

TOP
CLASSOLL 85-0818
12 March 1985MEMORANDUM FOR: Chief, Administrative Law Division/OGC
Deputy Director for Administration

FROM:

[Redacted]
Deputy Chief, Office of Legislation/OLL

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SUBJECT: Military Medical Tort Claims (H.R. 1161)

1. Attached herewith for your information is a copy of H.R. 1161; introduced by Congressman Frank and referred to the Judiciary Committee. This proposed legislation would amend the Federal Tort Claims Act so that members of the Armed Forces can sue the government for medical and dental malpractice.

2. In essence the bill would reverse in part the so-called Feres Doctrine (Feres v. U.S., 340 U.S. 135) which barred suits by one member of the military against another member or against the government for any act incident to military service. Three reasons for barring suits among the military are: 1) the adversarial process of litigation is disruptive of military unity, 2) there is a reasonable alternative compensation system for injured military personnel, and 3) military activity is inherently dangerous and opening the government to medical malpractice suits would be too costly in terms of time and money; physicians and medical support personnel would be tied up in litigation rather than focusing on military preparedness.

3. Congressman Frank is on the subcommittee of House Judiciary that has jurisdiction over the Federal Tort Claims Act. In addition, several influential Congressmen have cosponsored the bill.

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Attachment:
As stated

Distribution:

Orig - C/ALD/OGC
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① - LEG Subject (w/att)
1 - JBM Signer (w/att)

REG/OLL/IRM/bas:12Mar85

99TH CONGRESS
1ST SESSION

H. R. 1161

To amend chapter 171 of title 28, United States Code, to allow members of the Armed Forces to sue the United States for damages for certain injuries caused by improper medical care.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 20, 1985

Mr. FRANK (for himself, Mr. BERMAN, Mr. COYNE, Mr. GEJDENSON, Mr. JACOBS, Mr. LELAND, Mr. LUNDINE, Mr. MOAKLEY, Mr. MARKEY, Mr. MITCHELL, Mr. OWENS, Mrs. SCHROEDER, Mr. UDALL, and Mr. DONNELLY) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend chapter 171 of title 28, United States Code, to allow members of the Armed Forces to sue the United States for damages for certain injuries caused by improper medical care.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) chapter 171 of title 28, United States Code, is
4 amended by adding at the end thereof the following new sec-
5 tion:

1 **“§ 2681. Certain claims by members of the Armed Forces**

2 **“Claims may be brought under this chapter for damages**
3 **against the United States for the personal injury or death of a**
4 **member of the Armed Forces serving on active duty if the**
5 **claim arises out of medical or dental care furnished the**
6 **member in a Department of Defense hospital.”.**

7 **(b) The table of sections for such chapter is amended by**
8 **adding at the end thereof the following new item:**

 “2681. Certain claims by members of the Armed Forces.”.

9 **SEC. 2. Section 2681 of title 28, United States Code, as**
10 **added by the first section of this Act, shall apply only with**
11 **respect to claims arising on or after the date of the enactment**
12 **of this Act.**

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