

**42 USC 300aa-23: Trial**

Text contains those laws in effect on December 24, 2018

**From Title 42-THE PUBLIC HEALTH AND WELFARE**

CHAPTER 6A-PUBLIC HEALTH SERVICE

SUBCHAPTER XIX-VACCINES

Part 2-National Vaccine Injury Compensation Program

subpart b-additional remedies

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**§300aa–23. Trial****(a) General rule**

A civil action against a vaccine manufacturer for damages for a vaccine-related injury or death associated with the administration of a vaccine after October 1, 1988, which is not barred by section 300aa–11(a)(2) of this title shall be tried in three stages.

**(b) Liability**

The first stage of such a civil action shall be held to determine if a vaccine manufacturer is liable under section 300aa–22 of this title.

**(c) General damages**

The second stage of such a civil action shall be held to determine the amount of damages (other than punitive damages) a vaccine manufacturer found to be liable under section 300aa–22 of this title shall be required to pay.

**(d) Punitive damages**

(1) If sought by the plaintiff, the third stage of such an action shall be held to determine the amount of punitive damages a vaccine manufacturer found to be liable under section 300aa–22 of this title shall be required to pay.

(2) If in such an action the manufacturer shows that it complied, in all material respects, with all requirements under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] and this chapter applicable to the vaccine and related to the vaccine injury or death with respect to which the action was brought, the manufacturer shall not be held liable for punitive damages unless the manufacturer engaged in-

(A) fraud or intentional and wrongful withholding of information from the Secretary during any phase of a proceeding for approval of the vaccine under section 262 of this title,

(B) intentional and wrongful withholding of information relating to the safety or efficacy of the vaccine after its approval, or

(C) other criminal or illegal activity relating to the safety and effectiveness of vaccines,

which activity related to the vaccine-related injury or death for which the civil action was brought.

**(e) Evidence**

In any stage of a civil action, the Vaccine Injury Table, any finding of fact or conclusion of law of the United States Court of Federal Claims or a special master in a proceeding on a petition filed under section 300aa–11 of this title and the final judgment of the United States Court of Federal Claims and subsequent appellate review on such a petition shall not be admissible.

(July 1, 1944, ch. 373, title XXI, §2123, as added Pub. L. 99–660, title III, §311(a), Nov. 14, 1986, 100 Stat. 3774 ; amended Pub. L. 100–203, title IV, §§4302(b)(1), 4307(9), Dec. 22, 1987, 101 Stat. 1330–221 , 1330–225; Pub. L. 101–239, title VI, §6601(o), Dec. 19, 1989, 103 Stat. 2292 ; Pub. L. 102–572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516 .)

**REFERENCES IN TEXT**

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (d)(2), is act [June 25, 1938, ch. 675, 52 Stat. 1040](#) , as amended, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Tables.

**CODIFICATION**

In subsec. (a), "October 1, 1988" substituted for "the effective date of this subpart" on authority of section 323 of Pub. L. 99-660, as amended, set out as an Effective Date note under section 300aa-1 of this title.

### **AMENDMENTS**

**1992-**Subsec. (e). Pub. L. 102-572 substituted "United States Court of Federal Claims" for "United States Claims Court" in two places.

**1989-**Subsec. (e). Pub. L. 101-239 substituted "finding of fact or conclusion of law" for "finding", "special master" for "master appointed by such court", and directed substitution of "the United States Claims Court and subsequent appellate review" for "a district court of the United States" which was executed by inserting "and subsequent appellate review" after "the United States Claims Court" the second place it appeared to reflect the probable intent of Congress and the amendment by Pub. L. 100-203, §4307(a), see 1987 Amendment note below.

**1987-**Subsec. (a). Pub. L. 100-203, §4302(b)(1), substituted "effective date of this subpart" for "effective date of this part".

Subsec. (e). Pub. L. 100-203, §4307(9), substituted "the United States Claims Court" for "a district court of the United States" in two places.

### **EFFECTIVE DATE OF 1992 AMENDMENT**

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

### **EFFECTIVE DATE OF 1989 AMENDMENT**

For applicability of amendments by Pub. L. 101-239 to petitions filed after Dec. 19, 1989, petitions currently pending in which the evidentiary record is closed, and petitions currently pending in which the evidentiary record is not closed, with provision for an immediate suspension for 30 days of all pending cases, see section 6601(s)(1) of Pub. L. 101-239, set out as a note under section 300aa-10 of this title.