

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 352

Short Title: Vaccine Injury Program.

(Public)

Sponsors: Representatives Rhyne and Dickson.

Referred to: Judiciary I.

March 27, 1991

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE NORTH CAROLINA CHILDHOOD VACCINE-RELATED INJURY PROGRAM TO CLAIMANTS WHO ARE PERMITTED BY FEDERAL LAW TO BRING A CIVIL ACTION FOR DAMAGES FOR VACCINE-RELATED INJURY OR DEATH.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-423 reads as rewritten:

"§ 130A-423. North Carolina Childhood Vaccine-Related Injury Compensation Program; exclusive remedy; relationship to federal law; subrogation.

(a) There is established the North Carolina Childhood Vaccine-Related Injury Compensation Program.

(b) The rights and remedies granted the claimant, the claimant's parent, guardian ad litem, guardian, or personal representative shall exclude all other rights and remedies of the claimant, his parent, guardian ad litem, guardian, or personal representative against any respondent at common law or otherwise on account of such injury, illness, disability, death, or condition. If such an action is filed, it shall be dismissed, with prejudice, on the motion of any party under law.

(b1) A claimant may file a petition pursuant to this Article only if such claimant has filed an election pursuant to Section 2121 of the Public Health Service Act, P.L. 99-660, permitting such claimant to file a civil action for damages for a vaccine-related injury or death or if such claimant is otherwise permitted by federal law to file an action against a vaccine manufacturer.

(c) (For effective date see note) Nothing in this Article prohibits any individual from bringing a civil action against a vaccine manufacturer for damages for a vaccine-

1 related injury or death if the action is not barred by federal law under subtitle 2 of Title
2 XXI of the Public Health Service Act.

3 (d) **(For effective date see note)** If any action is brought against a vaccine
4 manufacturer as permitted by subtitle 2 of Title XXI of the Public Health Service Act
5 and subsection (c) of this section, the plaintiff in the action may recover damages only
6 to the extent permitted by subdivisions (1) through (3) of subsection (a) of G.S. 130A-
7 427. The aggregate amount awarded in any such action may not exceed the limitation
8 established by subsection (b) of G.S. 130A-427. Regardless of whether such an action
9 is brought against a vaccine manufacturer, a claimant who has filed an election pursuant
10 to Section 2121 of the Public Health Service Act, as enacted into federal law by Public
11 Law 99-660, permitting such a claimant to file a civil action for damages for a vaccine-
12 related injury or death, or who is otherwise permitted by federal law to file an action
13 against a vaccine manufacturer, may file a petition pursuant to G.S. 130A-425 to obtain
14 services from the Department and the Department of Human Resources pursuant to
15 subdivision (5) of subsection (a) of G.S. 130A-427 and, if no action has been brought
16 against a vaccine manufacturer, to obtain other relief available pursuant to G.S. 130A-
17 427.

18 (e) **(For effective date see note)** In order to prevent recovery of duplicate
19 damages, or the imposition of duplicate liability, in the event that an individual seeks an
20 award pursuant to G.S. 130A-427 and also files suit against the manufacturer as
21 permitted by subtitle 2 of Title XXI of the Public Health Service Act and subsection (c)
22 of this section, the following provisions shall apply:

- 23 (1) If, at the time an award is made pursuant to G.S. 130A-427, an
24 individual has already recovered damages from a manufacturer
25 pursuant to a judgment or settlement, the award shall consist only of a
26 commitment to provide services pursuant to subdivision (5) of
27 subsection (a) of G.S. 130A-427.
- 28 (2) If, at any time after an award is made to a claimant pursuant to G.S.
29 130A-427, an individual recovers damages for the same vaccine-
30 related injury from a manufacturer pursuant to a judgment or
31 settlement, the individual who recovers the damages shall reimburse
32 the State for all amounts previously recovered from the State in the
33 prior proceeding. Before a defendant in any action for a vaccine-
34 related injury pays any amount to a plaintiff to discharge a judgment or
35 settlement, he shall request from the Secretary and the Secretary of
36 Human Resources a statement itemizing any reimbursement owed by
37 the plaintiff pursuant to this subdivision, and, if any reimbursement is
38 owed by the plaintiff to either department, the defendant shall pay the
39 reimbursable amounts, as determined by each Secretary, directly to the
40 department to which such reimbursement is owed. This payment shall
41 discharge the plaintiff's obligations to the State under this subdivision
42 and any obligation the defendant may have to the plaintiff with respect
43 to these amounts.
- 44 (3) If:

- 1 a. An award has been made to a claimant for an element of
2 damages pursuant to G.S. 130A-427; and
3 b. An individual has recovered for the same element of damages
4 pursuant to a judgment in, or settlement of, an action for the
5 same vaccine-related injury brought against a manufacturer, and
6 that amount has not been remitted to the State pursuant to
7 subdivision (2) of this subsection; and
8 c. The State seeks to recover the amounts it paid in an action it
9 brings against the manufacturer pursuant to G.S. 130A-430;
10 any judgment obtained by the State under G.S. 130A-430 shall be
11 reduced by the amount necessary to prevent the double recovery of any
12 element of damages from the manufacturer. Nothing in this
13 subdivision limits the State's right to obtain reimbursement from a
14 claimant under subdivision (2) of this subsection with respect to any
15 double payment that might be received by the claimant.

16 (f) **(For effective date see note)** Subrogation claims pursued under the National
17 Childhood Vaccine Injury Act of 1986 shall be filed with the appropriate court, not with
18 the Industrial Commission."

19 Sec. 2. G.S. 130A-425(b) reads as rewritten:

20 "(b) In all claims filed pursuant to this Article, the claimant or the person in whose
21 behalf the claim is made shall file with the Commission a verified petition in duplicate,
22 setting forth the following information:

- 23 (1) The name and address of the claimant;
24 (2) The name and address of each respondent;
25 (3) The amount of compensation in money and services sought to be
26 recovered;
27 (4) The time and place where the injury occurred;
28 (5) A brief statement of the facts and circumstances surrounding the injury
29 and giving rise to the claim; and
30 (6) Supporting documentation and a statement of the claim that the
31 claimant or the person in whose behalf the claim is made suffered a
32 vaccine-related injury and has not previously collected an award or
33 settlement of a civil action for damages for this injury. This
34 supporting documentation shall include all available medical records
35 pertaining to the alleged injury, including autopsy reports, if any, and
36 if the injured person was under two years of age at the time of injury,
37 all prenatal, obstetrical, and pediatric records of care preceding the
38 injury, and an identification of any unavailable records known to the
39 claimant or the person in whose behalf the claim is made.

40 (7) Documentation to show that the claimant has filed an election pursuant
41 to Section 2121 of the Public Health Service Act, P.L. 99-660,
42 permitting such claimant to file a civil action for damages for a
43 vaccine-related injury or death or documentation to show that such

1 claimant is otherwise permitted by federal law to file an action against
2 a vaccine manufacturer."

3 Sec. 3. G.S. 130A-429 reads as rewritten:

4 **"§ 130A-429. Limitation on claims.**

5 (a) Except as provided in subsection (b) of this section, any claim under this
6 Article that is filed more than six years after the administration of a vaccine alleged to
7 have caused a vaccine-related injury is barred. Claims on behalf of minors or
8 incompetent persons shall be be filed by their parents, guardians ad litem, or guardians
9 within the applicable limitations period established by this section.

10 (b) Claims that are filed in accordance with the procedures set forth in G.S.
11 130A-425(b) within six years after the date of the enactment of this Article shall not be
12 barred unless, on the date the claim was filed, the claimant was barred by the applicable
13 statute of limitations from filing an action for damages with respect to the subject matter
14 of the claim.

15 (c) The period of limitation set forth in this section shall be stayed beginning on
16 the date the claimant files a petition under Section 2121 of the Public Health Service
17 Act, P.L. 99-660, and ending on the date a final judgment is entered on the petition."

18 Sec. 4. This act is effective upon ratification and applies to claims filed with
19 the Industrial Commission on or after that date.