

SENATE BILL 869

D3
HB 909/18 – HGO & JUD

9lr2331

By: **Senators Kelley, Benson, Eckardt, Ferguson, King, Kramer, Lam, Nathan-Pulliam, Patterson, Salling, Serafini, Smith, Washington, and West**
Introduced and read first time: February 6, 2019
Assigned to: Rules

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;
14 authorizing the Office of Health Care Quality, the State Board of Physicians, and the
15 State Board of Nursing to investigate a certain claim and take appropriate action
16 with respect to a certain health care facility, physician, or nurse; requiring the Office
17 of Administrative Hearings to provide certain training to certain administrative law
18 judges; defining certain terms; providing for the application of this Act; and generally
19 relating to the establishment of a system of adjudication and compensation of a
20 claimant for a birth-related neurological injury through the Maryland No-Fault
21 Birth Injury Fund.

22 BY adding to

23 Article – Courts and Judicial Proceedings
24 Section 3-2D-01 through 3-2D-08 to be under the new subtitle “Subtitle 2D.
25 Maryland No-Fault Birth Injury Fund Claims”
26 Annotated Code of Maryland
27 (2013 Replacement Volume and 2018 Supplement)

28 BY adding to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 Article – Health – General
2 Section 20–2001 through 20–2003 to be under the new subtitle “Subtitle 20. Birth
3 Injury Prevention”
4 Annotated Code of Maryland
5 (2015 Replacement Volume and 2018 Supplement)

6 BY adding to
7 Article – Insurance
8 Section 33–101 through 33–304 to be under the new title “Title 33. Maryland
9 No–Fault Birth Injury Fund”
10 Annotated Code of Maryland
11 (2017 Replacement Volume and 2018 Supplement)

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

14 **Article – Courts and Judicial Proceedings**

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

16 **3–2D–01.**

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

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

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

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

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

29 (C) “CLAIMANT” MEANS A PERSON WHO FILES A CLAIM IN ACCORDANCE
30 WITH § 3–2D–04 OF THIS SUBTITLE FOR BENEFITS OR COMPENSATION FOR A
31 BIRTH–RELATED NEUROLOGICAL INJURY THAT OCCURS IN THE STATE.

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

1 (E) "HEALTH CARE PRACTITIONER" MEANS AN INDIVIDUAL LICENSED OR
2 CERTIFIED OR OTHERWISE AUTHORIZED TO PROVIDE OBSTETRICAL SERVICES OR
3 AN INDIVIDUAL LICENSED OR CERTIFIED UNDER THE HEALTH OCCUPATIONS
4 ARTICLE TO PRACTICE MIDWIFERY.

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

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

8 (H) "PHYSICIAN" MEANS AN INDIVIDUAL:

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

10 (2) WHO LEGALLY PRACTICES MEDICINE WITHOUT A LICENSE UNDER
11 § 14-302(1), (2), (3), OR (4) OF THE HEALTH OCCUPATIONS ARTICLE.

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

20 3-2D-02.

21 (A) THE GENERAL ASSEMBLY FINDS THAT:

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

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

31 (3) BIRTH-RELATED NEUROLOGICAL INJURIES ARE AMONG THE
32 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 THAT THE PLAN UNDER SUBSECTION
9 (A)(2) OF THIS SECTION APPLY ONLY TO BIRTH-RELATED NEUROLOGICAL INJURIES.

10 3-2D-03.

11 (A) THIS SUBTITLE APPLIES TO BIRTHS OCCURRING ON OR AFTER JANUARY
12 1, 2021.

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

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

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

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

32 (1) ORDER THE PARTY TO FILE A CLAIM FOR A BIRTH-RELATED
33 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 THE 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 SHALL**
21 **BE TOLLED BY THE FILING OF A CLAIM UNDER THIS SUBTITLE, AND THE TIME THE**
22 **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;**

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

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

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

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

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

9 (B) THE CLAIMANT SHALL FILE WITH THE FUND THE FOLLOWING
10 INFORMATION WITHIN 45 DAYS AFTER THE FILING OF THE CLAIM AS SET FORTH IN
11 SUBSECTION (A) OF THIS SECTION:

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

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

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

24 (4) DOCUMENTATION OF ANY APPLICABLE PRIVATE OR
25 GOVERNMENT SOURCE OF SERVICES OR REIMBURSEMENT RELATIVE TO THE
26 IMPAIRMENTS.

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

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

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

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

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

15 **3-2D-05.**

16 **(A) (1) EACH DETERMINATION OF ELIGIBILITY AND FOR COMPENSATION**
17 **AND BENEFITS SHALL BE DELEGATED TO THE OFFICE FOR ADJUDICATION AND**
18 **DECISION BY AN ADMINISTRATIVE LAW JUDGE.**

19 **(2) THE OFFICE SHALL PROVIDE SPECIALIZED TRAINING TO**
20 **ADMINISTRATIVE LAW JUDGES WHO ARE ASSIGNED TO ADJUDICATE CLAIMS**
21 **SUBMITTED UNDER § 3-2D-04(D)(3) OF THIS SUBTITLE.**

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

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

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

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

32 **(D) THE CLAIM SHALL BE DISMISSED IF THE OFFICE DETERMINES THAT**

1 THE INJURY ALLEGED IN THE CLAIM IS NOT A BIRTH-RELATED NEUROLOGICAL
2 INJURY.

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

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

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

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

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

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

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

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

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

1 INFANT FOR THE BENEFIT OF THE INJURED INFANT;

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

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

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

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

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

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

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

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

34 3-2D-07.

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

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

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

9 (B) (1) THE PARTIES TO THE HEARING SHALL INCLUDE THE CLAIMANT
10 AND THE FUND.

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

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

18 (2) THE DEPOSITIONS SHALL BE TAKEN AFTER NOTICE IS GIVEN AND
19 IN THE MANNER PRESCRIBED FOR THE TAKING OF DEPOSITIONS IN ACTIONS AT
20 LAW, EXCEPT THAT THE DEPOSITIONS SHALL BE DIRECTED TO THE
21 ADMINISTRATIVE LAW JUDGE BEFORE WHOM THE PROCEEDINGS MAY BE PENDING.

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

24 3-2D-08.

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

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

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

1 **Article – Health – General**

2 **SUBTITLE 20. BIRTH INJURY PREVENTION.**

3 **20–2001.**

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

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

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

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

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

13 **20–2002.**

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

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

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

20 **(II) FORMULATE BEST PRACTICES STANDARDS FOR PRENATAL**
21 **CARE AND DELIVERIES IN THE STATE; AND**

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

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

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

1 ACTIVITIES.

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

4 20-2003.

5 (A) ON RECEIPT OF A CLAIM SUBMITTED BY THE FUND UNDER §
6 3-2D-04(D)(4) OF THE COURTS ARTICLE, THE OFFICE MAY INVESTIGATE THE
7 CLAIM AND TAKE APPROPRIATE ACTION WITH RESPECT TO A HEALTH CARE
8 FACILITY THAT PROVIDED CARE FOR THE AFFECTED INFANT OR MOTHER.

9 (B) ON RECEIPT OF A CLAIM SUBMITTED BY THE FUND UNDER §
10 3-2D-04(D)(4) OF THE COURTS ARTICLE, THE BOARD OF PHYSICIANS MAY
11 INVESTIGATE THE CLAIM AND TAKE APPROPRIATE ACTION WITH RESPECT TO A
12 PHYSICIAN WHO PROVIDED CARE FOR THE AFFECTED INFANT OR MOTHER.

13 (C) ON RECEIPT OF A CLAIM SUBMITTED BY THE FUND UNDER §
14 3-2D-04(D)(4) OF THE COURTS ARTICLE, THE BOARD OF NURSING MAY
15 INVESTIGATE THE CLAIM AND TAKE APPROPRIATE ACTION WITH RESPECT TO A
16 NURSE, INCLUDING A NURSE MIDWIFE, WHO PROVIDED CARE FOR THE AFFECTED
17 INFANT OR MOTHER.

18 Article - Insurance

19 TITLE 33. MARYLAND NO-FAULT BIRTH INJURY FUND.

20 SUBTITLE 1. DEFINITIONS; GENERAL PROVISIONS.

21 33-101.

22 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS
23 INDICATED.

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

26 (C) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE
27 FUND.

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

29 (E) "HEALTH CARE PRACTITIONER" MEANS AN INDIVIDUAL LICENSED OR

1 CERTIFIED OR OTHERWISE AUTHORIZED TO PROVIDE OBSTETRICAL SERVICES OR
2 AN INDIVIDUAL LICENSED OR CERTIFIED UNDER THE HEALTH OCCUPATIONS
3 ARTICLE TO PRACTICE MIDWIFERY.

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

6 (G) "PREMIUM" MEANS THE ANNUAL ASSESSMENT PAID BY HOSPITALS IN
7 ACCORDANCE WITH § 33-303 OF THIS TITLE.

8 (H) "SECRETARY" MEANS THE SECRETARY OF HEALTH.

9 SUBTITLE 2. POWERS; BOARD OF TRUSTEES; STAFF.

10 33-201.

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

12 (B) THE FUND IS AUTHORIZED TO:

13 (1) RECEIVE PREMIUMS COLLECTED UNDER § 33-303 OF THIS TITLE;

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

16 (3) INVEST AND REINVEST SURPLUS MONEY OVER LOSSES AND
17 EXPENSES AS SET FORTH IN § 33-302 OF THIS TITLE;

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

19 (5) EMPLOY OR RETAIN PERSONS AS NECESSARY TO PERFORM THE
20 ADMINISTRATIVE AND FINANCIAL TRANSACTIONS AND ANY OTHER NECESSARY AND
21 PROPER FUNCTIONS NOT PROHIBITED BY LAW; AND

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

24 33-202.

25 (A) THERE IS A BOARD OF TRUSTEES OF THE FUND.

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

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

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

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

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

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

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

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

9 **(C) (1) EACH MEMBER MUST BE A RESIDENT OF THE STATE.**

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

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

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

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

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

20 **(I) TWO FULL TERMS; OR**

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

22 **(4) IF A MEMBER OF THE BOARD OF TRUSTEES CEASES TO BE A**
23 **MEMBER OF THE BOARD OF TRUSTEES, THE GOVERNOR SHALL APPOINT A**
24 **SUCCESSOR FOR THE UNEXPIRED TERM.**

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

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

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

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

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

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

9 **33-203.**

10 **(A) (1) THE BOARD OF TRUSTEES SHALL APPOINT THE EXECUTIVE**
11 **DIRECTOR OF THE FUND.**

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

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

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

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

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

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

24 **(C) THE BOARD OF TRUSTEES SHALL DETERMINE THE COMPENSATION OF**
25 **THE EXECUTIVE DIRECTOR.**

26 **33-204.**

27 **(A) (1) EMPLOYEES OF THE FUND ARE NOT IN THE STATE PERSONNEL**

1 **MANAGEMENT SYSTEM.**

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

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

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

12 **SUBTITLE 3. PURPOSES AND ADMINISTRATION OF FUND.**

13 **33-301.**

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

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

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

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

25 **(D) (1) THE FUND SHALL PROVIDE TO EACH HOSPITAL IN THE STATE AND**
26 **OBSTETRICIAN PRACTICING IN THE STATE WRITTEN MATERIALS CONTAINING**
27 **INFORMATION ABOUT THE FUND FOR 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 THE**
30 **FUND.**

31 **33-302.**

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

2 (B) A DEBT OR AN OBLIGATION OF THE FUND IS NOT A DEBT OF THE STATE
3 OR A PLEDGE OF CREDIT OF THE STATE.

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

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

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

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

18 (4) THE ANNUAL AUDIT REPORT SHALL BE DISCLOSED TO THE
19 PUBLIC.

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

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

28 33-303.

29 (A) FOR EACH FISCAL YEAR, BASED ON THE ANNUAL STATEMENT OF
30 ACTUARIAL OPINION, THE BOARD OF TRUSTEES OF THE FUND SHALL:

31 (1) DETERMINE THE AMOUNT REQUIRED TO FINANCE AND

1 ADMINISTER THE FUND; AND

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

4 (B) (1) ON OR BEFORE THE BEGINNING OF EACH FISCAL YEAR, THE
5 COMMISSION SHALL:

6 (I) ASSESS PREMIUMS FOR ALL HOSPITALS IN THE STATE; AND

7 (II) INCREASE HOSPITAL RATES TOTALING THE AMOUNT
8 DETERMINED BY THE BOARD OF TRUSTEES OF THE FUND THAT IS REQUIRED TO
9 FINANCE AND ADMINISTER THE FUND.

10 (2) (I) THE COMMISSION SHALL ADOPT REGULATIONS THAT
11 SPECIFY THE METHODOLOGY FOR THE ASSESSMENT OF PREMIUMS.

12 (II) THE COMMISSION'S ASSESSMENT METHODOLOGY SHALL:

13 1. ACCOUNT FOR GEOGRAPHIC DIFFERENCES AMONG
14 HOSPITALS;

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

17 3. DISTINGUISH BETWEEN HOSPITALS THAT PROVIDE
18 OBSTETRICAL SERVICES AND THOSE THAT DO NOT.

19 (III) IN DETERMINING HOSPITAL RATES UNDER TITLE 19,
20 SUBTITLE 2 OF THE HEALTH – GENERAL ARTICLE, THE COMMISSION SHALL
21 INCREASE RATES TO ACCOUNT FOR THE AMOUNT OF THE PREMIUMS, AND THE
22 RESULTING INCREASE MAY NOT BE CONSIDERED IN DETERMINING THE
23 REASONABLENESS OF RATES OR HOSPITAL FINANCIAL PERFORMANCE UNDER
24 COMMISSION METHODOLOGIES.

25 (C) (1) ON OR BEFORE SEPTEMBER 1 EACH YEAR, EACH HOSPITAL
26 ASSESSED WITH PREMIUMS UNDER THIS SECTION SHALL PAY THE PREMIUM
27 AMOUNTS TO THE COMMISSION.

28 (2) THE COMMISSION SHALL COLLECT THE PREMIUM AMOUNTS
29 FROM HOSPITALS AND PAY THE PREMIUM AMOUNTS TO THE FUND FOR THE
30 PURPOSES OF THIS TITLE.

1 **33-304.**

2 (A) (1) EACH INSURER ISSUING OR ISSUING FOR DELIVERY IN THE STATE
3 A PERSONAL INJURY LIABILITY POLICY THAT PROVIDES MEDICAL MALPRACTICE
4 LIABILITY COVERAGE FOR THE OBSTETRICAL OR MIDWIFERY PRACTICE OF A
5 HEALTH CARE PRACTITIONER PRACTICING IN THE STATE SHALL PROVIDE A CREDIT
6 ON THE HEALTH CARE PRACTITIONER'S ANNUAL MEDICAL MALPRACTICE LIABILITY
7 INSURANCE PREMIUM TO ACCOUNT FOR THE AVAILABILITY OF THE FUND TO
8 COMPENSATE ELIGIBLE CLAIMANTS.

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

12 (B) (1) EACH INSURER ISSUING OR ISSUING FOR DELIVERY IN THE STATE
13 A PERSONAL INJURY LIABILITY POLICY THAT PROVIDES MEDICAL MALPRACTICE
14 LIABILITY COVERAGE FOR THE OBSTETRICAL OR MIDWIFERY SERVICES OF A
15 HOSPITAL IN THE STATE SHALL PROVIDE A CREDIT ON THE HOSPITAL'S ANNUAL
16 MEDICAL MALPRACTICE LIABILITY INSURANCE PREMIUM TO ACCOUNT FOR THE
17 AVAILABILITY OF THE FUND TO COMPENSATE ELIGIBLE CLAIMANTS.

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

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
22 apply only prospectively and may not be applied or interpreted to have any effect on or
23 application to any cause of action arising before January 1, 2021.

24 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July
25 1, 2019.