

SENATE BILL 585

D3
SB 798/14 – JPR & FIN

5lr0687
CF 5lr0686

By: **Senator Pugh**

Introduced and read first time: February 6, 2015

Assigned to: Judicial Proceedings and Finance

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

16 BY adding to

17 Article – Courts and Judicial Proceedings
18 Section 3-2D-01 through 3-2D-08 to be under the new subtitle “Subtitle 2D.
19 Maryland No-Fault Birth Injury Fund Claims”
20 Annotated Code of Maryland
21 (2013 Replacement Volume and 2014 Supplement)

22 BY adding to

23 Article – Health – General
24 Section 20-1601 through 20-1603 to be under the new subtitle “Subtitle 16. Birth
25 Injury Prevention”
26 Annotated Code of Maryland
27 (2009 Replacement Volume and 2014 Supplement)

28 BY adding to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Insurance

2 Section 32–101 through 32–304 to be under the new title “Title 32. Maryland
3 No–Fault Birth Injury Fund”

4 Annotated Code of Maryland

5 (2011 Replacement Volume and 2014 Supplement)

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

8 **Article – Courts and Judicial Proceedings**

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

10 **3–2D–01.**

11 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
12 INDICATED.

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

15 (I) IS CAUSED BY OXYGEN DEPRIVATION OR MECHANICAL
16 INJURY THAT OCCURRED OR COULD HAVE OCCURRED DURING PREPRODRIMAL
17 LABOR OR LABOR, DURING DELIVERY, OR IN THE IMMEDIATE RESUSCITATIVE
18 PERIOD AFTER DELIVERY; AND

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

22 1. BATHING;

23 2. GETTING DRESSED OR CHANGING CLOTHES;

24 3. EATING, NUTRITIONAL PLANNING, AND
25 PREPARATION OF MEALS;

26 4. TOILETING; AND

27 5. MOBILITY, INCLUDING TRANSFERRING TO AND FROM
28 A BED, A CHAIR, OR ANY OTHER STRUCTURE, AND MOVING ABOUT INDOORS OR
29 OUTDOORS.

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

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

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

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

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

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

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

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

15 **(2) WHO LEGALLY PRACTICES MEDICINE WITHOUT A LICENSE UNDER**
16 **§ 14-302(1), (2), (3), OR (4) OF THE HEALTH OCCUPATIONS ARTICLE.**

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

24 **3-2D-02.**

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

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

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

6 **(3) BIRTH-RELATED NEUROLOGICAL INJURY CLAIMS ARE AMONG**
7 **THE MOST COSTLY AND DEVASTATING TYPES OF MEDICAL INJURIES AND WARRANT**
8 **THE ESTABLISHMENT OF AN EQUITABLE SYSTEM OF COMPENSATION REGARDLESS**
9 **OF FAULT; AND**

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

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

18 **3-2D-03.**

19 **(A) THIS SUBTITLE APPLIES TO BIRTHS OCCURRING ON OR AFTER JANUARY**
20 **1, 2016.**

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

27 **(C) NOTHING IN THIS SUBTITLE EXCLUDES OTHER RIGHTS AND REMEDIES**
28 **AVAILABLE TO THE MOTHER OF THE INFANT ARISING OUT OF OR RELATED TO A**
29 **PHYSICAL INJURY, SEPARATE AND DISTINCT FROM A**
30 **BIRTH-RELATED NEUROLOGICAL INJURY TO THE INFANT, SUFFERED BY THE**
31 **MOTHER OF THE INFANT DURING THE COURSE OF DELIVERY OF THE INFANT.**

32 **(D) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A CIVIL ACTION IS**
33 **NOT PROHIBITED AGAINST A PHYSICIAN OR HOSPITAL IF THERE IS CLEAR AND**
34 **CONVINCING EVIDENCE THAT THE PHYSICIAN OR HOSPITAL MALICIOUSLY**

1 INTENDED TO CAUSE A BIRTH INJURY AND THE CLAIM IS FILED BEFORE AND IN LIEU
2 OF PAYMENT OF AN AWARD UNDER THIS SUBTITLE.

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

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

8 (2) DISMISS THE CIVIL PROCEEDING WITHOUT PREJUDICE.

9 (F) IF A CLAIM IN A PROCEEDING BEFORE THE HEALTH CARE
10 ALTERNATIVE DISPUTE RESOLUTION OFFICE APPEARS TO INVOLVE AN ELIGIBLE
11 BIRTH-RELATED NEUROLOGICAL INJURY, ON THE MOTION OF A PARTY IN THE
12 PROCEEDING, THE DIRECTOR OF THE HEALTH CARE ALTERNATIVE DISPUTE
13 RESOLUTION OFFICE SHALL:

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

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

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

21 (H) A CLAIM MAY BE FILED BY A LEGAL REPRESENTATIVE ON BEHALF OF AN
22 INJURED INFANT AND, IN THE CASE OF A DECEASED INFANT, BY AN ADMINISTRATOR,
23 A PERSONAL REPRESENTATIVE, OR ANY OTHER LEGAL REPRESENTATIVE OF THE
24 DECEASED INFANT.

25 (I) THE LIMITATIONS PERIOD WITH RESPECT TO A CIVIL ACTION THAT MAY
26 BE BROUGHT BY, OR ON BEHALF OF, AN INJURED INFANT FOR DAMAGES ALLEGEDLY
27 ARISING OUT OF, OR RELATED TO, A BIRTH-RELATED NEUROLOGICAL INJURY
28 SHALL BE TOLLED BY THE FILING OF A CLAIM UNDER THIS SUBTITLE, AND THE TIME
29 THE CLAIM IS PENDING OR IS ON APPEAL MAY NOT BE COMPUTED AS PART OF THE
30 PERIOD WITHIN WHICH THE CIVIL ACTION MAY BE BROUGHT.

31 3-2D-04.

1 **(A) (1) A CLAIM FILED FOR COMPENSATION OR OTHER BENEFITS UNDER**
2 **THIS SUBTITLE SHALL COMMENCE BY THE CLAIMANT FILING A CLAIM WITH THE**
3 **FUND.**

4 **(2) A CLAIM SHALL INCLUDE THE FOLLOWING INFORMATION:**

5 **(I) THE NAME AND ADDRESS OF THE LEGAL REPRESENTATIVE**
6 **AND THE BASIS FOR THE LEGAL REPRESENTATIVE'S REPRESENTATION OF THE**
7 **INJURED INFANT;**

8 **(II) THE NAME AND ADDRESS OF THE INJURED INFANT;**

9 **(III) THE NAME AND ADDRESS OF EACH PHYSICIAN PROVIDING**
10 **OBSTETRICAL SERVICES, OTHER HEALTH CARE PRACTITIONERS WHO ARE KNOWN**
11 **TO HAVE BEEN PRESENT AT THE BIRTH, AND THE HOSPITAL AT WHICH THE BIRTH**
12 **OCCURRED;**

13 **(IV) A DESCRIPTION OF THE DISABILITY FOR WHICH THE CLAIM**
14 **IS MADE;**

15 **(V) THE TIME AND PLACE THE INJURY OCCURRED; AND**

16 **(VI) A BRIEF STATEMENT OF THE FACTS AND CIRCUMSTANCES**
17 **SURROUNDING THE INJURY AND GIVING RISE TO THE CLAIM.**

18 **(B) THE CLAIMANT SHALL FILE WITH THE FUND THE FOLLOWING**
19 **INFORMATION WITHIN 10 DAYS AFTER THE FILING OF THE CLAIM AS SET FORTH IN**
20 **SUBSECTION (A) OF THIS SECTION:**

21 **(1) ALL AVAILABLE RELEVANT MEDICAL RECORDS RELATING TO THE**
22 **BIRTH-RELATED NEUROLOGICAL INJURY AND A LIST IDENTIFYING UNAVAILABLE**
23 **RECORDS KNOWN TO THE CLAIMANT AND THE REASONS FOR THE RECORDS'**
24 **UNAVAILABILITY;**

25 **(2) APPROPRIATE ASSESSMENTS, EVALUATIONS, AND PROGNOSSES**
26 **AND OTHER RECORDS AND DOCUMENTS REASONABLY NECESSARY FOR THE**
27 **DETERMINATION OF THE AMOUNT OF COMPENSATION TO BE PAID TO, OR ON BEHALF**
28 **OF, THE INJURED INFANT ON ACCOUNT OF THE BIRTH-RELATED NEUROLOGICAL**
29 **INJURY;**

30 **(3) DOCUMENTATION OF EXPENSES AND SERVICES INCURRED TO**
31 **DATE THAT IDENTIFIES THE PAYMENT MADE FOR THOSE EXPENSES AND SERVICES**
32 **AND THE PAYOR; AND**

1 **(4) DOCUMENTATION OF ANY APPLICABLE PRIVATE OR**
2 **GOVERNMENTAL SOURCE OF SERVICES OR REIMBURSEMENT RELATIVE TO THE**
3 **IMPAIRMENTS.**

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

8 **(D) (1) ON RECEIPT OF A CLAIM, THE FUND SHALL INVESTIGATE THE**
9 **CLAIM.**

10 **(2) WITHIN 90 DAYS AFTER THE DATE OF SERVICE OF A CLAIM FILED**
11 **IN ACCORDANCE WITH SUBSECTIONS (A) AND (B) OF THIS SECTION, THE FUND**
12 **SHALL SERVE ON THE CLAIMANT ITS RESPONSE TO THE CLAIM, INCLUDING**
13 **WHETHER THE FUND DETERMINES THAT THE INJURY ALLEGED IS A**
14 **BIRTH-RELATED NEUROLOGICAL INJURY.**

15 **(3) WITHIN 10 DAYS AFTER SERVING ITS RESPONSE TO A CLAIM, THE**
16 **FUND SHALL SUBMIT THE CLAIM, TOGETHER WITH ALL INFORMATION AND**
17 **MATERIALS SUBMITTED BY THE CLAIMANT AND THE FUND'S RESPONSE, TO THE**
18 **OFFICE FOR ADJUDICATION.**

19 **(4) AT THE TIME THE FUND SUBMITS THE CLAIM TO THE OFFICE, THE**
20 **FUND SHALL SUBMIT THE CLAIM, TOGETHER WITH ALL INFORMATION AND**
21 **MATERIALS SUBMITTED BY THE CLAIMANT AND THE FUND'S RESPONSE, TO THE**
22 **OFFICE OF HEALTH CARE QUALITY AND THE STATE BOARD OF PHYSICIANS FOR**
23 **REVIEW.**

24 **3-2D-05.**

25 **(A) EACH DETERMINATION OF ELIGIBILITY AND FOR COMPENSATION AND**
26 **BENEFITS SHALL BE DELEGATED TO THE OFFICE FOR ADJUDICATION AND DECISION**
27 **BY AN ADMINISTRATIVE LAW JUDGE.**

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

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

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

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

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

8 **3-2D-06.**

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

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

17 **(I) EXPENSES FOR ITEMS OR SERVICES THAT THE INFANT HAS**
18 **RECEIVED, OR IS ELIGIBLE TO RECEIVE, UNDER THE LAWS OF A STATE OR THE**
19 **UNITED STATES, EXCEPT TO THE EXTENT THAT THE EXCLUSION MAY BE**
20 **PROHIBITED BY FEDERAL LAW;**

21 **(II) EXPENSES FOR ITEMS OR SERVICES THAT THE INFANT HAS**
22 **RECEIVED, OR IS CONTRACTUALLY ENTITLED TO RECEIVE, FROM A PREPAID**
23 **HEALTH PLAN, A HEALTH MAINTENANCE ORGANIZATION, OR ANY OTHER PRIVATE**
24 **INSURING ENTITY;**

25 **(III) EXPENSES FOR WHICH THE INFANT HAS RECEIVED**
26 **REIMBURSEMENT, OR FOR WHICH THE INFANT IS ELIGIBLE TO RECEIVE**
27 **REIMBURSEMENT, UNDER THE LAWS OF A STATE OR THE UNITED STATES,**
28 **INCLUDING BENEFITS PROVIDED UNDER THE MARYLAND RARE AND EXPENSIVE**
29 **CASE MANAGEMENT PROGRAM, EXCEPT TO THE EXTENT THE EXCLUSION MAY BE**
30 **PROHIBITED BY FEDERAL LAW;**

31 **(IV) EXPENSES FOR WHICH THE INFANT HAS RECEIVED**
32 **REIMBURSEMENT, OR FOR WHICH THE INFANT IS CONTRACTUALLY ENTITLED TO**
33 **RECEIVE REIMBURSEMENT, UNDER THE PROVISIONS OF A HEALTH OR SICKNESS**
34 **INSURANCE POLICY OR OTHER PRIVATE INSURANCE PROGRAM; AND**

1 **(V) EXPENSES RELATED TO HOUSING OR MODIFICATION OF**
2 **RESIDENTIAL ENVIRONMENT;**

3 **(2) WITHIN THE DISCRETION OF THE OFFICE, AN AWARD NOT**
4 **EXCEEDING \$100,000, PAYABLE IN PERIODIC PAYMENTS OR AS A LUMP SUM TO THE**
5 **INJURED INFANT OR TO THE PARENTS OR LEGAL GUARDIANS OF THE INJURED**
6 **INFANT FOR THE BENEFIT OF THE INJURED INFANT;**

7 **(3) LOSS OF EARNINGS CALCULATED UNDER SUBSECTION (B) OF THIS**
8 **SECTION TO BE PAID IN PERIODIC PAYMENTS BEGINNING ON THE 18TH BIRTHDAY**
9 **OF THE INFANT;**

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

12 **(5) REASONABLE EXPENSES INCURRED IN CONNECTION WITH THE**
13 **FILING AND PROSECUTION OF A CLAIM TO ASSERT ELIGIBILITY AND FOR**
14 **COMPENSATION AND BENEFITS UNDER THIS SUBTITLE, INCLUDING REASONABLE**
15 **ATTORNEY'S FEES ON AN HOURLY BASIS, SUBJECT TO THE APPROVAL AND AWARD**
16 **OF THE ADMINISTRATIVE LAW JUDGE IN ACCORDANCE WITH SUBSECTION (C) OF**
17 **THIS SECTION.**

18 **(B) (1) AN INFANT FOUND TO HAVE SUSTAINED A BIRTH-RELATED**
19 **NEUROLOGICAL INJURY SHALL BE CONCLUSIVELY PRESUMED TO HAVE BEEN ABLE**
20 **TO EARN INCOME FROM EMPLOYMENT FROM THE AGE OF 18 YEARS THROUGH THE**
21 **AGE OF 65 YEARS, AS IF THE INFANT HAD NOT BEEN INJURED, IN THE AMOUNT OF**
22 **50% OF THE STATE AVERAGE WEEKLY WAGE AS DETERMINED BY THE DEPARTMENT**
23 **OF LABOR, LICENSING, AND REGULATION IN ACCORDANCE WITH § 9-603 OF THE**
24 **LABOR AND EMPLOYMENT ARTICLE.**

25 **(2) PAYMENTS FOR LOSS OF EARNINGS SHALL BE CALCULATED**
26 **BASED ON THE STATE REPORTING PERIOD IMMEDIATELY PRECEDING THE 18TH**
27 **BIRTHDAY OF THE INFANT AND SUBSEQUENTLY ADJUSTED BASED ON THE**
28 **SUCCEEDING ANNUAL REPORTS OF THE STATE AVERAGE WEEKLY WAGE.**

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

32 **(2) THE ADMINISTRATIVE LAW JUDGE MAY AWARD ATTORNEY'S FEES**
33 **FOR THE PROSECUTION OF A CLAIM FOUND TO BE INELIGIBLE UNDER THIS**

1 SUBTITLE IF THE CLAIM WAS NOT SUBMITTED IN BAD FAITH OR WITHOUT
2 SUBSTANTIAL JUSTIFICATION.

3 (D) AN AWARD OF EXPENSES SHALL REQUIRE THE IMMEDIATE PAYMENT OF
4 EXPENSES PREVIOUSLY INCURRED AND SHALL REQUIRE THAT FUTURE EXPENSES
5 BE PAID AS INCURRED.

6 3-2D-07.

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

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

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

15 (B) (1) THE PARTIES TO THE HEARING SHALL INCLUDE THE CLAIMANT
16 AND THE FUND.

17 (2) ON REQUEST BY A PERSON OR ENTITY IDENTIFIED BY THE
18 CLAIMANT IN ACCORDANCE WITH § 3-2D-04(A)(2)(III) OF THIS SUBTITLE, THE
19 PERSON OR ENTITY SHALL BE PERMITTED TO PARTICIPATE AS A PARTY.

20 (C) (1) A PARTY TO A PROCEEDING MAY, ON APPLICATION TO THE
21 ADMINISTRATIVE LAW JUDGE SETTING FORTH THE MATERIALITY OF THE EVIDENCE
22 TO BE GIVEN, SERVE INTERROGATORIES OR CAUSE THE DEPOSITIONS OF
23 WITNESSES RESIDING IN OR OUTSIDE THE STATE TO BE TAKEN.

24 (2) THE DEPOSITIONS SHALL BE TAKEN AFTER GIVING NOTICE AND
25 IN THE MANNER PRESCRIBED FOR THE TAKING OF DEPOSITIONS IN ACTIONS AT
26 LAW, EXCEPT THAT THEY SHALL BE DIRECTED TO THE ADMINISTRATIVE LAW JUDGE
27 BEFORE WHOM THE PROCEEDINGS MAY BE PENDING.

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

30 3-2D-08.

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

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

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

7 Article – Health – General

8 SUBTITLE 16. BIRTH INJURY PREVENTION.

9 20-1601.

10 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
11 INDICATED.

12 (B) “BOARD OF PHYSICIANS” MEANS THE STATE BOARD OF PHYSICIANS IN
13 THE DEPARTMENT.

14 (C) “FUND” MEANS THE MARYLAND NO-FAULT BIRTH INJURY FUND.

15 (D) “OFFICE” MEANS THE OFFICE OF HEALTH CARE QUALITY IN THE
16 DEPARTMENT.

17 20-1602.

18 (A) (1) THE SECRETARY SHALL CONVENE THE PERINATAL CLINICAL
19 ADVISORY COMMITTEE TO OVERSEE THE GENERAL DISSEMINATION OF
20 INITIATIVES, GUIDANCE, AND BEST PRACTICES TO HEALTH CARE FACILITIES FOR
21 PERINATAL CARE.

22 (2) THE PERINATAL CLINICAL ADVISORY COMMITTEE SHALL
23 CONSULT WITH THE MATERNAL AND PERINATAL HEALTH PROGRAM IN THE
24 DEPARTMENT.

25 (B) (1) THE DEPARTMENT SHALL DEVELOP INITIATIVES AND MAKE
26 RECOMMENDATIONS TO BUILD CULTURES OF PATIENT SAFETY FOR PERINATAL
27 CARE WITHIN HEALTH CARE FACILITIES.

28 (2) THE PERINATAL CLINICAL ADVISORY COMMITTEE SHALL
29 UNDERTAKE COLLABORATIVE WORK TO IMPROVE OBSTETRICAL CARE OUTCOMES

1 AND QUALITY OF CARE, BASED ON THE MARYLAND PERINATAL SYSTEM
2 STANDARDS, AND CLINICAL PROTOCOLS THAT CAN BE STANDARDIZED AND
3 ADOPTED BY HEALTH CARE FACILITIES, INCLUDING:

4 (I) COLLECTING DATA AND SURVEYING, REVIEWING, AND
5 ANALYZING CURRENT BEST PRACTICES AND OUTCOME MEASURES EMPLOYED IN
6 OBSTETRICAL CASES, INCLUDING EXPLORING THE USE OF “VIRTUAL GRAND
7 ROUNDS”;

8 (II) UNDERTAKING A REVIEW OF CLAIMS IN AN EFFORT TO
9 DEVELOP A SET OF “STANDARD BEST PRACTICES” FOR DELIVERIES IN MARYLAND;

10 (III) FORMULATING AND RECOMMENDING TO THE SECRETARY
11 BEST PRACTICE STANDARDS AND DESIGNING NEW PROGRAMS FOR
12 IMPLEMENTATION AND IMPROVED OUTCOMES, INCLUDING CLINICAL BUNDLES FOR
13 HIGH PRIORITY CONDITIONS, ELECTRONIC FETAL MONITORING TRAINING AND
14 CERTIFICATION, AND TEAM TRAINING; AND

15 (IV) ENGAGING THE EXISTING REGIONAL PERINATAL CENTER
16 NETWORK IN DIALOGUES REGARDING IMPROVING OBSTETRICAL CARE OUTCOMES
17 AND QUALITY OF CARE AND MAKING RECOMMENDATIONS TO IMPROVE OR UPGRADE
18 ASSISTANCE AND COMMUNICATION TO HEALTH FACILITIES OR BOTH.

19 **20–1603.**

20 (A) ON RECEIPT OF A BIRTH–RELATED NEUROLOGICAL INJURY CLAIM
21 FROM THE FUND, THE OFFICE MAY INVESTIGATE THE CLAIM AND TAKE
22 APPROPRIATE ACTION WITH RESPECT TO A HEALTH CARE FACILITY THAT PROVIDED
23 CARE FOR THE INJURED INFANT OR MOTHER OF THE INJURED INFANT.

24 (B) ON RECEIPT OF A BIRTH–RELATED NEUROLOGICAL INJURY CLAIM
25 FROM THE FUND, THE STATE BOARD OF PHYSICIANS MAY INVESTIGATE THE CLAIM
26 AND TAKE APPROPRIATE ACTION WITH RESPECT TO A PHYSICIAN WHO PROVIDED
27 CARE FOR THE INJURED INFANT OR MOTHER OF THE INJURED INFANT.

28 **Article – Insurance**

29 **TITLE 32. MARYLAND NO–FAULT BIRTH INJURY FUND.**

30 **SUBTITLE 1. DEFINITIONS; GENERAL PROVISIONS.**

31 **32–101.**

1 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS
2 INDICATED.

3 (B) "COMMISSION" MEANS THE HEALTH SERVICES COST REVIEW
4 COMMISSION ESTABLISHED IN § 19-202 OF THE HEALTH – GENERAL ARTICLE.

5 (C) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE
6 FUND.

7 (D) "FUND" MEANS THE MARYLAND NO-FAULT BIRTH INJURY FUND.

8 (E) "HOSPITAL" HAS THE MEANING STATED IN § 19-301 OF THE HEALTH –
9 GENERAL ARTICLE.

10 (F) "METROPOLITAN HOSPITAL" MEANS A HOSPITAL IN ANNE ARUNDEL
11 COUNTY, BALTIMORE COUNTY, HOWARD COUNTY, MONTGOMERY COUNTY,
12 PRINCE GEORGE'S COUNTY, OR BALTIMORE CITY.

13 (G) "NET DIRECT WRITTEN PREMIUMS" MEANS DIRECT GROSS PREMIUMS
14 WRITTEN ON POLICIES OF MEDICAL LIABILITY INSURANCE LESS RETURN PREMIUMS
15 OR DIVIDENDS PAID OR CREDITED TO POLICYHOLDERS WITH RESPECT TO THOSE
16 POLICIES.

17 (H) "PREMIUM" MEANS AN ANNUAL ASSESSMENT PAID BY A HOSPITAL AND
18 CERTAIN LICENSED PHYSICIANS IN ACCORDANCE WITH THIS TITLE TO FINANCE AND
19 ADMINISTER THE FUND.

20 (I) "RURAL HOSPITAL" MEANS A HOSPITAL THAT IS NOT LOCATED IN ANNE
21 ARUNDEL COUNTY, BALTIMORE COUNTY, HOWARD COUNTY, MONTGOMERY
22 COUNTY, PRINCE GEORGE'S COUNTY, OR BALTIMORE CITY.

23 (J) "SECRETARY" MEANS THE SECRETARY OF HEALTH AND MENTAL
24 HYGIENE.

25 SUBTITLE 2. MARYLAND NO-FAULT BIRTH INJURY FUND.

26 32-201.

27 (A) THERE IS A MARYLAND NO-FAULT BIRTH INJURY FUND.

28 (B) THE FUND IS A MEMBER OF THE PROPERTY AND CASUALTY INSURANCE
29 GUARANTY CORPORATION.

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

2 **(1) COLLECT AND RECEIVE PREMIUMS COLLECTED UNDER §**
3 **32-303 OF THIS TITLE;**

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

6 **(3) INVEST AND REINVEST SURPLUS MONEY OVER LOSSES AND**
7 **EXPENSES AS SET FORTH IN § 32-302 OF THIS TITLE;**

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

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

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

14 **32-202.**

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

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

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

19 **(I) ONE SHALL BE AN OBSTETRICIAN;**

20 **(II) ONE SHALL BE A PEDIATRIC NEUROLOGIST;**

21 **(III) ONE SHALL BE A REPRESENTATIVE NOMINATED BY THE**
22 **MARYLAND HOSPITAL ASSOCIATION;**

23 **(IV) ONE SHALL BE AN ATTORNEY; AND**

24 **(V) ONE SHALL BE A CITIZEN REPRESENTATIVE.**

25 **(C) (1) EACH MEMBER SHALL BE A RESIDENT OF THE STATE.**

1 **(2) IN APPOINTING MEMBERS, THE GOVERNOR, TO THE EXTENT**
2 **PRACTICABLE, SHALL CONSIDER THE GEOGRAPHIC AND DEMOGRAPHIC DIVERSITY**
3 **OF THE STATE, INCLUDING RACE AND GENDER.**

4 **(D) BEFORE TAKING OFFICE, EACH APPOINTEE TO THE BOARD OF**
5 **TRUSTEES SHALL TAKE THE OATH REQUIRED BY ARTICLE I, § 9 OF THE MARYLAND**
6 **CONSTITUTION.**

7 **(E) (1) THE TERM OF A MEMBER IS 5 YEARS.**

8 **(2) AT THE END OF A TERM, A MEMBER CONTINUES TO SERVE UNTIL**
9 **A SUCCESSOR IS APPOINTED AND QUALIFIES.**

10 **(3) A MEMBER MAY NOT SERVE FOR MORE THAN THE GREATER OF:**

11 **(I) TWO FULL TERMS; AND**

12 **(II) A TOTAL OF 10 YEARS.**

13 **(4) IF A MEMBER OF THE BOARD OF TRUSTEES CEASES TO BE A**
14 **MEMBER OF THE BOARD, THE GOVERNOR SHALL APPOINT A SUCCESSOR FOR THE**
15 **UNEXPIRED TERM.**

16 **(F) THE BOARD OF TRUSTEES SHALL CHOOSE A CHAIR FROM AMONG ITS**
17 **MEMBERS.**

18 **(G) EACH MEMBER OF THE BOARD OF TRUSTEES IS ENTITLED TO**
19 **REASONABLE PER DIEM COMPENSATION FOR EACH DAY ACTUALLY ENGAGED IN THE**
20 **DISCHARGE OF FUND DUTIES.**

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

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

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

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

26 **32-203.**

27 **(A) (1) THE BOARD OF TRUSTEES SHALL APPOINT THE EXECUTIVE**
28 **DIRECTOR OF THE FUND.**

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

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

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

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

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

10 **(2) THE BOARD OF TRUSTEES SHALL ADVISE THE EXECUTIVE**
11 **DIRECTOR ON THE EXERCISE OF THE POWERS AND DUTIES CONFERRED ON THE**
12 **EXECUTIVE DIRECTOR BY THIS TITLE.**

13 **(C) THE BOARD OF TRUSTEES SHALL DETERMINE THE COMPENSATION OF**
14 **THE EXECUTIVE DIRECTOR.**

15 **32-204.**

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

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

21 **(B) THE EXECUTIVE DIRECTOR SHALL DETERMINE AND ADMINISTER THE**
22 **COMPENSATION OF THE EMPLOYEES OF THE FUND WITH THE APPROVAL OF THE**
23 **BOARD OF TRUSTEES.**

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

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

29 **32-301.**

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

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

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

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

12 **(D) (1) THE FUND SHALL PROVIDE TO EACH MARYLAND HOSPITAL**
13 **WRITTEN MATERIALS CONTAINING INFORMATION ABOUT THE FUND FOR**
14 **DISTRIBUTION TO OBSTETRICAL PATIENTS.**

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

18 **32-302.**

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

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

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

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

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

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

5 **(4) THE ANNUAL AUDIT REPORT SHALL BE DISCLOSED TO THE**
6 **PUBLIC.**

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

11 **(2) THE ACTUARY SHALL PRODUCE A STATEMENT OF ACTUARIAL**
12 **OPINION CONCERNING THE VALUATION OF THE FUND'S ASSETS AND LIABILITIES**
13 **AND THE ADEQUACY OF THE ASSETS, WHICH THE BOARD OF TRUSTEES SHALL**
14 **DISCLOSE TO THE PUBLIC.**

15 **32-303.**

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

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

20 **(2) (I) BEGINNING ON JULY 1, 2015, EACH METROPOLITAN**
21 **HOSPITAL SHALL PAY AN ANNUAL PREMIUM TO THE FUND AS FOLLOWS:**

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

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

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

30 **(II) THE FUND IS AUTHORIZED TO INCREASE THE PREMIUM BY**
31 **NO MORE THAN 5% EACH YEAR IF THE ACTUARIAL ESTIMATE OF CURRENT**

1 LIABILITIES PERFORMED UNDER § 32-302(E) OF THIS SUBTITLE EQUALS OR
2 EXCEEDS 80% OF THE FUND'S ASSETS.

3 (3) (I) BEGINNING ON JULY 1, 2015, EACH RURAL HOSPITAL
4 SHALL PAY AN ANNUAL PREMIUM TO THE FUND AS FOLLOWS:

5 1. THE PREMIUM SHALL EQUAL \$150 PER LIVE BIRTH
6 FOR THE PRIOR FISCAL YEAR, AS REPORTED TO THE DEPARTMENT OF HEALTH AND
7 MENTAL HYGIENE;

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

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

13 (II) THE FUND IS AUTHORIZED TO INCREASE THE PREMIUM BY
14 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 (4) (I) BEGINNING ON JULY 1, 2015, EACH PHYSICIAN WHO
18 PERFORMED AT LEAST FIVE BIRTHS IN THE STATE DURING THE PRIOR FISCAL YEAR
19 SHALL PAY AN ANNUAL PREMIUM TO THE FUND IN THE AMOUNT OF \$7,500.

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

24 (5) IN CALCULATING HOSPITAL RATES UNDER TITLE 19, SUBTITLE 2
25 OF THE HEALTH – GENERAL ARTICLE, THE COMMISSION SHALL INCREASE RATES
26 FOR OBSTETRICS SERVICES TO ACCOUNT FOR THE COST OF THE PREMIUMS
27 ESTABLISHED IN THIS SECTION.

28 (C) BEGINNING ON JULY 1, 2015, EACH INSURER OR MUTUAL SOCIETY
29 SHALL PAY AN ANNUAL SURCHARGE TO THE FUND IN AN AMOUNT EQUAL TO 2.5%
30 OF THE AMOUNT COLLECTED FOR ALL NET DIRECT WRITTEN PREMIUMS FOR
31 MEDICAL LIABILITY COVERAGE IN THE STATE.

32 32-304.

1 **(A) EACH INSURER ISSUING OR ISSUING FOR DELIVERY IN THE STATE A**
2 **PERSONAL INJURY LIABILITY POLICY THAT PROVIDES MEDICAL MALPRACTICE**
3 **LIABILITY COVERAGE FOR THE OBSTETRICAL PRACTICE OF A PHYSICIAN**
4 **PRACTICING IN THE STATE SHALL PROVIDE A CREDIT ON THE PHYSICIAN'S ANNUAL**
5 **MEDICAL MALPRACTICE LIABILITY INSURANCE PREMIUM IN AN AMOUNT THAT WILL**
6 **PRODUCE PREMIUMS THAT ARE NOT EXCESSIVE, INADEQUATE, OR UNFAIRLY**
7 **DISCRIMINATORY, AS DETERMINED BY THE COMMISSIONER.**

8 **(B) EACH INSURER ISSUING OR ISSUING FOR DELIVERY IN THE STATE A**
9 **PERSONAL INJURY LIABILITY POLICY THAT PROVIDES MEDICAL MALPRACTICE**
10 **LIABILITY COVERAGE FOR THE OBSTETRICAL SERVICES OF A HOSPITAL IN THE**
11 **STATE SHALL PROVIDE A CREDIT ON THE HOSPITAL'S ANNUAL MEDICAL**
12 **MALPRACTICE LIABILITY INSURANCE PREMIUM IN AN AMOUNT THAT WILL PRODUCE**
13 **PREMIUMS THAT ARE NOT EXCESSIVE, INADEQUATE, OR UNFAIRLY**
14 **DISCRIMINATORY, AS DETERMINED BY THE COMMISSIONER.**

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
16 apply only prospectively and may not be applied or interpreted to have any effect on or
17 application to any cause of action arising before January 1, 2016.

18 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
19 1, 2015.