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89TH CONGRESS 2d Session } SENATE { REPORT No. 1327

INCREASED AGENCY CONSIDERATION OF TORT CLAIMS AGAINST THE GOVERNMENT

JUNE 24, 1966.—Ordered to be printed

Mr. ERVIN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 13650]

The Committee on the Judiciary, to which was referred the bill (H.R. 13650) to amend the Federal Tort Claims Act to authorize increased agency consideration of tort claims against the Government, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the bill is to provide authority to the heads of Federal agencies for administrative settlement of tort claims against the United States. Settlements for more than $25,000 must have the prior written approval of the Attorney General or his designee. A claim would have to be filed with the agency concerned within 2 years after it accrues and any tort action must be brought within 6 months after final denial of the administrative claim. The bill would increase the limits for attorneys' fees in cases of administrative settlement from 10 to 20 percent and from 20 to 25 percent of amounts paid after suit is begun.

STATEMENT

A similar Senate bill, S. 3162, was introduced by Senator Sam J. Ervin, Jr.

In its favorable report on the bill the Committee on the Judiciary of the House of Representatives said:

> The bill, H.R. 13650, is one of a group of three bills introduced in accordance with the recommendations of an executive communication transmitted to the Congress by the Department of Justice. The committee has considered these bills along with the bill H.R. 14182, providing for the award of costs in litigation involving the Government. These four bills have the common purpose of providing for more fair and equitable treatment of private individuals and claimants when they deal with the Government or are involved in litigation with their Government.
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> This bill, H.R. 13650, with the two bills, H.R. 13651 and H.R. 13652, also introduced as recommended by the Department of Justice, are intended to improve the disposition of monetary claims by and against the Government. These are the matters which now comprise the bulk of civil litigation involving the Government. The proposals embodied in H.R. 13650 are intended to ease court congestion and avoid unnecessary litigation, while making it possible for the Government to expedite the fair settlement of tort claims asserted against the United States. In accomplishing these purposes, the more expeditious procedures provided by this bill will have the effect of reducing the number of pending claims which may become stale and long delayed because of the extended time required for their consideration. The committee observes that the improvements contemplated by the bill would not only benefit private litigants, but would also be beneficial to the courts, the agencies, and the Department of Justice itself.
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> The Federal Tort Claims Act passed on 1946 made it possible for a person injured through the negligence or wrongful act of a Government employee to file suit against the United States for damages resulting from the injury when the employee was acting within the scope of his employment. The codified provisions of that act now contained in title 28 of the United States Code provide for administrative settlement only in cases where the claim is for $2,500 or less. For claims over that amount, the individual has no alternative but to file suit. At a hearing conducted with reference to this bill on April 6, 1966, the Department of Justice presented testimony which included statistics which underscore the need for procedures which will permit early settlement of tort cases. At the hearing, it was noted that thousands of suits have been filed under this act and each year the Government pays out millions of dollars to persons who have brought suit against the United States. At that hearing, it was pointed out that a large number of cases are settled prior to trial. In the fiscal year 1965, the Department of Justice settled 731 tort cases after suit had been instituted. The claims in these cases total $24 million, while the cases were settled for a total of $6 million. Where the cases resulted in judgment against the Government, the record for the same year showed that

there were 169 judgments which totaled approximately $4 million. The original claims as to these 169 cases totaled almost $24 million. Therefore, it is established that of meritorious claims filed against the Government under the tort claims provisions of title 28, about 80 percent are settled prior to actual trial.

The committee has been supplied with information which indicates that the same trend is evidenced in connection with private tort litigation. A recent study indicated that each year in New York City an average of 193,000 claimants seek compensation for bodily injuries. Of this number 39,000 settle or abandon their claims without consulting counsel, 77,000 settle or abandon their claims after consulting counsel but without instituting suit. The remaining 77,000 sue. Of this latter class of cases, 7,000 reach trial, of which 2,500 go all the way to verdict. The study thus indicates that in private practice where prelitigation settlements are allowed, only 40 percent of claimants for personal injuries file suit and of these cases, less than 10 percent reach trial and only 3 percent go to verdict.

The Department of Justice, in recommending this bill referred to its experience under the Federal Tort Claims Act which established that of all cases filed under the act, 80 percent are settled prior to trial. Tort claims against the Government for the most part arise in connection with the activities of a few agencies. These agencies include the Post Office Department, the Defense Department, the Veterans' Administration, the Department of the Interior, and the Federal Aviation Agency. These agencies therefore have a large degree of experience in settling such claims. The Justice Department recommended the procedure embodied in H.R. 13650 requiring all claims to be presented to the appropriate agency for consideration and possible settlement before a court action could be instituted. This procedure would make it possible for the claim first to be considered by the agency whose employee's activity allegedly caused the damage. That agency would have the best information concerning the activity which gave rise to the claim. Since it is the one directly concerned, it can be expected that claims which are found to be meritorious can be settled more quickly without the need for filing suit and possible expensive and time-consuming litigation. The committee observes in this connection that under the present provisions of law, even if the agency finds that it is clearly liable and desires to settle the claim quickly in the interest of justice and fairness, it cannot do so if the claim is for more than $2,500. Rather, a suit must be filed and a settlement negotiated after the action is begun in a U.S. district court.

The requirement of an administrative claims as a prerequisite to suit has numerous precedents in statutes governing tort claims against municipalities. These laws often provide that a municipality must be given notice of an accident within a fixed time. The purpose of this notice has been summarized as being—

"* * * to protect the municipality from the expense of needless litigation, give it an opportunity for investigation, and allow it to adjust differences and settle claims without suit (McQuillin, Municipal Corporations (3d ed.), section 53.153)."

In this connection, it is relevant to note that section 1–923 of the District of Columbia Code includes the following language concerning suits for damages caused by employees driving vehicles—

"* * * No suit shall be instituted * * * unless the claimant shall have first given notice to the District and shall have presented to the District in writing a claim for money damages in connection therewith, and the District has had 6 months from the date of such filing within which to make final disposition of such claim * * *."

Another example of a precedent in State practice is to be found in the laws of the State of Iowa (Laws of the 61st General Assembly, ch. 79 (Mar. 26, 1965)) which provide requirements very similar to those provided in H.R. 13650. This statute provides for tort claims against the State of Iowa and requires that a claim must first be presented to a State appeal board and further includes language providing that no suit is permitted unless the appeal board has made final disposition of the claim.

This committee in recommending this legislation further points out that it grants the agencies of Government sufficient authority to make the administrative settlements a meaningful thing. The bill would provide the agencies with the authority to make settlement offers which could result in settlement in a large percentage of tort claims cases where under today's conditions the present $2,500 limit means that administrative settlements are limited to property damage claims and relatively minor personal injury claims. There is good reason to believe that even in many of these cases a claimant may decide to file suit because of the present limits upon administrative settlement. This is because as soon as the case is filed, the Government can negotiate a settlement without regard to that limitation. It does not appear that this procedure is conducive to efficient claims administration. The filing of the suit and the consequent expense to the Government in preparing the case would appear to be unnecessarily involved when the case is a proper one for early settlement.

Another objective of this bill is to reduce unnecessary congestion in the courts. Each year between 1,500 and 2,000 new tort cases are filed in the court against the Government. The information available to this committee indicates that there is little likelihood that there will be any real decrease in the numbers of this type of claim.

Accordingly, in the light of these considerations the committee has recommended these amendments to the Tort Claims Act to authorize the head of each Federal agency to settle or compromise any tort claim presented to him which arises out of the negligent or wrongful act of an employee of that agency who was acting within the scope of his employ-

ment at the time of the act. This authority of the agency head will be exclusive for settlement up to $25,000. Above that amount, the settlement must have the prior written approval of the Attorney General or his designee as well as of the agency head.

The procedure provided in the bill would require a claimant to file his claim with the agency within 2 years after the claim accrues. The agency will then have 6 months to consider the claim prior to granting or denying it. Final denial in this connection includes instances where partial approval of a claim results in an offer unacceptable to the claimant and rejected by him. Thus the end result would be a denial of the claim. However if the agency fails to act in 6 months, the claimant may at his option elect to regard this inaction as a final denial and proceed to file suit. It is obvious that there will be some difficult tort claims that cannot be processed and evaluated in this 6-month period. The great bulk of them, however, should be ready for decision within this period. In some cases where the agency does not reach a decision in 6 months, the claimant may feel that the agency is sincerely seeking to reach a fair decision. Under such circumstances, the claimant might wish not to break off negotiations and file suit. Therefore even though this 6-month period may prove insufficient in some instances, the committee does not believe that this period ought to be enlarged to attempt to insure time for final decision on all claims. This is the same position stated by the Department of Justice at the hearing.

The bill will not assign novel tasks to the agencies. They now investigate all accidents involving their employees, prepare litigation reports on all tort cases, suggest Government defenses to claims, and, at the request of the Department of Justice, comment on all settlement offers presented to the Department. The views of the affected agency have always been taken into account by the Department in accepting or rejecting an offer of settlement.

As has been noted, tort claims against the Government have arisen primarily in a few agencies that have extensive dealings with the public or whose operations require the use of a large number of motor vehicles. For example, as of the end of October 1965, 81 percent of the tort suits then pending against the Government arose out of the activities of only five agencies—Defense, Post Office, Federal Aviation Agency, Interior, and the Veterans' Administration. This concentration of tort claims has led to the development in the agencies of substantial expertise in the problems involved in tort litigation. The Post Office, probably because of its use of more than 80,000 vehicles, has had to pass upon a very large number of tort claims. In 1965, the Post Office processed over 5,000 claims in the dollar range of $100 to $2,500 and allowed 3,800 of them. Postal officials in the field allowed another estimated 5,200 claims for less than $100. In addition, the Post Office employees assisted the Justice Department in connection with the handling of about 900 cases in Federal courts, cases which involved claims against the Government of over $36 million and which involved alleged

torts of postal employees. The point is that the Post Office and other agencies are now actually performing investigating and evaluating work on a large volume of tort claims against the Government.

The procedure set forth in this bill will not become effective until 6 months after the enactment date. In this period of time the agencies can develop procedures and instruct personnel for these new responsibilities. The Civil Division of the Department of Justice will be available for advice and assistance to any agency desiring it and will furnish suggestions as to how the claims procedures should be handled. The committee notes that the Civil Division will undoubtedly continue to provide similar assistance and legal counsel when required concerning tort claims and the legal questions involved.

The authority to settle claims for up to $25,000 and, above that amount, with the prior written approval of the Attorney General, seems sensible. If a satisfactory arrangement cannot be reached in the matter, the claimant can simply do as he does today—file suit.

Agency settlement of substantial numbers of tort claims would enable the Civil Division to give greater attention to those cases which involve difficult legal and damage questions in such areas as medical malpractice, drug and other products liability, and aviation accidents. These areas of litigation are expanding at a steady pace.

The part of attorneys, both Government and private, will be important in effecting settlements as provided in this bill. These tort claims will, as in the past, in many of the cases continue to require an attorney acting on behalf of the claimant. To assure competent representation and reasonable compensation in these matters, the proposed bill authorized increases in the attorneys' fees allowable under successful prosecution of these claims: 20 percent of the agency award and 25 percent of a court award or settlement after the filing of a complaint in court.

The bill increases the allowable fee in agency proceedings from the present 10 to 20 percent. The committee feels this increase will encourage attorneys to take these claims. In recommending this increase the committee points out that increased work will be required in many of the larger claims. Also, this amendment will bring the fees more nearly in line with those prevailing in private practice. Similarly, allowable fees for claims involving litigation have been raised from 20 to 25 percent.

CONCLUSION

In the light of the considerations referred to in the executive communication and outlined in this report, the committee recommends that the bill, as amended, be considered favorably.

ANALYSIS OF SECTIONS OF THE BILL

Section 1

This section amends section 2672 of title 28 of the United States Code, which concerns administrative settlements of tort claims against the United States.

Subsection (a) amends the first paragraph of section 2672 so as to authorize the head of each Federal agency or its designee to settle a tort claim for $25,000 or less in accordance with regulations prescribed by the Attorney General. Any claim in excess of that amount could be settled under the authority of the section only after written approval has been given by the Attorney General or his designee to the settlement.

Subsection (b) amends the second paragraph of section 2672 by inserting the words "compromise" and "settlement" to the present language of the paragraph so as to refer to the administrative settlement authority added by subsection(a).

Subsection (c) amends the third paragraph of section 2672 to refer to the settlement authority added to the section by subsection (a) as well as the compromise authority presently provided for the compromise and settlement of court actions in section 2677. In short, the new language permits the payment of final settlements effected under the authority added by the bill, and authorizes the use of appropriations or funds made available for such purposes. A committee amendment adds a sentence to make it clear that the heads of agencies retain the authority to pay settlements for $2,500 or less out of appropriations available to that agency.

Section 2

Subsection (a) amends section 2675 of title 28 which concerns disposition of an administrative claim prior to the commencement of a court action. The new language would require that an administrative claim be filed with the agency or department in each instance prior to filing a court action against the United States. After rejection of the claim, the claimant would be free to institute an action against the United States in a district court. After the claim has been presented to the agency and 6 months passes without final disposition of the claim, the claimant is expressly given the option to consider the claim as denied and to file suit. A sentence is added to this subsection by committee amendment to make it clear that the provisions of the subsection concerning the filing of a prior administrative claim do not apply to claims asserted in actions under the Federal Rules of Civil Procedure by third party complaint, cross-claim, or counterclaim.

Subsection (b) amends subsection (b) of section 2675 by deleting the first sentence of the subsection. This sentence is in effect replaced by the provision of subsection (a) of section 2675, as amended, which states that after 6 months without final action, the individual at his own option can deem the claim to be finally denied and be free to commence suit.

Section 3

This section removes the requirement that settlements of tort suits must be made with the "approval of the court". The committee recognizes that as a practical matter, the decision to settle a case must be made by the Justice Department and the language change recognizes this fact.

Section 4

Section 4, as amended, raises the limitations concerning attorneys fees in the first paragraph of section 2678 from 10 to 20 percent for administrative settlements, and from 20 to 25 percent for fees in cases after suit is filed. The language of the committee amendment merely places a limit on fees and removes from the section the requirement of agency or court allowance of the amount of attorneys fees. The actual amount of attorneys fees within the statutory limits, therefore, is made a matter for determination between the litigant and his attorney.

Section 5

Subsection (a) amends the Government drivers subsection, subsection (b) of section 2679 of title 28, to make it conform with the amendments proposed in the bill. The words "by suit" are deleted from the first sentence of the subsection and the subsection is further amended by including a reference to section 2672. The subsection is further improved by restating the description of damage or injury which is presently stated as "damage to property or for personal injury, including death" to read "injury or loss of property or personal injury or death".

Subsection (b) of section 5 of the bill was added at the request of the Veterans' Administration and incorporates the same type of amendments in section 4116 of title 38 of the United States Code as were added by the bill to subsection (b) of section 2679 concerning Government drivers.

Section 4116 of title 38 concerns actions against the Government based upon injuries allegedly caused by Veterans' Administration doctors and other medical personnel. The amendment simply deletes the words "by suit" and inserts a reference to section 2672 of title 28.

Section 7

This section amends the provisions of section 2401, the limitations section, to conform the section to the amendments added by the bill. The amendments have the effect of simplifying the language of section 2401 to require that a claimant must file a claim in writing to the appropriate Federal agency within 2 years after the claim accrues, and to further require the filing of a court action within 6 months of notice by certified or registered mail of a final decision of the claim by the agency to which it was presented.

Section 8

The first sentence of section 2671, the definitions section, of chapter 171 of title 28, is amended to include "military

departments" so as to include them in the definition of "Federal agencies".

Section 9

Subsection (a) amends the section heading of section 2672 to read "§ 2672. Administrative Adjustment of Claims". This change merely eliminates the previous restriction concerning administrative claims in the title which was $2,500 or less.

Subsection (b) amends the analysis of chapter 171 of title 28, the tort claims procedure chapter, to include the amended section heading just referred to.

Section 10

The provision of the bill on enactment shall apply to claims accruing 6 months or more after the date of enactment.

The bill as transmitted to the Congress by the Department of Justice was amended in several respects by the Committee on the Judiciary of the House of Representatives. The committee discussed its amendments as follows:

> The committee amendment to line 5 of the bill adds language providing that agency heads are to exercise the settlement authority provided by the bill in accordance with regulations prescribed by the Attorney General. This was added because of a concern expressed by subcommittee members at the hearing that there should be some provision for uniform procedures in the exercise of the settlement authority. Further, it was felt that the agencies should have recourse to qualified attorneys and adequate legal advice in resolving legal questions involved in tort claims matters. It was concluded that these and other matters could best be provided for by regulations issued by the Attorney General.
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> In line 5 of page 2 the limit for agency settlement without prior written approval of the Attorney General was reduced from $50,000 to $25,000.
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> On line 17 of page 2, a sentence was added to the third paragraph of section 2672 to make it clear that the agency involved can pay awards of $2,500 or less in settlements under the section out of appropriations available to the agency. Similar language is now in the section and as introduced the bill contemplated a continuance of present practices concerning payment out of agency appropriations. The bill provided for payment of settlements over $2,500, and the committee amendment merely clarifies the authorization for payments of $2,500 or less. A related amendment makes it clear that compromises by the Attorney General under section 2677, concerning compromises after commencement of a court action, are to be paid "in any amount" as originally provided in the bill in a manner similar "to judgments and compromises in like causes."
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> In line 15 of page 3 a sentence was added by committee amendment to make it clear that the requirement of a prior administrative claim will not apply to the assertion of claims

under the Federal Rules of Civil Procedure in court actions by third party complaint, crossclaim, or counterclaim.

The language of the bill on line 3 through 17 of page 4 amending the first paragraph of section 2678 was stricken by committee amendment and substitute language recommended. The language recommended by the committee would increase the limits on attorneys' fees as provided in the bill, but would eliminate the requirement that the agency or court determine the amount of the fee within the statutory limitation.

The final amendment was added at the request of the Veterans' Administration and is intended to make the same amendments to subsection 4116(a) of title 38 as were originally provided in the bill for subsection 2679(b) of title 28. These two subsections contain similar language even though they are found in different titles of the code. Subsection 4116(a) of title 38 concerns tort claims based on alleged negligence of Veterans' Administration medical personnel, and subsection 2679(b) concerns tort claims based upon alleged negligence of Government drivers. In each instance the tort claims provisions of title 28 provide the exclusive remedy. The committee agrees that the bill should provide for the same amendments to each subsection.

The committee has been informed by the Department of Justice that it has no objection to the amendments made to the bill by the House of Representatives.

The committee believes that the bill is meritorious and recommends it favorably.

Attached and made a part of this report are (1) a letter, dated March 10, 1966, to the Vice President from the Department of Justice, and (2) a letter, dated April 29, 1966, from the Veterans' Administration.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., March 10, 1966.

THE VICE PRESIDENT,
U.S. Senate,
Washington, D.C.

DEAR MR. VICE PRESIDENT: Enclosed for your consideration and appropriate reference are three legislative proposals: (1) to amend the Federal Tort Claims Act to authorize increased agency consideration of tort claims against the Government, and for other purposes; (2) to establish a statute of limitations for certain actions brought by the Government; and (3) to avoid unnecessary litigation by providing for the collection of claims of the United States, and for other purposes.

These proposals are designed to improve the disposition of monetary claims by and against the Government—claims which now comprise the bulk of civil litigation involving the Government. The proposals should ease court congestion, avoid unnecessary litigation, speed up settlements, and reduce the number of stale claims. Such results would, of course, not only benefit private litigants but be beneficial to the courts, the agencies, and the Department of Justice.

I. AMENDMENT TO TORT CLAIMS ACT

The first of these proposals would amend the Federal Tort Claims Act. That Act, with limited exceptions, makes the United States liable for the negligence, wrongful act, or omission, of a Government employee while he is acting within the scope of his office or employment, under circumstances in which a private person would be liable under the law of the place where the act or omission occurred. A person who has a substantial claim arising under the Act must bring an action in a Federal district court (28 U.S.C. 1346(b)). He can seek administrative settlement of his claim only if the claim is for less than $2,500 (28 U.S.C. 2672).

Our experience under the Federal Tort Claims Act has demonstrated that of all awards allowed in cases filed under the act, 80 percent are made prior to trial. Since tort claims against the Government tend to arise in a few agencies, these agencies have considerable experience in settling such claims. We therefore propose that a procedure be instituted under which all claims would be presented to the appropriate agencies for consideration and possible settlement before court action could be instituted. A claim would first be considered by the agency whose employee's activity allegedly caused the damage and which possesses the greatest information concerning that activity. As a result, it is expected that meritorious claims would be settled more quickly, without the need for expensive and time-consuming litigation or even for filing suit.

In order to provide the agencies with sufficient authority to settle a broad range of claims, the proposal would give them authority to consider and settle any claim under the Tort Claims Act, irrespective of amount. Settlement and awards in excess of $50,000 would require the prior approval of the Attorney General.

Finally, in order to encourage claimants and their attorneys to make use of this new administrative procedure, the attorney's fees allowable under the Act would be raised from the present 10 percent of the administrative award and 20 percent of the settlement of judgment after filing suit to 20 percent and 25 percent, respectively.

II. STATUTES OF LIMITATIONS AGAINST CERTAIN GOVERNMENT ACTIONS

The second proposal would establish statutes of limitations for certain types of actions brought by the Government. The general rule is that there is no limitation of time against the Government for bringing an action unless it is specifically authorized by statute. There are a few exceptions to this rule. For example, a civil suit brought by the Government on a false claim must be filed within 6 years; suits for penalties or forfeitures under the customs laws must be brought within 5 years; 2 years is the limit within which the Federal Housing Administration must sue to recover an overpayment on a guarantee of a home improvement loan. There are, however, no time bars against the great majority of Government claims.

More time limitations appear desirable for a number of reasons. Application of statutes of limitation in tort and contract actions would make the position of the Government more nearly equal to that of private litigants. A corollary to this objective is the desirability of encouraging trials at a sufficiently early time so that necessary witnesses and documents are available and memories are still fresh.

Another reason for proposing limitations is to reduce the costs of keeping records and detecting and collecting on Government claims—costs that after a period of years may exceed any return by way of actual collections. Further consequences to be expected from this measure are the encouragement of the agencies to refer their claims promptly to the Department of Justice for collection; the avoidance of judicial hostility to old claims asserted by the Government; and the minimizing of collection problems arising with respect to debtors who have died, disappeared, or gone bankrupt.

Accordingly, it is proposed that statutes of limitations be applied to important general areas where none are now in effect. The proposal would impose a 6-year limitation on the assertion of Government claims for money arising out of an express or implied contract or a quasi-contract. This time-bar corresponds to the 6-year limitation on those who sue the Government on similar claims under the Tucker Act.

Suits in tort are to be brought within 3 years, except those based on trespass to Government lands and those brought for the recovery of damages resulting from fire on such lands, and actions for conversion of Government property for which the limitation period will be 6 years.

A six-year limitation would be imposed upon suits by the Government to recover erroneous overpayments of wages and other benefits made to military and civilian employees of the Government.

III. Expansion of Agency Authority To Settle Government Monetary Claims

The third proposal seeks to ease court congestion and improve and accelerate the disposition of Government claims.

Each year, tens of thousands of Government claims arise out of the great variety of Government activities. Many of the agencies in which these claims arise have limited and inadequate authority to take effective collection action with respect to such claims. With few exceptions, the agencies have no authority to negotiate a compromise when the amount of the indebtedness, or even the fact of the indebtedness, is in dispute or where there is a question as to the debtor's financial capacity to pay.

Because of this lack of agency authority, many claims are referred routinely to the General Accounting Office and the Department of Justice for collection when they could be disposed of more satisfactorily at the agency level. The proposed legislation should permit more effective collection efforts by the agencies.

It would impose upon Government agencies the obligation to seek to collect debts due the United States as a result of their activities, and would afford them the flexibility to compromise claims when compromise is warranted or to suspend collection action on claims when they are found to be uncollectible by virtue of there being no assets available for payment. Agencies would not, however, be authorized to compromise or terminate a collection activity on a claim which exceeds a principal amount of $20,000. Neither could they act upon claims as to which there are indications of fraud or misrepresentation, or which arise out of antitrust violations.

Efforts at collection and compromise would be considered by the agency under regulations prescribed by the agency head and in con-

formity with such standards as may be promulgated jointly by the Attorney General and the Comptroller General.

It is clear that the legislation will not increase or diminish the existing authority of the head of any agency to litigate claims, nor will it diminish existing authority to settle, compromise, or close claims.

In conclusion, the enactment of these three proposals would have most beneficial consequences. Uncollectible claims of the Government could be disposed of by agency action without resort to litigation, tort claims against the Government could be settled without the necessity for filing suit, and claims of the Government will have to be brought, and, in fact, may only be brought, while they are still relatively fresh. The removal from the courts of litigation which is essentially unnecessary, should enable the courts and the Department of Justice to devote more time to other pressing matters and should permit claims of the United States to be satisfied more expeditiously.

In order to achieve these desirable objectives, I recommend the introduction and prompt enactment of these proposals.

The Bureau of the Budget has advised that there is no objection to the enactment of this legislation from the standpoint of the administration's program.

Sincerely,

NICHOLAS DEB. KATZENBACH,
Attorney General.

VETERANS' ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR OF VETERANS' AFFAIRS,
Washington, D.C., April 29, 1966.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reference to H.R. 13650, 89th Congress, a bill to amend the Federal Tort Claims Act to authorize increased agency consideration of tort claims against the Government, and for other purposes.

The Congressional Record for April 20, 1966, reflects the fact that on that day Subcommittee No. 2 of the House Committee on the Judiciary, in executive session, approved for full committee action, H.R. 13650, with several amendments. We understand that there was included an amendment to section 4116 of title 38, United States Code.

Section 4116 of title 38, United States Code, as added by section 6 of Public Law 89–311, was patterned after the provisions of 28 U.S.C. 2679, the so-called Drivers' Liability Act. Section 4116 provides that the remedy by suit against the United States, as provided by 28 U.S.C. 1346(b), for damages for personal injury, including death, allegedly arising from malpractice or negligence of a physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel in furnishing medical care or treatment while in the exercise of his duties in and for the Department of Medicine and Surgery of the Veterans' Administration, 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 whose act or omission gave rise to such claims.

We are advised that section 4116(a) was amended to read as follows:

"(a) The remedy by suit against the United States provided by sections 1346(b) and 2672 of title 28 for damages for personal injury, including death, allegedly arising from malpractice or negligence of a physician, dentist, nurse, pharmacist, or paramedical (for example, medical and dental technicians, nursing assistants, and therapists) or other supporting personnel in furnishing medical care or treatment while in the exercise of his duties in or for the Department of Medicine and Surgery shall hereafter 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 estate) whose act or omission gave rise to such claim."

We note that the subcommittee amendment to 38 U.S.C. 4116 paralleled the amendment to 28 U.S.C. 2679 in the bill, except that the amendment to section 2679 would also delete the words "by suit". It is apparent that the purpose of the amendment to section 2679 was to make it completely clear that the remedy of agency adjustment of claims provided by 28 U.S.C. 2672 would be similarly exclusive with the remedy of the legal action authorized by 28 U.S.C. 1346(b) against the United States for damages resulting from a Government employee's negligent operation of a motor vehicle.

The subcommittee amendment to 38 U.S.C. 4116, which was patterned after the amendment to 28 U.S.C. 2679, was appropriate, thereby making agency consideration of the claims similarly exclusive under our statute consistent with the exclusiveness of remedy of 28 U.S.C. 2679. We believe, however, that the subcommittee amendment to 38 U.S.C. 4116 should be revised to also delete the words "by suit" in the first line thereof, thus completing the parallel between section 2679 and section 4116.

We are enclosing herewith the text of the amendment, revised to reflect our suggestion, and a "Ramseyer" of section 4116 of title 38, United States Code.

We are advised by the Bureau of the Budget that there is no objection from the standpoint of the administration's program to the presentation of this report to your committee.

Sincerely,

W. J. DRIVER, *Administrator.*

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

TITLE 28.—JUDICIARY AND JUDICIAL PROCEDURE

* * * * * * *

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

"(a) * * *

"(b) A tort claim against the United States shall be forever barred unless [action is begun within two years after such claim accrues or

within one year after the date of enactment of this amendatory sentence, which ever is later, or unless, if it is a claim not exceeding $2,500,] is is presented in writing to the appropriate Federal agency within two years after such claim accrues [or within one year after the date of enactment of this amendatory sentence, whichever is later. If a claim not exceeding $2,500 has been presented in writing to the appropriate Federal agency within that period of time, suit thereon shall not be barred until the expiration of a period of six months after either the date of withdrawal of such claim from the agency or the date of mailing notice by the agency of final disposition of the claim.] *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.*"

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Chapter 171.—TORT CLAIMS PROCEDURE

Sec.
2671. Definitions.
2672. Administrative adjustment of claims [of 2,500 or less].
2673. Reports to Congress.
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2676. Judgment as bar.
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2678. Attorney fees; penalty.
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2680. Exceptions.

"As used in this chapter and sections 1346(b) and 2401(b) of this title, the term 'Federal agency' includes the executive departments, *the military departments,* [and] independent establishments of the United States, and corporations primarily acting as [,] instrumentalities or agencies of the United States, but does not include any contractor with the United States.

"Employees of the government" includes officers or employees of any federal agency, members of the military or naval forces of the United States, and persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation.

"Acting within the scope of his office or employment", in the case of a member of the military or naval forces of the United States, means acting in line of duty."

§ 2672. Administrative adjustment of claims [of $2,500 or less].

"The head of each Federal agency [,] or his designee [for the purpose, acting on behalf of the United States,], *in accordance with regulations prescribed by the Attorney General,* may consider, ascertain, adjust, determine, *compromise* and settle any claim for money damages [of $2,500 or less] against the United States [accruing on and after January 1, 1945,] for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the [Government] *agency* while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred [.]: *Provided, That any award, compromise, or settlement in excess of $25,000 shall be effected only with the prior written approval of the Attorney General or his designee.*

"Subject to the provisions of this title relating to civil actions on tort claims against the United States, any such award, *compromise, settlement,* or determination shall be final and conclusive on all officers of the Government, except when procured by means of fraud.

"*Any award, compromise or settlement in an amount of $2,500 or less made pursuant to this section shall be paid by the head of the Federal agency concerned out of appropriations available to that agency. Payment of* any award, *compromise, or settlement in an amount in excess of $2,500* made pursuant to this section, and any award, compromise, *or* settlement made *pursuant to this section or made* by the Attorney General *in any amount* pursuant to section 2677 of this title[,] shall be paid [by the head of the Federal agency concerned out of appropriations available to such agency] *in a manner similar to judgments and compromises in like causes and appropriations or funds available for the payment of such judgments and compromises are hereby made available for the payment of awards, compromises, or settlements under this chapter.*

"The acceptance by the claimant of any such award, compromise, or settlement shall be final and conclusive on the claimant, and shall constitute a complete release of any claim against the United States and against the employee of the government whose act or omission gave rise to the claim, by reason of the same subject matter."

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"§ 2675. Disposition by federal agency as prerequisite; evidence.

"(a) An action shall not be instituted upon a claim against the United States [which has been presented to a federal agency,] for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his [authority] *office or employment,* unless [such federal agency has made final disposition of the claim.] *the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail. The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section. The provisions of this subsection shall not apply to such claims as may be asserted under the Federal Rules of Civil Procedure by third party complaint, crossclaim or counterclaim.*

"(b) [The claimant, however, may, upon fifteen days written notice, withdraw such claims from consideration of the federal agency and commence action thereon.] Action under this section shall not be instituted for any sum in excess of the amount of the claim presented to the federal agency, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time of presenting the claim to the federal agency, or upon allegation and proof of intervening facts, relating to the amount of the claim.

"(c) Disposition of any claim by the Attorney General or other head of a federal agency shall not be competent evidence of liability or amount of damages."

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"§ 2677. **Compromise.**

"The Attorney General *or his designee* [, with the approval of the court,] may arbitrate, compromise, or settle any claim cognizable under section 1346(b) of this title, after the commencement of an action thereon.

"§ 2678. **Attorney fees; penalty.**

[The court rendering a judgment for the plaintiff pursuant to section 1346(b) of this title, or the head of the federal agency or his designee making an award pursuant to section 2672 of this title, or the Attorney General making a disposition pursuant to section 2677 of this title, may, as a part of such judgment, award, or settlement, determine and allow reasonable attorney fees, which, if the recovery is $500 or more, shall not exceed 10 per centum of the amount recovered under section 2672 of this title, or 20 per centum of the amount recovered under section 1346(b) of this title, to be paid out of but not in addition to the amount of judgment, award, or settlement recovered to the attorneys representing the claimant.]

"*No attorney shall charge, demand, receive or collect for services rendered, fees in excess of twenty-five per cent of any judgment rendered pursuant to section 1346(b) of this title or any settlement made pursuant to section 2677 of this title, or in excess of twenty per cent of any award, compromise, or settlement made pursuant to section 2672 of this title.*

"Any attorney who charges, demands, receives, or collects for services rendered in connection with such claim any amount in excess of that allowed under this section, if recovery be had, shall be fined not more than $2,000 or imprisoned not more than one year, or both."

"§ 2679. **Exclusiveness of remedy.**

"(a) * * *

"(b) The remedy [by suit] against the United States [as] provided by sections 1346(b) *and 2672* of this title for [damage to property or for personal injury, including death] *injury or loss of property or personal injury or death*, resulting from the operation by any employee of the Government of any motor vehicle while acting within the scope of his office or employment, shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against the employee or his estate whose act or omission gave rise to the claim.

"(c) * * *

"(d) * * *

"(e) * * *

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Act of July 27, 1956, as amended (70 Stat. 694, 75 Stat. 416; (31 U.S.C. 724a))

Chapter XIII

CLAIMS FOR DAMAGES, AUDITED CLAIMS, AND JUDGMENTS

"SEC. 1301. * * *

"SEC. 1302. There are appropriated, out of any money in the Treasury not otherwise appropriated, and out of the postal revenues, respectively, such sums as may hereafter be necessary for the payment, not otherwise provided for, as certified by the Comptroller General, of final judgments, *awards*, and compromise settlements (not in excess

of $100,000, or its equivalent in foreign currencies at the time of payment, in any one case) which are payable in accordance with the terms of sections 2414 [or], 2517, *2672, or 2677*, of title 28, United States Code, together with such interest and costs as may be specified in such judgments or otherwise authorized by law: Provided, That, whenever a judgment of a district court to which the provisions of subsection 2411(b) of title 28, United States Code apply, is payable from this appropriation, interest shall be paid thereon only when such judgment becomes final after review on appeal or petition by the United States, and then only from the date of the filing of the transcript thereof in the General Accounting Office to the date of the mandate of affirmance (except that in cases reviewed by the Supreme Court interest shall not be allowed beyond the term of the Court at which the judgment was affirmed): Provided further, That whenever a judgment rendered by the Court of Claims is payable from this appropriation, interest payable thereon in accordance with subsection 2516(b) of title 28, United States Code, shall be computed from the date of the filing of the transcript thereof in the General Accounting Office.

TITLE 38, UNITED STATES CODE

"§ 4116. Defense of certain malpractice and negligence suits.

"(a) The remedy [by suit] against the United States [as] provided by sections 1346(b) *and 2672* of title 28 for damages for personal injury, including death, allegedly arising from malpractice or negligence of a physician, dentist, nurse, pharmacist, or paramedical (for example, medical and dental technicians, nursing assistants, and therapists) or other supporting personnel in furnishing medical care or treatment while in the exercise of his duties in or for the Department of Medicine and Surgery shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against such physician, dentists, nurse, pharmacist, or paramedical or other supporting personnel (or his estate) whose act or omission gave rise to such claim.

"(b) * * *

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