

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           with birth-related neurological injuries; amending s.  
 9           766.315, F.S.; revising the membership of the board of  
 10          directors of the Florida Birth-Related Neurological  
 11          Injury Compensation Plan; revising the process for  
 12          recommending new directors; authorizing removal of a  
 13          director from office for specified reasons; revising  
 14          the powers of the directors; providing that meetings  
 15          of the board of directors are subject to the public  
 16          meetings law; providing an effective date.

17  
 18   Be It Enacted by the Legislature of the State of Florida:

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

22           766.303 Florida Birth-Related Neurological Injury  
 23   Compensation Plan; exclusiveness of remedy.—

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

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

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29 766.315 Florida Birth-Related Neurological Injury

30 Compensation Association; board of directors.—

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

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

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

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

45 2. One representative of participating physicians.

46 3. One representative of hospitals.

47 4. One representative of casualty insurers.

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

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

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

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

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

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

85           (3) The directors may ~~shall~~ not transact any business or  
86 exercise any power of the plan except upon the affirmative vote  
87 of four ~~three~~ directors. The directors shall serve without  
88 salary, but are entitled to receive reimbursement ~~each director~~  
89 ~~shall be reimbursed~~ for actual and necessary expenses incurred  
90 in the performance of ~~his or her~~ official duties as directors a  
91 ~~director~~ of the plan in accordance with s. 112.061. The  
92 directors are ~~shall~~ not ~~be~~ subject to any liability with respect  
93 to the administration of the plan.

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

95           (a) Administer the plan.

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

97           (c) Administer the payment of claims on behalf of the  
98 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  
107 to effect any or all of the purposes for which the plan is  
108 created.

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

111           (i) Employ or retain such persons as are necessary to  
112 perform the administrative and financial transactions and

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113 responsibilities of the plan and to perform other necessary and  
114 proper functions not prohibited by law.

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

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

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

133 (b) All meetings of the board of directors are subject to  
134 the requirements of s. 286.011, and all books, records, and  
135 audits of the plan are open to the public for reasonable  
136 inspection ~~to the general public~~, except that a claim file in  
137 the possession of the association or its representative is  
138 confidential and exempt from the provisions of s. 119.07(1) and  
139 s. 24(a), Art. I of the State Constitution until termination of  
140 litigation or settlement of the claim, although medical records

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141 and other portions of the claim file may remain confidential and  
142 exempt as otherwise provided by law. Any book, record, document,  
143 audit, or asset acquired by, prepared for, or paid for by the  
144 association is subject to the authority of the board of  
145 directors, which is responsible therefor.

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

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

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

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169 | the association and the State Board of Administration and in  
170 | compliance with ~~within the provisions of~~ ss. 215.44-215.53.

171 | Section 3. This act shall take effect July 1, 2013.