

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 352  
Senate Judiciary I Committee Substitute Adopted 6/18/91

Short Title: Vaccine Injury Program.

(Public)

Sponsors:

Referred to:

March 27, 1991

1 A BILL TO BE ENTITLED  
2 AN ACT TO LIMIT THE NORTH CAROLINA CHILDHOOD VACCINE-RELATED  
3 INJURY PROGRAM TO CLAIMANTS WHO ARE PERMITTED BY FEDERAL  
4 LAW TO BRING A CIVIL ACTION FOR DAMAGES FOR VACCINE-  
5 RELATED INJURY OR DEATH.

6 The General Assembly of North Carolina enacts:

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

8 "**§ 130A-423. North Carolina Childhood Vaccine-Related Injury Compensation**  
9 **Program; exclusive remedy; relationship to federal law; subrogation.**

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

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

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

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

5 (d) **(For effective date see note)** If any action is brought against a vaccine  
6 manufacturer as permitted by subtitle 2 of Title XXI of the Public Health Service Act  
7 and subsection (c) of this section, the plaintiff in the action may recover damages only  
8 to the extent permitted by subdivisions (1) through (3) of subsection (a) of G.S. 130A-  
9 427. The aggregate amount awarded in any such action may not exceed the limitation  
10 established by subsection (b) of G.S. 130A-427. Regardless of whether such an action  
11 is brought against a vaccine manufacturer, a claimant who has filed an election pursuant  
12 to Section 2121 of the Public Health Service Act, as enacted into federal law by Public  
13 Law 99-660, permitting such a claimant to file a civil action for damages for a vaccine-  
14 related injury or death, or who is otherwise permitted by federal law to file an action  
15 against a vaccine manufacturer, may file a petition pursuant to G.S. 130A-425 to obtain  
16 services from the Department and the Department of Human Resources pursuant to  
17 subdivision (5) of subsection (a) of G.S. 130A-427 and, if no action has been brought  
18 against a vaccine manufacturer, to obtain other relief available pursuant to G.S. 130A-  
19 427.

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

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

30 (2) If, at any time after an award is made to a claimant pursuant to G.S.  
31 130A-427, an individual recovers damages for the same vaccine-  
32 related injury from a manufacturer pursuant to a judgment or  
33 settlement, the individual who recovers the damages shall reimburse  
34 the State for all amounts previously recovered from the State in the  
35 prior proceeding. Before a defendant in any action for a vaccine-  
36 related injury pays any amount to a plaintiff to discharge a judgment or  
37 settlement, he shall request from the Secretary and the Secretary of  
38 Human Resources a statement itemizing any reimbursement owed by  
39 the plaintiff pursuant to this subdivision, and, if any reimbursement is  
40 owed by the plaintiff to either department, the defendant shall pay the  
41 reimbursable amounts, as determined by each Secretary, directly to the  
42 department to which such reimbursement is owed. This payment shall  
43 discharge the plaintiff's obligations to the State under this subdivision

1 and any obligation the defendant may have to the plaintiff with respect  
2 to these amounts.

3 (3) If:

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

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

11 c. The State seeks to recover the amounts it paid in an action it  
12 brings against the manufacturer pursuant to G.S. 130A-430;  
13 any judgment obtained by the State under G.S. 130A-430 shall be  
14 reduced by the amount necessary to prevent the double recovery of any  
15 element of damages from the manufacturer. Nothing in this  
16 subdivision limits the State's right to obtain reimbursement from a  
17 claimant under subdivision (2) of this subsection with respect to any  
18 double payment that might be received by the claimant.

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

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

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

26 (1) The name and address of the claimant;

27 (2) The name and address of each respondent;

28 (3) The amount of compensation in money and services sought to be  
29 recovered;

30 (4) The time and place where the injury occurred;

31 (5) A brief statement of the facts and circumstances surrounding the injury  
32 and giving rise to the claim; and

33 (6) Supporting documentation and a statement of the claim that the  
34 claimant or the person in whose behalf the claim is made suffered a  
35 vaccine-related injury and has not previously collected an award or  
36 settlement of a civil action for damages for this injury. This  
37 supporting documentation shall include all available medical records  
38 pertaining to the alleged injury, including autopsy reports, if any, and  
39 if the injured person was under two years of age at the time of injury,  
40 all prenatal, obstetrical, and pediatric records of care preceding the  
41 injury, and an identification of any unavailable records known to the  
42 claimant or the person in whose behalf the claim is made.

43 (7) Documentation to show that the claimant has filed an election pursuant  
44 to Section 2121 of the Public Health Service Act, P.L. 99-660,

1                    permitting such claimant to file a civil action for damages for a  
2                    vaccine-related injury or death or documentation to show that such  
3                    claimant is otherwise permitted by federal law to file an action against  
4                    a vaccine manufacturer."

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

6                    **"§ 130A-429. Limitation on claims.**

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

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

17                    (c) The period of limitation set forth in this section shall be stayed beginning on  
18 the date the claimant files a petition under Section 2111 of the Public Health Service  
19 Act, P.L. 99-660, and ending 120 days after the date final judgment is entered on the  
20 petition."

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