

ASSEMBLY, No. 3460

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:

Assemblyman JAMEL C. HOLLEY

District 20 (Union)

SYNOPSIS

Modifies “New Jersey Tort Claims Act” to provide for State to be strictly liable for injuries caused by State-mandated vaccines.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning liability for vaccine-related injuries, amending
2 various parts of the statutory law, and supplementing Title 59 of
3 the New Jersey Statutes

4
5 BE IT ENACTED by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. N.J.S.59:6-3 is amended to read as follows:

9 59:6-3. **【Neither】** a. Except as otherwise provided by
10 subsection b. of this section, neither a public entity nor a public
11 employee is liable for an injury resulting from the decision to
12 perform or not to perform any act to promote the public health of
13 the community by preventing disease or controlling the
14 communication of disease within the community.

15 b. Notwithstanding the provisions of this or any other section
16 of law to the contrary, a public entity is strictly liable for injury
17 caused by the administration of a vaccine that is intended to prevent
18 the communication of disease within the community if the plaintiff
19 establishes that:

20 (1) the vaccine was mandated by State law, rule, or regulation as
21 a condition of attendance at a child care center, preschool program,
22 elementary or secondary school, or institution of higher education at
23 the time of the vaccine's administration;

24 (2) the vaccine was administered by a public employee or any
25 other person authorized to ensure compliance with the State's
26 vaccination requirements; and

27 (3) the injury was proximately caused by the administration of
28 the vaccine. For the purposes of this paragraph, documentation of a
29 final determination of vaccine injury issued through the Vaccine
30 Injury Compensation Program administered by the Health
31 Resources and Services Administration in the United States
32 Department of Health and Human Services or a final judgment
33 issued by a court of competent jurisdiction that includes a finding of
34 vaccine injury shall constitute prima facie evidence that the injury
35 was proximately caused by the administration of the vaccine.

36 c. Any damages awarded to an individual pursuant to
37 subsection b. of this section shall be reduced by any amount for
38 which the individual received compensation from any other source,
39 including, but not limited to, compensation paid under an insurance
40 policy, by a State or federal health benefits program, by an entity
41 which provides health services on a prepaid basis, or by the Vaccine
42 Injury Compensation Program, regardless of whether the Vaccine
43 Injury Compensation Program issued a final determination of
44 vaccine injury.

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 d. For the purposes of 42 U.S.C. s.300aa-15, the provisions of
2 this section shall not constitute a State compensation program.
3 (cf: N.J.S.59:6-3)
4

5 2. Section 1 of P.L.2003, c.51 (C.59:6-8) is amended to read as
6 follows:

7 1. **【Notwithstanding】** a. Except as otherwise provided by
8 subsections b. and e. of this section, and notwithstanding any other
9 provision of law to the contrary, a public entity or public employee
10 shall not be liable in any civil action for damages as a result of the
11 public entity's or public employee's acts of commission or omission
12 arising out of and in the course of the acquisition, stockpiling,
13 distribution, or dispensing by the public entity or public employee
14 of drugs and vaccines 【which】 that mitigate the effects of exposure
15 to nuclear, chemical, or biological agents caused by an act of
16 terrorism or arising out of a state of emergency as declared by the
17 Governor, including but not limited to, potassium iodide pills.

18 b. Notwithstanding the provisions of this or any other section
19 of law to the contrary, a public entity is strictly liable for injury
20 caused by the administration of a vaccine that is intended to
21 mitigate the effects of exposure to nuclear, chemical, or biological
22 agents caused by an act of terrorism or arising out of a state of
23 emergency declared by the Governor if the plaintiff establishes that:

24 (1) the vaccine was mandated by State law, rule, or regulation as
25 a condition of attendance at a child care center, preschool program,
26 elementary or secondary school, or institution of higher education,
27 or by emergency declaration, at the time of the vaccine's
28 administration;

29 (2) the vaccine was administered by a public employee or any
30 other person authorized to ensure compliance with the State's
31 vaccination requirements; and

32 (3) the injury was proximately caused by the administration of
33 the vaccine. For the purposes of this paragraph, documentation of a
34 final determination of vaccine injury issued through the Vaccine
35 Injury Compensation Program administered by the Health
36 Resources and Services Administration in the United States
37 Department of Health and Human Services or a final judgment
38 issued by a court of competent jurisdiction that includes a finding of
39 vaccine injury shall constitute prima facie evidence that the injury
40 was proximately caused by the administration of the vaccine.

41 c. Any damages awarded to an individual pursuant to
42 subsection b. of this section shall be reduced by any amount for
43 which the individual received compensation from any other source,
44 including, but not limited to, compensation paid under an insurance
45 policy, by a State or federal health benefits program, by an entity
46 which provides health services on a prepaid basis, or by the Vaccine
47 Injury Compensation Program, regardless of whether the Vaccine
48 Injury Compensation Program issued a final determination of
49 vaccine injury.

1 d. For the purposes of 42 U.S.C. s.300aa-15, the provisions of
2 this section shall not constitute a State compensation program.

3 e. Nothing in this act shall be deemed to grant immunity to any
4 person or entity **【causing】** who causes damage by a willful, wanton,
5 or grossly negligent act of commission or omission.

6 (cf: P.L.2003, c.51, s.1)
7

8 3. N.J.S.59:9-2 is amended to read as follows:

9 59:9-2. a. No interest shall accrue prior to the entry of
10 judgment against a public entity or public employee.

11 b. **【No】** Except as otherwise provided by N.J.S.59:6-3 and
12 section 1 of P.L.2003, c.51 (C.59:6-8), no judgment shall be granted
13 against a public entity or public employee on the basis of strict
14 liability, implied warranty, or products liability.

15 c. No punitive or exemplary damages shall be awarded against
16 a public entity.

17 d. No damages shall be awarded against a public entity or
18 public employee for pain and suffering resulting from any injury;
19 provided, however, that this limitation on the recovery of damages
20 for pain and suffering shall not apply in cases of permanent loss of
21 a bodily function, permanent disfigurement, or dismemberment
22 where the medical treatment expenses are in excess of **【\$3,600.00】**
23 \$3,600. For purposes of this section, “medical treatment expenses”
24 are defined as the reasonable value of services rendered for
25 necessary surgical, medical, and dental treatment of the claimant for
26 such injury, sickness, or disease, including prosthetic devices and
27 ambulance, hospital, or professional nursing **【service】** services.

28 e. If a claimant receives or is entitled to receive benefits for the
29 injuries allegedly incurred from a policy or policies of insurance or
30 any other source other than a joint tortfeasor, such benefits shall be
31 disclosed to the court, and the amount thereof, which duplicates any
32 benefit contained in the award, shall be deducted from any award
33 against a public entity or public employee recovered by such
34 claimant; provided, however, that nothing in this **【provision】**
35 subsection shall be construed to limit the rights of a beneficiary
36 under a life insurance policy. No insurer or other person shall be
37 entitled to bring an action under a subrogation provision in an
38 insurance contract against a public entity or public employee.

39 (cf: P.L.2000, c.126, s.32)
40

41 4. (New section) a. Any public entity, other than the State, that
42 is named as a defendant in a suit brought pursuant to subsection b.
43 of N.J.S.59:6-3 or subsection b. of section 1 of P.L.2003, c.51
44 (C.69:6-8) shall be entitled to seek and obtain indemnification and
45 reimbursement from the State General Fund for all monetary
46 damages that are paid and all other reasonable costs, including
47 attorney’s fees and court costs, that are incurred by the public entity
48 in association with the resolution of the case. Reimbursement shall

1 be provided under this paragraph upon the Secretary of State's
2 receipt of a claim for reimbursement and approval of the claim by
3 the Director of the Division of Budget and Accounting in the
4 Department of the Treasury.

5 b. A claim for reimbursement under this section shall be filed
6 with the Secretary of State within the same timeframe and in the
7 same manner provided for claims for damage or injury under
8 chapter 8 of Title 59 of the New Jersey Statutes.

9 c. The Legislature shall annually appropriate, from the General
10 Fund to the Secretary of State, such sums as the State Treasurer and
11 the Director of the Division of Budget and Accounting in the
12 Department of the Treasury determine are necessary for
13 reimbursements authorized under this section.

14
15 5. This act shall take effect immediately and shall apply to all
16 vaccine-related injuries that are sustained after, or that are ongoing
17 as of, the effective date of this act.

20 STATEMENT

21
22 This bill would make the State strictly liable for damages
23 stemming from certain vaccine-related injuries.

24 The "New Jersey Tort Claims Act" (NJTCA) provides that the
25 public entities and public employees are to be generally immune
26 from civil liability in tort actions. "Public entity" is defined to
27 include the State and any county, municipality, district, public
28 authority, public agency, and any other political subdivision or
29 public body in the State. The NJTCA specifically immunizes all
30 public entities and public employees from liability for any injury
31 resulting from the decision to perform or not to perform any act to
32 promote the public health of the community by preventing disease
33 or controlling the communication of disease within the community.
34 The Act further specifies that no public entity or public employee
35 may be held civilly liable for any injury resulting from the public
36 entity's or public employee's acts of commission or omission arising
37 out of and in the course of the entity's or employee's acquisition,
38 stockpiling, distribution, or dispensing of drugs and vaccines that
39 mitigate the effects of exposure to nuclear, chemical, or biological
40 agents caused by an act of terrorism or arising out of a state of
41 emergency as declared by the Governor.

42 This bill would amend the NJTCA to specify that,
43 notwithstanding the Act's existing immunity provisions, a public
44 entity will be strictly liable for an injury that is caused by the
45 administration of a vaccine if the plaintiff establishes that:

46 1) the vaccine was mandated by State law, rule, or regulation as
47 a condition of attendance at a child care center, preschool program,
48 elementary or secondary school, or institution of higher education,

1 or by emergency declaration, at the time of the vaccine's
2 administration;

3 2) the vaccine was administered by a public employee or any
4 other person authorized to ensure compliance with the State's
5 vaccination requirements; and

6 3) the injury was proximately caused by the administration of
7 the vaccine. Documentation of a final determination of vaccine
8 injury, which is issued through the Vaccine Injury Compensation
9 Program administered by the Health Resources and Services
10 Administration in the United States Department of Health and
11 Human Services, or a final judgment issued by a court of competent
12 jurisdiction that includes a finding of vaccine injury will constitute
13 prima facie evidence that the injury was proximately caused by the
14 administration of the vaccine.

15 The bill provides that any damages awarded to an individual
16 pursuant to its provisions are to be reduced by any amount for
17 which the individual has received compensation from any other
18 source, including, but not limited to, compensation paid under an
19 insurance policy, by a State or federal health benefits program, by
20 an entity which provides health services on a prepaid basis, or by
21 the Vaccine Injury Compensation Program, regardless of whether
22 the Vaccine Injury Compensation Program issued a final
23 determination of vaccine injury. The bill further specifies that its
24 provisions may not be deemed to constitute a State compensation
25 program, under 42 U.S.C. s.300aa-15, for the purposes of
26 determining whether compensation is available under the Vaccine
27 Injury Compensation Program.

28 Because the term "public entity," as defined in the NJTCA,
29 includes the State as well as any county, municipality, district,
30 public authority, public agency, or other political subdivision or
31 public body, the bill would clarify that, whenever a public entity,
32 other than the State, is named as a defendant in a suit brought
33 pursuant to the bill, that entity will be entitled to seek and obtain
34 indemnification and reimbursement from the State General Fund for
35 any monetary damages that are paid and other reasonable costs that
36 are incurred thereby in association with the resolution of the case.
37 Reimbursement is be provided upon the Secretary of State's receipt
38 of a claim for reimbursement and approval of the claim by the
39 Director of the Division of Budget and Accounting in the
40 Department of the Treasury. A claim for reimbursement is to be
41 submitted in accordance with the same timeframes, and in the same
42 manner, as is specified by the NJTCA for claims of damage or
43 injury. The bill provides for the Legislature to annually appropriate,
44 from the General Fund to the Secretary of State, such sums as the
45 State Treasurer and the Director of the Division of Budget and
46 Accounting in the Department of the Treasury determine are
47 necessary for the reimbursements authorized under the bill.

- 1 This bill would take effect immediately and would apply to all
- 2 vaccine-related injuries that are sustained after, or that are ongoing
- 3 as of, the effective date.