GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 215
HOUSE BILL 407

AN ACT TO MAKE CERTAIN CHANGES IN THE NORTH CAROLINA CHILDHOOD VACCINE-RELATED INJURY COMPENSATION PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-423 is amended in the catchline by inserting the phrase "**; relationship to federal law**" immediately before the period, and by adding the following new subsections to read:

"(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 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 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) 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 of Human Resources a statement itemizing any reimbursement owed by the plaintiff pursuant to this subdivision, and, if the reimbursement is owed by the plaintiff, the defendant shall pay the reimbursable amounts, as determined by the Secretary, directly to the Department of Human Resources. 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."

Sec. 2. G.S. 130A-423 is amended in the catchline by inserting "; **subrogation**" immediately before the period and by adding a new subsection at the end to read:

"(f) 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. 3. 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.~~ 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.

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 Rules of Civil Procedure as contained in G.S. 1A-1 et seq. and the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 apply to claims filed with the Industrial Commission under 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 persons ~~refuses~~ refuse 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."

Sec. 4. G.S. 130A-430(b) reads as rewritten:

"(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. For purposes of this subsection, a defective product is a covered vaccine that was manufactured, transported, or stored in a negligent manner, or was distributed after its expiration date, or that otherwise violated the applicable requirements of any license, approval, or permit, or any applicable standards or requirements issued under Section 351 of the Public Health Service Act, as amended, or the federal Food, Drug, and Cosmetic Act, as these standards or requirements were interpreted or applied by the federal agency charged with their enforcement. The negligence or other action in violation of applicable federal standards or requirements shall be demonstrated by the State, by a preponderance of the evidence, to be the proximate cause of the injury for which an award was rendered pursuant to G.S. 130A-427, in order to allow recovery by the State against the manufacturer pursuant to this subsection."

Sec. 5. G.S.130A-431 reads as rewritten:

"**§ 130A-431. Certain ~~sales of~~ vaccine diversions made ~~misdemeanor~~ felony.** ~~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.~~ Any person who (i) receives a vaccine designated by the manufacturer for use in the State, (ii) directly or indirectly diverts the vaccine to a location outside the State, and (iii) directly or indirectly profits as a result of this diversion, is guilty of a Class J felony, punishable by imprisonment up to three years, or a fine, or both. The fine shall be twenty-five dollars ($25.00) per dose of the diverted vaccine or one hundred thousand dollars ($100,000), whichever is less. A health care professional convicted of a Class J felony pursuant to this section who is found by the court to have diverted more than 300 doses of covered vaccine shall have his license suspended for one year."

Sec. 6. G.S. 130A-432 reads as rewritten:

"**§ 130A-432. Scope.–**This Article applies to all claims for vaccine-related injuries occurring on and after October 1, 1986 and, at the option of the claimant, to claims for vaccine-related injuries that occurred before October 1, 1986 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~~ to all claims for vaccine-related injuries alleged to have been caused by covered vaccines administered within the State, regardless of where an action relating to the injuries is brought and regardless of where the injuries are alleged to have occurred."

Sec. 7. G.S. 130A-433 reads as rewritten:

"**§ 130A-433. Contracts for purchase of vaccines; distribution; fee; rules.–** Notwithstanding any law to the contrary, the Secretary of Human Resources may enter into contracts with the manufacturers and suppliers of covered vaccines and with other public entities either within or without the State for the purchase of covered vaccines and ~~shall distribute or sell~~ may provide for the distribution or sale of the covered

vaccines to health care providers ~~and facilities within the State~~. Local health departments shall distribute the covered vaccines at the request of the Department of Human Resources. 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 Article.

A health care provider who receives vaccine from the State may charge no more than the cost of the vaccine and a reasonable fee for the administration of the vaccine. Vaccines provided by the State to local health departments for administration shall be administered at no cost to the patient."

Sec. 8. Section 5 of Chapter 1008, 1985 Session Laws, Regular Session 1986, reads as rewritten:

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

Sec. 9. This act is effective upon ratification, except that Section 1 shall become effective only on and after the effective date of subtitle 2 of Title XXI of the Public Health Service Act, as enacted into federal law pursuant to Title III of Public Law 99-660, and only if this federal law on its effective date contains language that forbids a state from establishing or enforcing a law prohibiting an individual from bringing a civil action against a vaccine manufacturer for damages for a vaccine-related injury or death if this action is not barred by federal law.

In the General Assembly read three times and ratified this the 19th day of May, 1987.