

cised, with respect to commissioned officer corps of National Oceanic and Atmospheric Administration, by Secretary of Commerce or his designee, see section 3071 of Title 33, Navigation and Navigable Waters.

**§ 2732. Payment of claims: availability of appropriations**

Appropriations available to the Department of Defense for operation and maintenance may be used for payment of claims authorized by law to be paid by the Department of Defense (except for civil functions), including—

(1) claims for damages arising under training contracts with carriers; and

(2) repayment of amounts determined by the Secretary concerned to have been erroneously collected—

(A) from military and civilian personnel of the Department of Defense; or

(B) from States or territories or the District of Columbia (or members of the National Guard units thereof).

(Added Pub. L. 101-510, div. A, title XIV, §1481(j)(1), Nov. 5, 1990, 104 Stat. 1708.)

**Editorial Notes**

**PRIOR PROVISIONS**

Provisions similar to those in this section were contained in Pub. L. 100-463, title VIII, §8098, Oct. 1, 1988, 102 Stat. 2270-35, which was set out as a note under section 2241 of this title, prior to repeal by Pub. L. 101-510, §1481(j)(3).

A prior section 2732, acts Aug. 10, 1956, ch. 1041, 70A Stat. 152; Sept. 2, 1958, Pub. L. 85-861, §§1(53), 33(a)(16), 72 Stat. 1461, 1565; Sept. 15, 1965, Pub. L. 89-185, §1, 79 Stat. 789, related to settlement of property loss incident to service, prior to repeal by Pub. L. 88-558, §5(3), Aug. 31, 1964, 78 Stat. 768, effective two years from Aug. 31, 1964. See section 3701 et seq. of Title 31, Money and Finance.

**§ 2733. Property loss; personal injury or death: incident to noncombat activities of Department of Army, Navy, or Air Force**

(a) Under such regulations as the Secretary concerned may prescribe, he, or, subject to appeal to him, the Judge Advocate General of an armed force under his jurisdiction, or the chief Counsel of the Coast Guard, as appropriate, if designated by him, may settle, and pay in an amount not more than \$100,000, a claim against the United States for—

(1) damage to or loss of real property, including damage or loss incident to use and occupancy;

(2) damage to or loss of personal property, including property bailed to the United States and including registered or insured mail damaged, lost, or destroyed by a criminal act while in the possession of the Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard, as the case may be; or

(3) personal injury or death;

either caused by a civilian officer or employee of that department, or the Coast Guard, or a member of the Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard, as the case may be, acting within the scope of his employment, or otherwise incident to noncombat activities of that department, or the Coast Guard.

(b) A claim may be allowed under subsection (a) only if—

(1) it is presented in writing within two years after it accrues, except that if the claim accrues in time of war or armed conflict or if such a war or armed conflict intervenes within two years after it accrues, and if good cause is shown, the claim may be presented not later than two years after the war or armed conflict is terminated;

(2) it is not covered by section 2734 of this title or section 2672 of title 28;

(3) it is not for personal injury or death of such a member or civilian officer or employee whose injury or death is incident to his service;

(4) the damage to, or loss of, property, or the personal injury or death, was not caused wholly or partly by a negligent or wrongful act of the claimant, his agent, or his employee; or, if so caused, allowed only to the extent that the law of the place where the act or omission complained of occurred would permit recovery from a private individual under like circumstances; and

(5) it is substantiated as prescribed in regulations of the Secretary concerned.

For the purposes of clause (1), the dates of the beginning and ending of an armed conflict are the dates established by concurrent resolution of Congress or by a determination of the President.

(c) Payment may not be made under this section for reimbursement for medical, hospital, or burial services furnished at the expense of the United States.

(d) If the Secretary concerned considers that a claim in excess of \$100,000 is meritorious, and the claim otherwise is payable under this section, the Secretary may pay the claimant \$100,000 and report any meritorious amount in excess of \$100,000 to the Secretary of the Treasury for payment under section 1304 of title 31.

(e) Except as provided in subsection (d), no claim may be paid under this section unless the amount tendered is accepted by the claimant in full satisfaction.

(f) For the purposes of this section, a member of the National Oceanic and Atmospheric Administration or of the Public Health Service who is serving with the Navy or Marine Corps shall be treated as if he were a member of that armed force.

(g) Under regulations prescribed by the Secretary concerned, an officer or employee under the jurisdiction of the Secretary may settle a claim that otherwise would be payable under this section in an amount not to exceed \$25,000. A decision of the officer or employee who makes a final settlement decision under this section may be appealed by the claimant to the Secretary concerned or an officer or employee designated by the Secretary for that purpose.

(h) Under such regulations as the Secretary of Defense may prescribe, he or his designee has the same authority as the Secretary of a military department under this section with respect to the settlement of claims based on damage, loss, personal injury, or death caused by a civilian officer or employee of the Department of Defense acting within the scope of his employment

or otherwise incident to noncombat activities of that department.

(Aug. 10, 1956, ch. 1041, 70A Stat. 153; Pub. L. 85-729, §1, Aug. 23, 1958, 72 Stat. 813; Pub. L. 85-861, §1(54), Sept. 2, 1958, 72 Stat. 1461; Pub. L. 89-718, §8(a), Nov. 2, 1966, 80 Stat. 1117; Pub. L. 90-522, Sept. 26, 1968, 82 Stat. 875; Pub. L. 90-525, §§1, 3-5, Sept. 26, 1968, 82 Stat. 877, 878; Pub. L. 91-312, §2, July 8, 1970, 84 Stat. 412; Pub. L. 93-336, §1, July 8, 1974, 88 Stat. 291; Pub. L. 96-513, title V, §511(94), Dec. 12, 1980, 94 Stat. 2928; Pub. L. 98-564, §1, Oct. 30, 1984, 98 Stat. 2918; Pub. L. 104-316, title II, §202(e), Oct. 19, 1996, 110 Stat. 3842; Pub. L. 116-283, div. A, title IX, §924(b)(2)(A)(ix), Jan. 1, 2021, 134 Stat. 3821.)

HISTORICAL AND REVISION NOTES  
1956 ACT

Table with 3 columns: Revised section, Source (U.S. Code), Source (Statutes at Large). Rows include 2733(a) through 2733(f) with detailed legislative history.

In subsection (a), the words "a civilian officer or employee of that department, or a member of the Army, Navy, Air Force, or Marine Corps, as the case may be" are substituted for the words "military personnel or civilian employees of the Department of the Army or of the Army". The words "whether under a lease, express or implied" are omitted as surplusage. The words "consider, ascertain, adjust, determine" are omitted as covered by the word "settle", as defined in section 2731 of this title. The words "arising on or after May 27, 1941" are omitted as executed, since, under revised subsection (b), a claim must be filed within one year after it accrues, or within one year after the war is terminated, if it accrues in time of war.

In subsection (a)(1), the words "or loss" are inserted before the word "incident", for clarity.

In subsection (b)(1), the words "it accrues" are substituted for the words "the accident or incident out of which such claim arises shall have occurred", in 31:223b. The words "the claim accrues" are substituted for the words "That if such accident or incident occurs". The words "not later than" are substituted for the words "within" to make it clear that a claim may be presented during a war. The words "the war is terminated" are substituted for the words "after peace is established", since the other time covered is "time of war". 31:223b (last 49 words of proviso of 2d sentence) is omitted as executed.

In subsection (b)(2), the words "or section 2672 of title 28" are substituted for the words "claims cognizable under part 2 of this title", to reflect the express amendment of 31:223b and 223c by the fourth clause of section 424(a) of the Federal Tort Claims Act, 60 Stat. 847. Section 424(a) of the Federal Tort Claims Act referred to "claims cognizable under part 2 of this title". Part 2 of that act consisted of sections 403 and 404 which were re-

pealed by section 39 of the Act of June 25, 1948, ch. 646, 62 Stat. 1008, and replaced by sections 2672 and 2673 of title 28. The words "or possessions thereof" are omitted, since possessions of foreign countries are not specifically covered by the section to which the words refer.

In subsection (d), the words "claim \* \* \* that would otherwise be covered by this section" are substituted for the words "such claims".

In subsection (e), the words "and final settlement" are omitted as surplusage.

1958 ACT

Table with 3 columns: Revised section, Source (U.S. Code), Source (Statutes at Large). Row includes 2733 ..... 31:223b. Mar. 29, 1956, ch. 103, §§1-3, 70 Stat. 60, 61.

Editorial Notes

AMENDMENTS

2021—Subsec. (a). Pub. L. 116-283 substituted "Marine Corps, Space Force," for "Marine Corps," in par. (2) and in concluding provisions.

1996—Subsec. (d). Pub. L. 104-316 substituted "Secretary of the Treasury" for "Comptroller General".

1984—Subsec. (a). Pub. L. 98-564, §1(1), substituted "Chief Counsel" for "chief legal officer" and "\$100,000" for "\$25,000" in provisions preceding par. (1).

Subsec. (d). Pub. L. 98-564, §1(2), amended subsec. (d) generally, substituting "\$100,000" for "\$25,000" and provisions requiring Secretary to report excess to the Comptroller General for provisions requiring reporting to Congress.

Subsec. (g). Pub. L. 98-564, §1(3), substituted provisions permitting officers and employees of Secretary concerned to settle claims not otherwise payable under this section in amounts not to exceed \$25,000 and providing for an appeal to Secretary concerned or his designee for provisions which provided for delegation of claims settlement authority by Secretary for cases not to exceed \$5,000 and for appeal therefrom.

1980—Subsec. (f). Pub. L. 96-513 substituted "National Oceanic and Atmospheric Administration" for "Environmental Science Services Administration".

1974—Subsec. (a). Pub. L. 93-336, §1(1), substituted "\$25,000" for "\$15,000".

Subsec. (d). Pub. L. 93-336, §1(2), substituted "\$25,000" for "\$15,000" wherever appearing.

Subsec. (g). Pub. L. 93-336, §1(3), substituted "\$5,000" for "\$2,500".

1970—Subsec. (a). Pub. L. 91-312, §2(a), substituted "\$15,000" for "\$5,000".

Subsec. (d). Pub. L. 91-312, §2(b), substituted "\$15,000" for "\$5,000" wherever appearing.

1968—Subsec. (a). Pub. L. 90-525, §1, substituted "Secretary concerned" for "Secretary of a military department", and authorized the Chief Legal Officer of the Coast Guard to settle claims, settlement of claims for damage or loss to personal property in possession of the Coast Guard, and settlements when the torts are caused by civilian officers or employees and members of the Coast Guard when acting within scope of employment or otherwise incident to noncombat activities of the Coast Guard.

Subsec. (b)(4). Pub. L. 90-522, §1(1), authorized application of local law in determining effect of claimant's contributory negligence.

Subsec. (d). Pub. L. 90-525, §5, struck out "of the military department" after "Secretary".

Subsec. (g). Pub. L. 90-525, §3, increased limitation on amount of settlement from \$1,000 to \$2,500, struck out "military" before "department concerned", and provided for appeals to Secretary concerned, or his designee, from determinations delegating authority to settle claims to an officer of an armed force. See Pub. L. 90-522, §1(2), hereunder, for identical provision for appeals to Secretary concerned.

Pub. L. 90-522, §1(2), provided for appeals to Secretary concerned, or his designee, from determinations delegating authority to settle claims to an officer of an armed force.

Subsec. (h). Pub. L. 90-525, §4, added subsec. (h).

1966—Subsec. (f). Pub. L. 89-718 substituted “Environmental Science Services Administration” for “Coast and Geodetic Survey”.

1958—Subsec. (a). Pub. L. 85-729, §1(1)(A), substituted “the Judge Advocate General of an armed force under his jurisdiction, if designated by him, may settle, and pay in an amount not more than \$5,000” for “any officer designated by him may settle, and pay in an amount not more than \$1,000”.

Subsec. (b). Pub. L. 85-861, §1(54)(A), (B), in cl. (1), substituted “two years” for “one year” in three places and included claims accruing in time of armed conflict, and inserted sentence providing for the determination of dates of the beginning and ending of an armed conflict.

Subsec. (c). Pub. L. 85-861, §1(54)(C), substituted provisions prohibiting payment for reimbursement for medical, hospital, or burial services furnished at the expense of the United States for provisions which prohibited allowance of claims for personal injury or death for more than the cost of reasonable medical, hospital, and burial expenses actually incurred, and not otherwise furnished or paid by the United States.

Subsec. (d). Pub. L. 85-729, §1(1)(B), substituted provisions authorizing partial payments on claims over \$5,000 for provisions which authorized the Secretary of the military department concerned to report a claim for more than \$1,000 to Congress for its consideration.

Subsec. (e). Pub. L. 85-729, §1(1)(B), substituted “Except as provided in subsection (d), no claim may be paid under this section” for “No claim may be paid under subsection (a)”.

Subsec. (g). Pub. L. 85-729, §1(1)(C), added subsec. (g).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a Amendment note under section 101 of this title.

##### REPEALS

The directory language of, but not the amendment made by, Pub. L. 89-718, §8(a), Nov. 2, 1966, 80 Stat. 1117, cited as a credit to this section, was repealed by Pub. L. 97-295, §6(b), Oct. 12, 1982, 96 Stat. 1314.

##### TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

##### CLAIMS FOR INJURY OR DEATH ACCRUED BEFORE MARCH 30, 1956

Pub. L. 85-861, §17, Sept. 2, 1958, 72 Stat. 1558, disallowed claims for personal injury or death under section 2733 of this title, for more than the cost of reasonable medical, hospital, and burial expenses actually incurred if the claim accrued before March 30, 1956.

#### Executive Documents

##### TRANSFER OF FUNCTIONS

For transfer of functions of Public Health Service, see note set out under section 802 of this title.

#### § 2733a. Medical malpractice claims by members of the uniformed services

(a) IN GENERAL.—Consistent with this section and under such regulations as the Secretary of Defense shall prescribe under subsection (f), the Secretary may allow, settle, and pay a claim against the United States for personal injury or death incident to the service of a member of the uniformed services that was caused by the medical malpractice of a Department of Defense health care provider.

(b) REQUIREMENT FOR CLAIMS.—A claim may be allowed, settled, and paid under subsection (a) only if—

(1) the claim is filed by the member of the uniformed services who is the subject of the medical malpractice claimed, or by an authorized representative on behalf of such member who is deceased or otherwise unable to file the claim due to incapacitation;

(2) the claim is for personal injury or death caused by the negligent or wrongful act or omission of a Department of Defense health care provider in the performance of medical, dental, or related health care functions while such provider was acting within the scope of employment;

(3) the act or omission constituting medical malpractice occurred in a covered military medical treatment facility;

(4) the claim is presented to the Department in writing within two years after the claim accrues;

(5) the claim is not allowed to be settled and paid under any other provision of law; and

(6) the claim is substantiated as prescribed in regulations prescribed by the Secretary of Defense under subsection (f).

(c) LIABILITY.—(1) The Department of Defense is liable for only the portion of compensable injury, loss, or damages attributable to the medical malpractice of a Department of Defense health care provider.

(2) The Department of Defense shall not be liable for the attorney fees of a claimant under this section.

(d) PAYMENT OF CLAIMS.—(1) If the Secretary of Defense determines, pursuant to regulations prescribed by the Secretary under subsection (f), that a claim under this section in excess of \$100,000 is meritorious, and the claim is otherwise payable under this section, the Secretary may pay the claimant \$100,000 and report any meritorious amount in excess of \$100,000 to the Secretary of the Treasury for payment under section 1304 of title 31.

(2) Except as provided in paragraph (1), no claim may be paid under this section unless the amount tendered is accepted by the claimant in full satisfaction.

(e) REPORTING MEDICAL MALPRACTICE.—Not later than 30 days after a determination of medical malpractice or the payment of all or part of a claim under this section, the Secretary of Defense shall submit to the Director of the Defense Health Agency a report documenting such determination or payment to be used by the Director for all necessary and appropriate purposes, including medical quality assurance.

(f) REGULATIONS.—(1) The Secretary of Defense shall prescribe regulations to implement this section.