

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

S

1

SENATE BILL 464*

Short Title: Eugenics Compensation Program. (Public)

Sponsors: Senators McKissick, Parmon (Primary Sponsors); Kinnaird and Woodard.

Referred to: Appropriations/Base Budget.

March 28, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE MONETARY COMPENSATION TO PERSONS ASEXUALIZED
3 OR STERILIZED UNDER THE AUTHORITY OF THE EUGENICS BOARD OF
4 NORTH CAROLINA.

5 Whereas, it is the policy and intent of this State to provide compensation for certain
6 individuals who were lawfully asexualized or sterilized under the authority of the Eugenics
7 Board of North Carolina in accordance with Chapter 224 of the Public Laws of 1933 or Chapter
8 221 of the Public Laws of 1937; and

9 Whereas, the General Assembly recognizes that the State has no legal liability for
10 these asexualization or sterilization procedures and that any applicable statutes of limitations
11 have long since expired for the filing of any claims against the State for injuries caused; and

12 Whereas, the General Assembly wishes to make restitution for injustices suffered
13 and unreasonable hardships endured by the asexualization or sterilization of individuals at the
14 direction of the State between 1933 and 1974; and

15 Whereas, the General Assembly intends that compensation paid under this act shall
16 not be subject to State or federal income taxation nor considered for eligibility purposes for
17 State or federal public assistance; Now, therefore,
18 The General Assembly of North Carolina enacts:

19 **SECTION 1.** Article 9 of Chapter 143B of the General Statutes is amended by
20 adding a new Part to read:

21 "Part 30. Eugenics Asexualization and Sterilization Compensation Program.

22 **"§ 143B-426.50. Definitions.**

23 As used in this Part, the following definitions apply:

- 24 (1) Claimant. – An individual on whose behalf a claim is made for
25 compensation as a qualified recipient under this Part.
26 (2) Commission. – The North Carolina Industrial Commission.
27 (3) Office. – The Office of Justice for Sterilization Victims.
28 (4) Qualified recipient. – An individual who was asexualized or sterilized under
29 the authority of the Eugenics Board of North Carolina in accordance with
30 Chapter 224 of the Public Laws of 1933 or Chapter 221 of the Public Laws
31 of 1937 and who was living on May 16, 2012.

32 **"§ 143B-426.51. Compensation payments.**

33 (a) A claimant determined to be a qualified recipient under this Part shall receive
34 lump-sum compensation in the amount of fifty thousand dollars (\$50,000) from funds
35 appropriated to the Department of State Treasurer for these purposes.



1 (b) A qualified recipient may assign compensation received pursuant to subsection (a)
2 of this section to a trust established for the benefit of the qualified recipient.

3 **"§ 143B-426.52. Claims for compensation for asexualization or sterilization.**

4 (a) An individual shall be entitled to compensation as provided for in this Part if a claim
5 is submitted on behalf of that individual in accordance with this Part on or before December 31,
6 2015, and that individual is subsequently determined by a preponderance of the evidence to be
7 a qualified recipient.

8 (b) A claim under this section shall be submitted to the Office. The claim shall be in a
9 form, and supported by appropriate documentation and information, as required by the
10 Commission. A claim may be submitted on behalf of a claimant by a person lawfully
11 authorized to act on the individual's behalf. A claim may be submitted by the personal
12 representative of an individual who dies on or after May 16, 2012. The Office shall file the
13 submitted claim to the Commission.

14 (c) The Commission shall determine the eligibility of a claimant to receive the
15 compensation authorized by this Part in accordance with G.S. 143B-426.53. The Commission
16 shall notify the claimant in writing of the Commission's determination regarding the claimant's
17 eligibility.

18 (d) The Commission shall adopt rules for the determination of eligibility and the
19 processing of claims.

20 **"§ 143B-426.53. Industrial Commission determination.**

21 (a) The Commission shall determine whether a claimant is eligible for compensation as
22 a qualified recipient under this Part. The Commission shall have all powers and authority
23 granted under Article 31 of Chapter 143 of the General Statutes with regard to claims filed
24 pursuant to this Part.

25 (b) A deputy commissioner shall be assigned by the Commission to make initial
26 determinations of eligibility for compensation under this Part. The deputy commissioner shall
27 review the claim and supporting documentation submitted on behalf of a claimant and shall
28 make a determination of eligibility. If the claim is not approved, the deputy commissioner shall
29 set forth in writing the reasons for the disapproval and notify the claimant.

30 (c) A claimant whose claim is not approved under subsection (b) of this section may
31 submit to the Commission additional documentation in support of the individual's claim and
32 request a redetermination by the deputy commissioner.

33 (d) A claimant whose claim is not approved under subsection (b) or (c) of this section
34 shall have the right to request a hearing before the deputy commissioner. The hearing shall be
35 conducted in accordance with rules of the Commission. For claimants who are residents of this
36 State, at the request of the claimant, the hearing shall be held in the county of residence of the
37 claimant. For claimants who are not residents of this State, the hearing shall be held in Wake
38 County or at a location of mutual convenience as determined by the deputy commissioner. The
39 claimant shall have the right to be represented, including the right to be represented by counsel,
40 present evidence, and call witnesses. The deputy commissioner who hears the claim shall issue
41 a written decision of eligibility which shall be sent to the claimant.

42 (e) Upon the issuance of a decision by the deputy commissioner under subsection (d) of
43 this section, the claimant may file notice of appeal with the Commission within 30 days of the
44 date notice of the deputy commissioner's decision is given. Such appeal shall be heard by the
45 Commission, sitting as the full Commission, on the basis of the record in the matter and upon
46 oral argument. The full Commission may amend, set aside, or strike out the decision of the
47 deputy commissioner and may issue its own findings of fact, conclusions of law, and decision.
48 The Commission shall notify all parties concerned in writing of its decision.

49 (f) A claimant may appeal the decision of the full Commission to the Court of Appeals
50 within 30 days of the date notice of the decision of the full Commission is given. Appeals under

1 this section shall be in accordance with the procedures set forth in G.S. 143-293 and
2 G.S. 143-294.

3 (g) If at any stage of the proceedings the claimant is determined to be a qualified
4 recipient, the Commission shall give notice to the claimant and to the Office of the State
5 Treasurer, and the State Treasurer shall make payment of compensation to the qualified
6 recipient, a trust specified under G.S. 143B-426.51(b), or the estate of a qualified recipient, as
7 applicable.

8 (h) Decisions and determinations by the Commission favorable to the claimant shall be
9 final and not subject to appeal by the State.

10 (i) Costs under this section shall be taxed to the State.

11 **"§ 143B-426.54. Office of Justice for Sterilization Victims.**

12 (a) There is created in the Department of Administration the Office of Justice for
13 Sterilization Victims.

14 (b) At the request of a claimant or a claimant's legal representative, the Office shall
15 assist an individual who may be a qualified recipient to determine whether the individual
16 qualifies for compensation under this Part. The Office may assist an individual filing a claim
17 under this Part and collect documentation in support of the claim. With the claimant's consent,
18 the Office may represent and advocate for the claimant before the Commission and may assist
19 the claimant with any good faith further appeal of an adverse decision on a claim.

20 (c) The Office shall plan and implement an outreach program to attempt to notify
21 individuals who may be possible qualified recipients.

22 **"§ 143B-426.55. Confidentiality.**

23 Records of all inquiries of eligibility, claims, and payments under this Part shall be
24 confidential and not public records under Chapter 132 of the General Statutes.

25 **"§ 143B-426.56. Compensation excluded as income, resources, or assets.**

26 (a) Any payment made under this section is not subject to income tax as provided in
27 G.S. 105-134.6(b)(23) nor to be considered income or assets for purposes of determining the
28 eligibility for, or the amount of, any benefits or assistance under any State or local program
29 financed in whole or in part with State funds.

30 (b) Pursuant to G.S. 108A-26.1, the Department of Health and Human Services shall do
31 the following:

32 (1) Provide income, resource, and asset disregard to an applicant for, or
33 recipient of, public assistance who receives compensation under this Part.
34 The amount of the income, resource, and asset disregard shall be equal to the
35 total compensation paid to the individual from the Eugenics Sterilization
36 Compensation Fund.

37 (2) Provide resource protection by reducing any subsequent recovery by the
38 State under G.S. 108A-70.5 from a deceased recipient's estate for payment of
39 Medicaid-paid services by the amount of resource disregard given under
40 subdivision (1) of this subsection.

41 (3) Adopt rules to implement the provisions of subdivisions (1) and (2) of this
42 subsection.

43 **"§ 143B-426.57. Limitation of liability.**

44 Nothing in this Part shall revive or extend any statute of limitations that may otherwise
45 have expired prior to July 1, 2013. The State's liability arising from any cause of action related
46 to any asexualization or sterilization performed pursuant to an order of the Eugenics Board of
47 North Carolina shall be limited to the compensation authorized by this Part."

48 **SECTION 2.** G.S. 105-134.6(b) is amended by adding a new subdivision to read:

49 "(22) The amount paid to the taxpayer during the taxable year from the Eugenics
50 Sterilization Compensation Fund in the Office of the State Treasurer as
51 compensation to a qualified recipient under the Eugenics Asexualization and

1 Sterilization Compensation Program under Part 30 of Article 9 of Chapter
2 143B of the General Statutes."

3 **SECTION 3.** Part 1 of Article 2 of Chapter 108A of the General Statutes is
4 amended by adding a new section to read:

5 **"§ 108A-26.1. Exclude compensation from the Eugenics Sterilization Compensation Fund**
6 **from income, resources, and assets for public assistance programs.**

7 With regard to compensation received pursuant to Part 30 of Article 9 of Chapter 143B of
8 the General Statutes, the provisions of G.S. 143B-426.56(b) shall apply to the Department."

9 **SECTION 4.** G.S. 132-1.23 reads as rewritten:

10 **"§ 132-1.23. Eugenics program records.**

11 (a) Records in the custody of the State, including those in the custody of the North
12 Carolina Office of Justice for Sterilization Foundation Victims, concerning the North
13 Carolina Eugenics Board of North Carolina's program are confidential and are not public
14 records to the extent they concern: records, including the records identifying (i) persons
15 individuals impacted by the program, (ii) persons-individuals, or their guardians or authorized
16 agents-agents, inquiring about the impact of the program on them, the individuals, or (iii)
17 persons-individuals, or their guardians or authorized agents-agents, inquiring about the potential
18 impact of the program on others.

19 (b) Notwithstanding subsection (a) of this section, a person-an individual impacted by
20 the program may obtain that person's individual records under the program, and a guardian or
21 authorized agent of that person may also obtain them. program, or a guardian or authorized
22 agent of that individual, may obtain that individual's records under the program upon execution
23 of a proper release authorization.

24 (c) Notwithstanding subsections (a) and (b) of this section, minutes or reports of the
25 Eugenics Board of North Carolina, for which identifying information of the individuals
26 impacted by the program have been redacted, may be released to any person. As used in this
27 subsection, "identifying information" shall include the name, street address, birth day and
28 month, and any other information the State believes may lead to the identity of any individual
29 impacted by the program, or of any relative of an individual impacted by the program."

30 **SECTION 5.** The State Controller shall establish a reserve in the General Fund to
31 be known as the Eugenics Sterilization Compensation Reserve. Compensation authorized under
32 Part 30 of Article 9 of Chapter 143B of the General Statutes shall be transferred from this
33 Reserve to the Office of Justice for Sterilization Victims established in G.S. 143B-426.54.
34 Funds in the Reserve shall not be expended or transferred except in accordance with Part 30 of
35 Article 9 of Chapter 143B of the General Statutes. Funds in the Reserve shall remain until all
36 claims timely filed with the Industrial Commission as prescribed in this act have been finally
37 adjudicated and all qualified recipients who timely submit claims are paid. The Office of
38 Justice for Sterilization Victims and the Reserve are subject to the oversight of the State
39 Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. Funds remaining after
40 all qualified recipients are paid shall revert to the General Fund.

41 **SECTION 6.** The Department of Health and Human Services shall submit to the
42 Centers for Medicare and Medicaid Services by July 1, 2013, a State Plan Amendment for the
43 Medical Assistance Program and a State Plan Amendment for the Children's Health Insurance
44 Program to allow for income, resource, and asset disregard for compensation payments under
45 Part 30 of Article 9 of Chapter 143B of the General Statutes, the Eugenics Asexualization and
46 Sterilization Compensation Program, as enacted by Section 1 of this act.

47 **SECTION 7.** Effective June 30, 2013, the State Controller shall reserve the sum of
48 ten million dollars (\$10,000,000) in the General Fund to the Eugenics Sterilization
49 Compensation Reserve.

1 **SECTION 8.** Of the funds appropriated for the 2013-2014 fiscal year to the
2 Reserve Fund, the sum of one hundred eighty-four thousand dollars (\$184,000) shall be
3 transferred to the Industrial Commission for the administration of Section 1 of this act.

4 **SECTION 9.** Of the funds appropriated for the 2013-2014 fiscal year to the
5 Reserve Fund, the sum of six hundred fifty-four thousand dollars (\$654,000) shall be
6 transferred to the Department of Administration for the expenses of the Office of Justice for
7 Sterilization Victims as set forth in Section 1 of this act.

8 **SECTION 10.** The Department of Cultural Resources shall electronically scan and
9 index records of index cards and minutes of the Eugenics Board of North Carolina. The
10 Department of Administration, with the assistance of the Department of Cultural Resources,
11 shall establish an electronic searchable database of records of the Eugenics Board of North
12 Carolina, which shall be made available for the purpose of assisting in the identification of
13 claimants who may be qualified recipients under this act. Of the funds appropriated for the
14 2013-2014 fiscal year to the Reserve Fund, the sum of fifty-seven thousand dollars (\$57,000)
15 shall be transferred to the Department of Cultural Resources for the electronic scanning and
16 indexing of documents. Of the funds appropriated for the 2013-2014 fiscal year to the Reserve
17 Fund, the sum of one hundred fifty-five thousand dollars (\$155,000) shall be transferred to the
18 Department of Administration for the creation and maintenance of the database established
19 under this section.

20 **SECTION 11.** It is the intent of this General Assembly that, to the extent the funds
21 appropriated by this act are insufficient to pay compensation to all qualified recipients under
22 this act, any future General Assembly will appropriate sufficient funds to compensate all
23 qualified recipients.

24 **SECTION 12.** Section 2 of this act is effective for taxes imposed for taxable years
25 beginning on or after January 1, 2013. Sections 6 and 12 of this act are effective when this act
26 becomes law. The remainder of this act becomes effective July 1, 2013. Except for the
27 provisions of Section 2 and Section 3 of this act, and the provisions of Section 4 of this act
28 pertaining to the protection of confidential and identifying information, this act expires June 30,
29 2016.