

By Senator Storms

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1 A bill to be entitled
2 An act relating to the Florida Birth-Related
3 Neurological Injury Compensation Association; amending
4 s. 766.303, F.S.; requiring that the association
5 administer the Florida Birth-Related Neurological
6 Injury Compensation Plan in a manner that promotes and
7 protects the health and best interests of children
8 having birth-related neurological injuries; amending
9 s. 766.315, F.S.; revising the membership of the board
10 of directors of the Florida Birth-Related Neurological
11 Injury Compensation Plan; revising the process for
12 recommending new directors; authorizing the Governor
13 or the Chief Financial Officer to remove a director
14 from office for specified reasons; revising the powers
15 of the directors; providing that meetings of the board
16 of directors are subject to the requirements of the
17 public meetings law; providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Subsection (4) is added to section 766.303,
22 Florida Statutes, to read:

23 766.303 Florida Birth-Related Neurological Injury
24 Compensation Plan; exclusiveness of remedy.—

25 (4) The association shall administer the plan in a manner
26 that promotes and protects the health and best interests of
27 children having birth-related neurological injuries.

28 Section 2. Section 766.315, Florida Statutes, is amended to
29 read:

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30 766.315 Florida Birth-Related Neurological Injury
31 Compensation Association; board of directors.-

32 (1) (a) The Florida Birth-Related Neurological Injury
33 Compensation Plan shall be governed by a board of seven ~~five~~
34 directors which shall be known as the Florida Birth-Related
35 Neurological Injury Compensation Association. The association is
36 not a state agency, board, or commission. Notwithstanding the
37 provision of s. 15.03, the association may ~~is authorized to~~ use
38 the state seal.

39 (b) The directors shall be appointed for staggered terms of
40 3 years or until their successors are appointed and have
41 qualified.

42 (c) The directors shall be appointed by the Chief Financial
43 Officer as follows:

44 1. One citizen representative who is not affiliated with
45 any of the groups identified in subparagraphs 2.-7.

46 2. One representative of participating physicians.

47 3. One representative of hospitals.

48 4. One representative of casualty insurers.

49 5. One representative of physicians other than
50 participating physicians.

51 6. One parent or guardian of a child, living or deceased,
52 who is or was a beneficiary of the plan.

53 7. One member in good standing of The Florida Bar who is
54 not affiliated with any of the groups identified in
55 subparagraphs 2.-6. and who has experience representing cases on
56 behalf of children who have been injured in a health care
57 setting.

58 (2) (a) The Chief Financial Officer may select the

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59 representative of the participating physicians from a list of at
60 least three names to be recommended by the Florida Obstetric and
61 Gynecologic Society; the representative of hospitals from a list
62 of at least three names to be recommended by the Florida
63 Hospital Association; the representative of casualty insurers
64 from a list of at least three names, one of which is recommended
65 by the American Insurance Association, one by the Alliance of
66 American Insurers, and one by the National Association of
67 Independent Insurers; ~~and~~ the representative of physicians other
68 than participating physicians from a list of three names to be
69 recommended by the Florida Medical Association and a list of
70 three names to be recommended by the Florida Osteopathic Medical
71 Association; the parent or guardian of a child from a list of
72 three names to be recommended by the Governor; and the member of
73 The Florida Bar from a list of three names to be recommended by
74 the President of The Florida Bar. ~~In no case shall~~ The Chief
75 Financial Officer is not ~~be~~ bound to make any appointment from
76 among the nominees of such respective associations.

77 (b) The Chief Financial Officer shall promptly notify the
78 appropriate ~~medical~~ association or person identified in
79 paragraph (a) which makes recommendations upon the occurrence of
80 any vacancy, and like nominations may be made for the filling of
81 the vacancy.

82 (c) The Governor or the Chief Financial Officer may remove
83 a director from office for misconduct, malfeasance, misfeasance,
84 or neglect of duty in office. Any vacancy so created shall be
85 filled as provided in paragraph (a).

86 (3) The directors may ~~shall~~ not transact any business or
87 exercise any power of the plan except upon the affirmative vote

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88 of four ~~three~~ directors. The directors shall serve without
89 salary, but are entitled to receive reimbursement ~~each director~~
90 ~~shall be reimbursed~~ for actual and necessary expenses incurred
91 in the performance of ~~his or her~~ official duties as directors ~~a~~
92 ~~director~~ of the plan in accordance with s. 112.061. The
93 directors are ~~shall~~ not ~~be~~ subject to any liability with respect
94 to the administration of the plan.

95 (4) The board of directors has ~~shall have~~ the power to:

96 (a) Administer the plan.

97 (b) Administer the funds collected on behalf of the plan.

98 (c) Administer the payment of claims on behalf of the plan.

99 (d) Direct the investment and reinvestment of any surplus
100 funds over losses and expenses, if ~~provided that~~ any investment
101 income generated thereby remains credited to the plan.

102 (e) Reinsure the risks of the plan in whole or in part.

103 (f) Sue and be sued, and appear and defend, in all actions
104 and proceedings in its name to the same extent as a natural
105 person.

106 (g) Have and exercise all powers necessary or convenient to
107 effect any or all of the purposes for which the plan is created.

108 (h) Enter into such contracts as are necessary or proper to
109 administer the plan.

110 (i) Employ or retain such persons as are necessary to
111 perform the administrative and financial transactions and
112 responsibilities of the plan and to perform other necessary and
113 proper functions not prohibited by law.

114 (j) Take such legal action as may be necessary to avoid
115 payment of improper claims.

116 (k) Indemnify any employee, agent, member of the board of

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117 directors or alternate thereof, or person acting on behalf of
118 the plan in an official capacity, for expenses, including
119 attorney ~~attorney's~~ fees, judgments, fines, and amounts paid in
120 settlement actually and reasonably incurred in connection with
121 any action, suit, or proceeding, including any appeal thereof,
122 arising out of such person's capacity to act ~~acting~~ on behalf of
123 the plan, ~~if, provided that~~ such person acted in good faith and
124 in a manner he or she reasonably believed to be in, or not
125 opposed to, the best interests of the plan and the health and
126 best interest of the child having birth-related neurological
127 injuries, and ~~if provided that,~~ with respect to any criminal
128 action or proceeding, such ~~the~~ person had reasonable cause to
129 believe his or her conduct was lawful.

130 (5) (a) Money may be withdrawn on account of the plan only
131 upon a voucher as authorized by the association.

132 (b) All meetings of the board of directors are subject to
133 the requirements of s. 286.011, and all books, records, and
134 audits of the plan are open to the public for reasonable
135 inspection ~~to the general public,~~ except that a claim file in
136 the possession of the association or its representative is
137 confidential and exempt from the provisions of s. 119.07(1) and
138 s. 24(a), Art. I of the State Constitution until termination of
139 litigation or settlement of the claim, although medical records
140 and other portions of the claim file may remain confidential and
141 exempt as otherwise provided by law. Any book, record, document,
142 audit, or asset acquired by, prepared for, or paid for by the
143 association is subject to the authority of the board of
144 directors, which is responsible therefor.

145 (c) Each person authorized to receive deposits, issue

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146 vouchers, or withdraw or otherwise disburse any funds shall post
147 a blanket fidelity bond in an amount reasonably sufficient to
148 protect plan assets, as determined by the plan of operation. The
149 cost of such bond will be paid from the assets of the plan.

150 (d) Annually, the association shall furnish audited
151 financial reports to any plan participant upon request, to the
152 Office of Insurance Regulation of the Financial Services
153 Commission, and to the Joint Legislative Auditing Committee. The
154 reports must be prepared in accordance with accepted accounting
155 procedures and must include such information as may be required
156 by the Office of Insurance Regulation or the Joint Legislative
157 Auditing Committee. At any time determined to be necessary, the
158 Office of Insurance Regulation or the Joint Legislative Auditing
159 Committee may conduct an audit of the plan.

160 (e) Funds held on behalf of the plan are funds of the State
161 of Florida. The association may ~~only~~ invest plan funds only in
162 the investments and securities described in s. 215.47, and is
163 ~~shall be~~ subject to the limitations on investments contained in
164 that section. All income derived from such investments shall
165 ~~will~~ be credited to the plan. The State Board of Administration
166 may invest and reinvest funds held on behalf of the plan in
167 accordance with the trust agreement approved by the association
168 and the State Board of Administration and within the provisions
169 of ss. 215.44-215.53.

170 Section 3. This act shall take effect July 1, 2012.