

GENERAL ASSEMBLY OF NORTH CAROLINA
1985 SESSION

CHAPTER 1008
SENATE BILL 859

AN ACT TO ESTABLISH THE NORTH CAROLINA CHILDHOOD VACCINE-RELATED INJURY COMPENSATION PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. Chapter 130A of the General Statutes is amended by inserting a new Article to read:

"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.

"§ 130A-423. **North Carolina Childhood Vaccine-Related Injury Compensation Program; exclusive remedy.** – (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.

"§ 130A-424. Industrial Commission authorized to hear and determine claims; damages. –The North Carolina Industrial Commission is authorized to hear and pass upon all claims filed pursuant to this Article. The members of the Commission, or a deputy thereof, have power to issue subpoenas, administer oaths, conduct hearings, take evidence, enter orders, opinions, settlements, and awards, and punish for contempt. The Commission may appoint deputies and clerical assistants to carry out the purpose and intent of this Article, and this deputy or deputies are vested with the same power and authority to hear and determine claims filed pursuant to this Article as is by this Article vested in the members of the Commission.

"§ 130A-425. Filing of claims. –(a) Notwithstanding any other provision of State law, no action for compensation for a vaccine- related injury may be filed against any person unless that person was named as a respondent in a claim filed pursuant to this section and unless the claim was filed within the applicable time period set forth in G.S. 130A-429.

(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.

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

The Commission shall adopt rules necessary to govern the proceedings required by this Article. The Commission shall keep a record of all proceedings conducted under this Article, and has the right to subpoena any persons and records it considers necessary in making its determinations. The Commission may require all persons called as witnesses to testify under oath or affirmation, and any member of the Commission may administer oaths. If any person refuses to comply with any subpoena issued

pursuant to this Article or to testify with respect to any matter relevant to proceedings conducted under this Article, the Superior Court of Wake County, on application of the Commission, may issue an order requiring the person to comply with the subpoena and to testify. Any failure to obey any such order may be punished by the court as for contempt.

"§ 130A-426. Determination of claims. – (a) The Commission shall determine, on the basis of the evidence presented to it, the following issues:

(1) Whether any injuries alleged in the claim are vaccine-related injuries; and

(2) How much compensation, if any, is awardable pursuant to G.S. 130A-427.

(b) If the Commission determines pursuant to subsection (a) of this section that the injuries alleged in the claim are not vaccine-related injuries, it shall render a decision denying any compensation. If the Commission decides that any of the injuries are vaccine-related injuries it shall make an award pursuant to guidelines it establishes specifically adopted to relate to vaccine-related injuries.

"§ 130A-427. Commission awards for vaccine-related injuries; duties of Secretary of Human Resources. – (a) Upon determining that a claimant has sustained a vaccine-related injury, the Commission shall make an award providing compensation or services for any or all of the following:

(1) Actual and projected reasonable expenses of medical care, developmental evaluation, special education, vocational training, physical, emotional or behavioral therapy, and residential and custodial care and service expenses, that cannot be provided by the Department of Human Resources pursuant to subdivision (5) of this subsection;

(2) Loss of earnings and projected earnings, determined in accordance with generally accepted actuarial principles;

(3) Noneconomic, general damages arising from pain, suffering, and emotional distress;

(4) Reasonable attorneys fees;

(5) Needs that the Secretary of Human Resources determines on a case-by-case basis shall be met by medical, health, developmental evaluation, special education, vocational training, physical, emotional, or behavioral therapy, residential and custodial care, and other essential and necessary services, to be provided the injured party by the programs and services administered by the Department. The Secretary of Human Resources shall develop an itemized list of the service needs of the injured party upon review and evaluation of the injured party's medical record and shall present it to the Commission prior to the Commission's determination. In the event that the Commission's award includes the provision of any of these services, the Secretary shall develop a

comprehensive, coordinated plan for the delivery of these services to the injured party. Notwithstanding any other provision of State law, the Secretary shall waive all eligibility criteria in determining eligibility for services provided by the Department under the plan of care developed pursuant to this subdivision. If the award

includes any such services, these services shall be provided by the Department free of any cost to the injured party.

(b) The money compensation component of the award may not be made pursuant to this section in excess of an aggregate amount of the present day value amount of three hundred thousand dollars (\$300,000) with respect to all injuries claimed to have resulted from the administration of a covered vaccine to a single individual. The value of all services to be provided by the Department of Human Resources, as part of this award is in addition to the total amount of money compensation, and is not included in the limitation prescribed by this subsection on the amount of money compensation that may be awarded. No damages may be awarded pursuant to subdivision (a)(3) on behalf of any person to whom the covered vaccine was not administered.

"§ 130A-428. Notice of determination of claim; appeal to full commission. –(a) Decisions of the Commission pursuant to G.S. 130A-427 shall be final and binding on the claimant and each respondent.

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

(c) The decision of the Commission, if not reviewed in due time, or an award of the Commission, shall be conclusive and binding as to all questions of fact; but any party to the proceedings may, within 30 days from the date of the decision or award, or within 30 days after receipt of notice to be sent by registered mail or certified mail of the award, but not thereafter, appeal from the decision or award of the Commission to the Court of Appeals for errors of law under the same terms and conditions as govern appeals from the Superior Court to the Court of Appeals in ordinary civil actions. The procedure for the appeal shall be as provided by the rules of appellate procedure.

"§ 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.

"§ 130A-430. Right of State to bring action against health care provider and manufacturer. –(a) If the Industrial Commission makes an award for a claimant who it

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

(b) Manufacturer. If the Industrial Commission makes an award for a claimant who it determines has sustained a vaccine-related injury, the State may, within two years of the date the Commission renders its decision, bring an action against the manufacturer who made the vaccine on the ground that the vaccine was a defective product. Damages in an action brought under this section are limited to the amount of the award made by the Commission plus the estimated present value of all the services to be provided to the claimant by the Department of Human Resources under G.S. 130A-427, the reasonable costs of prosecuting the action, including, but not limited to, attorneys' fees, fees charged by witnesses, and costs of exhibits.

"§ 130A-431. A health care provider who receives a vaccine from the State and who gives or sells the vaccine to another, other than in the course of administering the vaccine, is guilty of a general misdemeanor.

"§ 130A-432. Scope. – This Article applies to all claims for vaccine-related injuries occurring on and after the effective date of this Article and, at the option of the claimant, to claims for vaccine-related injuries that occurred before the effective date if such claim has not been resolved by final judgment or by settlement agreement or is not barred by a statute of limitations.

This Article applies only to claims for vaccine-related injuries which occur in this State."

Sec. 2. Notwithstanding any law to the contrary, the Secretary of Human Resources may enter into contracts with the manufacturers and suppliers of covered vaccines for the purchase of covered vaccines and shall distribute or sell the covered vaccines to health care providers and facilities within the State. The Secretary may charge a fee for providing a covered vaccine to a health care provider. The fee shall be set at an amount that covers the cost of the vaccine to the Department, plus the cost to the Department of storing and distributing the vaccine. The Secretary shall adopt rules to implement this act.

Sec. 3. (a) There is established the Child Vaccine Injury Compensation Fund within the Department of Human Resources to finance the North Carolina Childhood Vaccine-Related Injury Compensation Program created by this act. The money compensation components of all awards made pursuant to Article 17 of Chapter 130A of the General Statutes shall be paid by the Department of Human Resources from the Fund.

(b) Should the Department of Human Resources find that the sum of appropriations and receipts is insufficient to meet financial obligations incurred by the Department in the administration of this act, the Department may transfer appropriations and receipts which would otherwise revert to the General Fund in order to meet such

obligations. The Department of Human Resources may also budget anticipated receipts as needed to implement this act.

(c) Of the funds appropriated to the Department of Human Resources, Division of Medical Assistance, for fiscal year 1986-87, the Secretary may use up to one hundred thousand dollars (\$100,000) as start up funds needed to implement this act and as reimbursement to health care providers and facilities operated by the Department of Human Resources, or under contract with the Department to provide health care to low income children and their families.

Sec. 4. In the event any provision of this act is held to be invalid by any court of competent jurisdiction, the court's holding as to that provision shall not affect the validity or operation of other provisions of this act; and to that end the provisions of this act are severable.

Sec. 5. This act shall become effective October 1, 1986, and shall expire on October 1, 1989.

In the General Assembly read three times and ratified, this the 15th day of July, 1986.