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HOUSE BILL NO. 1207

Offered January 17, 2014

A BILL to amend and reenact §§ 38.2-5002.1 and 38.2-5016 of the Code of Virginia, relating to the Virginia Birth-Related Neurological Injury Compensation Act.

Patron—O'Bannon

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-5002.1 and 38.2-5016 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-5002.1. Representation by Office of Attorney General; applicability of Public Procurement Act, Freedom of Information Act, and Administrative Process Act.

A. The Office of the Attorney General shall provide requested legal services to the Program as provided in this subsection. The Program shall compensate the Office of the Attorney General for its provision of such legal services based on a reasonable hourly rate as shall be agreed upon periodically by the Board and the Attorney General. If the Office of the Attorney General is unable to provide such legal services as the result of a conflict of interest or other disqualifying circumstances, the Board may employ such other counsel as it deems necessary.

B. The board of directors of the Program shall adopt and implement rules consistent with the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) that specify policies and procedures regarding the contracting for services not related to the health care provided for claimants, which rules shall be based on competitive principles generally applicable to the procurement of services by state agencies.

C. The Program and its board of directors shall be public bodies for purposes of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

D. *The board of directors of the Program may adopt such rules and regulations, including emergency regulations, not in conflict with this chapter as may be necessary to carry out the purpose and provisions of this chapter.* The procedure for adoption of rules and regulations by the board of directors of the Program shall be consistent with the provisions of ~~Article 2 (§ 2.2-4006 et seq.)~~ of the Administrative Process Act (§ 2.2-4000 et seq.).

§ 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 nine 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. Six citizen representatives. One of the members shall have a minimum of five years of professional investment experience. One of the members shall have a minimum of five years of professional experience in finance and be licensed as a certified public accountant or hold a similar professional designation. One of the members shall have professional experience working with the disabled community. One of the members shall be the relative of a disabled child experienced in the care of the disabled child. One of the members shall be an attorney with a minimum of three years of experience in the practice of law representing clients with physical personal injuries. One of the members shall be an at large representative consisting of a person deemed qualified to serve by knowledge, education, training, interest or experience;

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 whom is recommended by the American Insurance Association and two of whom are recommended by the Property Casualty Insurers Association of America. The Governor may

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59 select the attorney member from a list of at least four names to be recommended by the Virginia State
60 Bar. The Governor may select the parent of a disabled child member and the at large member from
61 applications duly submitted. Nothing contained herein shall preclude qualified applicants for any position
62 on the Board from submitting an application to the Governor to serve as a member of the Board. In no
63 case shall the Governor be bound to make any appointment from among the nominees of the respective
64 associations.

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

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

73 F. The board shall have the power to (i) *adopt such rules and regulations, including emergency*
74 *regulations, not in conflict with this chapter as may be necessary to carry out the purpose and*
75 *provisions of this chapter*, (ii) administer the Program, ~~(ii)~~ (iii) administer the Birth-Related Neurological
76 Injury Compensation Fund, which shall include the authority to purchase, hold, sell or transfer real or
77 personal property and the authority to place any such property in trust for the benefit of claimants who
78 have received awards pursuant to § 38.2-5009, ~~(iii)~~ (iv) appoint a service company or companies to
79 administer the payment of claims on behalf of the Program, ~~(iv)~~ (v) direct the investment and
80 reinvestment of any surplus in the Fund over losses and expenses, provided any investment income
81 generated thereby remains in the Fund, ~~(v)~~ (vi) reinsure the risks of the Fund in whole or in part, and
82 ~~(vi)~~ (vii) obtain and maintain directors' and officers' liability insurance. The board shall discharge its
83 duties with respect to the Fund solely in the interest of the recipients of awards pursuant to
84 §§ 38.2-5009 and 38.2-5009.1 and shall invest the assets of the Fund with the care, skill, prudence, and
85 diligence under the circumstances then prevailing that a prudent person acting in a like capacity and
86 familiar with such matters would use in the conduct of an enterprise of a like character and with like
87 aims. Any decisions regarding the investment of the assets of the Fund shall be based on the advice of
88 one or more investment advisors retained by the board, provided that any investment advisor retained by
89 the board shall be registered pursuant to the provisions of Article 3 (§ 13.1-504 et seq.) of Chapter 5 of
90 Title 13.1 or shall be a federal covered advisor as defined in § 13.1-501 who has filed such documents
91 and paid such fees as may be necessary to transact business in the Commonwealth pursuant to
92 § 13.1-504. The board shall report annually to the Governor and to the Speaker of the House of
93 Delegates and the Clerk of the House of Delegates and to the Chairman of the Senate Rules Committee
94 and the Clerk of the Senate regarding the investment of the Fund's assets. The board shall establish a
95 procedure in the plan of operation for notice to be given to obstetrical patients concerning the no-fault
96 alternative for birth-related neurological injuries provided in this chapter, such notice to include a clear
97 and concise explanation of a patient's rights and limitations under the program.

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

103 **2. That the provisions of the first enactment of this act are declarative of existing law.**