

By Senator Altman

16-00547-13

2013470__

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 the association to
5 administer the Florida Birth-Related Neurological
6 Injury Compensation Plan in a manner that promotes and
7 protects the interests of children who have birth-
8 related neurological injuries; amending s. 766.315,
9 F.S.; revising the membership of the association
10 board; revising the process for recommending new
11 directors; authorizing the Governor or the Chief
12 Financial Officer to remove a director from office for
13 specified reasons; revising the powers of the
14 directors; providing that meetings of the board of
15 directors are subject to public meetings requirements;
16 providing an effective date.

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

19
20 Section 1. Subsection (1) of section 766.303, Florida
21 Statutes, is amended to read:

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

24 (1) ~~There is established~~ The Florida Birth-Related
25 Neurological Injury Compensation Plan is established for the
26 purpose of providing compensation, irrespective of fault, for
27 birth-related neurological injury claims. The ~~Such~~ plan applies
28 ~~shall apply~~ to births occurring on or after January 1, 1989, and
29 shall be administered by the Florida Birth-Related Neurological

16-00547-13

2013470__

30 Injury Compensation Association. The association shall
31 administer the plan in a manner that promotes and protects the
32 health and best interests of children who have birth-related
33 neurological injuries.

34 Section 2. Section 766.315, Florida Statutes, is amended to
35 read:

36 766.315 Florida Birth-Related Neurological Injury
37 Compensation Association; board of directors.-

38 (1) ~~(a)~~ The Florida Birth-Related Neurological Injury
39 Compensation Plan shall be governed by a board of seven ~~five~~
40 directors which shall be known as the Florida Birth-Related
41 Neurological Injury Compensation Association. The association is
42 not a state agency, board, or commission. Notwithstanding ~~the~~
43 ~~provision of s. 15.03~~, the association may ~~is authorized to~~ use
44 the state seal.

45 ~~(a)~~ ~~(b)~~ The directors shall be appointed for staggered terms
46 of 3 years or until their successors are appointed and have
47 qualified.

48 ~~(b)~~ ~~(c)~~ The directors shall be appointed by the Chief
49 Financial Officer as follows:

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

52 2. One representative of participating physicians.

53 3. One representative of hospitals.

54 4. One representative of casualty insurers.

55 5. One representative of physicians other than
56 participating physicians.

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

16-00547-13

2013470

59 7. One member in good standing of The Florida Bar who is
60 not affiliated with any of the groups identified in
61 subparagraphs 2.-6., and who has experience advocating on behalf
62 of children who have been injured in a health care setting.

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

83 ~~(a)~~ (b) Upon the occurrence of a vacancy, the Chief
84 Financial Officer shall promptly contact ~~notify~~ the appropriate
85 ~~medical~~ association or person to request recommendations ~~upon~~
86 ~~the occurrence of any vacancy,~~ and ~~like~~ nominations may be made
87 for the filling of the vacancy.

16-00547-13

2013470__

88 (b) The Governor or Chief Financial Officer may remove a
89 director from the board for misconduct, malfeasance,
90 misfeasance, or neglect of duty while in office. Any vacancy so
91 created shall be filled as provided in this subsection.

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

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

102 (a) Administer the plan.

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

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

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

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

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

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

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

116 (i) Employ or retain such persons as are necessary to

16-00547-13

2013470__

117 perform the administrative and financial transactions and
118 responsibilities of the plan and to perform other necessary and
119 proper functions not prohibited by law.

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

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

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

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

16-00547-13

2013470__

146 of the claim, although medical records and other portions of the
147 claim file may remain confidential and exempt as otherwise
148 provided by law. Any book, record, document, audit, or asset
149 acquired by, prepared for, or paid for by the association is
150 subject to the authority of the board of directors, which is
151 responsible therefor.

152 (c) Each person authorized to receive deposits, issue
153 vouchers, or withdraw or otherwise disburse any funds shall post
154 a blanket fidelity bond in an amount reasonably sufficient to
155 protect plan assets, as determined by the plan of operation. The
156 cost of such bond must ~~will~~ be paid from the assets of the plan.

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

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

16-00547-13

2013470__

175 and the State Board of Administration and within the provisions
176 of ss. 215.44-215.53.

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