

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

SESSION LAW 2003-169
HOUSE BILL 273

AN ACT TO ENSURE THAT EMPLOYEES WHO RECEIVE VACCINATION AGAINST SMALLPOX INCIDENT TO THE ADMINISTRATION OF SMALLPOX COUNTERMEASURES BY HEALTH PROFESSIONALS UNDER SECTION 304 OF THE FEDERAL HOMELAND SECURITY ACT OF 2002 AND ANY HOUSEHOLD MEMBERS LIVING IN THE HOMES OF THESE VACCINATED EMPLOYEES WILL BE COVERED FOR ADVERSE MEDICAL REACTIONS DUE TO THE VACCINATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 135-40.6(8) reads as rewritten:

"(8) Other Covered Charges. –

...

u. Treatment of adverse reactions to vaccinations undertaken as smallpox countermeasures: Necessary medical services provided to a covered individual for infection with smallpox, infection with vaccinia, or any adverse medical reaction due to the vaccination."

SECTION 2. G.S. 97-53 reads as rewritten:

"§ 97-53. **Occupational diseases enumerated; when due to exposure to chemicals.**

The following diseases and conditions only shall be deemed to be occupational diseases within the meaning of this Article:

(29) Infection with smallpox, infection with vaccinia, or any adverse medical reaction when the infection or adverse reaction is due to the employee receiving in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)), or when the infection or adverse medical reaction is due to the employee being exposed to another employee vaccinated as described in this subdivision.

..."

SECTION 3. Article 31 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-300.1A. Claims arising from certain smallpox vaccinations of State employees.**

The North Carolina Industrial Commission shall have jurisdiction to hear and determine claims in accordance with the procedures set forth in this Article made against the State by a person who is permanently or temporarily living in the home of a State employee who receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) when the person contracts an infection with smallpox or an infection with vaccinia or has any adverse medical reaction due to the vaccination received by the employee. A person covered by this section shall be entitled to recover

from the State damages incurred by the person that are directly attributable to the vaccination of the employee under this section. No showing of negligence is required under this section. The provisions of G.S. 143-299.1 shall not apply to claims made under this section, and contributory negligence is not a defense for claims under this section. Damages awarded under this section shall be paid in accordance with G.S. 143-291(a1) and shall be subject to the same limits as those which apply to tort claims under this Article."

SECTION 4. Article 3 of Chapter 126 of the General Statutes is amended by adding a new section to read:

"§ 126-8.4. No sick leave taken for absences by State employees resulting from adverse reactions to vaccination.

(a) Absence from work by an employee shall not count against the employee's sick leave, and the employee's salary shall continue during the absence when the employee receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) and the absence is due to the employee having an adverse medical reaction resulting from the vaccination. The provisions of this subsection shall apply for a maximum of 480 employment hours. The employing department, agency, institution, or entity may require the employee to obtain certification from a health care provider justifying the need for leave after the first 24 hours of leave taken pursuant to this subsection.

(b) Absence from work by an employee shall not count against the employee's sick leave, and the employee's salary shall continue during the absence when the employee is permanently or temporarily living in the home of a person who receives in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) and the absence is due to (i) the employee having an adverse medical reaction resulting from exposure to the vaccinated person, or (ii) the need to care for the vaccinated person who has an adverse medical reaction resulting from the vaccination. The provisions of this subsection shall apply for a maximum of 480 employment hours. The employing department, agency, institution, or entity may require the employee to obtain certification from a health care provider justifying the need for leave after the first 24 hours of leave taken pursuant to this subsection.

(c) Notwithstanding any other provisions of this Chapter, this section applies to all State employees."

SECTION 5. Part 4 of Article 7 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-164.1. Smallpox vaccination policy.

All municipalities that employ firefighters, police officers, paramedics, or other first responders shall, not later than 90 days after this section becomes law, enact a policy regarding sick leave and salary continuation for those employees for absence from work due to an adverse medical reaction resulting from the employee receiving in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p))."

SECTION 6. Part 4 of Article 5 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"§ 153A-94.1. Smallpox vaccination policy.

All counties that employ firefighters, law enforcement officers, paramedics, other first responders, or health department employees shall, not later than 90 days after this section becomes law, enact a policy regarding sick leave and salary continuation for those employees for absence from work due to an adverse medical reaction resulting from the employee receiving in employment vaccination against smallpox incident to

the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p))."

SECTION 7. In the event that federal regulatory or statutory provisions providing compensation and benefits to persons for infection with smallpox, infection with vaccinia, or any adverse medical reaction incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) are adopted, a condition precedent to recovery under this act shall be that the person claiming compensation and benefits under this act shall first seek compensation and benefits under the federal provisions, with those provisions constituting primary coverage and the person then being entitled to compensation and benefits under this act not exceeding a total recovery under the federal provisions and this act equal to the amount available under the applicable provisions of this act.

SECTION 8. The provisions of this act are severable. If any provision of this act is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

SECTION 9. This act is effective when it becomes law and applies to claims arising from infection or adverse medical reactions related to smallpox vaccinations incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No.107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) whether the infection or adverse medical reactions occurred before, on, or after the effective date of this act.

In the General Assembly read three times and ratified this the 5th day of June, 2003.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 10:00 a.m. this 12th day of June, 2003