

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE BILL 800\*

Short Title: Eugenics Compensation Program. (Public)

Sponsors: Senators McKissick, Hartsell, Kinnaird; Atwater, D. Berger, Blue, Clodfelter, Dannelly, Graham, Jenkins, Jones, Mansfield, Purcell, Robinson, Stein, Vaughan, Walters, and White.

Referred to: Appropriations/Base Budget.

May 17, 2012

A BILL TO BE ENTITLED

AN ACT TO PROVIDE MONETARY COMPENSATION TO PERSONS ASEXUALIZED OR STERILIZED UNDER THE AUTHORITY OF THE EUGENICS BOARD OF NORTH CAROLINA.

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

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

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

Whereas, the General Assembly intends that compensation paid under this act shall not be subject to State or federal income taxation nor considered for eligibility purposes for State or federal public assistance; Now, therefore,

The General Assembly of North Carolina enacts:

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

"Part 30. Eugenics Asexualization and Sterilization Compensation Program.

**"§ 143B-426.50. Definitions.**

As used in this Part, the following definitions apply:

- (1) Claimant. – An individual on whose behalf a claim is made for compensation as a qualified recipient under this Part.
- (2) Commission. – The North Carolina Industrial Commission.
- (3) Office. – The Office of Justice for Sterilization Victims.
- (4) Qualified recipient. – An individual who was asexualized or sterilized under the authority of the Eugenics Board of North Carolina in accordance with Chapter 224 of the Public Laws of 1933 or Chapter 221 of the Public Laws of 1937, and who was living on March 1, 2010.

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



1       (a) A claimant determined to be a qualified recipient under this Part shall receive  
2 compensation in the amount of fifty thousand dollars (\$50,000) from funds appropriated to the  
3 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 at a  
41 location determined by the deputy commissioner. The claimant shall have the right to be  
42 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.

9       (h) Costs under this section shall be taxed to the State.

10 **"§ 143B-426.54. Office of Justice for Sterilization Victims.**

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

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

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

21 **"§ 143B-426.55. Confidentiality.**

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

24 **"§ 143B-426.56. Compensation excluded as income, resources, or assets.**

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

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

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

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

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

42 **"§ 143B-426.57. Limitation of liability.**

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

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

48       "(23) The amount paid to the taxpayer during the taxable year from the Eugenics  
49 Sterilization Compensation Fund in the Office of the State Treasurer as  
50 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 Carolina  
13 Eugenics Board of North Carolina's program are confidential and are not public records to the  
14 extent they concern records, including the records identifying (i) persons-individuals impacted  
15 by the program, (ii) persons-individuals, or their guardians or authorized agents-agents,  
16 inquiring about the impact of the program on them, the individuals, or (iii) persons-persons, or  
17 their guardians or authorized agents-agents, inquiring about the potential impact of the program  
18 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.** There is established the Eugenics Sterilization Compensation Fund in  
31 the Office of the State Treasurer. Compensation authorized under Part 30 of Article 9 of  
32 Chapter 143B of the General Statutes shall be paid from this Fund. Funds appropriated to this  
33 Fund shall not revert until all claims timely filed with the Industrial Commission under Part 30  
34 of Article 9 of Chapter 143B of the General Statutes have been finally adjudicated and all  
35 qualified recipients who timely submit claims are paid. The Fund is subject to the oversight of  
36 the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

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

43                   **SECTION 7.** Of the funds appropriated for the 2012-2013 fiscal year to the  
44 Department of the State Treasurer, the sum of ten million dollars (\$10,000,000) shall be used to  
45 fund the Eugenics Sterilization Compensation Fund established under Section 5 of this act.

46                   **SECTION 8.** Of the funds appropriated for the 2012-2013 fiscal year to the  
47 Industrial Commission, the sum of one hundred eighty-four thousand dollars (\$184,000) shall  
48 be used for the administration of Section 1 of this act.

49                   **SECTION 9.** Of the funds appropriated for the 2012-2013 fiscal year to the  
50 Department of Administration, the sum of six hundred fifty-four thousand dollars (\$654,000)

1 shall be used for the expenses of the Office of Justice for Sterilization Victims as set forth in  
2 Section 1 of this act.

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

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

18 **SECTION 12.** Sections 6 and 12 of this act are effective when this act becomes  
19 law. The remainder of this act becomes effective July 1, 2012.