

Sec.

## HISTORICAL AND REVISION NOTES

## 1949 ACT

This section amends the analysis of chapter 161 of title 28, U.S.C., to conform item 2411 therein with the catch line of section 2411 of such title as amended by another section of this bill.

## AMENDMENTS

1980—Pub. L. 96-481, title II, §204(b), Oct. 21, 1980, 94 Stat. 2329, substituted “Costs and fees” for “Costs” in item 2412.

1976—Pub. L. 94-381, §6, Aug. 12, 1976, 90 Stat. 1120, inserted “or a State” after “United States” in item 2403.

1972—Pub. L. 92-562, §3(b), Oct. 25, 1972, 86 Stat. 1177, added item 2409a.

1966—Pub. L. 89-505, §2, July 18, 1966, 80 Stat. 305, added items 2415 and 2416.

1961—Pub. L. 87-187, §2, Aug. 30, 1961, 75 Stat. 416, substituted “and compromise settlements” for “against the United States” in item 2414.

1954—Act July 30, 1954, ch. 648, §2(b), 68 Stat. 589, struck out “denied” in item 2402.

1949—Act May 24, 1949, ch. 139, §118, 63 Stat. 105, substituted “Interest” for “Interest on judgments against United States” in item 2411.

**§ 2401. Time for commencing action against United States**

(a) Except as provided by chapter 71 of title 41, every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues. The action of any person under legal disability or beyond the seas at the time the claim accrues may be commenced within three years after the disability ceases.

(b) A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented.

(June 25, 1948, ch. 646, 62 Stat. 971; Apr. 25, 1949, ch. 92, §1, 63 Stat. 62; Pub. L. 86-238, §1(3), Sept. 8, 1959, 73 Stat. 472; Pub. L. 89-506, §7, July 18, 1966, 80 Stat. 307; Pub. L. 95-563, §14(b), Nov. 1, 1978, 92 Stat. 2389; Pub. L. 111-350, §5(g)(8), Jan. 4, 2011, 124 Stat. 3848.)

## HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 41(20), 942 (Mar. 3, 1911, ch. 231, §24, part 20, 36 Stat. 1093; Nov. 23, 1921, ch. 136, §1310(c), 42 Stat. 311; June 2, 1924, 4:01 p.m., ch. 234, §1025(c), 43 Stat. 348; Feb. 24, 1925, ch. 309, 43 Stat. 972; Feb. 26, 1926, ch. 27, §§1122(c), 1200, 44 Stat. 121, 125; Aug. 2, 1946, ch. 753, §420, 60 Stat. 845).

Section consolidates provision in section 41(20) of title 28, U.S.C., 1940 ed., as to time limitation for bringing actions against the United States under section 1346(a) of this title, with section 942 of said title 28.

Words “or within one year after the date of enactment of this Act whichever is later”, in section 942 of title 28, U.S.C., 1940 ed., were omitted as executed.

Provisions of section 41(20) of title 28, U.S.C., 1940 ed., relating to jurisdiction of district courts and trial by the court of actions against the United States are the basis of sections 1346(a) and 2402 of this title.

Words in subsec. (a) of this revised section, “person under legal disability or beyond the seas at the time the claim accrues” were substituted for “claims of married women, first accrued during marriage, of per-

sons under the age of twenty-one years, first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim.” (See reviser’s note under section 2501 of this title.)

Words in section 41(20) of title 28, U.S.C., 1940 ed., “nor shall any of the said disabilities operate cumulatively” were omitted. (See reviser’s note under section 2501 of this title.)

A provision in section 41(20) of title 28, U.S.C., 1940 ed., that disabilities other than those specifically mentioned should not prevent any action from being barred was omitted as superfluous.

Subsection (b) of the revised section simplifies and restates said section 942 of title 28, U.S.C., 1940 ed., without change of substance.

Changes were made in phraseology.

## SENATE REVISION AMENDMENT

Subsection (b) amended in the Senate to insert the 1 year limitation on the bringing of tort actions and to include the limitation upon the time in which tort claims not exceeding \$1000 must be presented to the appropriate Federal agencies for administrative disposition. 80th Congress Senate Report No. 1559, Amendment No. 48.

## AMENDMENTS

2011—Subsec. (a). Pub. L. 111-350 substituted “chapter 71 of title 41” for “the Contract Disputes Act of 1978”.

1978—Subsec. (a). Pub. L. 95-563 inserted Contract Disputes Act of 1978 exception.

1966—Subsec. (b). Pub. L. 89-506 struck out provisions dealing with a tort claim of \$2,500 or under as a special category of tort claim requiring preliminary administrative action and substituted provisions requiring presentation of all tort claims to the appropriate Federal agency in writing within two years after the claim accrues and commencement of an action within six months of the date of mailing of notice of final denial of the claim by the agency to which it was presented for provisions requiring commencement of an action within two years after the claim accrues.

1959—Subsec. (b). Pub. L. 86-238 substituted “\$2,500” for “\$1,000” in two places.

1949—Subsec. (b). Act Apr. 25, 1949, the time limitation on bringing tort actions from 1 year to 2 years.

## EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-563 effective with respect to contracts entered into 120 days after Nov. 1, 1978, and, at the election of the contractor, with respect to any claim pending at such time before the contracting officer or initiated thereafter, see section 16 of Pub. L. 95-563, Nov. 1, 1978, 92 Stat. 2391, formerly set out as an Effective Date note under section 601 of former Title 41, Public Contracts.

## 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.

**§ 2402. Jury trial in actions against United States**

Subject to chapter 179 of this title, any action against the United States under section 1346 shall be tried by the court without a jury, except that any action against the United States under section 1346(a)(1) shall, at the request of either party to such action, be tried by the court with a jury.

(June 25, 1948, ch. 646, 62 Stat. 971; July 30, 1954, ch. 648, §2(a), 68 Stat. 589; Pub. L. 104-331, §3(b)(3), Oct. 26, 1996, 110 Stat. 4069.)

## HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 41(20), 931(a) (Mar. 3, 1911, ch. 231, §24, par. 20, 36 Stat. 1093; Nov. 23, 1921,

ch. 136, §1310(c), 42 Stat. 311; June 2, 1924, 4:01 p.m., ch. 234, §1025(c), 43 Stat. 348; Feb. 24, 1925, ch. 309, 43 Stat. 972; Feb. 26, 1926, ch. 27, §§1122(c), 1200, 44 Stat. 121, 125; Aug. 2, 1946, ch. 753, §410(a), 60 Stat. 843.

Section consolidates non-jury provisions of sections 41(20) and 931(a) of title 28, U.S.C., 1940 ed. For other provisions of said section 931(a) relating to tort claims, see Distribution Table.

Word “actions” was substituted for “suits”, in view of Rule 2 of the Federal Rules of Civil Procedure.

Provisions of title 28, U.S.C., 1940 ed., §41(20) relating to jurisdiction of district courts and time for bringing actions against the United States are the basis of sections 1346 and 2401 of this title.

#### AMENDMENTS

1996—Pub. L. 104-331 substituted “Subject to chapter 179 of this title, any action” for “Any action”.

1954—Act July 30, 1954, permitted a jury trial at the request of either party in actions under section 1346(a)(1) of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-331 effective Oct. 1, 1997, see section 3(d) of Pub. L. 104-331, set out as an Effective Date note under section 1296 of this title.

### § 2403. Intervention by United States or a State; constitutional question

(a) In any action, suit or proceeding in a court of the United States to which the United States or any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United States to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The United States shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

(b) In any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The State shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

(June 25, 1948, ch. 646, 62 Stat. 971; Pub. L. 94-381, §5, Aug. 12, 1976, 90 Stat. 1120.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §401 (Aug. 24, 1937, ch. 754, §1, 50 Stat. 751).

Word “action” was added before “suit or proceeding”, in view of Rule 2 of the Federal Rules of Civil Procedure.

Since this section applies to all Federal courts, the word “suit” was not required to be deleted by such rule.

“Court of the United States” is defined in section 451 of this title. Direct appeal from decisions invalidating Acts of Congress is provided by section 1252 of this title.

Changes were made in phraseology.

#### AMENDMENTS

1976—Pub. L. 94-381, §5(b), inserted “or a State” after “United States” in section catchline.

Subsecs. (a), (b). Pub. L. 94-381, §5(a), designated existing provisions as subsec. (a) and added subsec. (b).

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-381 not applicable to any action commenced on or before Aug. 12, 1976, see section 7 of Pub. L. 94-381, set out as a note under section 2284 of this title.

### § 2404. Death of defendant in damage action

A civil action for damages commenced by or on behalf of the United States or in which it is interested shall not abate on the death of a defendant but shall survive and be enforceable against his estate as well as against surviving defendants.

(June 25, 1948, ch. 646, 62 Stat. 971.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §780a (June 16, 1933, ch. 103, 48 Stat. 311).

Substitution of parties, see rule 25(a) of the Federal Rules of Civil Procedure.

Changes in phraseology were made.

### § 2405. Garnishment

In any action or suit commenced by the United States against a corporation for the recovery of money upon a bill, note, or other security, the debtors of the corporation may be summoned as garnishees. Any person so summoned shall appear in open court and depose in writing to the amount of his indebtedness to the corporation at the time of the service of the summons and at the time of making the deposition, and judgment may be entered in favor of the United States for the sum admitted by the garnishee to be due the corporation as if it had been due the United States. A judgment shall not be entered against any garnishee until after judgment has been rendered against the corporation, nor until the sum in which the garnishee is indebted is actually due.

When any garnishee deposes in open court that he is not and was not at the time of the service of the summons indebted to the corporation, an issue may be tendered by the United States upon such deposition. If, upon the trial of that issue, a verdict is rendered against the garnishee, judgment shall be entered in favor of the United States, pursuant to such verdict, with costs.

Any garnishee who fails to appear at the term to which he is summoned shall be subject to attachment for contempt.

(June 25, 1948, ch. 646, 62 Stat. 971.)

#### HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§748, 749, and 750 (R.S. §§935, 936, 937).

Changes were made in phraseology.

### § 2406. Credits in actions by United States; prior disallowance

In an action by the United States against an individual, evidence supporting the defendant's