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HOUSE BILL NO. 74

Offered January 8, 2014

Prefiled December 8, 2013

A BILL to amend and reenact § 2.2-1514, as it is effective and as it may become effective, of the Code of Virginia and to amend the Code of Virginia by adding in Title 63.2 a chapter numbered 23, consisting of sections numbered 63.2-2300 through 63.2-2309, relating to the Justice for Victims of Sterilization Act.

Patrons—Marshall, R.G., Hope, Cline and Simon

Referred to Committee on Appropriations

Whereas, it is the policy and intent of the Commonwealth to provide monetary compensation for certain individuals who were involuntarily sterilized under the authority of the Virginia Eugenical Sterilization Act of 1924, "An ACT to provide for the sexual sterilization of inmates of State institutions in certain cases"; and

Whereas, it is the policy and intent of the Commonwealth to establish a museum, located at the Central Virginia Training Center in Lynchburg, Virginia, with the mission and the purpose of fulfilling an objective of House Joint Resolution 607, which is to "urge the citizens . . . to become familiar with the history of the eugenics movement, in the belief that a more educated, enlightened and tolerant population will reject absolutely any such abhorrent pseudo-scientific movement in the future"; and

Whereas, the General Assembly recognizes that the Virginia Eugenical Sterilization Act was held constitutional in a landmark 1927 decision, before the United States Supreme Court, in the case called *Buck v. Bell*, and thereafter the Virginia Eugenical Sterilization Act became a model act for other states and other nations, including Nazi Germany in 1933; and

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

Whereas, the General Assembly wishes to make restitution for injustices suffered and unreasonable hardships endured by the involuntary sterilization of individuals at the direction of the Commonwealth between 1924 and 1979; 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,

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-1514, as it is effective and as it may become effective, of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 63.2 a chapter numbered 23, consisting of sections numbered 63.2-2300 through 63.2-2309, as follows:

§ 2.2-1514. (Contingent expiration date) Assignment of general fund for nonrecurring expenditures.

A. As used in this section:

"The Budget Bill" means the "The Budget Bill" submitted pursuant to § 2.2-1509, including any amendments to a general appropriation act pursuant to such section.

"Nonrecurring expenditures" means the acquisition or construction of capital outlay projects as defined in § 2.2-1518, the acquisition or construction of capital improvements, the acquisition of land, the acquisition of equipment, or other expenditures of a one-time nature as specified in the general appropriation act.

B. At the end of each fiscal year, the Comptroller shall assign within his annual report pursuant to § 2.2-813 as follows: 67 percent of the remaining amount of the general fund balance that is not otherwise restricted, committed, or assigned for other usage within the general fund shall be assigned by the Comptroller for deposit into the Transportation Trust Fund or a subfund thereof, and the remaining amount shall be assigned for nonrecurring expenditures. No such assignment shall be made unless the full amounts required for other restrictions, commitments, or assignments including but not limited to (i) the Revenue Stabilization Fund deposit pursuant to § 2.2-1829, (ii) the Virginia Water Quality Improvement Fund deposit pursuant to § 10.1-2128, but excluding any deposits provided under the Virginia Natural Resources Commitment Fund established under § 10.1-2128.1, (iii) the *Justice for Victims of Sterilization Compensation Fund* deposit pursuant to § 63.2-2304, (iv) capital outlay reappropriations pursuant to the general appropriation act, ~~(iv)~~ (v) (a) operating expense reappropriations pursuant to the general appropriation act, and (b) reappropriations of unexpended appropriations to

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59 certain public institutions of higher education pursuant to § 2.2-5005, ~~(v)~~ (vi) pro rata rebate payments to
 60 certain public institutions of higher education pursuant to § 2.2-5005, ~~(vi)~~ (vii) the unappropriated
 61 balance anticipated in the general appropriation act for the end of such fiscal year, and ~~(vii)~~ (viii)
 62 interest payments on deposits of certain public institutions of higher education pursuant to § 2.2-5005
 63 are set aside. The Comptroller shall set aside amounts required for clauses ~~(iv)~~ (v) (b), ~~(v)~~ (vi), and ~~(vii)~~
 64 (viii) beginning with the initial fiscal year as determined under § 2.2-5005 and for all fiscal years
 65 thereafter.

66 C. The Governor shall include in "The Budget Bill" pursuant to § 2.2-1509 recommended
 67 appropriations from the general fund or recommended amendments to general fund appropriations in the
 68 general appropriation act in effect at that time an amount for deposit into the Transportation Trust Fund
 69 or a subfund thereof, and an amount for nonrecurring expenditures equal to the amounts assigned by the
 70 Comptroller for such purposes pursuant to the provisions of subsection B. Such deposit to the
 71 Transportation Trust Fund or a subfund thereof shall not preclude the appropriation of additional
 72 amounts from the general fund for transportation purposes.

73 **§ 2.2-1514. (Contingent effective date) Assignment of general fund for nonrecurring**
 74 **expenditures.**

75 A. As used in this section:

76 "The Budget Bill" means the "The Budget Bill" submitted pursuant to § 2.2-1509, including any
 77 amendments to a general appropriation act pursuant to such section.

78 "Nonrecurring expenditures" means the acquisition or construction of capital outlay projects as
 79 defined in § 2.2-1518, the acquisition or construction of capital improvements, the acquisition of land,
 80 the acquisition of equipment, or other expenditures of a one-time nature as specified in the general
 81 appropriation act.

82 B. At the end of each fiscal year, the Comptroller shall assign within his annual report pursuant to
 83 § 2.2-813 as follows: 67 percent of the remaining amount of the general fund balance that is not
 84 otherwise restricted, committed, or assigned for other usage within the general fund shall be assigned by
 85 the Comptroller for deposit into the Transportation Trust Fund or a subfund thereof, and the remaining
 86 amount shall be assigned for nonrecurring expenditures. No such assignment shall be made unless the
 87 full amounts required for other restrictions, commitments, or assignments including but not limited to (i)
 88 the Revenue Stabilization Fund deposit pursuant to § 2.2-1829, (ii) the Virginia Water Quality
 89 Improvement Fund deposit pursuant to § 10.1-2128, but excluding any deposits provided under the
 90 Virginia Natural Resources Commitment Fund established under § 10.1-2128.1, (iii) *the Justice for*
 91 *Victims of Sterilization Compensation Fund deposit pursuant to § 63.2-2304*, (iv) capital outlay
 92 reappropriations pursuant to the general appropriation act, ~~(iv)~~ (v) (a) operating expense reappropriations
 93 pursuant to the general appropriation act, and (b) reappropriations of unexpended appropriations to
 94 certain public institutions of higher education pursuant to § 2.2-5005, ~~(v)~~ (vi) pro rata rebate payments to
 95 certain public institutions of higher education pursuant to § 2.2-5005, ~~(vi)~~ (vii) the unappropriated
 96 balance anticipated in the general appropriation act for the end of such fiscal year, and ~~(vii)~~ (viii)
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 98 are set aside. The Comptroller shall set aside amounts required for clauses ~~(iv)~~ (v) (b), ~~(v)~~ (vi), and ~~(vii)~~
 99 (viii) beginning with the initial fiscal year as determined under § 2.2-5005 and for all fiscal years
 100 thereafter.

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 102 appropriations from the general fund or recommended amendments to general fund appropriations in the
 103 general appropriation act in effect at that time an amount for deposit into the Transportation Trust Fund
 104 or a subfund thereof, and an amount for nonrecurring expenditures equal to the amount assigned by the
 105 Comptroller for such purpose pursuant to the provisions of subsection B. Such deposit to the
 106 Transportation Trust Fund or a subfund thereof shall not preclude the appropriation of additional
 107 amounts from the general fund for transportation purposes.

108 **CHAPTER 23.**

109 **JUSTICE FOR VICTIMS OF STERILIZATION ACT.**

110 **§ 63.2-2300. Definitions.**

111 *As used in this chapter, unless the context requires a different meaning:*

112 *"Claimant" means an individual on whose behalf a claim is made for compensation.*

113 *"Department" means Department of Social Services.*

114 *"Qualified recipient" means any individual who, by substantial evidence, was involuntarily sterilized*
 115 *under the authority of the Virginia Eugenical Sterilization Act and who was living on November 15,*
 116 *2013, and submits a claim on or before December 31, 2017.*

117 **§ 63.2-2301. Claims for compensation for involuntary sterilization.**

118 A. A qualified recipient shall be entitled to compensation if a claim is submitted on or before
 119 December 31, 2017.

120 B. A claim shall be submitted to the Department and the claim shall be in a form, and supported by

appropriate documentation and information, as required by the Department. A claim may be submitted on behalf of a claimant by a person lawfully authorized to act on the individual's behalf. A claim may be submitted by the estate of or personal representative of an individual who dies on or after November 15, 2013. No estate of or personal representative of a qualified recipient who died on or before November 15, 2012, shall be entitled to seek a claim for compensation.

C. A claimant determined to be a qualified recipient shall receive compensation in the amount of \$50,000 from funds appropriated to the Comptroller for this purpose.

D. A qualified recipient may assign compensation received to a trust established for the benefit of the qualified recipient.

§ 63.2-2302. Review of claimant eligibility; appeals.

A. The Department shall promulgate regulations for the proper administration of this chapter, including eligibility requirements, procedures for filing a claim, and evaluating and setting reserves for the payment of claims.

B. The Department shall review the claim and supporting documentation submitted on behalf of a claimant and shall make a determination of eligibility. If the claim is approved, the Department shall classify the claimant as a qualified recipient.

C. Whenever a claimant is determined to be a qualified recipient, the Department shall proceed to pay the compensation provided by this chapter.

D. If the claim is denied, the Department shall set forth in writing the reasons for the denial and notify the claimant. The denial of a claim shall be considered a case decision as defined in § 2.2-4001.

§ 63.2-2303. Department to provide assistance; outreach program.

A. At the request of a claimant or a claimant's legal representative, the Department shall assist an individual who may be a qualified recipient to determine whether the individual qualifies for compensation. The Department may assist an individual in filing a claim and collecting documentation in support of the claim.

B. The Department shall establish an ongoing outreach program to provide a point of contact for questions and to disseminate information on the program aimed at potential claimants.

§ 63.2-2304. Justice for Victims of Sterilization Compensation Fund.

There is hereby created in the state treasury a special nonreverting fund to be known as the Justice for Victims of Sterilization Compensation Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. The Fund shall consist of sums appropriated to it by the General Assembly, which shall include, unless otherwise provided in the general appropriation act, 10 percent of the annual general fund revenue collections that are in excess of the official estimates in the general appropriation act and 10 percent of any unrestricted and uncommitted general fund balance at the close of each fiscal year whose reappropriation is not required in the general appropriation act. The Fund shall also consist of such other sums as may be made available to it from any other source, public or private. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of providing compensation to recipients under this chapter. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Commissioner of Social Services.

§ 63.2-2305. Confidentiality.

Records of all inquiries of eligibility, claims, and payments shall be confidential and not public records.

§ 63.2-2306. Department of Social Services; compensation excluded as income, resources, or assets.

A. No payment made under this chapter shall be subject to income tax, nor be considered income or assets for purposes of determining the eligibility for, or the amount of, any benefits or assistance under any state or local program financed in whole or in part with state funds.

B. The Department of Social Services shall:

1. Provide income, resource, and asset disregard to an applicant for or recipient of public assistance who receives compensation under this act. The amount of the income, resource, and asset disregard shall be equal to the total compensation paid to the individual from the Justice for Victims of Sterilization Compensation Fund.

2. Provide resource protection by reducing any subsequent recovery by the state from a deceased recipient's estate for payment of Medicaid paid services by the amount of resource disregard provided under subdivision 1.

§ 63.2-2307. Limitation of liability.

Nothing in this act shall revive or extend any statute of limitations that may otherwise have expired. The liability of the Commonwealth arising from any cause of action related to any involuntary sterilization performed pursuant to an order of the Virginia Eugenical Sterilization Act shall be limited

182 *to the compensation authorized by this chapter.*

183 **§ 63.2-2308. Access to records.**

184 A. Contact information for individuals involuntarily sterilized shall be provided to the Department for
185 the purpose of locating such individuals. The Department, the Department of Health, the Department of
186 Behavioral Health and Developmental Services, and any other state agency shall provide in a timely
187 manner all records, including medical records and sterilization hearings, in the name of an individual
188 who it may reasonably believe is a qualified recipient under this act.

189 B. Any individual affected by the Virginia Eugenical Sterilization Act shall be provided access to all
190 records of the Act that pertain to such individual. In addition, a guardian or authorized agent of the
191 individual shall also have access to such records, provided a proper release authorization has been
192 executed.

193 C. All documents, including minutes, hearings, and reports, regarding the Virginia Eugenical
194 Sterilization Act or regarding individuals affected by the Act may be released to any person, provided
195 that the release of such information is in a form that does not identify individuals or provide personal
196 identifying information. As used in this subsection, "personal identifying information" means (i) the
197 name, (ii) the street address, (iii) the date of birth, (iv) the biometric data, or (v) any other information
198 that can be used to determine the identity of any individual affected by the program or of any relative
199 of an individual affected by the program.

200 **§ 63.2-2309. Sunset.**

201 *The provisions of this chapter shall expire on July 1, 2019.*