

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 947*
PROPOSED COMMITTEE SUBSTITUTE H947-PCS80352-TM-23

Short Title: Eugenics Compensation Program.

(Public)

Sponsors:

Referred to:

May 17, 2012

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 March 1, 2010.

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



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

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

6 **"§ 143B-426.52. Claims for compensation for asexualization or sterilization.**

7 (a) An individual shall be entitled to compensation as provided for in this Part if a claim
8 is submitted on behalf of that individual in accordance with this Part on or before December 31,
9 2015, and that individual is subsequently determined by a preponderance of the evidence to be
10 a qualified recipient.

11 (b) A claim under this section shall be submitted to the Office. The claim shall be in a
12 form, and supported by appropriate documentation and information, as required by the
13 Commission. A claim may be submitted on behalf of a claimant by a person lawfully
14 authorized to act on the individual's behalf. A claim may be submitted by the personal
15 representative of an individual who dies on or after March 1, 2010. The Office shall file the
16 submitted claim to the Commission.

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

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

23 **"§ 143B-426.53. Industrial Commission determination.**

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

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

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

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

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

1 (f) A claimant may appeal the decision of the full Commission to the Court of Appeals
2 within 30 days of the date notice of the decision of the full Commission is given. Appeals under
3 this section shall be in accordance with the procedures set forth in G.S. 143-293 and
4 G.S. 143-294.

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

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

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

13 **"§ 143B-426.54. Office of Justice for Sterilization Victims.**

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

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

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

24 **"§ 143B-426.55. Confidentiality.**

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

27 **"§ 143B-426.56. Compensation excluded as income, resources, or assets.**

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

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

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

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

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

45 **"§ 143B-426.57. Limitation of liability.**

46 Nothing in this Part shall revive or extend any statute of limitations that may otherwise
47 have expired prior to July 1, 2012. The State's liability arising from any cause of action related
48 to any asexualization or sterilization performed pursuant to an order of the Eugenics Board of
49 North Carolina shall be limited to the compensation authorized by this Part."

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

1 "(23) The amount paid to the taxpayer during the taxable year from the Eugenics
2 Sterilization Compensation Fund in the Office of the State Treasurer as
3 compensation to a qualified recipient under the Eugenics Asexualization and
4 Sterilization Compensation Program under Part 30 of Article 9 of Chapter
5 143B of the General Statutes."

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

8 "**§ 108A-26.1. Exclude compensation from the Eugenics Sterilization Compensation Fund**
9 **from income, resources, and assets for public assistance programs.**

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

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

13 "**§ 132-1.23. Eugenics program records.**

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

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

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

33 **SECTION 5.** There is established the Eugenics Sterilization Compensation Fund in
34 the Office of the State Treasurer. Compensation authorized under Part 30 of Article 9 of
35 Chapter 143B of the General Statutes shall be paid from this Fund. Funds appropriated to this
36 Fund shall not revert until all claims timely filed with the Industrial Commission under Part 30
37 of Article 9 of Chapter 143B of the General Statutes have been finally adjudicated and all
38 qualified recipients who timely submit claims are paid. The Fund is subject to the oversight of
39 the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

40 **SECTION 6.** The Department of Health and Human Services shall submit to the
41 Centers for Medicare and Medicaid Services by July 1, 2012, a State Plan Amendment for the
42 Medical Assistance Program and a State Plan Amendment for the Children's Health Insurance
43 Program to allow for income, resource, and asset disregard for compensation payments under
44 Part 30 of Article 9 of Chapter 143B of the General Statutes, the Eugenics Asexualization and
45 Sterilization Compensation Program, as enacted by Section 1 of this act.

46 **SECTION 7.** Of the funds appropriated for the 2012-2013 fiscal year to the
47 Eugenics Reserve Fund, the sum of ten million dollars (\$10,000,000) shall be transferred to the
48 Eugenics Sterilization Compensation Fund established under Section 5 of this act.

49 **SECTION 8.** Of the funds appropriated for the 2012-2013 fiscal year to the
50 Eugenics Reserve Fund, the sum of one hundred eighty-four thousand dollars (\$184,000) shall
51 be transferred to the Industrial Commission for the administration of Section 1 of this act.

1 **SECTION 9.** Of the funds appropriated for the 2012-2013 fiscal year to the
2 Eugenics Reserve Fund, the sum of six hundred fifty-four thousand dollars (\$654,000) shall be
3 transferred to the Department of Administration for the expenses of the Office of Justice for
4 Sterilization Victims as set forth in Section 1 of this act.

5 **SECTION 10.** The Department of Cultural Resources shall electronically scan and
6 index records of index cards and minutes of the Eugenics Board of North Carolina. The
7 Department of Administration, with the assistance of the Department of Cultural Resources,
8 shall establish an electronic searchable database of records of the Eugenics Board of North
9 Carolina, which shall be made available for the purpose of assisting in the identification of
10 claimants who may be qualified recipients under this act. Of the funds appropriated for the
11 2012-2013 fiscal year to the Eugenics Reserve Fund, the sum of fifty-seven thousand dollars
12 (\$57,000) shall be transferred to the Department of Cultural Resources for the electronic
13 scanning and indexing of documents. Of the funds appropriated for the 2012-2013 fiscal year to
14 the Eugenics Reserve Fund, the sum of one hundred fifty-five thousand dollars (\$155,000) shall
15 be transferred to the Department of Administration for the creation and maintenance of the
16 database established under this section.

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

21 **SECTION 12.** Section 2 of this act is effective for taxes imposed for taxable years
22 beginning on or after January 1, 2012. Sections 6 and 12 of this act are effective when this act
23 becomes law. The remainder of this act becomes effective July 1, 2012.