

Article 17.

Childhood Vaccine-Related Injury Compensation Program.

§ 130A-422. Definitions.

The following definitions apply throughout this Article, unless the context clearly implies otherwise:

- (1) "Claimant" means any person who files a claim for compensation for a vaccine-related injury pursuant to G.S. 130A-425(b). In the case of a minor or incompetent, a claim may be filed by a guardian ad litem, parent, guardian, or other legal representative; and, in the case of a decedent, the claim may be filed by an administrator, executor, or other legal representative.

In the event that more than one person claims to have suffered compensable injuries as the result of the administration of a covered vaccine to a single individual, all these persons shall be treated for purposes of this Article as if they were a single claimant. A single joint claim shall be filed on behalf of all these persons, and the limitations on awards set forth in G.S. 130A-427(b) apply to that joint claim or subsequent joint action as if it were a claim filed on behalf of a single individual.

- (2) "Commission" means the North Carolina Industrial Commission.
- (3) "Covered vaccine" means a vaccine administered pursuant to the requirements of G.S. 130A-152.
- (4) "Respondent" means the person or entity the claimant identifies in the claim as the agent of causality of the vaccine-related injury.
- (5) "Vaccine-related injury", with respect to persons engaged in the manufacture, distribution, or sale, or administration of a covered vaccine, means any injury, disability, illness, death, or condition caused by the vaccine. "Vaccine-related injury" shall not mean any injury, disability, illness, death, or condition caused by the method of injection of the vaccine into the body. (1985 (Reg. Sess., 1986), c. 1008, s. 1; 1987, c. 215, s. 8.)

§ 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 injury, illness, disability, death, or condition. If 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 after the claimant has filed an election pursuant to Section 2121 of the Public Health Service Act, P.L. 99-660, permitting the claimant to file a civil action for damages for a vaccine-related injury or death or if the claimant is otherwise permitted by federal law to file an action against a vaccine manufacturer.

(c) Nothing in this Article prohibits any individual from bringing a civil action against a vaccine manufacturer for damages for a vaccine-related injury or death if the action is not barred by federal law under subtitle 2 of Title XXI of the Public Health Service Act.

(d) If any action is brought against a vaccine manufacturer as permitted by subtitle 2 of Title XXI of the Public Health Service Act and subsection (c) of this section, the plaintiff in the action may recover damages only to the extent permitted by subdivisions (1) through (3) of

1 subsection (a) of G.S. 130A-427. The aggregate amount awarded in any action may not exceed
2 the limitation established by subsection (b) of G.S. 130A-427. Regardless of whether an action
3 is brought against a vaccine manufacturer, a claimant who has filed an election pursuant to
4 Section 2121 of the Public Health Service Act, as enacted into federal law by Public Law
5 99-660, permitting a claimant to file a civil action for damages for a vaccine-related injury or
6 death, or who is otherwise permitted by federal law to file an action against a vaccine
7 manufacturer, may file a petition pursuant to G.S. 130A-425 to obtain services from the
8 Department pursuant to subdivision (5) of subsection (a) of G.S. 130A-427 and, if no action has
9 been brought against a vaccine manufacturer, to obtain other relief available pursuant to G.S.
10 130A-427.

11 (e) In order to prevent recovery of duplicate damages, or the imposition of duplicate
12 liability, in the event that an individual seeks an award pursuant to G.S. 130A-427 and also
13 files suit against the manufacturer as permitted by subtitle 2 of Title XXI of the Public Health
14 Service Act and subsection (c) of this section, the following provisions shall apply:

15 (1) If, at the time an award is made pursuant to G.S. 130A-427, an individual
16 has already recovered damages from a manufacturer pursuant to a judgment
17 or settlement, the award shall consist only of a commitment to provide
18 services pursuant to subdivision (5) of subsection (a) of G.S. 130A-427.

19 (2) If, at any time after an award is made to a claimant pursuant to G.S.
20 130A-427, an individual recovers damages for the same vaccine-related
21 injury from a manufacturer pursuant to a judgment or settlement, the
22 individual who recovers the damages shall reimburse the State for all
23 amounts previously recovered from the State in the prior proceeding. Before
24 a defendant in any action for a vaccine-related injury pays any amount to a
25 plaintiff to discharge a judgment or settlement, he shall request from the
26 Secretary a statement itemizing any reimbursement owed by the plaintiff
27 pursuant to this subdivision, and, if any reimbursement is owed by the
28 plaintiff to the Department, the defendant shall pay the reimbursable
29 amounts, as determined by the Secretary, directly to the Department. This
30 payment shall discharge the plaintiff's obligations to the State under this
31 subdivision and any obligation the defendant may have to the plaintiff with
32 respect to these amounts.

33 (3) If:

34 a. An award has been made to a claimant for an element of damages
35 pursuant to G.S. 130A-427; and

36 b. An individual has recovered for the same element of damages
37 pursuant to a judgment in, or settlement of, an action for the same
38 vaccine-related injury brought against a manufacturer, and that
39 amount has not been remitted to the State pursuant to subdivision (2)
40 of this subsection; and

41 c. The State seeks to recover the amounts it paid in an action it brings
42 against the manufacturer pursuant to G.S. 130A-430;

43 any judgment obtained by the State under G.S. 130A-430 shall be reduced by the amount
44 necessary to prevent the double recovery of any element of damages from the manufacturer.
45 Nothing in this subdivision limits the State's right to obtain reimbursement from a claimant
46 under subdivision (2) of this subsection with respect to any double payment that might be
47 received by the claimant.

48 (f) Subrogation claims pursued under the National Childhood Vaccine Injury Act of
49 1986 shall be filed with the appropriate court, not with the Industrial Commission. (1985 (Reg.
50 Sess., 1986), c. 1008, s. 1; 1987, c. 215, ss. 1, 2; 1989, c. 727, ss. 148, 149; 1991, c. 410, s. 1;
51 1997-443, s. 11A.85.)

1
2 **§ 130A-424. Industrial Commission authorized to hear and determine claims; damages.**

3 The North Carolina Industrial Commission is authorized to hear and pass upon all claims
4 filed pursuant to this Article. The members of the Commission, or a deputy thereof, have power
5 to issue subpoenas, administer oaths, conduct hearings, take evidence, enter orders, opinions,
6 settlements, and awards, and punish for contempt. The Commission may appoint deputies and
7 clerical assistants to carry out the purpose and intent of this Article, and this deputy or deputies
8 are vested with the same power and authority to hear and determine claims filed pursuant to
9 this Article as is by this Article vested in the members of the Commission. (1985 (Reg. Sess.,
10 1986), c. 1008, s. 1.)

11
12 **§ 130A-425. Filing of claims.**

13 (a) Notwithstanding any other provision of State law, no action for compensation for a
14 vaccine-related injury may be filed against any person unless that person was named as a
15 respondent in a claim filed pursuant to this section and unless the claim was filed within the
16 applicable time period set forth in G.S. 130A-429.

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

- 20 (1) The name and address of the claimant;
- 21 (2) The name and address of each respondent;
- 22 (3) The amount of compensation in money and services sought to be recovered;
- 23 (4) The time and place where the injury occurred;
- 24 (5) A brief statement of the facts and circumstances surrounding the injury and
25 giving rise to the claim; and
- 26 (6) Supporting documentation and a statement of the claim that the claimant or
27 the person in whose behalf the claim is made suffered a vaccine-related
28 injury and has not previously collected an award or settlement of a civil
29 action for damages for this injury. This supporting documentation shall
30 include all available medical records pertaining to the alleged injury,
31 including autopsy reports, if any, and if the injured person was under two
32 years of age at the time of injury, all prenatal, obstetrical, and pediatric
33 records of care preceding the injury, and an identification of any unavailable
34 records known to the claimant or the person in whose behalf the claim is
35 made.
- 36 (7) Documentation to show that the claimant has filed an election pursuant to
37 Section 2121 of the Public Health Service Act, P.L. 99-660, permitting such
38 claimant to file a civil action for damages for a vaccine-related injury or
39 death or documentation to show that such claimant is otherwise permitted by
40 federal law to file an action against a vaccine manufacturer.

41 (c) Upon receipt of this verified petition in duplicate, the Commission shall enter the
42 case upon its hearing docket and shall determine the matter in the county where the injury
43 occurred unless the parties agree or the Commission directs that the case may be heard in some
44 other county. All parties shall be given reasonable notice of the date when and the place where
45 the claim will be heard. Immediately upon receipt of the claim, the Commission shall serve a
46 copy of the verified petition on each respondent by registered or certified mail. The
47 Commission shall also send a copy of the verified petition to the Secretary, who shall be a party
48 to all proceedings involving the claim, and to the Attorney General who shall represent the
49 State's interest in all the proceedings involving the claim.

50 (d) The Commission shall adopt rules necessary to govern the proceedings required by
51 this Article. The Rules of Civil Procedure as contained in G.S. 1A-1 **et seq.** and the General

1 Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 apply to
2 claims filed with the Industrial Commission under this Article. The Commission shall keep a
3 record of all proceedings conducted under this Article, and has the right to subpoena any
4 persons and records it considers necessary in making its determinations. The Commission may
5 require all persons called as witnesses to testify under oath or affirmation, and any member of
6 the Commission may administer oaths. If any persons refuse to comply with any subpoena
7 issued pursuant to this Article or to testify with respect to any matter relevant to proceedings
8 conducted under this Article, the Superior Court of Wake County, on application of the
9 Commission, may issue an order requiring the person to comply with the subpoena and to
10 testify. Any failure to obey any such order may be punished by the court as for contempt.
11 (1985 (Reg. Sess., 1986), c. 1008, s. 1; 1987, c. 215, s. 3; 1989, c. 727, s. 150; 1991, c. 410, s.
12 2.)

13
14 **§ 130A-426. Determination of claims.**

15 (a) The Commission shall determine, on the basis of the evidence presented to it, the
16 following issues:

- 17 (1) Whether any injuries alleged in the claim are vaccine-related injuries; and
18 (2) How much compensation, if any, is awardable pursuant to G.S. 130A-427.

19 (b) If the Commission determines pursuant to subsection (a) of this section that the
20 injuries alleged in the claim are not vaccine-related injuries, it shall render a decision denying
21 any compensation. If the Commission decides that any of the injuries are vaccine-related
22 injuries it shall make an award pursuant to guidelines it establishes specifically adopted to
23 relate to vaccine-related injuries. (1985 (Reg. Sess., 1986), c. 1008, s. 1.)
24

25 **§ 130A-427. Commission awards for vaccine-related injuries; duties of Secretary.**

26 (a) Upon determining that a claimant has sustained a vaccine-related injury, the
27 Commission shall make an award providing compensation or services for any or all of the
28 following:

- 29 (1) Actual and projected reasonable expenses of medical care, developmental
30 evaluation, special education, vocational training, physical, emotional or
31 behavioral therapy, and residential and custodial care and service expenses,
32 that cannot be provided by the Department pursuant to subdivision (5) of this
33 subsection;
- 34 (2) Loss of earnings and projected earnings, determined in accordance with
35 generally accepted actuarial principles;
- 36 (3) Noneconomic, general damages arising from pain, suffering, and emotional
37 distress;
- 38 (4) Reasonable attorneys' fees;
- 39 (5) Needs that the Secretary determines on a case-by-case basis shall be met by
40 medical, health, developmental evaluation, special education, vocational
41 training, physical, emotional, or behavioral therapy, residential and custodial
42 care, and other essential and necessary services, to be provided the injured
43 party by the programs and services administered by the Department. The
44 Secretary shall develop an itemized list of the service needs of the injured
45 party upon review and evaluation of the injured party's medical record and
46 shall present it to the Commission prior to the Commission's determination.
47 In the event that the Commission's award includes the provision of any of
48 these services, the Secretary shall develop a comprehensive, coordinated
49 plan for the delivery of these services to the injured party. Notwithstanding
50 any other provision of State law, the Secretary shall waive all eligibility
51 criteria in determining eligibility for services provided by the Department

1 under the plan of care developed pursuant to this subdivision. If the award
2 includes any such services, these services shall be provided by the
3 Department free of any cost to the injured party.

4 (b) The money compensation component of the award may not be made pursuant to this
5 section in excess of an aggregate amount of the present day value amount of three hundred
6 thousand dollars (\$300,000) with respect to all injuries claimed to have resulted from the
7 administration of a covered vaccine to a single individual. The value of all services to be
8 provided by the Department, as part of this award is in addition to the total amount of money
9 compensation, and is not included in the limitation prescribed by this subsection on the amount
10 of money compensation that may be awarded. No damages may be awarded pursuant to
11 subdivision (a)(3) on behalf of any person to whom the covered vaccine was not administered.
12 (1985 (Reg. Sess., 1986), c. 1008, s. 1; 1989, c. 727, s. 151; 1997-443, s. 11A.86.)
13

14 **§ 130A-428. Notice of determination of claim; appeal to full commission.**

15 (a) Decisions of the Commission pursuant to G.S. 130A-427 shall be final and binding
16 on the claimant and each respondent.

17 (b) Notwithstanding subsection (a), upon determination of the claim, the Commission
18 shall notify all parties concerned in writing of its decision and any party shall have 15 days
19 after receipt of such notice within which to file notice of appeal with the Commission. This
20 appeal, when so taken, shall be heard by the Commission, sitting as a full commission, on the
21 basis of the record in the matter and upon oral argument of the parties, and the full commission
22 may amend, set aside, or strike out the decision of the hearing commissioner and may issue its
23 own findings of fact and conclusions of law. Upon determination of the claim by the
24 Commission, sitting as a full commission, the Commission shall notify all parties concerned in
25 writing of its decision.

26 (c) The decision of the Commission, if not reviewed in due time, or an award of the
27 Commission, shall be conclusive and binding as to all questions of fact; but any party to the
28 proceedings may, within 30 days from the date of the decision or award, or within 30 days after
29 receipt of notice to be sent by registered mail or certified mail of the award, but not thereafter,
30 appeal from the decision or award of the Commission to the Court of Appeals for errors of law
31 under the same terms and conditions as govern appeals from the Superior Court to the Court of
32 Appeals in ordinary civil actions. The procedure for the appeal shall be provided by the Rules
33 of Appellate Procedure. (1985 (Reg. Sess., 1986), c. 1008, s. 1.)
34

35 **§ 130A-429. Limitation on claims.**

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

41 (b) Claims that are filed in accordance with the procedures set forth in G.S.
42 130A-425(b) within six years after the date of the enactment of this Article shall not be barred
43 unless, on the date the claim was filed, the claimant was barred by the applicable statute of
44 limitations from filing an action for damages with respect to the subject matter of the claim.

45 (c) The period of limitation set forth in this section shall be stayed beginning on the
46 date the claimant files a petition under Section 2111 of the Public Health Service Act, P.L.
47 99-660, and ending 120 days after the date final judgment is entered on the petition. (1985
48 (Reg. Sess., 1986), c. 1008, s. 1; 1991, c. 410, s. 3.)
49

50 **§ 130A-430. Right of State to bring action against health care provider and**
51 **manufacturer.**

1 (a) If the Industrial Commission makes an award for a claimant who it determines has
2 sustained a vaccine-related injury, the State may, within two years of the date the Commission
3 renders its decision, bring an action against the health care provider who administered the
4 vaccine on the ground that the health care provider was negligent in administering the vaccine.
5 Damages in an action brought under this section are limited to the amount of the award made
6 by the Commission plus the estimated present value of all the services to be provided to the
7 claimant by the Department under G.S. 130A-427.

8 (b) **Manufacturer.** – If the Industrial Commission makes an award for a claimant who it
9 determines has sustained a vaccine-related injury, the State may, within two years of the date
10 the Commission renders its decision, bring an action against the manufacturer who made the
11 vaccine on the ground that the vaccine was a defective product. Damages in an action brought
12 under this section are limited to the amount of the award made by the Commission plus the
13 estimated present value of all the services to be provided to the claimant by the Department
14 under G.S. 130A-427, the reasonable costs of prosecuting the action, including, but not limited
15 to, attorneys' fees, fees charged by witnesses, and costs of exhibits. For purposes of this
16 subsection, a defective product is a covered vaccine that was manufactured, transported, or
17 stored in a negligent manner, or was distributed after its expiration date, or that otherwise
18 violated the applicable requirements of any license, approval, or permit, or any applicable
19 standards or requirements issued under Section 351 of the Public Health Service Act, as
20 amended, or the federal Food, Drug, and Cosmetic Act, as these standards or requirements were
21 interpreted or applied by the federal agency charged with their enforcement. The negligence or
22 other action in violation of applicable federal standards or requirements shall be demonstrated
23 by the State, by a preponderance of the evidence, to be the proximate cause of the injury for
24 which an award was rendered pursuant to G.S. 130A-427, in order to allow recovery by the
25 State against the manufacturer pursuant to this subsection. (1985 (Reg. Sess., 1986), c. 1008, s.
26 1; 1987, c. 215, s. 4; 1989, c. 727, s. 152; 1997-443, s. 11A.87.)
27

28 **§ 130A-431. Certain vaccine diversions made felony.**

29 Any person who (i) receives a vaccine designated by the manufacturer for use in the State,
30 (ii) directly or indirectly diverts the vaccine to a location outside the State, and (iii) directly or
31 indirectly profits as a result of this diversion, is guilty of a Class I felony. The fine shall be
32 twenty-five dollars (\$25.00) per dose of the diverted vaccine or one hundred thousand dollars
33 (\$100,000), whichever is less. A health care professional convicted of a Class I felony pursuant
34 to this section who is found by the court to have diverted more than 300 doses of covered
35 vaccine shall have his license suspended for one year. (1985 (Reg. Sess., 1986), c. 1008, s. 1;
36 1987, c. 215, s. 5; 1993, c. 539, s. 1306; 1994, Ex. Sess., c. 24, s. 14(c).)
37

38 **§ 130A-432. Scope.**

39 This Article applies to all claims for vaccine-related injuries occurring on and after October
40 1, 1986 and, at the option of the claimant, to claims for vaccine-related injuries that occurred
41 before October 1, 1986 if such claim has not been resolved by final judgment or by settlement
42 agreement or is not barred by a statute of limitations.

43 This Article applies to all claims for vaccine-related injuries alleged to have been caused by
44 covered vaccines administered within the State, regardless of where an action relating to the
45 injuries is brought and regardless of where the injuries are alleged to have occurred. (1985
46 (Reg. Sess., 1986), c. 1008, s. 1; 1987, c. 215, s. 6.)
47

48 **§ 130A-433. Contracts for purchase of vaccines; distribution; fee; rules.**

49 (a) Notwithstanding any law to the contrary, the Secretary may enter into contracts with
50 the manufacturers and suppliers of covered vaccines and with other public entities either within
51 or without the State for the purchase of covered vaccines and may provide for the distribution

1 or sale of the covered vaccines to health care providers. Local health departments shall
2 distribute the covered vaccines at the request of the Department. The Secretary shall adopt rules
3 to implement this Article except for subsection (b) of this section.

4 (b) Except as otherwise provided in G.S. 130A-153(a), a health care provider who
5 receives vaccine from the State may charge no more than a reasonable fee established by the
6 Commission for Public Health for the administration of the vaccine. (1985 (Reg. Sess., 1986),
7 c. 1008, s. 2; 1987, c. 215, s. 7; 1989, c. 727, s. 153; 1993, c. 321, s. 281(b); 2007-182, s. 2;
8 2009-451, s. 10.29A(b).)

9
10 **§ 130A-434. Child Vaccine Injury Compensation Fund established; payments from**
11 **Fund; transfer of appropriations and receipts.**

12 (a) There is established the Child Vaccine Injury Compensation Fund within the
13 Department to finance the North Carolina Childhood Vaccine-Related Injury Compensation
14 Program created by this article. The money compensation components of all awards made
15 pursuant to Article 17 of Chapter 130A of the General Statutes shall be paid by the Department
16 from the Fund.

17 (b) Should the Department find that the sum of appropriations and receipts is
18 insufficient to meet financial obligations incurred in the administration of this article,
19 appropriations and receipts in the Department which would otherwise revert to the General
20 Fund may be transferred to the Child Vaccine Injury Compensation Fund in order to meet such
21 obligations. The Department may also budget anticipated receipts as needed to implement this
22 Article. (1985 (Reg. Sess., 1986), c. 1008, s. 3(a), 3(b); 1989, c. 727, s. 154; 1997-443, s.
23 11A.88.)

24
25 **§§ 130A-435 through 130A-439. Reserved for future codification purposes.**