

SENATE BILL 513

D3
SB 585/15 – JPR & FIN

6lr2716
CF HB 377

By: **Senators Nathan–Pulliam, Bates, DeGrange, Ferguson, Guzzone, Hough,
Klausmeier, Manno, McFadden, Serafini, and Young**

Introduced and read first time: February 4, 2016

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; requiring the Maryland Patient Safety
8 Center to convene a certain Perinatal Clinical Advisory Committee; establishing the
9 Maryland No–Fault Birth Injury Fund; providing for the governance,
10 administration, and purposes of the Fund; providing for certain premiums to be used
11 to finance and administer the Fund; providing for certain credits for certain medical
12 liability coverage for the obstetrical practice or services of certain health care
13 practitioners and hospitals; providing for certain patient safety initiatives; defining
14 certain terms; providing for the application of this Act; and generally relating to
15 establishment of a system of adjudication and compensation of a claimant for a
16 birth–related neurological injury through the Maryland No–Fault Birth Injury
17 Fund.

18 BY adding to

19 Article – Courts and Judicial Proceedings
20 Section 3–2D–01 through 3–2D–08 to be under the new subtitle “Subtitle 2D.
21 Maryland No–Fault Birth Injury Fund Claims”
22 Annotated Code of Maryland
23 (2013 Replacement Volume and 2015 Supplement)

24 BY adding to

25 Article – Health – General
26 Section 20–1701 and 20–1702 to be under the new subtitle “Subtitle 17. Birth Injury
27 Prevention”
28 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2015 Replacement Volume)

BY adding to

Article – Insurance

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

Annotated Code of Maryland

(2011 Replacement Volume and 2015 Supplement)

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

Article – Courts and Judicial Proceedings

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

3–2D–01.

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

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

(I) IS CAUSED BY OXYGEN DEPRIVATION OR OTHER INJURY
THAT OCCURRED OR COULD HAVE OCCURRED DURING LABOR, DURING DELIVERY,
OR IN THE RESUSCITATIVE PERIOD AFTER DELIVERY; AND

(II) RENDERS THE INFANT PERMANENTLY NEUROLOGICALLY
AND PHYSICALLY IMPAIRED.

(2) “BIRTH–RELATED NEUROLOGICAL INJURY” DOES NOT INCLUDE
DISABILITY OR DEATH CAUSED BY GENETIC OR CONGENITAL ABNORMALITY.

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

(D) “FUND” MEANS THE MARYLAND NO–FAULT BIRTH INJURY FUND.

(E) “HEALTH CARE PRACTITIONER” MEANS AN INDIVIDUAL LICENSED OR
CERTIFIED OR OTHERWISE AUTHORIZED TO PROVIDE OBSTETRICAL SERVICES OR

1 AN INDIVIDUAL LICENSED OR CERTIFIED UNDER THE HEALTH OCCUPATIONS
2 ARTICLE TO PRACTICE MIDWIFERY.

3 (F) "HOSPITAL" HAS THE MEANING STATED IN § 19-301 OF THE HEALTH -
4 GENERAL ARTICLE.

5 (G) "OFFICE" MEANS THE OFFICE OF ADMINISTRATIVE HEARINGS.

6 (H) "PHYSICIAN" MEANS AN INDIVIDUAL:

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

8 (2) WHO LEGALLY PRACTICES MEDICINE WITHOUT A LICENSE UNDER
9 § 14-302(1), (2), (3), OR (4) OF THE HEALTH OCCUPATIONS ARTICLE.

10 (I) "QUALIFIED HEALTH CARE COSTS" MEANS REASONABLE EXPENSES OF
11 MEDICAL, HOSPITAL, REHABILITATIVE, FAMILY RESIDENTIAL OR CUSTODIAL CARE,
12 PROFESSIONAL RESIDENTIAL CARE, DURABLE MEDICAL EQUIPMENT, MEDICALLY
13 NECESSARY DRUGS, AND RELATED TRAVEL, AND RESIDENTIAL OR VEHICLE
14 MODIFICATIONS THAT ARE NECESSARY TO MEET A CLAIMANT'S HEALTH CARE
15 NEEDS AS DETERMINED BY THE CLAIMANT'S TREATING PHYSICIANS, PHYSICIAN
16 ASSISTANTS, OR NURSE PRACTITIONERS, AND AS OTHERWISE DEFINED BY
17 REGULATION.

18 3-2D-02.

19 (A) THE GENERAL ASSEMBLY FINDS THAT:

20 (1) BIRTHS OTHER THAN A NORMAL BIRTH SOMETIMES LEAD TO
21 CLAIMS AGAINST THE HOSPITAL WHERE THE BIRTH OCCURRED AND THE HEALTH
22 CARE PRACTITIONERS INVOLVED AND, CONSEQUENTLY, THOSE HOSPITALS AND
23 HEALTH CARE PRACTITIONERS ARE MOST SEVERELY AFFECTED BY MEDICAL
24 LIABILITY RISK AND ASSOCIATED COSTS;

25 (2) BECAUSE OBSTETRIC SERVICES ARE ESSENTIAL, IT IS
26 INCUMBENT ON THE GENERAL ASSEMBLY TO PROVIDE A PLAN DESIGNED TO
27 RESULT IN THE STABILIZATION AND REDUCTION OF MEDICAL LIABILITY RISK AND
28 ASSOCIATED COST IN ORDER TO PRESERVE ACCESS TO OBSTETRIC SERVICES IN
29 MARYLAND;

30 (3) BIRTH-RELATED NEUROLOGICAL INJURIES ARE AMONG THE
31 MOST COSTLY AND DEVASTATING TYPES OF MEDICAL INJURIES AND WARRANT THE

1 ESTABLISHMENT OF AN EQUITABLE SYSTEM OF COMPENSATION REGARDLESS OF
2 FAULT; AND

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

5 (B) IT IS THE INTENT OF THE GENERAL ASSEMBLY TO PROVIDE FAIR AND
6 EQUITABLE COMPENSATION, ON A NO-FAULT BASIS, FOR A LIMITED CLASS OF
7 CATASTROPHIC INJURIES THAT RESULT IN UNUSUALLY HIGH COSTS FOR
8 CUSTODIAL CARE AND REHABILITATION, AND THE PLAN UNDER SUBSECTION (A)(2)
9 OF THIS SECTION SHALL APPLY ONLY TO BIRTH-RELATED NEUROLOGICAL
10 INJURIES.

11 3-2D-03.

12 (A) THIS SUBTITLE APPLIES TO BIRTHS OCCURRING ON OR AFTER JANUARY
13 1, 2018.

14 (B) THE RIGHTS AND REMEDIES UNDER THIS SUBTITLE EXCLUDE AND
15 SUPPLANT ALL OTHER RIGHTS AND REMEDIES OF THE INFANT, PERSONAL
16 REPRESENTATIVE OF THE INFANT, AND PARENTS, DEPENDENTS, OR NEXT OF KIN OF
17 THE INFANT ARISING OUT OF OR RELATED TO A BIRTH-RELATED NEUROLOGICAL
18 INJURY TO THE INFANT, INCLUDING CLAIMS OF EMOTIONAL DISTRESS RELATED TO
19 THE INFANT'S INJURY.

20 (C) NOTHING IN THIS SUBTITLE EXCLUDES OTHER RIGHTS AND REMEDIES
21 AVAILABLE TO THE MOTHER OF THE INFANT ARISING OUT OF OR RELATED TO A
22 PHYSICAL INJURY, SEPARATE AND DISTINCT FROM A BIRTH-RELATED
23 NEUROLOGICAL INJURY TO THE INFANT, SUFFERED BY THE MOTHER OF THE INFANT
24 DURING THE COURSE OF DELIVERY OF THE INFANT.

25 (D) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A CIVIL ACTION IS
26 NOT PROHIBITED AGAINST A HEALTH CARE PRACTITIONER OR HOSPITAL IF THERE
27 IS CLEAR AND CONVINCING EVIDENCE THAT THE HEALTH CARE PRACTITIONER OR
28 HOSPITAL MALICIOUSLY INTENDED TO CAUSE A BIRTH INJURY AND THE CLAIM IS
29 FILED BEFORE AND INSTEAD OF PAYMENT OF AN AWARD UNDER THIS SUBTITLE.

30 (E) IF A PARTY IN A CIVIL PROCEEDING BEFORE A CIRCUIT COURT ASSERTS
31 A CLAIM THAT INVOLVES AN ELIGIBLE BIRTH-RELATED NEUROLOGICAL INJURY, ON
32 THE MOTION OF SUCH PARTY IN THE CIVIL PROCEEDING, THE COURT SHALL:

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

1 **(2) DISMISS THE CIVIL PROCEEDING WITHOUT PREJUDICE.**

2 **(F) IF A PARTY IN A PROCEEDING BEFORE THE HEALTH CARE**
3 **ALTERNATIVE DISPUTE RESOLUTION OFFICE ASSERTS A CLAIM THAT INVOLVES AN**
4 **ELIGIBLE BIRTH-RELATED NEUROLOGICAL INJURY, ON THE MOTION OF SUCH**
5 **PARTY IN THE PROCEEDING, THE DIRECTOR OF THE HEALTH CARE ALTERNATIVE**
6 **DISPUTE RESOLUTION OFFICE SHALL:**

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

9 **(2) DISMISS THE PROCEEDING BEFORE THE HEALTH CARE**
10 **ALTERNATIVE DISPUTE RESOLUTION OFFICE WITHOUT PREJUDICE.**

11 **(G) A CLAIM FOR COMPENSATION AND BENEFITS UNDER THIS SUBTITLE**
12 **SHALL BE FILED WITHIN THE TIME PERIODS ESTABLISHED UNDER § 5-109 OF THIS**
13 **ARTICLE.**

14 **(H) A CLAIM MAY BE FILED BY A LEGAL REPRESENTATIVE ON BEHALF OF AN**
15 **INJURED INFANT AND, IN THE CASE OF A DECEASED INFANT, BY AN ADMINISTRATOR,**
16 **A PERSONAL REPRESENTATIVE, OR ANY OTHER LEGAL REPRESENTATIVE OF THE**
17 **DECEASED INFANT.**

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

24 **3-2D-04.**

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

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

29 **(i) THE NAME AND ADDRESS OF THE LEGAL REPRESENTATIVE**
30 **AND THE BASIS FOR THE LEGAL REPRESENTATIVE'S REPRESENTATION OF THE**
31 **INJURED INFANT;**

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

2 **(III) THE NAME AND ADDRESS OF EACH HEALTH CARE**
3 **PRACTITIONER WHO IS KNOWN TO HAVE BEEN PRESENT AT THE BIRTH, AND THE**
4 **HOSPITAL AT WHICH THE BIRTH OCCURRED;**

5 **(IV) A DESCRIPTION OF THE DISABILITY FOR WHICH THE CLAIM**
6 **IS MADE;**

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

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

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

13 **(1) ALL AVAILABLE RELEVANT MEDICAL RECORDS RELATING TO THE**
14 **BIRTH-RELATED NEUROLOGICAL INJURY AND A LIST IDENTIFYING UNAVAILABLE**
15 **RECORDS KNOWN TO THE CLAIMANT AND THE REASONS FOR THE RECORDS'**
16 **UNAVAILABILITY;**

17 **(2) APPROPRIATE ASSESSMENTS, EVALUATIONS, AND PROGNoses**
18 **AND OTHER RECORDS AND DOCUMENTS REASONABLY NECESSARY FOR THE**
19 **DETERMINATION OF THE AMOUNT OF COMPENSATION TO BE PAID TO, OR ON BEHALF**
20 **OF, THE INJURED INFANT ON ACCOUNT OF THE BIRTH-RELATED NEUROLOGICAL**
21 **INJURY;**

22 **(3) DOCUMENTATION OF EXPENSES AND SERVICES INCURRED TO**
23 **DATE THAT IDENTIFIES THE PAYMENT MADE FOR THOSE EXPENSES AND SERVICES**
24 **AND THE PAYOR; AND**

25 **(4) DOCUMENTATION OF ANY APPLICABLE PRIVATE OR**
26 **GOVERNMENTAL SOURCE OF SERVICES OR REIMBURSEMENT RELATIVE TO THE**
27 **IMPAIRMENTS.**

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

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

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

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

12 (4) AT THE TIME THE FUND SUBMITS THE CLAIM TO THE OFFICE, THE
13 FUND SHALL SUBMIT THE CLAIM, TOGETHER WITH ALL INFORMATION AND
14 MATERIALS SUBMITTED BY THE CLAIMANT AND THE FUND'S RESPONSE, TO THE
15 OFFICE OF HEALTH CARE QUALITY AND THE STATE BOARD OF PHYSICIANS FOR
16 REVIEW.

17 3-2D-05.

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

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

24 (C) THE OFFICE SHALL HAVE EXCLUSIVE JURISDICTION TO DETERMINE, ON
25 THE BASIS OF THE EVIDENCE PRESENTED IN A CONTESTED HEARING, THE
26 FOLLOWING ISSUES:

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

29 (2) THE NATURE AND AMOUNT OF COMPENSATION AND BENEFITS, IF
30 ANY, TO BE PROVIDED TO THE CLAIMANT.

31 (D) THE CLAIM SHALL BE DISMISSED IF THE OFFICE DETERMINES THAT
32 THE INJURY ALLEGED IN THE CLAIM IS NOT A BIRTH-RELATED NEUROLOGICAL
33 INJURY.

1 **3-2D-06.**

2 (A) ON A DETERMINATION THAT AN INFANT HAS SUSTAINED A
3 BIRTH-RELATED NEUROLOGICAL INJURY, THE CLAIMANT MAY BE AWARDED ONE OR
4 MORE OF THE FOLLOWING BENEFITS AND COMPENSATION TO BE PAID OR PROVIDED
5 FROM THE FUND:

6 (1) ACTUAL LIFETIME EXPENSES FOR QUALIFIED HEALTH CARE
7 COSTS, LIMITED TO REASONABLE CHARGES PREVAILING IN THE SAME COMMUNITY
8 FOR SIMILAR TREATMENT OF INJURED PERSONS WHEN THE TREATMENT IS PAID
9 FOR BY THE INJURED PERSON, EXCLUDING:

10 (i) EXPENSES FOR ITEMS OR SERVICES THAT THE INFANT HAS
11 RECEIVED, OR IS ELIGIBLE TO RECEIVE, UNDER THE LAWS OF ANY STATE OR THE
12 UNITED STATES, EXCEPT TO THE EXTENT THAT THE EXCLUSION MAY BE
13 PROHIBITED BY FEDERAL LAW;

14 (ii) EXPENSES FOR ITEMS OR SERVICES THAT THE INFANT HAS
15 RECEIVED, OR IS CONTRACTUALLY ENTITLED TO RECEIVE, FROM A PREPAID
16 HEALTH PLAN, A HEALTH MAINTENANCE ORGANIZATION, OR ANY OTHER PRIVATE
17 INSURING ENTITY;

18 (iii) EXPENSES FOR WHICH THE INFANT HAS RECEIVED
19 REIMBURSEMENT, OR FOR WHICH THE INFANT IS ELIGIBLE TO RECEIVE
20 REIMBURSEMENT, UNDER THE LAWS OF A STATE OR THE UNITED STATES,
21 INCLUDING BENEFITS PROVIDED UNDER THE MARYLAND RARE AND EXPENSIVE
22 CASE MANAGEMENT PROGRAM, EXCEPT TO THE EXTENT THE EXCLUSION MAY BE
23 PROHIBITED BY FEDERAL LAW;

24 (iv) EXPENSES FOR WHICH THE INFANT HAS RECEIVED
25 REIMBURSEMENT, OR FOR WHICH THE INFANT IS CONTRACTUALLY ENTITLED TO
26 RECEIVE REIMBURSEMENT, UNDER THE PROVISIONS OF A HEALTH OR SICKNESS
27 INSURANCE POLICY OR OTHER PRIVATE INSURANCE PROGRAM; AND

28 (v) EXPENSES RELATED TO THE PROVISION OF HOUSING,
29 EXCEPT FOR THE MODIFICATION OF RESIDENTIAL ENVIRONMENT;

30 (2) WITHIN THE DISCRETION OF THE OFFICE, AN AWARD NOT
31 EXCEEDING \$500,000, PAYABLE IN PERIODIC PAYMENTS OR AS A LUMP SUM TO THE
32 INJURED INFANT OR TO THE PARENTS OR LEGAL GUARDIANS OF THE INJURED
33 INFANT FOR THE BENEFIT OF THE INJURED INFANT;

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

4 **(4) IF THE INFANT DIES BEFORE ATTAINING THE AGE OF 18 YEARS, A**
5 **FUNERAL PAYMENT IN THE AMOUNT OF \$25,000; AND**

6 **(5) REASONABLE EXPENSES INCURRED IN CONNECTION WITH THE**
7 **FILING AND PROSECUTION OF A CLAIM TO ASSERT ELIGIBILITY AND FOR**
8 **COMPENSATION AND BENEFITS UNDER THIS SUBTITLE, INCLUDING REASONABLE**
9 **ATTORNEY'S FEES ON AN HOURLY BASIS, SUBJECT TO THE APPROVAL AND AWARD**
10 **OF THE ADMINISTRATIVE LAW JUDGE IN ACCORDANCE WITH SUBSECTION (C) OF**
11 **THIS SECTION.**

12 **(B) (1) AN INFANT FOUND TO HAVE SUSTAINED A BIRTH-RELATED**
13 **NEUROLOGICAL INJURY SHALL BE CONCLUSIVELY PRESUMED TO HAVE BEEN ABLE**
14 **TO EARN INCOME FROM EMPLOYMENT FROM THE AGE OF 18 THROUGH THE AGE OF**
15 **65, AS IF THE INFANT HAD NOT BEEN INJURED, IN THE AMOUNT OF 50% OF THE**
16 **STATE AVERAGE WEEKLY WAGE AS DETERMINED BY THE DEPARTMENT OF LABOR,**
17 **LICENSING, AND REGULATION IN ACCORDANCE WITH § 9-603 OF THE LABOR AND**
18 **EMPLOYMENT ARTICLE.**

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

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

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

30 **(D) AN AWARD OF EXPENSES SHALL REQUIRE THE IMMEDIATE PAYMENT OF**
31 **EXPENSES PREVIOUSLY INCURRED AND SHALL REQUIRE THAT FUTURE EXPENSES**
32 **BE PAID AS INCURRED.**

33 **3-2D-07.**

1 **SUBTITLE 17. BIRTH INJURY PREVENTION.**

2 **20-1701.**

3 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
4 **INDICATED.**

5 **(B) “BOARD OF NURSING” MEANS THE STATE BOARD OF NURSING IN THE**
6 **DEPARTMENT.**

7 **(C) “BOARD OF PHYSICIANS” MEANS THE STATE BOARD OF PHYSICIANS IN**
8 **THE DEPARTMENT.**

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

10 **(E) “OFFICE” MEANS THE OFFICE OF HEALTH CARE QUALITY IN THE**
11 **DEPARTMENT.**

12 **20-1702.**

13 **(A) (1) THE MARYLAND PATIENT SAFETY CENTER SHALL CONVENE A**
14 **PERINATAL CLINICAL ADVISORY COMMITTEE TO OVERSEE THE GENERAL**
15 **DISSEMINATION OF INITIATIVES, GUIDANCE, AND BEST PRACTICES TO HEALTH**
16 **CARE FACILITIES FOR PERINATAL CARE.**

17 **(2) THE PERINATAL CLINICAL ADVISORY COMMITTEE SHALL:**

18 **(I) UNDERTAKE REVIEW OF FUND CLAIMS;**

19 **(II) FORMULATE BEST PRACTICES STANDARDS FOR PRENATAL**
20 **CARE AND DELIVERIES IN MARYLAND; AND**

21 **(III) DEVELOP AND IMPLEMENT PROGRAMS TO IMPROVE**
22 **OBSTETRICAL CARE OUTCOMES.**

23 **(3) THE MARYLAND PATIENT SAFETY CENTER SHALL REPORT**
24 **ANNUALLY TO THE BOARD OF TRUSTEES OF THE FUND.**

25 **(B) (1) THE BOARD OF TRUSTEES OF THE FUND SHALL ALLOCATE**
26 **FUNDING EACH YEAR TO THE MARYLAND PATIENT SAFETY CENTER FOR THE**
27 **STAFFING OF THE PERINATAL CLINICAL ADVISORY COMMITTEE AND PROGRAM**
28 **ACTIVITIES.**

1 **(2) FUNDING FOR THE PERINATAL CLINICAL ADVISORY COMMITTEE**
2 **SHALL BE APPORTIONED FROM GENERAL FUND ADMINISTRATION ALLOCATIONS.**

3 **Article – Insurance**

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

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

6 **32–101.**

7 **(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
8 **INDICATED.**

9 **(B) “COMMISSION” MEANS THE HEALTH SERVICES COST REVIEW**
10 **COMMISSION ESTABLISHED IN § 19–202 OF THE HEALTH – GENERAL ARTICLE.**

11 **(C) “EXECUTIVE DIRECTOR” MEANS THE EXECUTIVE DIRECTOR OF THE**
12 **FUND.**

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

14 **(E) “HEALTH CARE PRACTITIONER” MEANS AN INDIVIDUAL LICENSED OR**
15 **CERTIFIED OR OTHERWISE AUTHORIZED TO PROVIDE OBSTETRICAL SERVICES OR**
16 **AN INDIVIDUAL LICENSED OR CERTIFIED UNDER THE HEALTH OCCUPATIONS**
17 **ARTICLE TO PRACTICE MIDWIFERY.**

18 **(F) “HOSPITAL” HAS THE MEANING STATED IN § 19–301 OF THE HEALTH –**
19 **GENERAL ARTICLE.**

20 **(G) “PREMIUM” MEANS THE ANNUAL ASSESSMENT PAID BY HOSPITALS IN**
21 **ACCORDANCE WITH § 32–202 OF THIS TITLE.**

22 **(H) “SECRETARY” MEANS THE SECRETARY OF HEALTH AND MENTAL**
23 **HYGIENE.**

24 **SUBTITLE 2. POWERS; BOARD OF TRUSTEES; STAFF.**

25 **32–201.**

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

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

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

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

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

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

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

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

13 **32-202.**

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

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

17 **(2) OF THE SEVEN MEMBERS:**

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

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

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

22 **(IV) ONE SHALL BE AN ATTORNEY;**

23 **(V) TWO SHALL BE CITIZEN REPRESENTATIVES; AND**

24 **(VI) ONE SHALL BE AN EXPERT IN DISABILITY CARE.**

25 **(C) (1) EACH MEMBER MUST 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. PURPOSES AND ADMINISTRATION OF 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 AND
13 OBSTETRICIAN PRACTICING IN MARYLAND WRITTEN MATERIALS CONTAINING
14 INFORMATION ABOUT THE FUND FOR 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 A 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) FOR EACH FISCAL YEAR, BASED ON THE ANNUAL STATEMENT OF**
17 **ACTUARIAL OPINION, THE BOARD OF TRUSTEES OF THE FUND SHALL:**

18 **(1) DETERMINE THE AMOUNT REQUIRED TO FINANCE AND**
19 **ADMINISTER THE FUND; AND**

20 **(2) PROVIDE NOTICE OF THE AMOUNT TO THE COMMISSION ON OR**
21 **BEFORE MARCH 1 OF EACH YEAR.**

22 **(B) (1) ON OR BEFORE THE BEGINNING OF EACH FISCAL YEAR, THE**
23 **COMMISSION SHALL:**

24 **(I) ASSESS PREMIUMS FOR ALL MARYLAND HOSPITALS; AND**

25 **(II) INCREASE HOSPITAL RATES TOTALING THE AMOUNT**
26 **DETERMINED BY THE BOARD OF TRUSTEES OF THE FUND THAT IS REQUIRED TO**
27 **FINANCE AND ADMINISTER THE FUND.**

28 **(2) (I) THE COMMISSION SHALL ADOPT REGULATIONS THAT**
29 **SPECIFY THE METHODOLOGY FOR THE ASSESSMENT OF PREMIUMS.**

30 **(II) THE COMMISSION'S ASSESSMENT METHODOLOGY SHALL:**

1 1. ACCOUNT FOR GEOGRAPHIC DIFFERENCES AMONG
2 HOSPITALS;

3 2. ACCOUNT FOR DIFFERENCES AMONG HOSPITALS'
4 HISTORICAL CLAIMS EXPERIENCE INVOLVING BIRTHS IN EACH HOSPITAL; AND

5 3. DISTINGUISH BETWEEN HOSPITALS THAT PROVIDE
6 OBSTETRICAL SERVICES AND THOSE THAT DO NOT.

7 (III) IN DETERMINING HOSPITAL RATES UNDER TITLE 19,
8 SUBTITLE 2 OF THE HEALTH – GENERAL ARTICLE, THE COMMISSION SHALL
9 INCREASE RATES TO ACCOUNT FOR THE AMOUNT OF THE PREMIUMS, AND THE
10 RESULTING INCREASE MAY NOT BE CONSIDERED IN DETERMINING THE
11 REASONABLENESS OF RATES OR HOSPITAL FINANCIAL PERFORMANCE UNDER
12 COMMISSION METHODOLOGIES.

13 (c) (1) ON OR BEFORE SEPTEMBER 1 OF EACH YEAR, EACH HOSPITAL
14 ASSESSED WITH PREMIUMS UNDER THIS SECTION SHALL MAKE PAYMENT TO THE
15 COMMISSION.

16 (2) THE COMMISSION SHALL COLLECT THE PREMIUM AMOUNTS
17 FROM HOSPITALS AND PAY THE PREMIUM AMOUNTS TO THE FUND FOR THE
18 PURPOSES OF THIS TITLE.

19 **32-304.**

20 (A) (1) EACH INSURER ISSUING OR ISSUING FOR DELIVERY IN THE STATE
21 A PERSONAL INJURY LIABILITY POLICY THAT PROVIDES MEDICAL MALPRACTICE
22 LIABILITY COVERAGE FOR THE OBSTETRICAL OR MIDWIFERY PRACTICE OF A
23 HEALTH CARE PRACTITIONER PRACTICING IN THE STATE SHALL PROVIDE A CREDIT
24 ON THE HEALTH CARE PRACTITIONER'S ANNUAL MEDICAL MALPRACTICE LIABILITY
25 INSURANCE PREMIUM TO ACCOUNT FOR THE AVAILABILITY OF THE FUND TO
26 COMPENSATE ELIGIBLE CLAIMANTS.

27 (2) THE CREDIT SHALL BE IN AN AMOUNT THAT WILL PRODUCE
28 PREMIUMS THAT ARE NOT EXCESSIVE, INADEQUATE, OR UNFAIRLY
29 DISCRIMINATORY, AS DETERMINED BY THE COMMISSIONER.

30 (B) (1) EACH INSURER ISSUING OR ISSUING FOR DELIVERY IN THE STATE
31 A PERSONAL INJURY LIABILITY POLICY THAT PROVIDES MEDICAL MALPRACTICE
32 LIABILITY COVERAGE FOR THE OBSTETRICAL OR MIDWIFERY SERVICES OF A
33 HOSPITAL IN THE STATE SHALL PROVIDE A CREDIT ON THE HOSPITAL'S ANNUAL

1 MEDICAL MALPRACTICE LIABILITY INSURANCE PREMIUM TO ACCOUNT FOR THE
2 AVAILABILITY OF THE FUND TO COMPENSATE ELIGIBLE CLAIMANTS.

3 (2) THE CREDIT SHALL BE IN AN AMOUNT THAT WILL PRODUCE
4 PREMIUMS THAT ARE NOT EXCESSIVE, INADEQUATE, OR UNFAIRLY
5 DISCRIMINATORY, AS DETERMINED BY THE COMMISSIONER.

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
7 apply only prospectively and may not be applied or interpreted to have any effect on or
8 application to any cause of action arising before January 1, 2018.

9 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
10 1, 2016.