

Public Law 94-464
94th Congress

An Act

To provide for an exclusive remedy against the United States in suits based upon medical malpractice on the part of medical personnel of the armed forces, the Defense Department, the Central Intelligence Agency, and the National Aeronautics and Space Administration, and for other purposes.

Oct. 8, 1976

[H.R. 3954]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 55 of title 10, United States Code, is amended by adding at the end thereof a new section as follows:

Medical
malpractice
suits
against the
United States.
Protection.
10 USC 1089.

§ 1089. Defense of certain suits arising out of medical malpractice

“(a) The remedy against the United States provided by sections 1346(b) and 2672 of title 28 for damages for personal injury, including death, caused by the negligent or wrongful act or omission of any physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (including medical and dental technicians, nursing assistants, and therapists) of the armed forces, the Department of Defense, or the Central Intelligence Agency in the performance of medical, dental, or related health care functions (including clinical studies and investigations) while acting within the scope of his duties or employment therein or therefor 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 the estate of such person) whose act or omission gave rise to such action or proceeding.

“(b) The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or the estate of such person) for any such injury. Any such person against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such person or an attested true copy thereof to such person's immediate superior or to whomever was designated by the head of the agency concerned to receive such papers and such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the action or proceeding is brought, to the Attorney General and to the head of the agency concerned.

“(c) Upon a certification by the Attorney General that any person described in subsection (a) was acting in the scope of such person's duties or employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28 and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is

28 USC 1.

one in which a remedy by suit within the meaning of subsection (a) of this section is not available against the United States, the case shall be remanded to the State court.

“(d) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, and with the same effect.

“(e) For purposes of this section, the provisions of section 2680(h) of title 28 shall not apply to any cause of action arising out of a negligent or wrongful act or omission in the performance of medical, dental, or related health care functions (including clinical studies and investigations).

“(f) The head of the agency concerned or his designee may, to the extent that he or his designee deems appropriate, hold harmless or provide liability insurance for any person described in subsection (a) for damages for personal injury, including death, caused by such person's negligent or wrongful act or omission in the performance of medical, dental, or related health care functions (including clinical studies and investigations) while acting within the scope of such person's duties if such person is assigned to a foreign country or detailed for service with other than a Federal department, agency, or instrumentality or if the circumstances are such as are likely to preclude the remedies of third persons against the United States described in section 1346(b) of title 28, for such damage or injury.

“(g) In this section, ‘head of the agency concerned’ means—

“(1) the Director of Central Intelligence, in the case of an employee of the Central Intelligence Agency;

“(2) the Secretary of Transportation, in the case of a member or employee of the Coast Guard when it is not operating as a service in the Navy; and

“(3) the Secretary of Defense, in all other cases.”

(b) The table of sections at the beginning of such chapter 55 is amended by adding at the end thereof the following:

“1089. Defense of certain suits arising out of medical malpractice.”

SEC. 2. (a) The Congress finds—

(1) that the Army National Guard and the Air National Guard are critical components of the defense posture of the United States;

(2) that a medical capability is essential to the performance of the mission of the National Guard when in Federal service;

(3) that the current medical malpractice crisis poses a serious threat to the availability of sufficient medical personnel for the National Guard; and

(4) that in order to insure that such medical personnel will continue to be available to the National Guard, it is necessary for the Federal Government to assume responsibility for the payment of malpractice claims made against such personnel arising out of actions or omissions on the part of such personnel while they are performing certain training exercises.

(b) Chapter 3 of title 32, United States Code, is amended by adding at the end thereof a new section as follows:

§ 334. Payment of malpractice liability of National Guard Medical personnel

(a) Upon the final disposition of any claim for damages for personal injury, including death, caused by the negligent or wrongful act or omission of any medical personnel of the National Guard in furnishing medical care or treatment while acting within the scope of

Liability insurance for persons assigned to a foreign country or non-Federal agency.

“Head of agency concerned.”

32 USC 334 note.

32 USC 334.

his duties for the National Guard during a training exercise, the liability of such medical personnel for any costs, settlement, or judgment shall become, subject to the provisions of this section, the liability of the United States and shall be payable under the provisions of section 1302 of the Act of July 27, 1956 (31 U.S.C. 724a), or out of funds appropriated for the payment of such liability.

“(b) The liability for any claim for damages under this section against any medical personnel shall become the liability of the United States only to the extent that the liability of such medical personnel is not covered by insurance, and such liability shall not constitute coinsurance for any purpose.

“(c) Liability of the United States for damages against any medical personnel referred to in subsection (a) shall be subject to the condition that the medical personnel against whom any claim for such damages is made shall—

“(1) promptly notify the Attorney General of the claim, and in case of any civil action or proceeding brought in any court against any such personnel, deliver all process served upon such personnel (or an attested true copy thereof) to the immediate superior of such personnel or to such other person designated by the appropriate Adjutant General to receive such papers, who shall promptly transmit such papers to the Attorney General.

Notification
to Attorney
General.

“(2) furnish to the Attorney General such other information and documents as the Attorney General may request, and

“(3) comply with the instructions of the Attorney General relative to the final disposition of a claim for damages.

“(d) The liability of the United States under this section shall also be subject to the condition that the settlement of any claim described in subsection (a) of this section be approved by the Attorney General prior to its finalization.

“(e) The provisions of this section shall not apply in the case of any claim for damages against any medical personnel settled under the provisions of section 715 of title 32.

“(f) As used in this section, the term—

Definitions.

“(1) ‘Medical personnel’ means any physician, dentist, nurse, pharmacist, paramedical, or other supporting personnel (including medical and dental technicians, nursing assistants, and therapists) of the Army National Guard or the Air National Guard.

“(2) ‘Training exercise’ means training or duty performed by medical personnel under section 316, 502, 503, 504, or 505 of this title or under any other provision of law for which such personnel are entitled to or has waived pay under section 206 of title 37.

32 USC 316,
502-505.

“(3) ‘Final disposition’ means—

“(A) a final judgment of any court from which the Attorney General decides there will be no appeal,

“(B) the settlement of any claim, or

“(C) a determination at any stage of a claim for damages in favor of a medical personnel and from which determination no appeal can be made.

“(4) ‘Settlement’ means any compromise of a claim for damages which is agreed to by the claimant and approved by the Attorney General prior to its finalization.

“(5) ‘Costs’ includes any costs which are taxed by any court against any medical personnel, normal litigation expenses, attorney’s fees incurred by any medical personnel, and such interest as any medical personnel may be obligated to pay by any court order or by statute.

“(6) ‘Claim for damages’ means any claim or any legal or administrative action in connection with any claim described in subsection (a) of this section.

“(7) ‘Attorney General’ means the Attorney General of the United States.”.

(c) The table of sections at the beginning of such chapter 3 is amended by adding at the end thereof the following:

“334. Payment of malpractice liability of National Guard medical personnel.”.

42 USC 2459.

SEC. 3. Title III of the National Aeronautics and Space Act of 1958, as amended, is amended by redesignating section 307 as 308 and by inserting after section 306 a new section 307 as follows:

“DEFENSE OF CERTAIN MALPRACTICE AND NEGLIGENCE SUITS

42 USC 2458a.

“SEC. 307. (a) The remedy against the United States provided by sections 1346(b) and 2672 of title 28, United States Code, for damages for personal injury, including death, caused by the negligent or wrongful act or omission of any physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (including medical and dental technicians, nursing assistants, and therapists) of the Administration in the performance of medical, dental, or related health care functions (including clinical studies and investigations) while acting within the scope of his duties or employment therein or therefor 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 the estate of such person) whose act or omission gave rise to such action or proceeding.

“(b) The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or the estate of such person) for any such injury. Any such person against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such person or an attested true copy thereof to such person's immediate superior or to whomever was designated by the Administrator to receive such papers and such person shall promptly furnish copies of the pleading and process therein to the United States Attorney for the district embracing the place wherein the proceeding is brought to the Attorney General and to the Administrator.

28 USC 1.

“(c) Upon a certification by the Attorney General that any person described in subsection (a) was acting in the scope of such person's duties or employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28, United States Code, and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (a) of this section is not available against the United States, the case shall be remanded to the State court.

“(d) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, United States Code, and with the same effect.

“(e) For purposes of this section, the provisions of section 2680(h) of title 28, United States Code, shall not apply to any cause of action arising out of a negligent or wrongful act of omission in the performance of medical, dental, or related health care functions (including clinical studies and investigations).

“(f) The Administrator or his designee may, to the extent that the Administrator or his designee deem appropriate, hold harmless or provide liability insurance for any person described in subsection (a) for damages for personal injury, including death, caused by such person's negligent or wrongful act or omission in the performance of medical, dental, or related health care functions (including clinical studies and investigations) while acting within the scope of such person's duties if such person is assigned to a foreign country or detailed for service with other than a Federal department, agency, or instrumentality or if the circumstances are such as are likely to preclude the remedies of third persons against the United States described in section 2679(b) of title 28, United States Code, for such damage or injury.”

Sec. 4. This Act shall become effective on the date of its enactment and shall apply only to those claims accruing on or after such date of enactment.

Approved October 8, 1976.

Liability insurance for persons assigned to a foreign country or non-Federal agency.

Effective date.
10 USC 1089
note.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 94-333 (Comm. on Armed Services).

SENATE REPORT No. 94-1264 (Comm. on Armed Services).

CONGRESSIONAL RECORD:

Vol. 121 (1975): July 21, considered and passed House.

Vol. 122 (1976): Sept. 24, considered and passed Senate, amended.
Sept. 27, House concurred in Senate amendment.