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HOUSE BILL NO. 417**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Appropriations
on February 10, 2006)

(Patron Prior to Substitute—Delegate Tata)

*A BILL to amend and reenact §§ 38.2-5016 and 38.2-5016.1 of the Code of Virginia, relating to the Virginia Birth-Related Neurological Injury Compensation Program.***Be it enacted by the General Assembly of Virginia:****1. That §§ 38.2-5016 and 38.2-5016.1 of the Code of Virginia are amended and reenacted as follows:**

§ 38.2-5016. Board of directors; appointment; vacancies; term; list of Program claimants.

A. The Birth-Related Neurological Injury Compensation Program shall be governed by a board of seven directors.

B. Except as provided in subsection C, directors shall be appointed for a term of three years or until their successors are appointed and have qualified.

C. 1. The directors shall be appointed by the Governor as follows:

a. Four citizen representatives. The term of the member appointed in 1999 shall commence when appointed and shall end on July 1, 2002. When the terms of the two members expire in 2001, one shall be appointed for a term of two years ending July 1, 2003, and one shall be appointed for a term of three years ending July 1, 2004. Two of the members shall have a minimum of five years of professional investment experience; one of the members shall have professional experience working with the disabled community; and one of the members shall be the parent of a disabled child. Citizen members shall not have children or relatives who are claimants or who have been awarded benefits under the Act;

b. One representative of participating physicians. The initial term of the member appointed in 1999 shall commence when appointed and shall be for one year;

c. One representative of participating hospitals. The initial term of the member appointed in 1999 shall commence when appointed and shall be for two years; and

d. One representative of liability insurers. The initial term of the member appointed in 1999 shall commence when appointed and shall be for three years.

2. The Governor may select the representative of the participating physicians from a list of at least three names to be recommended by the Virginia Society of Obstetrics and Gynecology; the representative of participating hospitals from a list of at least three names to be recommended by the Virginia Hospital & Healthcare Association; and the representative of liability insurers from a list of at least three names, one of which is recommended by the American Insurance Association, one by the Alliance of American Insurers, and one by the National Association of Independent Insurers. In no case shall the Governor be bound to make any appointment from among the nominees of the respective associations.

D. The Governor shall promptly notify the appropriate association, which may make nominations, of any vacancy other than by expiration among the members of the board representing a particular interest and like nominations may be made for the filling of the vacancy.

E. The directors shall act by majority vote with four directors constituting a quorum for the transaction of any business or the exercise of any power of the Program. The directors shall serve without salary, but each director shall be reimbursed for actual and necessary expenses incurred in the performance of his official duties as a director of the Program. The directors shall not be subject to any personal liability with respect to the administration of the Program or the payment of any award.

F. The board shall have the power to (i) administer the Program, (ii) administer the Birth-Related Neurological Injury Compensation Fund, which shall include the authority to purchase, hold, sell or transfer real or personal property and the authority to place any such property in trust for the benefit of claimants who have received awards pursuant to § 38.2-5009, (iii) appoint a service company or companies to administer the payment of claims on behalf of the Program, (iv) direct the investment and reinvestment of any surplus in the Fund over losses and expenses, provided any investment income generated thereby remains in the Fund, (v) reinsure the risks of the Fund in whole or in part, and (vi) obtain and maintain directors' and officers' liability insurance. The board shall discharge its duties with respect to the Fund solely in the interest of the recipients of awards pursuant to § 38.2-5009 and shall invest the assets of the Fund with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. Any decisions regarding the investment of the assets of the Fund shall be based on the advice of one or more investment advisors

60 retained by the board from a list provided by the chief investment officer of the Virginia Retirement
61 System, provided that any investment advisor retained by the board shall be registered pursuant to the
62 provisions of Article 3 (§ 13.1-504 et seq.) of Chapter 5 of Title 13.1 or shall be a federal covered
63 advisor as defined in § 13.1-501 who has filed such documents and paid such fees as may be necessary
64 to transact business in the Commonwealth pursuant to § 13.1-504. The board shall report annually to the
65 Governor and to the Speaker of the House of Delegates and the Clerk of the House of Delegates and to
66 the Chairman of the Senate Rules Committee and the Clerk of the Senate regarding the investment of
67 the Fund's assets. The board shall establish a procedure in the plan of operation for notice to be given to
68 obstetrical patients concerning the no-fault alternative for birth-related neurological injuries provided in
69 this chapter, such notice to include a clear and concise explanation of a patient's rights and limitations
70 under the program.

71 G. The board shall establish a procedure in the plan of operation for maintaining a list of Program
72 claimants. Each claimant may consent to have his name, address, phone number, and other personal
73 information included on such list, for distribution to other Program claimants. The Board shall distribute
74 the list to Program claimants who have given consent to be included on such list, and to no other
75 person.

76 § 38.2-5016.1. Investment strategy advice; expected returns.

77 A. The board of directors of the Program shall consult with the chief investment officer of the
78 Virginia Retirement System semiannually for advice regarding the Fund's risk profile and the optimal
79 investment strategy for its assets, including allocations of its equities and fixed income portfolios.

80 B. The investment advisor or advisors retained by the board pursuant to subsection F of § 38.2-5016
81 shall provide the board with annual statements explaining the expected returns on its equities and fixed
82 income portfolios.