

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 273*
Committee Substitute Favorable 4/2/03

Short Title: Adverse Reactions to Smallpox Vaccination.

(Public)

Sponsors:

Referred to:

March 6, 2003

A BILL TO BE ENTITLED

1 AN ACT TO ENSURE THAT EMPLOYEES WHO RECEIVE VACCINATION
2 AGAINST SMALLPOX INCIDENT TO THE ADMINISTRATION OF
3 SMALLPOX COUNTERMEASURES BY HEALTH PROFESSIONALS UNDER
4 SECTION 304 OF THE FEDERAL HOMELAND SECURITY ACT OF 2002 AND
5 ANY HOUSEHOLD MEMBERS LIVING IN THE HOMES OF THESE
6 VACCINATED EMPLOYEES WILL BE COVERED FOR ADVERSE MEDICAL
7 REACTIONS DUE TO THE VACCINATION.
8

9 The General Assembly of North Carolina enacts:

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

11 "(8) Other Covered Charges. –

12 ...

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

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

19 **"§ 97-53. Occupational diseases enumerated; when due to exposure to chemicals.**

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

22 ...

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

1 employee being exposed to another employee vaccinated as described
2 in this subdivision.

3 "

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

6 **"§ 143-300.1A. Claims arising from certain smallpox vaccinations of State**
7 **employees.**

8 The North Carolina Industrial Commission shall have jurisdiction to hear and
9 determine claims in accordance with the procedures set forth in this Article made
10 against the State by a person who is permanently or temporarily living in the home of a
11 State employee who receives in employment vaccination against smallpox incident to
12 the Administration of Smallpox Countermeasures by Health Professionals, section 304
13 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at
14 42 U.S.C. § 233(p)) when the person contracts an infection with smallpox or an
15 infection with vaccinia or has any adverse medical reaction due to the vaccination
16 received by the employee. A person covered by this section shall be entitled to recover
17 from the State damages incurred by the person that are directly attributable to the
18 vaccination of the employee under this section. No showing of negligence is required
19 under this section. The provisions of G.S 143-299.1 shall not apply to claims made
20 under this section, and contributory negligence is not a defense for claims under this
21 section. Damages awarded under this section shall be paid in accordance with G.S.
22 143-291(a1) and shall be subject to the same limits as those which apply to tort claims
23 under this Article."

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

26 **"§ 126-8.4. No sick leave taken for absences by State employees resulting from**
27 **adverse reactions to vaccination of certain health professionals against**
28 **smallpox.**

29 (a) Absence from work by an employee shall not count against the employee's
30 sick leave, and the employee's salary shall continue during the absence when the
31 employee receives in employment vaccination against smallpox incident to the
32 Administration of Smallpox Countermeasures by Health Professionals, section 304 of
33 the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at
34 42 U.S.C. § 233(p)) and the absence is due to the employee having an adverse medical
35 reaction resulting from the vaccination. The provisions of this subsection shall apply for
36 a maximum of 480 employment hours. The employing department, agency, institution
37 or entity may require the employee to obtain certification from a health care provider
38 justifying the need for leave after the first 24 hours of leave taken pursuant to this
39 subsection.

40 (b) Absence from work by an employee shall not count against the employee's
41 sick leave, and the employee's salary shall continue during the absence when the
42 employee is permanently or temporarily living in the home of a person who receives in
43 employment vaccination against smallpox incident to the Administration of Smallpox
44 Countermeasures by Health Professionals, section 304 of the Homeland Security Act,

1 Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 U.S.C. § 233(p)) and the
2 absence is due to (i) the employee having an adverse medical reaction resulting from
3 exposure to the vaccinated person, or (ii) the need to care for the vaccinated person who
4 has an adverse medical reaction resulting from the vaccination. The provisions of this
5 subsection shall apply for a maximum of 480 employment hours. The employing
6 department, agency, institution or entity may require the employee to obtain
7 certification from a health care provider justifying the need for leave after the first 24
8 hours of leave taken pursuant to this subsection.

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

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

13 **"§ 160A-164.1. Smallpox vaccination policy.**

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

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

23 **"§ 153A-94.1. Smallpox vaccination policy.**

24 All counties that employ firefighters, law enforcement officers, paramedics, other
25 first responders, or health department employees shall, not later that 90 days after this
26 section becomes law, enact a policy regarding sick leave and salary continuation for
27 those employees for absence from work due to an adverse medical reaction resulting
28 from the employee receiving in employment vaccination against smallpox incident to
29 the Administration of Smallpox Countermeasures by Health Professionals, section 304
30 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at
31 42 U.S.C. § 233(p))."

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

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

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