

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 410
HOUSE BILL 352

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 after 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-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) **(For effective date see note)** 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 subsection (a) of G.S. 130A-427. The aggregate amount awarded in any such action may not exceed the limitation established by subsection (b) of G.S. 130A-427. Regardless of whether such an action is brought against a vaccine manufacturer, a claimant who has filed an election pursuant to Section 2121 of the Public Health Service Act, as enacted into federal law by Public Law 99-660, permitting such a claimant to file a civil action for damages for a vaccine-related injury or death, or who is otherwise permitted by federal law to file an action

against a vaccine manufacturer, may file a petition pursuant to G.S. 130A-425 to obtain services from the Department and the Department of Human Resources pursuant to subdivision (5) of subsection (a) of G.S. 130A-427 and, if no action has been brought against a vaccine manufacturer, to obtain other relief available pursuant to G.S. 130A-427.

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

- (1) If, at the time an award is made pursuant to G.S. 130A-427, an individual has already recovered damages from a manufacturer pursuant to a judgment or settlement, the award shall consist only of a commitment to provide services pursuant to subdivision (5) of subsection (a) of G.S. 130A-427.
- (2) If, at any time after an award is made to a claimant pursuant to G.S. 130A-427, an individual recovers damages for the same vaccine-related injury from a manufacturer pursuant to a judgment or settlement, the individual who recovers the damages shall reimburse the State for all amounts previously recovered from the State in the prior proceeding. Before a defendant in any action for a vaccine-related injury pays any amount to a plaintiff to discharge a judgment or settlement, he shall request from the Secretary and the Secretary of Human Resources a statement itemizing any reimbursement owed by the plaintiff pursuant to this subdivision, and, if any reimbursement is owed by the plaintiff to either department, the defendant shall pay the reimbursable amounts, as determined by each Secretary, directly to the department to which such reimbursement is owed. This payment shall discharge the plaintiff's obligations to the State under this subdivision and any obligation the defendant may have to the plaintiff with respect to these amounts.
- (3) If:
 - a. An award has been made to a claimant for an element of damages pursuant to G.S. 130A-427; and
 - b. An individual has recovered for the same element of damages pursuant to a judgment in, or settlement of, an action for the same vaccine-related injury brought against a manufacturer, and that amount has not been remitted to the State pursuant to subdivision (2) of this subsection; and
 - c. The State seeks to recover the amounts it paid in an action it brings against the manufacturer pursuant to G.S. 130A-430; any judgment obtained by the State under G.S. 130A-430 shall be reduced by the amount necessary to prevent the double recovery of any element of damages from the manufacturer. Nothing in this

subdivision limits the State's right to obtain reimbursement from a claimant under subdivision (2) of this subsection with respect to any double payment that might be received by the claimant.

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

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

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

- (1) The name and address of the claimant;
- (2) The name and address of each respondent;
- (3) The amount of compensation in money and services sought to be recovered;
- (4) The time and place where the injury occurred;
- (5) A brief statement of the facts and circumstances surrounding the injury and giving rise to the claim; and
- (6) Supporting documentation and a statement of the claim that the claimant or the person in whose behalf the claim is made suffered a vaccine-related injury and has not previously collected an award or settlement of a civil action for damages for this injury. This supporting documentation shall include all available medical records pertaining to the alleged injury, including autopsy reports, if any, and if the injured person was under two years of age at the time of injury, all prenatal, obstetrical, and pediatric records of care preceding the injury, and an identification of any unavailable records known to the claimant or the person in whose behalf the claim is made.
- (7) Documentation to show that the 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 documentation to show that such claimant is otherwise permitted by federal law to file an action against a vaccine manufacturer."

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

"§ 130A-429. Limitation on claims.

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

(b) Claims that are filed in accordance with the procedures set forth in G.S. 130A-425(b) within six years after the date of the enactment of this Article shall not be barred unless, on the date the claim was filed, the claimant was barred by the applicable

statute of limitations from filing an action for damages with respect to the subject matter of the claim.

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

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

In the General Assembly read three times and ratified this the 26th day of June, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives