SENATE, No. 1791

STATE OF NEW JERSEY

219th LEGISLATURE

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

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

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

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

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

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

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

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

c. Any damages awarded to an individual pursuant to subsection b. of this section shall be reduced by any amount for which the individual received compensation from any other source, including, but not limited to, compensation paid under an insurance policy, by a State or federal health benefits program, by an entity which provides health services on a prepaid basis, or by the Vaccine Injury Compensation Program, regardless of whether the Vaccine Injury Compensation Program issued a final determination of 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.
d. For the purposes of 42 U.S.C. s.300aa-15, the provisions of this section shall not constitute a State compensation program.
(cf: N.J.S.59:6-3)

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

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

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

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

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

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

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

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

e. Nothing in this act shall be deemed to grant immunity to any
person or entity causing damage by a willful, wanton, or grossly negligent act of commission or omission.

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

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

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

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

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

d. No damages shall be awarded against a public entity or
public employee for pain and suffering resulting from any injury;
provided, however, that this limitation on the recovery of damages
for pain and suffering shall not apply in cases of permanent loss of
a bodily function, permanent disfigurement, or dismemberment
where the medical treatment expenses are in excess of $3,600.00

$3,600. For purposes of this section, “medical treatment expenses”
are defined as the reasonable value of services rendered for
necessary surgical, medical, and dental treatment of the claimant for
such injury, sickness, or disease, including prosthetic devices and
ambulance, hospital, or professional nursing services.

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

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

4. (New section) a. Any public entity, other than the State,
that is named as a defendant in a suit brought pursuant to subsection
b. of N.J.S.59:6-3 or subsection b. of section 1 of P.L.2003, c.51
(C.69:6-8) shall be entitled to seek and obtain indemnification and
reimbursement from the State General Fund for all monetary
damages that are paid and all other reasonable costs, including attorney’s fees and court costs, that are incurred by the public entity in association with the resolution of the case. Reimbursement shall be provided under this paragraph upon the Secretary of State’s receipt of a claim for reimbursement and approval of the claim by the Director of the Division of Budget and Accounting in the Department of the Treasury.

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

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

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

STATEMENT

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

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

This bill would amend the NJTCA to specify that, notwithstanding the Act’s existing immunity provisions, a public entity will be strictly liable for an injury that is caused by the administration of a vaccine if the plaintiff establishes that:
1) the vaccine was mandated by State law, rule, or regulation as a condition of attendance at a child care center, preschool program, elementary or secondary school, or institution of higher education, or by emergency declaration, at the time of the vaccine’s administration;

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

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

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

Because the term “public entity,” as defined in the NJTCA, includes the State as well as any county, municipality, district, public authority, public agency, or other political subdivision or public body, the bill would clarify that, whenever a public entity, other than the State, is named as a defendant in a suit brought pursuant to the bill, that entity will be entitled to seek and obtain indemnification and reimbursement from the State General Fund for any monetary damages that are paid and other reasonable costs that are incurred thereby in association with the resolution of the case. Reimbursement is to be provided upon the Secretary of State’s receipt of a claim for reimbursement and approval of the claim by the Director of the Division of Budget and Accounting in the Department of the Treasury. A claim for reimbursement is to be submitted in accordance with the same timeframes, and in the same manner, as is specified by the NJTCA for claims of damage or injury. The bill provides for the Legislature to annually appropriate, from the General Fund to the Secretary of State, such sums as the State Treasurer and the Director of the Division of Budget and
Accounting in the Department of the Treasury determine are necessary for the reimbursements authorized under the bill. This bill would take effect immediately and would apply to all vaccine-related injuries that are sustained after, or that are ongoing as of, the effective date.