

**SENATE, No. 1791**

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**STATE OF NEW JERSEY**

**219th LEGISLATURE**

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INTRODUCED FEBRUARY 13, 2020

**Sponsored by:**

**Senator JOSEPH PENNACCHIO**

**District 26 (Essex, Morris and Passaic)**

**Senator MICHAEL L. TESTA, JR.**

**District 1 (Atlantic, Cape May and Cumberland)**

**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

1 Injury Compensation Program issued a final determination of  
2 vaccine injury.

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

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

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

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

11 59:9-2. a. No interest shall accrue prior to the entry of  
12 judgment against a public entity or public employee.

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

17 c. No punitive or exemplary damages shall be awarded against  
18 a public entity.

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

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

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

42  
43 4. (New section) a. Any public entity, other than the State,  
44 that is named as a defendant in a suit brought pursuant to subsection  
45 b. of N.J.S.59:6-3 or subsection b. of section 1 of P.L.2003, c.51  
46 (C.69:6-8) shall be entitled to seek and obtain indemnification and  
47 reimbursement from the State General Fund for all monetary

1 damages that are paid and all other reasonable costs, including  
2 attorney's fees and court costs, that are incurred by the public entity  
3 in association with the resolution of the case. Reimbursement shall  
4 be provided under this paragraph upon the Secretary of State's  
5 receipt of a claim for reimbursement and approval of the claim by  
6 the Director of the Division of Budget and Accounting in the  
7 Department of the Treasury.

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

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

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

#### 21 22 23 STATEMENT

24  
25 This bill would make the State strictly liable for damages  
26 stemming from certain vaccine-related injuries.

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

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

1       1) the vaccine was mandated by State law, rule, or regulation as  
2 a condition of attendance at a child care center, preschool program,  
3 elementary or secondary school, or institution of higher education,  
4 or by emergency declaration, at the time of the vaccine's  
5 administration;

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

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

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

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

**S1791 PENNACCHIO, TESTA**

7

1    Accounting in the Department of the Treasury determine are  
2    necessary for the reimbursements authorized under the bill.

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