

HOUSE BILL 1337

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4lr2041
CF SB 798

By: **Delegates Morhaim, Hammen, Barve, Bromwell, Cluster, Frank, Frick, Griffith, Healey, Hubbard, Impallaria, Kach, A. Kelly, McComas, McIntosh, Murphy, Nathan–Pulliam, Niemann, Oaks, Ready, Reznik, B. Robinson, Rosenberg, Stein, Szeliga, Tarrant, and V. Turner**

Introduced and read first time: February 7, 2014

Assigned to: Health and Government Operations and Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland No–Fault Birth Injury Fund**

3 FOR the purpose of declaring certain findings and the intent of the General Assembly;
4 establishing a system for adjudication of a claim involving a birth–related
5 neurological injury; excluding certain rights and remedies of a claimant and
6 certain other persons; providing for certain procedures; providing for certain
7 benefits and compensation of a claimant under this Act; establishing the
8 Maryland No–Fault Birth Injury Fund; providing for the governance,
9 administration, and purposes of the Fund; providing for certain premiums and
10 insurance surcharges to be used to finance and administer the Fund; providing
11 for certain credits for certain medical liability coverage for the obstetrical
12 practice or services of certain physicians and hospitals; providing for certain
13 patient safety initiatives; defining certain terms; providing for the application of
14 this Act; and generally relating to establishment of a system of adjudication and
15 compensation of a claimant for a birth–related neurological injury through the
16 Maryland No–Fault Birth Injury Fund.

17 BY adding to

18 Article – Courts and Judicial Proceedings
19 Section 3–2D–01 through 3–2D–08 to be under the new subtitle “Subtitle 2D.
20 Maryland No–Fault Birth Injury Fund Claims”
21 Annotated Code of Maryland
22 (2013 Replacement Volume and 2013 Supplement)

23 BY adding to

24 Article – Health – General
25 Section 20–1401 through 20–1403 to be under the new subtitle “Subtitle 14.
26 Birth Injury Prevention”

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2009 Replacement Volume and 2013 Supplement)

3 BY adding to
4 Article – Insurance
5 Section 32–101 through 32–304 to be under the new title “Title 32. Maryland
6 No–Fault Birth Injury Fund”
7 Annotated Code of Maryland
8 (2011 Replacement Volume and 2013 Supplement)

9 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
10 MARYLAND, That the Laws of Maryland read as follows:

11 **Article – Courts and Judicial Proceedings**

12 **SUBTITLE 2D. MARYLAND NO–FAULT BIRTH INJURY FUND CLAIMS.**

13 **3–2D–01.**

14 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
15 INDICATED.

16 (B) (1) “BIRTH–RELATED NEUROLOGICAL INJURY” MEANS AN
17 INJURY TO THE BRAIN OR SPINAL CORD OF A LIVE INFANT THAT:

18 (I) IS CAUSED BY OXYGEN DEPRIVATION OR MECHANICAL
19 INJURY THAT OCCURRED OR COULD HAVE OCCURRED DURING PREPRODROMAL
20 LABOR OR LABOR, DURING DELIVERY, OR IN THE IMMEDIATE RESUSCITATIVE
21 PERIOD AFTER DELIVERY; AND

22 (II) CAUSES DEATH OR PERMANENT AND SUBSTANTIAL
23 MENTAL AND PHYSICAL DISABILITY THAT RESULTS IN A PERMANENT NEED FOR
24 ASSISTANCE IN AT LEAST TWO OF THE FOLLOWING ACTIVITIES OF DAILY LIVING:

- 25 1. BATHING;
- 26 2. GETTING DRESSED OR CHANGING CLOTHES;
- 27 3. EATING, NUTRITIONAL PLANNING, AND
28 PREPARATION OF MEALS;
- 29 4. TOILETING; AND

1 **5. MOBILITY, INCLUDING TRANSFERRING TO AND**
2 **FROM A BED, A CHAIR, OR ANY OTHER STRUCTURE, AND MOVING ABOUT**
3 **INDOORS OR OUTDOORS.**

4 **(2) “BIRTH-RELATED NEUROLOGICAL INJURY” INCLUDES ONLY**
5 **AN INJURY OR A DEATH INVOLVING OBSTETRICAL SERVICES PROVIDED IN A**
6 **MARYLAND HOSPITAL.**

7 **(3) “BIRTH-RELATED NEUROLOGICAL INJURY” DOES NOT**
8 **INCLUDE DISABILITY OR DEATH CAUSED BY GENETIC OR CONGENITAL**
9 **ABNORMALITY.**

10 **(C) “CLAIMANT” MEANS A PERSON WHO FILES A CLAIM IN ACCORDANCE**
11 **WITH § 3-2D-05 OF THIS SUBTITLE FOR BENEFITS OR COMPENSATION FOR A**
12 **BIRTH-RELATED NEUROLOGICAL INJURY THAT OCCURS IN THE STATE.**

13 **(D) “FUND” MEANS THE MARYLAND NO-FAULT BIRTH INJURY FUND.**

14 **(E) “HOSPITAL” HAS THE MEANING STATED IN § 19-301 OF THE**
15 **HEALTH – GENERAL ARTICLE.**

16 **(F) “OFFICE” MEANS THE OFFICE OF ADMINISTRATIVE HEARINGS.**

17 **(G) “PHYSICIAN” MEANS AN INDIVIDUAL:**

18 **(1) LICENSED TO PRACTICE MEDICINE IN THE STATE; OR**

19 **(2) WHO LEGALLY PRACTICES MEDICINE WITHOUT A LICENSE**
20 **UNDER § 14-302(1), (2), (3), OR (4) OF THE HEALTH OCCUPATIONS ARTICLE.**

21 **(H) “QUALIFIED HEALTH CARE COSTS” MEANS REASONABLE EXPENSES**
22 **OF MEDICAL, HOSPITAL, REHABILITATIVE, FAMILY RESIDENTIAL OR CUSTODIAL**
23 **CARE, PROFESSIONAL RESIDENTIAL CARE, DURABLE MEDICAL EQUIPMENT,**
24 **MEDICALLY NECESSARY DRUGS, AND RELATED TRAVEL OR VEHICLE**
25 **MODIFICATIONS THAT ARE NECESSARY TO MEET A CLAIMANT’S HEALTH CARE**
26 **NEEDS AS DETERMINED BY THE CLAIMANT’S TREATING PHYSICIANS, PHYSICIAN**
27 **ASSISTANTS, OR NURSE PRACTITIONERS, AND AS OTHERWISE DEFINED BY**
28 **REGULATION.**

29 **3-2D-02.**

30 **(A) THE GENERAL ASSEMBLY FINDS THAT:**

1 **(1) BIRTHS OTHER THAN A NORMAL BIRTH SOMETIMES LEAD TO**
2 **CLAIMS AGAINST THE HOSPITAL WHERE THE BIRTH OCCURRED AND THE**
3 **ATTENDING PHYSICIAN AND, CONSEQUENTLY, THOSE HOSPITALS AND**
4 **PHYSICIANS ARE MOST SEVERELY AFFECTED BY MEDICAL LIABILITY RISK AND**
5 **ASSOCIATED COSTS;**

6 **(2) BECAUSE OBSTETRIC SERVICES ARE ESSENTIAL, IT IS**
7 **INCUMBENT ON THE GENERAL ASSEMBLY TO PROVIDE A PLAN DESIGNED TO**
8 **RESULT IN THE STABILIZATION AND REDUCTION OF MEDICAL LIABILITY RISK**
9 **AND ASSOCIATED COST IN ORDER TO PRESERVE ACCESS TO OBSTETRIC**
10 **SERVICES IN MARYLAND;**

11 **(3) BIRTH-RELATED NEUROLOGICAL INJURY CLAIMS ARE AMONG**
12 **THE MOST COSTLY AND DEVASTATING TYPES OF MEDICAL INJURIES AND**
13 **WARRANT THE ESTABLISHMENT OF AN EQUITABLE SYSTEM OF COMPENSATION**
14 **REGARDLESS OF FAULT; AND**

15 **(4) SOME BIRTH-RELATED NEUROLOGICAL INJURIES ARE**
16 **UNAVOIDABLE EVEN UNDER THE BEST CIRCUMSTANCES OF MEDICAL CARE.**

17 **(B) IT IS THE INTENT OF THE GENERAL ASSEMBLY TO PROVIDE FAIR**
18 **AND EQUITABLE COMPENSATION, ON A NO-FAULT BASIS, FOR A LIMITED CLASS**
19 **OF CATASTROPHIC INJURIES THAT RESULT IN UNUSUALLY HIGH COSTS FOR**
20 **CUSTODIAL CARE AND REHABILITATION, AND THE PLAN UNDER SUBSECTION**
21 **(A)(2) OF THIS SECTION SHALL APPLY ONLY TO BIRTH-RELATED**
22 **NEUROLOGICAL INJURIES.**

23 **3-2D-03.**

24 **(A) THIS SUBTITLE APPLIES TO BIRTHS OCCURRING ON OR AFTER**
25 **JANUARY 1, 2015.**

26 **(B) THE RIGHTS AND REMEDIES UNDER THIS SUBTITLE EXCLUDE AND**
27 **SUPPLANT ALL OTHER RIGHTS AND REMEDIES OF THE INFANT, PERSONAL**
28 **REPRESENTATIVE OF THE INFANT, PARENTS, DEPENDENTS, OR NEXT OF KIN**
29 **ARISING OUT OF OR RELATED TO THE BIRTH-RELATED NEUROLOGICAL INJURY**
30 **TO THE INFANT, INCLUDING CLAIMS OF EMOTIONAL DISTRESS RELATED TO THE**
31 **INFANT'S INJURY.**

32 **(C) NOTHING IN THIS SUBTITLE EXCLUDES OTHER RIGHTS AND**
33 **REMEDIES AVAILABLE TO THE MOTHER OF THE INFANT ARISING OUT OF OR**
34 **RELATED TO A PHYSICAL INJURY, SEPARATE AND DISTINCT FROM A**

1 BIRTH-RELATED NEUROLOGICAL INJURY TO THE INFANT, SUFFERED BY THE
2 MOTHER OF THE INFANT DURING THE COURSE OF DELIVERY OF THE INFANT.

3 (D) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A CIVIL
4 ACTION IS NOT PROHIBITED AGAINST A PHYSICIAN OR HOSPITAL IF THERE IS
5 CLEAR AND CONVINCING EVIDENCE THAT THE PHYSICIAN OR HOSPITAL
6 MALICIOUSLY INTENDED TO CAUSE A BIRTH INJURY AND THE CLAIM IS FILED
7 BEFORE AND IN LIEU OF PAYMENT OF AN AWARD UNDER THIS SUBTITLE.

8 (E) IF A CLAIM IN A CIVIL PROCEEDING BEFORE A CIRCUIT COURT
9 APPEARS TO INVOLVE AN ELIGIBLE BIRTH-RELATED NEUROLOGICAL INJURY,
10 ON THE MOTION OF A PARTY IN THE CIVIL PROCEEDING, THE COURT SHALL:

11 (1) ORDER A PARTY TO FILE A CLAIM FOR A BIRTH-RELATED
12 NEUROLOGICAL INJURY WITH THE FUND; AND

13 (2) DISMISS THE CIVIL PROCEEDING WITHOUT PREJUDICE.

14 (F) IF A CLAIM IN A PROCEEDING BEFORE THE HEALTH CARE
15 ALTERNATIVE DISPUTE RESOLUTION OFFICE APPEARS TO INVOLVE AN
16 ELIGIBLE BIRTH-RELATED NEUROLOGICAL INJURY, ON THE MOTION OF A
17 PARTY IN THE PROCEEDING, THE DIRECTOR OF THE HEALTH CARE
18 ALTERNATIVE DISPUTE RESOLUTION OFFICE SHALL:

19 (1) ORDER A PARTY TO FILE A CLAIM FOR A BIRTH-RELATED
20 NEUROLOGICAL INJURY WITH THE FUND; AND

21 (2) DISMISS THE PROCEEDING BEFORE THE HEALTH CARE
22 ALTERNATIVE DISPUTE RESOLUTION OFFICE WITHOUT PREJUDICE.

23 (G) A CLAIM FOR COMPENSATION AND BENEFITS UNDER THIS SUBTITLE
24 SHALL BE FILED NO LATER THAN 21 YEARS AFTER THE BIRTH OF THE INJURED
25 INFANT.

26 (H) A CLAIM MAY BE FILED BY A LEGAL REPRESENTATIVE ON BEHALF
27 OF AN INJURED INFANT AND, IN THE CASE OF A DECEASED INFANT, BY AN
28 ADMINISTRATOR, A PERSONAL REPRESENTATIVE, OR ANY OTHER LEGAL
29 REPRESENTATIVE OF THE DECEASED INFANT.

30 (I) THE LIMITATIONS PERIOD WITH RESPECT TO A CIVIL ACTION THAT
31 MAY BE BROUGHT BY, OR ON BEHALF OF, AN INJURED INFANT FOR DAMAGES
32 ALLEGEDLY ARISING OUT OF, OR RELATED TO, A BIRTH-RELATED
33 NEUROLOGICAL INJURY SHALL BE TOLLED BY THE FILING OF A CLAIM UNDER

1 THIS SUBTITLE, AND THE TIME THE CLAIM IS PENDING OR IS ON APPEAL MAY
2 NOT BE COMPUTED AS PART OF THE PERIOD WITHIN WHICH THE CIVIL ACTION
3 MAY BE BROUGHT.

4 **3-2D-04.**

5 (A) (1) A CLAIM FILED FOR COMPENSATION OR OTHER BENEFITS
6 UNDER THIS SUBTITLE SHALL COMMENCE BY THE CLAIMANT FILING A CLAIM
7 WITH THE FUND.

8 (2) A CLAIM SHALL INCLUDE THE FOLLOWING INFORMATION:

9 (I) THE NAME AND ADDRESS OF THE LEGAL
10 REPRESENTATIVE AND THE BASIS FOR THE LEGAL REPRESENTATIVE'S
11 REPRESENTATION OF THE INJURED INFANT;

12 (II) THE NAME AND ADDRESS OF THE INJURED INFANT;

13 (III) THE NAME AND ADDRESS OF EACH PHYSICIAN
14 PROVIDING OBSTETRICAL SERVICES, OTHER HEALTH CARE PRACTITIONERS
15 WHO ARE KNOWN TO HAVE BEEN PRESENT AT THE BIRTH, AND THE HOSPITAL
16 AT WHICH THE BIRTH OCCURRED;

17 (IV) A DESCRIPTION OF THE DISABILITY FOR WHICH THE
18 CLAIM IS MADE;

19 (V) THE TIME AND PLACE THE INJURY OCCURRED; AND

20 (VI) A BRIEF STATEMENT OF THE FACTS AND
21 CIRCUMSTANCES SURROUNDING THE INJURY AND GIVING RISE TO THE CLAIM.

22 (B) THE CLAIMANT SHALL FILE WITH THE FUND THE FOLLOWING
23 INFORMATION WITHIN 10 DAYS AFTER THE FILING OF THE CLAIM AS SET FORTH
24 IN SUBSECTION (A) OF THIS SECTION:

25 (1) ALL AVAILABLE RELEVANT MEDICAL RECORDS RELATING TO
26 THE BIRTH-RELATED NEUROLOGICAL INJURY AND A LIST IDENTIFYING
27 UNAVAILABLE RECORDS KNOWN TO THE CLAIMANT AND THE REASONS FOR THE
28 RECORDS' UNAVAILABILITY;

29 (2) APPROPRIATE ASSESSMENTS, EVALUATIONS, AND
30 PROGNOSSES AND OTHER RECORDS AND DOCUMENTS REASONABLY NECESSARY
31 FOR THE DETERMINATION OF THE AMOUNT OF COMPENSATION TO BE PAID TO,

1 OR ON BEHALF OF, THE INJURED INFANT ON ACCOUNT OF THE BIRTH-RELATED
2 NEUROLOGICAL INJURY;

3 (3) DOCUMENTATION OF EXPENSES AND SERVICES INCURRED TO
4 DATE THAT IDENTIFIES THE PAYMENT MADE FOR THOSE EXPENSES AND
5 SERVICES AND THE PAYOR; AND

6 (4) DOCUMENTATION OF ANY APPLICABLE PRIVATE OR
7 GOVERNMENTAL SOURCE OF SERVICES OR REIMBURSEMENT RELATIVE TO THE
8 IMPAIRMENTS.

9 (C) WITHIN 10 DAYS AFTER RECEIPT OF A COMPLETE CLAIM AND THE
10 INFORMATION PROVIDED BY THE CLAIMANT IN ACCORDANCE WITH SUBSECTION
11 (B) OF THIS SECTION, THE FUND SHALL PROVIDE COPIES OF THOSE MATERIALS
12 TO THE PERSONS AND ENTITIES IDENTIFIED IN SUBSECTION (A)(2)(III) OF THIS
13 SECTION.

14 (D) (1) ON RECEIPT OF A CLAIM, THE FUND SHALL INVESTIGATE THE
15 CLAIM.

16 (2) WITHIN 90 DAYS AFTER THE DATE OF SERVICE OF A CLAIM
17 FILED IN ACCORDANCE WITH SUBSECTIONS (A) AND (B) OF THIS SECTION, THE
18 FUND SHALL SERVE ON THE CLAIMANT ITS RESPONSE TO THE CLAIM,
19 INCLUDING WHETHER THE FUND DETERMINES THAT THE INJURY ALLEGED IS A
20 BIRTH-RELATED NEUROLOGICAL INJURY.

21 (3) WITHIN 10 DAYS AFTER SERVING ITS RESPONSE TO A CLAIM,
22 THE FUND SHALL SUBMIT THE CLAIM, TOGETHER WITH ALL INFORMATION AND
23 MATERIALS SUBMITTED BY THE CLAIMANT AND THE FUND'S RESPONSE, TO THE
24 OFFICE FOR ADJUDICATION.

25 (4) AT THE TIME THE FUND SUBMITS THE CLAIM TO THE OFFICE,
26 THE FUND SHALL SUBMIT THE CLAIM, TOGETHER WITH ALL INFORMATION AND
27 MATERIALS SUBMITTED BY THE CLAIMANT AND THE FUND'S RESPONSE, TO THE
28 OFFICE OF HEALTH CARE QUALITY AND THE STATE BOARD OF PHYSICIANS
29 FOR REVIEW.

30 3-2D-05.

31 (A) EACH DETERMINATION OF ELIGIBILITY AND FOR COMPENSATION
32 AND BENEFITS SHALL BE DELEGATED TO THE OFFICE FOR ADJUDICATION AND
33 DECISION BY AN ADMINISTRATIVE LAW JUDGE.

1 **(B) THE FUND SHALL PROVIDE WRITTEN NOTICE OF THE SUBMISSION**
2 **OF A CLAIM FOR ADJUDICATION TO THE CLAIMANT AND TO THE PERSONS AND**
3 **ENTITIES IDENTIFIED BY THE CLAIMANT UNDER § 3-2D-04(A)(2)(III) OF THIS**
4 **SUBTITLE.**

5 **(C) THE OFFICE SHALL DETERMINE, ON THE BASIS OF THE EVIDENCE**
6 **PRESENTED IN A CONTESTED HEARING, THE FOLLOWING ISSUES:**

7 **(1) WHETHER THE CLAIM INVOLVES AN ELIGIBLE**
8 **BIRTH-RELATED NEUROLOGICAL INJURY; AND**

9 **(2) THE NATURE AND AMOUNT OF COMPENSATION AND**
10 **BENEFITS, IF ANY, TO BE PROVIDED TO THE CLAIMANT.**

11 **(D) THE CLAIM SHALL BE DISMISSED IF THE OFFICE DETERMINES THAT**
12 **THE INJURY ALLEGED IN THE CLAIM IS NOT A BIRTH-RELATED NEUROLOGICAL**
13 **INJURY.**

14 **3-2D-06.**

15 **(A) ON A DETERMINATION THAT AN INFANT HAS SUSTAINED A**
16 **BIRTH-RELATED NEUROLOGICAL INJURY, THE CLAIMANT MAY BE AWARDED**
17 **ONE OR MORE OF THE FOLLOWING BENEFITS AND COMPENSATION TO BE PAID**
18 **OR PROVIDED FROM THE FUND:**

19 **(1) ACTUAL LIFETIME EXPENSES FOR QUALIFIED HEALTH CARE**
20 **COSTS, LIMITED TO REASONABLE CHARGES PREVAILING IN THE SAME**
21 **COMMUNITY FOR SIMILAR TREATMENT OF INJURED PERSONS WHEN THE**
22 **TREATMENT IS PAID FOR BY THE INJURED PERSON, EXCLUDING:**

23 **(i) EXPENSES FOR ITEMS OR SERVICES THAT THE INFANT**
24 **HAS RECEIVED, OR IS ELIGIBLE TO RECEIVE, UNDER THE LAWS OF ANY STATE**
25 **OR THE UNITED STATES, EXCEPT TO THE EXTENT THAT THE EXCLUSION MAY BE**
26 **PROHIBITED BY FEDERAL LAW;**

27 **(ii) EXPENSES FOR ITEMS OR SERVICES THAT THE INFANT**
28 **HAS RECEIVED, OR IS CONTRACTUALLY ENTITLED TO RECEIVE, FROM A**
29 **PREPAID HEALTH PLAN, A HEALTH MAINTENANCE ORGANIZATION, OR ANY**
30 **OTHER PRIVATE INSURING ENTITY;**

31 **(iii) EXPENSES FOR WHICH THE INFANT HAS RECEIVED**
32 **REIMBURSEMENT, OR FOR WHICH THE INFANT IS ELIGIBLE TO RECEIVE**
33 **REIMBURSEMENT, UNDER THE LAWS OF A STATE OR THE UNITED STATES,**

1 INCLUDING BENEFITS PROVIDED UNDER THE MARYLAND RARE AND
2 EXPENSIVE CASE MANAGEMENT PROGRAM, EXCEPT TO THE EXTENT THE
3 EXCLUSION MAY BE PROHIBITED BY FEDERAL LAW;

4 (IV) EXPENSES FOR WHICH THE INFANT HAS RECEIVED
5 REIMBURSEMENT, OR FOR WHICH THE INFANT IS CONTRACTUALLY ENTITLED
6 TO RECEIVE REIMBURSEMENT, UNDER THE PROVISIONS OF A HEALTH OR
7 SICKNESS INSURANCE POLICY OR OTHER PRIVATE INSURANCE PROGRAM; AND

8 (V) EXPENSES RELATED TO HOUSING OR MODIFICATION OF
9 RESIDENTIAL ENVIRONMENT;

10 (2) WITHIN THE DISCRETION OF THE OFFICE, AN AWARD NOT
11 EXCEEDING \$100,000, PAYABLE IN PERIODIC PAYMENTS OR AS A LUMP SUM TO
12 THE INJURED INFANT OR TO THE PARENTS OR LEGAL GUARDIANS OF THE
13 INJURED INFANT FOR THE BENEFIT OF THE INJURED INFANT;

14 (3) LOSS OF EARNINGS CALCULATED UNDER SUBSECTION (B) OF
15 THIS SECTION TO BE PAID IN PERIODIC PAYMENTS BEGINNING ON THE 18TH
16 BIRTHDAY OF THE INFANT;

17 (4) IF THE INFANT DIES BEFORE ATTAINING THE AGE OF 18
18 YEARS, A FUNERAL PAYMENT IN THE AMOUNT OF \$15,000; AND

19 (5) REASONABLE EXPENSES INCURRED IN CONNECTION WITH
20 THE FILING AND PROSECUTION OF A CLAIM TO ASSERT ELIGIBILITY AND FOR
21 COMPENSATION AND BENEFITS UNDER THIS SUBTITLE, INCLUDING
22 REASONABLE ATTORNEY'S FEES ON AN HOURLY BASIS, SUBJECT TO THE
23 APPROVAL AND AWARD OF THE ADMINISTRATIVE LAW JUDGE IN ACCORDANCE
24 WITH SUBSECTION (C) OF THIS SECTION.

25 (B) (1) AN INFANT FOUND TO HAVE SUSTAINED A BIRTH-RELATED
26 NEUROLOGICAL INJURY SHALL BE CONCLUSIVELY PRESUMED TO HAVE BEEN
27 ABLE TO EARN INCOME FROM EMPLOYMENT FROM THE AGE OF 18 THROUGH
28 THE AGE OF 65, AS IF THE INFANT HAD NOT BEEN INJURED, IN THE AMOUNT OF
29 50% OF THE STATE AVERAGE WEEKLY WAGE AS DETERMINED BY THE
30 DEPARTMENT OF LABOR, LICENSING, AND REGULATION IN ACCORDANCE WITH
31 § 9-603 OF THE LABOR AND EMPLOYMENT ARTICLE.

32 (2) PAYMENTS FOR LOSS OF EARNINGS SHALL BE CALCULATED
33 BASED ON THE STATE REPORTING PERIOD IMMEDIATELY PRECEDING THE 18TH
34 BIRTHDAY OF THE INFANT AND SUBSEQUENTLY ADJUSTED BASED ON THE
35 SUCCEEDING ANNUAL REPORTS OF THE STATE AVERAGE WEEKLY WAGE.

1 (C) (1) IN DETERMINING AN AWARD FOR ATTORNEY'S FEES, THE
2 ADMINISTRATIVE LAW JUDGE SHALL APPLY THE STANDARDS SET FORTH IN
3 MARYLAND RULE 2-703(F)(3).

4 (2) THE ADMINISTRATIVE LAW JUDGE MAY AWARD ATTORNEY'S
5 FEES FOR THE PROSECUTION OF A CLAIM FOUND TO BE INELIGIBLE UNDER
6 THIS SUBTITLE IF THE CLAIM WAS NOT SUBMITTED IN BAD FAITH OR WITHOUT
7 SUBSTANTIAL JUSTIFICATION.

8 (D) AN AWARD OF EXPENSES SHALL REQUIRE THE IMMEDIATE
9 PAYMENT OF EXPENSES PREVIOUSLY INCURRED AND SHALL REQUIRE THAT
10 FUTURE EXPENSES BE PAID AS INCURRED.

11 **3-2D-07.**

12 (A) (1) THE OFFICE SHALL SET THE DATE FOR A HEARING ON A
13 CONTESTED CASE NO SOONER THAN 60 DAYS AND NO LATER THAN 120 DAYS
14 AFTER THE WRITTEN NOTICE OF THE FUND'S SUBMISSION OF A CLAIM TO THE
15 OFFICE FOR ADJUDICATION.

16 (2) THE ADMINISTRATIVE LAW JUDGE SHALL IMMEDIATELY
17 NOTIFY THE PARTIES OF THE TIME AND PLACE OF THE HEARING.

18 (3) THE HEARING SHALL BE CONDUCTED IN ACCORDANCE WITH
19 ARTICLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

20 (B) (1) THE PARTIES TO THE HEARING SHALL INCLUDE THE
21 CLAIMANT AND THE FUND.

22 (2) ON REQUEST BY A PERSON OR ENTITY IDENTIFIED BY THE
23 CLAIMANT IN ACCORDANCE WITH § 3-2D-04(A)(2)(III), THE PERSON OR ENTITY
24 SHALL BE PERMITTED TO PARTICIPATE AS A PARTY.

25 (C) (1) A PARTY TO A PROCEEDING MAY, ON APPLICATION TO THE
26 ADMINISTRATIVE LAW JUDGE SETTING FORTH THE MATERIALITY OF THE
27 EVIDENCE TO BE GIVEN, SERVE INTERROGATORIES OR CAUSE THE
28 DEPOSITIONS OF WITNESSES RESIDING IN OR OUTSIDE THE STATE TO BE
29 TAKEN.

30 (2) THE DEPOSITIONS SHALL BE TAKEN AFTER GIVING NOTICE
31 AND IN THE MANNER PRESCRIBED FOR THE TAKING OF DEPOSITIONS IN
32 ACTIONS AT LAW, EXCEPT THAT THEY SHALL BE DIRECTED TO THE

1 ADMINISTRATIVE LAW JUDGE BEFORE WHOM THE PROCEEDINGS MAY BE
2 PENDING.

3 (3) THE COSTS OF INTERROGATORIES AND DEPOSITIONS SHALL
4 BE TAXED AS EXPENSES INCURRED IN CONNECTION WITH THE FILING OF A
5 CLAIM.

6 3-2D-08.

7 (A) (1) A DECISION OF THE OFFICE UNDER THIS SUBTITLE SHALL
8 CONSTITUTE A FINAL DECISION FOR PURPOSES OF JUDICIAL REVIEW.

9 (2) A PARTY MAY SEEK JUDICIAL REVIEW OF A FINAL DECISION
10 UNDER § 10-222 OF THE STATE GOVERNMENT ARTICLE.

11 (B) THE FILING OF A PETITION FOR JUDICIAL REVIEW SHALL STAY
12 ENFORCEMENT OF THE FINAL DECISION.

13 Article - Health - General

14 SUBTITLE 14. BIRTH INJURY PREVENTION.

15 20-1401.

16 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
17 INDICATED.

18 (B) "BOARD OF PHYSICIANS" MEANS THE STATE BOARD OF
19 PHYSICIANS IN THE DEPARTMENT.

20 (C) "FUND" MEANS THE MARYLAND NO-FAULT BIRTH INJURY FUND.

21 (D) "OFFICE" MEANS THE OFFICE OF HEALTH CARE QUALITY IN THE
22 DEPARTMENT.

23 20-1402.

24 (A) (1) THE SECRETARY SHALL CONVENE THE PERINATAL CLINICAL
25 ADVISORY COMMITTEE TO OVERSEE THE GENERAL DISSEMINATION OF
26 INITIATIVES, GUIDANCE, AND BEST PRACTICES TO HEALTH CARE FACILITIES
27 FOR PERINATAL CARE.

1 **(2) THE PERINATAL CLINICAL ADVISORY COMMITTEE SHALL**
2 **CONSULT WITH THE MATERNAL AND PERINATAL HEALTH PROGRAM IN THE**
3 **DEPARTMENT.**

4 **(B) (1) THE DEPARTMENT SHALL DEVELOP INITIATIVES AND MAKE**
5 **RECOMMENDATIONS TO BUILD CULTURES OF PATIENT SAFETY FOR PERINATAL**
6 **CARE WITHIN HEALTH CARE FACILITIES.**

7 **(2) THE PERINATAL CLINICAL ADVISORY COMMITTEE SHALL**
8 **UNDERTAKE COLLABORATIVE WORK TO IMPROVE OBSTETRICAL CARE**
9 **OUTCOMES AND QUALITY OF CARE, BASED ON THE MARYLAND PERINATAL**
10 **SYSTEM STANDARDS, AND CLINICAL PROTOCOLS THAT CAN BE STANDARDIZED**
11 **AND ADOPTED BY HEALTH CARE FACILITIES, INCLUDING:**

12 **(I) COLLECTING DATA AND SURVEYING, REVIEWING, AND**
13 **ANALYZING CURRENT BEST PRACTICES AND OUTCOME MEASURES EMPLOYED IN**
14 **OBSTETRICAL CASES, INCLUDING EXPLORING THE USE OF “VIRTUAL GRAND**
15 **ROUNDS”;**

16 **(II) UNDERTAKING A REVIEW OF CLAIMS IN AN EFFORT TO**
17 **DEVELOP A SET OF “STANDARD BEST PRACTICES” FOR DELIVERIES IN**
18 **MARYLAND;**

19 **(III) FORMULATING AND RECOMMENDING TO THE**
20 **SECRETARY BEST PRACTICE STANDARDS AND DESIGNING NEW PROGRAMS FOR**
21 **IMPLEMENTATION AND IMPROVED OUTCOMES, INCLUDING CLINICAL BUNDLES**
22 **FOR HIGH PRIORITY CONDITIONS, ELECTRONIC FETAL MONITORING TRAINING**
23 **AND CERTIFICATION, AND TEAM TRAINING; AND**

24 **(IV) ENGAGING THE EXISTING REGIONAL PERINATAL**
25 **CENTER NETWORK IN DIALOGUES REGARDING IMPROVING OBSTETRICAL CARE**
26 **OUTCOMES AND QUALITY OF CARE AND MAKING RECOMMENDATIONS TO**
27 **IMPROVE OR UPGRADE ASSISTANCE AND COMMUNICATION TO HEALTH**
28 **FACILITIES OR BOTH.**

29 **20-1403.**

30 **(A) ON RECEIPT OF A BIRTH INJURY CLAIM FROM THE FUND, THE**
31 **OFFICE MAY INVESTIGATE THE CLAIM AND TAKE APPROPRIATE ACTION WITH**
32 **RESPECT TO A HEALTH CARE FACILITY THAT PROVIDED CARE FOR THE**
33 **AFFECTED INFANT OR MOTHER.**

1 **(J) “SECRETARY” MEANS THE SECRETARY OF HEALTH AND MENTAL**
2 **HYGIENE.**

3 **SUBTITLE 2. MARYLAND NO–FAULT BIRTH INJURY FUND.**

4 **32–201.**

5 **(A) THERE IS A MARYLAND NO–FAULT BIRTH INJURY FUND.**

6 **(B) THE FUND IS A MEMBER OF THE PROPERTY AND CASUALTY**
7 **INSURANCE GUARANTY CORPORATION.**

8 **(C) THE FUND IS AUTHORIZED TO:**

9 **(1) COLLECT AND RECEIVE PREMIUMS COLLECTED UNDER §**
10 **32–303 OF THIS TITLE;**

11 **(2) ADMINISTER THE PAYMENT OF AWARDS UNDER TITLE 3,**
12 **SUBTITLE 2D OF THE COURTS ARTICLE;**

13 **(3) INVEST AND REINVEST SURPLUS MONEY OVER LOSSES AND**
14 **EXPENSES AS SET FORTH IN § 32–302 OF THIS TITLE;**

15 **(4) REINSURE THE RISKS OF THE FUND WHOLLY OR PARTLY;**

16 **(5) EMPLOY OR RETAIN PERSONS AS NECESSARY TO PERFORM**
17 **THE ADMINISTRATIVE AND FINANCIAL TRANSACTIONS AND OTHER NECESSARY**
18 **AND PROPER FUNCTIONS NOT PROHIBITED BY LAW; AND**

19 **(6) ENTER INTO CONTRACTS AS NECESSARY OR PROPER TO**
20 **CARRY OUT THE LEGAL AND PROPER BUSINESS OF THE FUND.**

21 **32–202.**

22 **(A) THERE IS A BOARD OF TRUSTEES OF THE FUND.**

23 **(B) (1) THE BOARD OF TRUSTEES CONSISTS OF FIVE MEMBERS**
24 **APPOINTED BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE**
25 **SENATE.**

26 **(2) OF THE FIVE MEMBERS:**

- 1 **(I) ONE SHALL BE AN OBSTETRICIAN;**
- 2 **(II) ONE SHALL BE A PEDIATRIC NEUROLOGIST;**
- 3 **(III) ONE SHALL BE A REPRESENTATIVE NOMINATED BY THE**
4 **MARYLAND HOSPITAL ASSOCIATION;**
- 5 **(IV) ONE SHALL BE AN ATTORNEY; AND**
- 6 **(V) ONE SHALL BE A CITIZEN REPRESENTATIVE.**
- 7 **(C) (1) EACH MEMBER SHALL BE A RESIDENT OF THE STATE.**
- 8 **(2) IN APPOINTING MEMBERS, THE GOVERNOR, TO THE EXTENT**
9 **PRACTICABLE, SHALL CONSIDER THE GEOGRAPHIC AND DEMOGRAPHIC**
10 **DIVERSITY OF THE STATE, INCLUDING RACE AND GENDER.**
- 11 **(D) BEFORE TAKING OFFICE, EACH APPOINTEE TO THE BOARD OF**
12 **TRUSTEES SHALL TAKE THE OATH REQUIRED BY ARTICLE I, § 9 OF THE**
13 **MARYLAND CONSTITUTION.**
- 14 **(E) (1) THE TERM OF A MEMBER IS 5 YEARS.**
- 15 **(2) AT THE END OF A TERM, A MEMBER CONTINUES TO SERVE**
16 **UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.**
- 17 **(3) A MEMBER MAY NOT SERVE FOR MORE THAN THE GREATER**
18 **OF:**
- 19 **(I) TWO FULL TERMS; AND**
- 20 **(II) A TOTAL OF 10 YEARS.**
- 21 **(4) IF A MEMBER OF THE BOARD OF TRUSTEES CEASES TO BE A**
22 **MEMBER OF THE BOARD, THE GOVERNOR SHALL APPOINT A SUCCESSOR FOR**
23 **THE UNEXPIRED TERM.**
- 24 **(F) THE BOARD OF TRUSTEES SHALL CHOOSE A CHAIR FROM AMONG**
25 **ITS MEMBERS.**
- 26 **(G) EACH MEMBER OF THE BOARD OF TRUSTEES IS ENTITLED TO**
27 **REASONABLE PER DIEM COMPENSATION FOR EACH DAY ACTUALLY ENGAGED IN**
28 **THE DISCHARGE OF FUND DUTIES.**

1 **(H) EACH MEMBER OF THE BOARD OF TRUSTEES IS ENTITLED TO**
2 **REIMBURSEMENT FOR REASONABLE EXPENSES.**

3 **(I) THE BOARD OF TRUSTEES:**

4 **(1) SHALL ADOPT RULES, BYLAWS, AND PROCEDURES; AND**

5 **(2) MAY ADOPT ANY POLICY TO CARRY OUT THIS TITLE.**

6 **32-203.**

7 **(A) (1) THE BOARD OF TRUSTEES SHALL APPOINT THE EXECUTIVE**
8 **DIRECTOR OF THE FUND.**

9 **(2) THE EXECUTIVE DIRECTOR SERVES AT THE PLEASURE OF**
10 **THE BOARD OF TRUSTEES.**

11 **(3) IF THE BOARD OF TRUSTEES FAILS TO AGREE ON A**
12 **SUCCESSOR EXECUTIVE DIRECTOR, THE GOVERNOR SHALL APPOINT THE**
13 **SUCCESSOR.**

14 **(B) (1) THE EXECUTIVE DIRECTOR:**

15 **(I) IS THE ADMINISTRATIVE HEAD OF THE FUND; AND**

16 **(II) SHALL EXERCISE THE POWERS AND PERFORM THE**
17 **DUTIES CONFERRED ON THE FUND BY THIS TITLE EXCEPT FOR THOSE POWERS**
18 **AND DUTIES CONFERRED ON THE BOARD OF TRUSTEES.**

19 **(2) THE BOARD OF TRUSTEES SHALL ADVISE THE EXECUTIVE**
20 **DIRECTOR ON THE EXERCISE OF THE POWERS AND DUTIES CONFERRED ON THE**
21 **EXECUTIVE DIRECTOR BY THIS TITLE.**

22 **(C) THE BOARD OF TRUSTEES SHALL DETERMINE THE COMPENSATION**
23 **OF THE EXECUTIVE DIRECTOR.**

24 **32-204.**

25 **(A) (1) EMPLOYEES OF THE FUND ARE NOT IN THE STATE**
26 **PERSONNEL MANAGEMENT SYSTEM.**

1 **(2) THE EXECUTIVE DIRECTOR SHALL APPOINT AND REMOVE**
2 **EMPLOYEES OF THE FUND IN ACCORDANCE WITH THE POLICIES OF THE BOARD**
3 **OF TRUSTEES.**

4 **(B) THE EXECUTIVE DIRECTOR SHALL DETERMINE AND ADMINISTER**
5 **THE COMPENSATION OF THE EMPLOYEES OF THE FUND WITH THE APPROVAL**
6 **OF THE BOARD OF TRUSTEES.**

7 **(C) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE, AN**
8 **EMPLOYEE OF THE FUND IS NOT SUBJECT TO ANY LAW, REGULATION, OR**
9 **EXECUTIVE ORDER GOVERNING STATE EMPLOYEE COMPENSATION, INCLUDING**
10 **FURLOUGHS, SALARY REDUCTIONS, AND OTHER GENERAL FUND COST-SAVING**
11 **MEASURES.**

12 **SUBTITLE 3. THE PURPOSES OF THE FUND.**

13 **32-301.**

14 **(A) THE PURPOSE OF THE FUND IS TO PROVIDE COMPENSATION AND**
15 **BENEFITS TO ELIGIBLE CLAIMANTS UNDER TITLE 3, SUBTITLE 2D OF THE**
16 **COURTS ARTICLE.**

17 **(B) MONEY OF THE FUND CONSISTS OF REVENUES, PREMIUMS, AND**
18 **OTHER RECEIPTS PROVIDED BY LAW.**

19 **(C) (1) ALL OPERATING EXPENSES OF THE FUND SHALL BE PAID**
20 **FROM THE MONEY COLLECTED BY OR FOR THE FUND.**

21 **(2) MONEY AND PROPERTY AVAILABLE TO THE FUND MAY BE**
22 **USED FOR THE GENERAL PURPOSES OF THE FUND, INCLUDING FOR THE**
23 **PAYMENT OF AWARDS ARISING UNDER TITLE 3, SUBTITLE 2D OF THE COURTS**
24 **ARTICLE AND FOR THE ADMINISTRATIVE EXPENSES OF THE FUND.**

25 **(D) (1) THE FUND SHALL PROVIDE TO EACH MARYLAND HOSPITAL**
26 **WRITTEN MATERIALS CONTAINING INFORMATION ABOUT THE FUND FOR**
27 **DISTRIBUTION TO OBSTETRICAL PATIENTS.**

28 **(2) THE INFORMATION SHALL INCLUDE A CLEAR AND CONCISE**
29 **EXPLANATION OF A PATIENT'S RIGHTS, REMEDIES, AND LIMITATIONS UNDER**
30 **THE FUND.**

31 **32-302.**

1 **(A) THE ASSETS OF THE FUND ARE NOT PART OF THE STATE**
2 **TREASURY.**

3 **(B) THE DEBTS AND OBLIGATIONS OF THE FUND ARE NOT DEBT OF THE**
4 **STATE OR A PLEDGE OF CREDIT OF THE STATE.**

5 **(C) WHEN THE AMOUNT OF MONEY IN THE FUND EXCEEDS THE**
6 **AMOUNT THAT THE EXECUTIVE DIRECTOR BELIEVES IS LIKELY TO BE**
7 **REQUIRED IMMEDIATELY, THE BOARD OF TRUSTEES MAY MANAGE THE EXCESS**
8 **AS THE BOARD OF TRUSTEES CONSIDERS APPROPRIATE AND INVEST THE**
9 **EXCESS IN INVESTMENTS LEGAL FOR CASUALTY INSURERS UNDER §§ 5-601**
10 **THROUGH 5-609 OF THIS ARTICLE.**

11 **(D) (1) EACH FISCAL YEAR, THE FUND SHALL ENGAGE AN**
12 **INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT TO AUDIT THE ACCOUNTS OF**
13 **THE FUND.**

14 **(2) THE COST OF THE AUDIT SERVICES SHALL BE BORNE BY THE**
15 **FUND AND BE PAID FROM MONEY DESIGNATED FOR SUCH PURPOSES IN THE**
16 **FUND.**

17 **(3) THE AUDIT SHALL BE PERFORMED EACH FISCAL YEAR IN**
18 **ACCORDANCE WITH GENERALLY ACCEPTED AUDITING STANDARDS AND SHALL**
19 **INCLUDE TESTS OF THE ACCOUNTING RECORDS AND AUDITING PROCEDURES AS**
20 **CONSIDERED NECESSARY UNDER THE CIRCUMSTANCES.**

21 **(4) THE ANNUAL AUDIT REPORT SHALL BE DISCLOSED TO THE**
22 **PUBLIC.**

23 **(E) (1) EACH FISCAL YEAR, THE FUND SHALL ENGAGE A QUALIFIED**
24 **ACTUARY WHO IS A MEMBER OF THE AMERICAN ACADEMY OF ACTUARIES TO**
25 **INVESTIGATE THE REQUIREMENTS OF THE FUND AND PROVIDE AN ACTUARIAL**
26 **OPINION OF THE VALUATION OF THE ASSETS AND LIABILITIES OF THE FUND.**

27 **(2) THE ACTUARY SHALL PRODUCE A STATEMENT OF ACTUARIAL**
28 **OPINION CONCERNING THE VALUATION OF THE FUND'S ASSETS AND**
29 **LIABILITIES AND THE ADEQUACY OF THE ASSETS, WHICH THE BOARD OF**
30 **TRUSTEES SHALL DISCLOSE TO THE PUBLIC.**

31 **32-303.**

32 **(A) THE PREMIUMS ESTABLISHED UNDER THIS SECTION SHALL BE**
33 **USED TO FINANCE AND ADMINISTER THE FUND.**

1 **(B) (1) PREMIUMS PAID TO THE FUND SHALL BE COLLECTED BY THE**
2 **FUND FROM HOSPITALS AND OBSTETRICAL PHYSICIANS.**

3 **(2) (I) BEGINNING ON JULY 1, 2014, EACH METROPOLITAN**
4 **HOSPITAL SHALL PAY AN ANNUAL PREMIUM TO THE FUND AS FOLLOWS:**

5 **1. THE PREMIUM SHALL EQUAL \$175 PER LIVE**
6 **BIRTH FOR THE PRIOR FISCAL YEAR, AS REPORTED TO THE DEPARTMENT OF**
7 **HEALTH AND MENTAL HYGIENE;**

8 **2. THE ANNUAL PREMIUM MAY NOT EXCEED**
9 **\$525,000 FOR A METROPOLITAN HOSPITAL; AND**

10 **3. A METROPOLITAN HOSPITAL WITH 100 OR FEWER**
11 **BIRTHS DURING THE PRIOR FISCAL YEAR SHALL PAY A MINIMUM ANNUAL**
12 **PREMIUM OF NOT LESS THAN \$17,500.**

13 **(II) THE FUND IS AUTHORIZED TO INCREASE THE PREMIUM**
14 **BY NO MORE THAN 5% EACH YEAR IF THE ACTUARIAL ESTIMATE OF CURRENT**
15 **LIABILITIES PERFORMED UNDER § 32-302(E) OF THIS SUBTITLE EQUALS OR**
16 **EXCEEDS 80% OF THE FUND'S ASSETS.**

17 **(3) (I) BEGINNING ON JULY 1, 2014, EACH RURAL HOSPITAL**
18 **SHALL PAY AN ANNUAL PREMIUM TO THE FUND AS FOLLOWS:**

19 **1. THE PREMIUM SHALL EQUAL \$150 PER LIVE**
20 **BIRTH FOR THE PRIOR FISCAL YEAR, AS REPORTED TO THE DEPARTMENT OF**
21 **HEALTH AND MENTAL HYGIENE;**

22 **2. THE ANNUAL PREMIUM MAY NOT EXCEED**
23 **\$450,000 FOR ANY ONE RURAL HOSPITAL; AND**

24 **3. A RURAL HOSPITAL WITH 100 OR FEWER BIRTHS**
25 **DURING THE PRIOR FISCAL YEAR SHALL PAY A MINIMUM ANNUAL PREMIUM OF**
26 **NOT LESS THAN \$15,000.**

27 **(II) THE FUND IS AUTHORIZED TO INCREASE THE PREMIUM**
28 **BY NO MORE THAN 5% EACH YEAR IF THE ACTUARIAL ESTIMATE OF CURRENT**
29 **LIABILITIES PERFORMED UNDER § 32-302(E) OF THIS SUBTITLE EQUALS OR**
30 **EXCEEDS 80% OF THE FUND'S ASSETS.**

1 **(4) (I) BEGINNING ON JULY 1, 2014, EACH PHYSICIAN WHO**
2 **PERFORMED AT LEAST FIVE BIRTHS IN THE STATE DURING THE PRIOR FISCAL**
3 **YEAR SHALL PAY AN ANNUAL PREMIUM TO THE FUND IN THE AMOUNT OF**
4 **\$7,500.**

5 **(II) THE FUND IS AUTHORIZED TO INCREASE THE PREMIUM**
6 **BY NO MORE THAN 5% EACH YEAR IF THE ACTUARIAL ESTIMATE OF CURRENT**
7 **LIABILITIES PERFORMED UNDER § 32-302(E) OF THIS SUBTITLE EQUALS OR**
8 **EXCEEDS 80% OF THE FUND'S ASSETS.**

9 **(5) IN CALCULATING HOSPITAL RATES UNDER TITLE 19,**
10 **SUBTITLE 2 OF THE HEALTH – GENERAL ARTICLE, THE COMMISSION SHALL**
11 **INCREASE RATES FOR OBSTETRICS SERVICES TO ACCOUNT FOR THE COST OF**
12 **THE PREMIUMS ESTABLISHED IN THIS SECTION.**

13 **(C) BEGINNING ON JULY 1, 2014, EACH INSURER OR MUTUAL SOCIETY**
14 **SHALL PAY AN ANNUAL SURCHARGE TO THE FUND IN AN AMOUNT EQUAL TO**
15 **2.5% OF THE AMOUNT COLLECTED FOR ALL NET DIRECT WRITTEN PREMIUMS**
16 **FOR MEDICAL LIABILITY COVERAGE IN THE STATE.**

17 **32-304.**

18 **(A) EACH INSURER ISSUING OR ISSUING FOR DELIVERY IN THE STATE A**
19 **PERSONAL INJURY LIABILITY POLICY THAT PROVIDES MEDICAL MALPRACTICE**
20 **LIABILITY COVERAGE FOR THE OBSTETRICAL PRACTICE OF A PHYSICIAN**
21 **PRACTICING IN THE STATE SHALL PROVIDE A CREDIT ON THE PHYSICIAN'S**
22 **ANNUAL MEDICAL MALPRACTICE LIABILITY INSURANCE PREMIUM IN AN**
23 **AMOUNT THAT WILL PRODUCE PREMIUMS THAT ARE NOT EXCESSIVE,**
24 **INADEQUATE, OR UNFAIRLY DISCRIMINATORY, AS DETERMINED BY THE**
25 **COMMISSIONER.**

26 **(B) EACH INSURER ISSUING OR ISSUING FOR DELIVERY IN THE STATE A**
27 **PERSONAL INJURY LIABILITY POLICY THAT PROVIDES MEDICAL MALPRACTICE**
28 **LIABILITY COVERAGE FOR THE OBSTETRICAL SERVICES OF A HOSPITAL IN THE**
29 **STATE SHALL PROVIDE A CREDIT ON THE HOSPITAL'S ANNUAL MEDICAL**
30 **MALPRACTICE LIABILITY INSURANCE PREMIUM IN AN AMOUNT THAT WILL**
31 **PRODUCE PREMIUMS THAT ARE NOT EXCESSIVE, INADEQUATE, OR UNFAIRLY**
32 **DISCRIMINATORY, AS DETERMINED BY THE COMMISSIONER.**

33 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be**
34 **construed to apply only prospectively and may not be applied or interpreted to have**
35 **any effect on or application to any cause of action arising before January 1, 2015.**

1 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 July 1, 2014.