HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

HOUSE CONCURRENT
RESOLUTION 1012 By: West (Kevin)

AS INTRODUCED

A Concurrent Resolution urging Congress to repeal the National Childhood Vaccine Injury Act; and directing distribution.

WHEREAS, on October 1, 1988, the National Childhood Vaccine Injury Act (NCVIA) became effective; and

WHEREAS, the NCVIA was Congress' attempt to strike a balance between protecting vaccine manufacturers and administrators from financial liability for vaccine injuries, while creating a cost-effective no-fault arbitration process to compensate those who suffer from vaccine side effects; and

WHEREAS, the NCVIA was drafted after the costs of defending DPT vaccine injury lawsuits caused two of the three American DPT vaccine manufacturers to halt production of the vaccine in 1984; and

WHEREAS, those who believe that vaccines have caused harm to themselves or their children must petition the Vaccine Injury Compensation Program (VICP); and

WHEREAS, the VICP is funded not by vaccine manufacturers but by a 75-cent excise tax placed on each disease component dose of every vaccine administered, which is paid by vaccine consumers at the time of purchase; and

WHEREAS, on November 14, 1986, President Ronald Reagan signed the NCVIA into law after expressing concern for its "substantial deficiencies" and stated that its "unprecedented arrangement" of being administered by the federal judiciary rather than the executive branch was a "poor choice to ensure a well-managed and effective program"; and

WHEREAS, this arrangement is inconsistent with the constitutional requirement for separation of powers among the branches of the federal government; and

WHEREAS, the U.S. Department of Justice, which is tasked with defending VICP claims, had urged a veto of the NCVIA prior to its signing; and

WHEREAS, the NCVIA was passed with the intent to allow parents of injured children to accept an award as payment in full, or reject the payment and file a lawsuit against the vaccine manufacturer; and

WHEREAS, on February 22, 2011, the U.S. Supreme Court ruled 6-to-2 in *Bruesewitz v. Wyeth* that NCVIA claimants were not permitted to reject a VCIP award and file suit against vaccine manufacturers, with Justice Antonin Scalia writing in the majority decision that the NCVIA "preempts all design-defect claims against vaccine

manufacturers brought by plaintiffs who seek compensation for injury or death caused by vaccine side effects"; and

WHEREAS, Justices Sonia Sotomayor and Ruth Bader Ginsburg dissented in the *Bruesewitz* ruling, stating that by preempting all design defect lawsuits by vaccine victims, the high court was imposing "its own bare policy preference over the considered judgment of Congress"; and

WHEREAS, the Vaccine Injury Table is a list of covered vaccines, associated injuries, and time periods of first symptoms to appear; and

WHEREAS, when claiming injuries sustained from vaccines that are not listed on the Table, which comprise 98% of all claims, the claimant must prove to the special master that the vaccine caused the injury, which requires retaining an expert witness willing to subject themselves to public scrutiny; and

WHEREAS, the $250,000 cap on the VICP payout for death as a result of vaccination has not changed since 1986 despite having an inflation-adjusted value over $560,000 today; and

WHEREAS, VICP-covered vaccines are those which are recommended for routine administration to children or pregnant women by the federal Centers for Disease Control and Prevention (CDC), irrespective of whether the vaccines were never safety tested for, or approved for use in, children or pregnant women; and

WHEREAS, newly-licensed vaccines that fall within a category of vaccines already covered by the VCIP are automatically added to the VICP-covered vaccine list and granted immunity from consumer litigation; and

WHEREAS, all other newly-licensed vaccines become VICP-covered upon the CDC's recommendation for routine administration to children or pregnant women; and

WHEREAS, the Advisory Committee on Immunization Practices (ACIP), which develops the recommended vaccine schedule for children is located within the CDC organization itself; and

WHEREAS, the vaccine safety program, called the Immunization Safety Office (ISO), is located within the CDC organization itself; and

WHEREAS, in December, 2009, Merck announced that Julie Gerberding, the former director of the CDC, was named president of Mercks's vaccine division 11 months after her resignation from the CDC, a move which transitioned her from a federal employee annual salary of $202,200 to a total compensation package worth multimillions; and

WHEREAS, the conflicting nature of the CDC's role in both recommending childhood and prenatal vaccines while simultaneously overseeing vaccine safety, combined with the absence of any prohibition on CDC employees assuming executive private sector pharmaceutical positions in vaccines, the biologic products the CDC

oversees safety for, further combined with the removal of all vaccine manufacturer financial liability, has served as a disincentive for manufacturers to vigilantly strive for creating the safest vaccines possible; and

WHEREAS, in 2002, Merck used unconventional methods to test the safety of its HPV vaccine, Gardasil, which resulted in many trial participant side effects being withheld from regulators; and

WHEREAS, in April, 2013, glass was detected in vials of Sanofi's Haemophilus b conjugate vaccine, or ActHIB, but Sanofi failed to issue a recall or alert parents of the health risks of injecting glass into infants, despite the U.S. Food and Drug Administration's warning that injecting glass could cause an adverse immune system reaction; and

WHEREAS, in August, 2015, the CDC admitted that there is an increased risk of toddler-aged children having febrile seizures with the MMR and MMR-V vaccines, as well as there being an increased risk of febrile seizures when the influenza vaccine is given with the pneumococcal or DTaP vaccines, as is common practice with six-month old infants; and

WHEREAS, in September, 2017, the CDC admitted that the risk of spontaneous abortion (miscarriage) increases by 670% when pregnant women receive the influenza vaccine during their first trimester; and

WHEREAS, many Health Maintenance Organizations (HMO) and Preferred Provider Organizations (PPOs) award large financial incentives to physicians for achieving high patient vaccination rates, or withhold vaccine reimbursement unless a patient is vaccinated strictly in accordance with the CDC childhood schedule; and

WHEREAS, in August, 2016, the American Academy of Pediatrics endorsed the practice of dismissing parents from doctor offices if they insist on following an alternative vaccination schedule or decline to vaccinate their child; and

WHEREAS, pediatricians are now denying medical homes and all medical care to patients whose caregivers do not consent to the administration of biologic drugs in accordance to the CDC schedule or not at all; and

WHEREAS, this threat of medical dismissal has created an environment of implied authority and intimidation by pediatricians who cannot, under the NCVIA and *Bruesewitz v. Wyeth,* be held liable in a court of law in the event a child is harmed by vaccination; and

WHEREAS, under the Obama administration the VICP was found to have flaws that "hinder its ability to satisfy both claimants and vaccine manufacturers," despite the fact that vaccine manufacturers are not financially or legally liable for VICP claims; and

WHEREAS, under the Obama administration the VICP was found to have extensive delays in processing claims and a multibillion dollar

balance in the program's trust fund that was unspent, since the trust fund is invested in U.S. Treasury securities; and

WHEREAS, in violation of the intention of the NCVIA, the VICP trust fund is used to make payments into the general fund of the U.S. Treasury, thereby allowing our government to profit from the vaccine excise tax intended to compensate injured children; and

WHEREAS, the U.S. Treasury has a financial interest in expanding the number of vaccines routinely administered to children and pregnant women so that it may collect a portion of the 75-cent tax on each vaccine administered; and

WHEREAS, the VICP has failed to be the expedited process envisioned by its drafters, as the average case now takes 3.6 years to resolve; and

WHEREAS, the VICP has failed to be the accessible no-fault arbitration process envisioned by its drafters, as 66% of claims have been dismissed without compensation and, in 2012, 90% of claims were dismissed; and

WHEREAS, the VICP has failed to be a resource for families of children injured due to the childhood vaccination schedule, as 64% of all compensable claims from 2006 to 2015 were for adults suffering shoulder injuries and nerve damage caused by the influenza vaccine; and

WHEREAS, the VICP has failed to conduct outreach to the general public, as most Americans, including lawyers, do not know of its

existence until the statute of limitations on a claim has run, and only $20,000 of its $6.5 million annual budget was dedicated to public outreach in 2014; and

WHEREAS, the VICP has failed to be the non-adversarial environment envisioned by its drafters due to its refusal to update the Injury Table in a timely and sensible manner, resulting in battles of expert witnesses that are no different from litigating a case in the judicial system; and

WHEREAS, in November, 2015, Barbara Loe Fisher, the co-creator of the NCVIA on behalf of injured children, called for it to be repealed.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE 2ND SESSION OF THE 56TH OKLAHOMA LEGISLATURE, THE SENATE CONCURRING THEREIN:

THAT the Oklahoma Legislature urges that Congress repeals the National Childhood Vaccine Injury Act.

THAT a copy of this resolution be sent to the President of the United States, to the presiding officers of each house of Congress, and to the entire Oklahoma delegation.

DIRECT TO CALENDAR.