when commencing and terminating service and any necessary daily or interim travel, not to exceed a subsistence allowance of \$16 per day; and deleted provision for same fees for service in districts courts for districts of Guam and Canal Zone as provided for services in other Federal district courts as covered in definition of "district court of the United States" in section 1869(f) of this title.

1968—Pub. L. 90-274 increased from \$10 to \$20 the per diem allowance for grand and petit jurors, increased from \$14 to \$25 the fee for extra days in cases requiring attendance in excess of 30 days, increased from \$10 to \$16 the daily subsistence rate when travel appears impracticable, increased from \$10 to \$20 per day the limit after which payment of fees by the marshal must be on the certificate of the trial judge, provided for the allowance of amounts expended for tolls, for toll roads, for toll tunnels, and for toll bridges, and directed that grand and petit jurors in the district courts for the districts of Guam and the Canal Zone receive the same fees and allowances provided for grand and petit jurors in other district courts of the United States.

1965—Pub. L. 89-165 increased from \$7 to \$10 the per diem allowance for grand and petit jurors, increased from \$10 to \$14 the fee for extra days in cases requiring

attendance in excess of 30 days, prohibited payment for interim or daily travel at the 10-cent-per-mile rate in excess of the subsistence allowance which would have been paid if he had remained at the place of holding court overnight or during temporary recess, increased from \$7 to \$10 the daily subsistence rate when travel daily appears impracticable, and increased from \$7 to \$10 per day the limit after which payment of fees by the marshal must be on the certificate of the trial judge.

1957—Pub. L. 85-299 increased from 7 to 10 cents per mile and \$5 to \$7 per day the mileage and subsistence allowances of grand and petit jurors.

1949—Act July 14, 1949, increased the per diem fee paid jurors from \$5 to \$7, provided for per diem fee payments not to exceed \$10 for each day in excess of thirty days, increased the mileage payment from 5 cents per mile to 7 cents, and provided for the certification of the judge in cases where the jury fee is in excess of \$7 per diem.

Act May 24, 1949, increased jury fees and mileage and subsistence allowances.

#### EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-406, §3(b), Oct. 13, 2008, 122 Stat. 4292, provided that: "The amendments made by this section [amending this section] shall take effect on October 1, 2009."

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Jan. 1, 1993, see section 1101(a) of Pub. L. 102-572, set out as a note under section 905 of Title 2, The Congress.

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-572 applicable with respect to any grand or petit juror serving on or after the sixtieth day following Nov. 2, 1978, see section 7(b) of Pub. L. 95-572, set out as an Effective Date note under section 1363 of this title.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-274 effective 270 days after Mar. 27, 1968, except as to cases in which an indictment has been returned or a petit jury empaneled prior to such effective date, see section 104 of Pub. L. 90-274, set out as a note under section 1861 of this title.

#### REFRESHMENT OF JURORS

Pub. L. 101-162, title IV, Nov. 21, 1989, 103 Stat. 1012, provided: "That for fiscal year 1990 and hereafter, funds appropriated under this heading [COURTS OF APPEALS, DISTRICT COURTS AND OTHER JUDICIAL SERVICES AND FEES OF JURORS AND COMMISSIONERS] shall be available for refreshment of jurors."

### § 1872. Issues of fact in Supreme Court

In all original actions at law in the Supreme Court against citizens of the United States, issues of fact shall be tried by a jury.

(June 25, 1948, ch. 646, 62 Stat. 953.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §343 (Mar. 3, 1911, ch. 231, § 235, 36 Stat. 1156).

Changes were made in phraseology.

### § 1873. Admiralty and maritime cases

In any case of admiralty and maritime jurisdiction relating to any matter of contract or tort arising upon or concerning any vessel of twenty tons or upward, enrolled and licensed for the coasting trade, and employed in the business of commerce and navigation between places in different states upon the lakes and navigable waters connecting said lakes, the trial of all is-

sues of fact shall be by jury if either party demands it.

(June 25, 1948, ch. 646, 62 Stat. 953.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 770 (R.S. §§ 566, 648; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167).

Words "and Territories" following words "in different States" were omitted as obsolete. The act of February 26, 1845, ch. 20, 5 Stat. 726, from which this language was derived was intended primarily to cover the Great Lakes regions.

The first sentence of section 770 of title 28, U.S.C., 1940 ed., providing generally for the right of jury trials in district courts, was omitted as covered by Rule 38 of the Federal Rules of Civil Procedure.

Changes were made in phraseology.

### § 1874. Actions on bonds and specialties

In all actions to recover the forfeiture annexed to any articles of agreement, covenant, bond, or other specialty, wherein the forfeiture, breach, or nonperformance appears by default or confession of the defendant, the court shall render judgment for the plaintiff for such amount as is due. If the sum is uncertain, it shall, upon request of either party, be assessed by a jury.

(June 25, 1948, ch. 646, 62 Stat. 953.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., § 785 (R.S. § 961).

Word "actions" was substituted for "all suits brought," in view of Rule 2 of the Federal Rules of Civil Procedure. For the same reason, words "according to equity," after "to recover so much as is due," were omitted.

Words "or upon demurrer," after "default or confession of the defendant," were omitted in view of Federal Rules of Civil Procedure, Rule 7(c), abolishing demurrers.

Changes were made in phraseology.

### § 1875. Protection of jurors' employment

(a) No employer shall discharge, threaten to discharge, intimidate, or coerce any permanent employee by reason of such employee's jury service, or the attendance or scheduled attendance in connection with such service, in any court of the United States.

(b) Any employer who violates the provisions of this section—

(1) shall be liable for damages for any loss of wages or other benefits suffered by an employee by reason of such violation;

(2) may be enjoined from further violations of this section and ordered to provide other appropriate relief, including but not limited to the reinstatement of any employee discharged by reason of his jury service; and

(3) shall be subject to a civil penalty of not more than \$5,000 for each violation as to each employee, and may be ordered to perform community service.

(c) Any individual who is reinstated to a position of employment in accordance with the provisions of this section shall be considered as having been on furlough or leave of absence during his period of jury service, shall be reinstated to his position of employment without loss of seniority, and shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and prac-

tices relating to employees on furlough or leave of absence in effect with the employer at the time such individual entered upon jury service.

(d)(1) An individual claiming that his employer has violated the provisions of this section may make application to the district court for the district in which such employer maintains a place of business and the court shall, upon finding probable merit in such claim, appoint counsel to represent such individual in any action in the district court necessary to the resolution of such claim. Such counsel shall be compensated and necessary expenses repaid to the extent provided by section 3006A of title 18, United States Code.

(2) In any action or proceeding under this section, the court may award a prevailing employee who brings such action by retained counsel a reasonable attorney's fee as part of the costs. The court may tax a defendant employer, as costs payable to the court, the attorney fees and expenses incurred on behalf of a prevailing employee, where such costs were expended by the court pursuant to paragraph (1) of this subsection. The court may award a prevailing employer a reasonable attorney's fee as part of the costs only if the court finds that the action is frivolous, vexatious, or brought in bad faith.

(Added Pub. L. 95-572, §6(a)(1), Nov. 2, 1978, 92 Stat. 2456; amended Pub. L. 97-463, §1, Jan. 12, 1983, 96 Stat. 2531; Pub. L. 110-406, §19, Oct. 13, 2008, 122 Stat. 4295.)

#### AMENDMENTS

2008—Subsec. (b)(3). Pub. L. 110-406 substituted "\$5,000 for each violation as to each employee, and may be ordered to perform community service." for "\$1,000 for each violation as to each employee."

1983—Subsec. (d)(1). Pub. L. 97-463, §1(1), substituted designation "(d)(1)" for "(d)" before "An individual claiming".

Subsec. (d)(2). Pub. L. 97-463, §1(2), inserted provision empowering the court to tax a defendant employer, as costs payable to the court, the attorney fees and expenses incurred on behalf of a prevailing employee, where such costs were expended by the court pursuant to par. (1) of this subsection and, in existing provisions, substituted "only if the court finds that the action is frivolous" for "if the court determines that the action is frivolous".

#### EFFECTIVE DATE

Section applicable with respect to any grand or petit juror summoned for service or actually serving on or after Nov. 2, 1978, see section 7(a) of Pub. L. 95-572, set out as a note under section 1363 of this title.

### § 1876. Trial by jury in the Court of International Trade

(a) In any civil action in the Court of International Trade which is to be tried before a jury, the jury shall be selected in accordance with the provisions of this chapter and under the procedures set forth in the jury selection plan of the district court for the judicial district in which the case is to be tried.

(b) Whenever the Court of International Trade conducts a jury trial—

(1) the clerk of the district court for the judicial district in which the Court of International Trade is sitting, or an authorized deputy clerk, shall act as clerk of the Court of