

Nov. 10, 1986, 100 Stat. 3597; Pub. L. 103-322, title XXXIII, §330016(2)(A), Sept. 13, 1994, 108 Stat. 2148.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-322 inserted “(notwithstanding section 3571)” before “fined not more than one-half”.

1986—Subsec. (a). Pub. L. 99-646 substituted “property or against the person of another” for “the person or property of another” and inserted “life imprisonment or” before “death”.

CHAPTER 21—CONTEMPTS

Sec.

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| 401. | Power of court. |
| 402. | Contempts constituting crimes. |
| 403. | Protection of the privacy of child victims and child witnesses. |

AMENDMENTS

1990—Pub. L. 101-647, title II, §225(b)(2), Nov. 29, 1990, 104 Stat. 4806, added item 403.

1949—Act May 24, 1949, ch. 139, §8(a), (b), 63 Stat. 90, struck out “CONSTITUTING CRIMES” in chapter heading and substituted “Contempts constituting crimes” for “Criminal contempts” in item 402.

§ 401. Power of court

A court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other, as—

(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

(2) Misbehavior of any of its officers in their official transactions;

(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

(June 25, 1948, ch. 645, 62 Stat. 701; Pub. L. 107-273, div. B, title III, §3002(a)(1), Nov. 2, 2002, 116 Stat. 1805.)

HISTORICAL AND REVISION NOTES

Based on section 385 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (Mar. 3, 1911, ch. 231, §268, 36 Stat. 1163).

Said section 385 conferred two powers. The first part authorizing courts of the United States to impose and administer oaths will remain in title 28, U.S.C., 1940 ed., Judicial Code and Judiciary. The second part relating to contempt of court constitutes this section.

Changes in phraseology and arrangement were made.

AMENDMENTS

2002—Pub. L. 107-273 inserted “or both,” after “fine or imprisonment,” in introductory provisions.

§ 402. Contempts constituting crimes

Any person, corporation or association willfully disobeying any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of the District of Columbia, by doing any act or thing therein, or thereby forbidden, if the act or thing so done be of such character as to constitute also a criminal offense under any statute of the United States or under the laws of any State in which the act was committed, shall be prosecuted for such contempt as provided in section 3691 of this title and shall be punished by a fine under this title or imprisonment, or both.

Such fine shall be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may, where more than one is so damaged, be divided or apportioned among them as the court may direct, but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of \$1,000, nor shall such imprisonment exceed the term of six months.

This section shall not be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but the same, and all other cases of contempt not specifically embraced in this section may be punished in conformity to the prevailing usages at law.

For purposes of this section, the term “State” includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(June 25, 1948, ch. 645, 62 Stat. 701; May 24, 1949, ch. 139, §8(c), 63 Stat. 90; Pub. L. 101-647, title XII, §1205(c), Nov. 29, 1990, 104 Stat. 4830; Pub. L. 103-322, title XXXIII, §§330011(f), 330016(2)(E), Sept. 13, 1994, 108 Stat. 2145, 2148.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on sections 386, 387, 389, and 390a of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary (Oct. 15, 1914, ch. 323, §§1, 21, 22, 24, 38 Stat. 730, 738, 739).

Section 21 of the Clayton Act, section 386 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary, is here consolidated with parts of sections 1, 22, and 24 of the same act. Section 1 of said act, section 390a of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary, defined person or persons. Section 22 of said act, section 387 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary, regulated the procedure and provided for the punishment of contempts. Section 24 of said act, section 389 of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary, limited the application of these sections to certain kinds of contempt.

In transferring these sections to this title and in consolidating them numerous changes of phraseology were necessary which do not, however, change their meaning or substance. Words “corporation or association” were inserted after “any person” in substitution for the definition provisions of section 390a of title 28, U.S.C., 1940 ed., Judicial Code and Judiciary, which read as follows: “The word ‘person’ or ‘persons’ wherever used in sections 381-383, 386-390a of this title, sections 12, 13, 14-19, 20, 21, 22-27 and 44 of title 15, and section 412 of title 18 shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.”

The words “any person, corporation, or association,” unqualified except by the context of the section mean all that the more lengthy definition included. Only those persons, corporations, and associations who were parties to the order or had actual notice of it may be punished for contempt. (See *McCaully v. First Trust & Savings Bank*, C.C.A. Ill. 1921, 276 F. 117. See, also *National Labor Relations Board v. Blackstone Mfg. Co.*, C.C.A. 1941, 123 F. 2d 633.) The fact that the contemnor was incorporated or organized under a foreign law or under the laws of a particular State or Territory would hardly be relevant to the issue of criminal contempt.