

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 718\*

Short Title: Birth Impairment Fund.

(Public)

Sponsors: Senators Daniel; Carpenter, Carter, Conder, Daughtry, Forrester, Hartsell, Hunt, Johnson, Kincaid, Lee, Martin of Pitt, Parnell, Perdue, Plexico, Seymour, Smith, Walker, and Ward.

Referred to: Human Resources.

April 22, 1991

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA BIRTH-RELATED NEUROLOGICAL IMPAIRMENT PROGRAM AND THE NORTH CAROLINA BIRTH-RELATED NEUROLOGICAL IMPAIRMENT TRUST FUND.

The General Assembly of North Carolina enacts:

Section 1. Chapter 130A of the General Statutes is amended by adding a new Article 20 to read:

**“ARTICLE 20.**

**“NORTH CAROLINA BIRTH-RELATED NEUROLOGICAL IMPAIRMENT PROGRAM.**

**“§ 130A-460. Statement of purpose.**

In order to provide for the general welfare and to protect the lives and the health of the people of the State, to provide a stable environment, to promote prenatal and obstetrical care so as to reduce infant mortality and morbidity, and to provide funds and services for the care of persons born in North Carolina with birth-related neurological impairments throughout their entire life, a no-fault compensation system for birth-related neurological impairments is appropriate and necessary.

**“§ 130A-461. Definitions.**

The following definitions apply throughout this Article, unless the context clearly implies otherwise:

- (1) ‘Applicant’ means any person who files an application under this Article claiming to have a birth-related neurological impairment. An

1 application may be filed on behalf of a minor or incompetent by a  
2 parent, guardian or guardian **ad litem**. In the case of a decedent, the  
3 application may be filed by a decedent's personal representative.

4 (2) 'Birth-related neurological impairment' means an impairment of the  
5 brain function of an infant which occurred or could have occurred  
6 during pregnancy, before or during a delivery or in the immediate  
7 resuscitative period after a delivery, and which results primarily in a  
8 nonprogressive inability to control motor function, characterized by  
9 spasticity, extrapyramidal signs, or a mixture of the two, and renders  
10 the infant chronically impaired. This condition is commonly referred  
11 to as cerebral palsy. A birth-related neurological impairment may be  
12 accompanied by one or more associated symptoms, including (i)  
13 vision, speech, hearing, or learning difficulties, (ii) seizures, or (iii)  
14 behavioral and psychological problems. This definition shall not  
15 include disability caused by genetic abnormality or by substance  
16 abuse.

17 (3) 'Delivery' means live birth in North Carolina.

18 (4) 'Department' means the Department of Environment, Health, and  
19 Natural Resources.

20 (5) 'Director' means the Director of the North Carolina Birth-Related  
21 Neurological Impairment Compensation Program.

22 (6) 'Fund' means the North Carolina Birth-Related Neurological  
23 Impairment Trust Fund.

24 (7) 'Impaired person' means an applicant who has established entitlement  
25 to benefits under this Article by obtaining a determination of having a  
26 birth-related neurological impairment.

27 (8) 'Program' means the North Carolina Birth-Related Neurological  
28 Impairment Program.

29 (9) 'Provider' means (i) a health care provider as defined in G.S. 90-21.11  
30 who performs or assists in the prenatal care, delivery, or resuscitative  
31 care immediately thereafter of the applicant; (ii) a hospital facility as  
32 defined in G.S. 131E-6 in which such care is performed; or (iii) a  
33 birthing facility licensed under Chapter 131E of the General Statutes in  
34 which such care is performed.

35 (10) 'Secretary' means the Secretary of the Department of Environment,  
36 Health, and Natural Resources.

37 **§ 130A-462. North Carolina Birth-Related Neurological Impairment Program;**  
38 **exclusive remedy; exception.**

39 (a) There is created the North Carolina Birth-Related Neurological Impairment  
40 Program. The Department shall establish and administer the Program, and the Secretary  
41 shall appoint a Director employed within the Division of Maternal and Child Health,  
42 Section of Children and Youth, to carry out its obligations under the Program pursuant  
43 to this Article. The Department shall adopt rules to implement the Program, including  
44 provisions for a citizens' advisory committee to the Program, the membership of which

1 shall include representatives of persons disabled by chronic inability to control motor  
2 function.

3 (b) The rights and remedies granted a person with a birth-related neurological  
4 impairment hereunder shall exclude all other rights and remedies of the person, the  
5 person's parents, guardian, guardian **ad litem**, personal representative and all others  
6 against any provider, as defined in this Article, at common law or otherwise for any  
7 damages arising out of such birth-related neurological impairment. If a civil action is  
8 filed involving an impairment previously and finally determined by the Department to  
9 be a birth-related neurological impairment, it shall be dismissed on the motion of any  
10 party to the action. If a civil action is filed involving an impairment alleged by any  
11 party to be a birth-related neurological impairment, but no determination has been made  
12 by the Department, upon motion of any party, the action shall be stayed pending an  
13 application and determination. The action shall be dismissed if the impairment is finally  
14 determined to be a birth-related neurological impairment, but the stay shall be lifted and  
15 the action proceed if the impairment is finally determined not to be a birth-related  
16 neurological impairment.

17 (c) For every injury giving rise to an application under this Article, there shall be  
18 an independent investigation by the Department and the North Carolina Board of  
19 Medical Examiners of the provider or providers performing the delivery. The results of  
20 the investigation by the Department, with recommendations, shall be submitted to the  
21 Board of Medical Examiners or any other appropriate licensing board. The Board of  
22 Medical Examiners shall have the power to restrict, suspend, or revoke a license or  
23 other authority to practice medicine in this State, issued by the Board to any person  
24 when that person is found by the Board to have committed any act or acts showing: (i)  
25 lack of ability or competence to practice medicine with reasonable skill or safety to  
26 patients; (ii) unprofessional conduct, including, but not limited to, any departure from,  
27 or the failure to conform to, the standards of acceptable and prevailing medical practice  
28 among providers with similar training and experience situated in the same or similar  
29 communities at the time of the act; or (iii) any other reason for which a person is  
30 otherwise subject to disciplinary action. If upon investigation there is reasonable cause  
31 for disciplinary action against any provider, as determined in the discretion of the Board  
32 of Medical Examiners or any other appropriate licensing board to which the  
33 investigation has been referred, disciplinary proceedings shall be commenced. Before  
34 the Board of Medical Examiners may revoke, restrict, or suspend a license, charges  
35 shall be brought and opportunity for public hearing shall be afforded pursuant to Article  
36 1, Chapter 90 of the General Statutes and Chapter 150B of the General Statutes. The  
37 Board of Medical Examiners shall receive from the Department copies of all  
38 applications and accompanying documentation in order to commence investigations.  
39 Any authority conducting an investigation may obtain assistance from one or more  
40 impartial physicians in evaluating the clinical aspects of such investigation. Necessary  
41 and reasonable funds shall be made available for this investigation from the Fund. A  
42 report of the number and type of recommendations made by the Department and a  
43 report of final disciplinary actions taken against health care providers under this section  
44 shall be made annually to the Secretary and shall be a matter of public record.

1       (d) In addition to the foregoing, a civil penalty action shall be brought against  
2 any provider where there is clear and convincing evidence of a birth-related  
3 neurological impairment which was directly caused by malicious, willful, or wanton  
4 conduct engaged in by the provider with a conscious and intentional disregard of, and  
5 indifference to, the rights and safety of others. Such action shall be filed in the General  
6 Court of Justice, Superior Court Division. The court may, in its discretion, impose a  
7 civil penalty against the defendant for each such act of the defendant.

8       In determining the amount of the civil penalty, the court shall consider all relevant  
9 circumstances, including the extent of the harm caused by the conduct of the defendant,  
10 the assets, liabilities, and net worth of the defendant, whether corporate or individual,  
11 and any corrective action taken by the defendant. Any penalties so assessed shall be  
12 paid to the Birth-Related Neurological Impairment Trust Fund. Actions to recover civil  
13 penalties under this subsection shall be initiated by the Department. The defendant shall  
14 be entitled to a jury trial in such action upon written demand filed in accordance with  
15 Rule 38 of the North Carolina Rules of Civil Procedure.

16 **"§ 130A-463. Comprehensive, integrated assistance.**

17       The Department shall develop a program for referral to evaluation centers, assistance  
18 with applications, clinical assessment of needs and available resources, determination of  
19 eligibility, management of care, and compensation. To the extent feasible and  
20 consistent with the purposes of this Article, the Department shall integrate the Program  
21 with existing assistance programs for disabled or impaired persons in North Carolina.

22 **"§ 130A-464. Referrals.**

23       Referrals will be accepted from all sources, including, but not limited to, the  
24 following: (i) local health departments, (ii) departments of social services, (iii)  
25 hospitals, (iv) health care providers, (v) preschool and school health programs, (vi)  
26 volunteer agencies, (vii) impaired persons and their families and (viii) early intervention  
27 programs. Referrals shall be made to the most accessible Department evaluation center.

28 **"§ 130A-465. Application assistance.**

29       The Director, by and through a service coordinator individually assigned, shall assist  
30 each applicant in the preparation of an application for benefits under the Program on  
31 forms provided by the Department. The service coordinator shall also assist in  
32 obtaining appropriate information, including identification of providers, time and place  
33 where the birth occurred, medical records, evaluations, other clinical information, and  
34 information relative to the applicant's medical condition and needs.

35 **"§ 130A-466. Determination of impairment.**

36       The Director shall timely determine whether the applicant has a birth-related  
37 neurological impairment. In making such determination, the Director shall consider the  
38 evaluations, prognoses, and other documentation in or with the application. The  
39 Director may make a determination that the disability of the applicant resulted from a  
40 genetic abnormality or substance abuse by the applicant's mother only upon a finding  
41 based on clear and convincing evidence. On appeal, the Director shall have the burden  
42 of proof on that issue. Upon the request of any applicant or provider, or upon the  
43 Director's own initiative, the Director may solicit further evaluations and prognoses by

1 one or more qualified and impartial physicians. The Director shall consider, but is not  
2 bound by, such solicited recommendations.

3 **"§ 130A-467. Clinical assessment; need; resources.**

4 (a) If the Director determines that the applicant has a birth-related neurological  
5 impairment, a written clinical assessment shall be made identifying the impairment and  
6 associated disabilities or special needs. The assessment shall be interdisciplinary and  
7 shall include collection and review of pertinent historical and medical information,  
8 evaluation of overall health status, developmental level, family relations, and where  
9 possible, the etiology of the impairment. The clinical assessment shall include a  
10 comprehensive coordinated care plan for the delivery of services and necessary  
11 appliances to the impaired person.

12 (b) A written financial assessment shall also be made of the availability of  
13 potential third-party payment sources and of direct services or other benefits, from all  
14 sources, including governmental or private insurance. Resources of the applicant or the  
15 applicant's family shall not be considered in making the financial assessment. With  
16 respect to private insurance covering both the impaired person and members of the  
17 impaired person's family, the impaired person will be deemed to have available as a  
18 resource only that portion of the insurance benefits allocable to such impaired person as  
19 determined by dividing the policy limit by the number of family members covered. The  
20 service coordinator shall assist in providing information on possible resources and in  
21 securing eligibility for and access to them. The Program shall have a plan for integrated  
22 access to benefits through other State programs and agencies. When sources of benefits  
23 are exhausted or insufficient to meet the established needs of the impaired person,  
24 Program payments shall be disbursed from the Fund pursuant and subject to this Article.

25 **"§ 130A-468. Determination letter.**

26 The determination of whether the applicant has a birth-related neurological  
27 impairment, the basis for the determination, and if affirmative, the clinical and financial  
28 resource assessments, shall be set forth in writing in a determination letter from the  
29 Director to the applicant. Written notice of the determination shall be sent by the  
30 Director to the Secretary, the named providers, and the Board of Medical Examiners or  
31 other appropriate licensing board.

32 **"§ 130A-469. Case management; payments.**

33 (a) Case management shall be provided throughout the individual's entire life  
34 through the evaluation centers and service coordinators. It shall include assistance to  
35 assure that impaired persons receive adequate services consistent with the care plan,  
36 regular consultation and follow up, and to assure that changing needs are identified and  
37 satisfied by the provision of adequate services. Impaired persons shall receive Program  
38 support for unmet expenses for necessary (i) case coordination, (ii) developmental  
39 evaluation, (iii) special education, (iv) vocational training, (v) physical, emotional, or  
40 behavioral therapy, and (vi) other devices, including but not limited to prostheses,  
41 wheelchairs, crutches, canes, or other mobility aids, vans equipped with lifts, and  
42 specialized controls for automobiles, medical care, custodial and/or attendant care and  
43 rehabilitative services relative to and necessitated by the impairment. If the death of an  
44 applicant directly results from or is directly caused by a birth-related neurological

1 impairment, a benefit for unmet burial expenses in an amount determined by the  
2 Director to be reasonable and necessary, shall be paid by the Fund to the heirs at law of  
3 the applicant. Medical conditions not associated with the impairment do not qualify for  
4 Program support. Subject to this Article, Fund payments shall be disbursed for case  
5 management and authorized payments consistent with the care plan, on a supplemental  
6 basis after all other sources of payment, benefits, or services for the impaired person are  
7 exhausted or not available. In circumstances in which qualifying unmet expenses have  
8 been incurred by a newly eligible impaired person or on such person's behalf,  
9 retroactive Fund reimbursement is authorized. An impaired person, as defined, shall be  
10 eligible for Program benefits and services regardless of whether the impaired person is  
11 located within the State of North Carolina.

12 (b) Fund payments shall not be considered in determinations of assets or income  
13 in governmental assistance programs where the level of support is based upon assets or  
14 income. Fund payments shall not be considered a third-party benefit entitlement in  
15 calculations of eligibility for private third-party payment or for governmental assistance  
16 programs.

17 (c) Fund payments shall be made throughout the individual's entire life for  
18 services or benefits authorized by the Department. Fund payments will be paid directly  
19 to providers or suppliers of benefits after receipt of statements. Fund payments shall be  
20 at reasonable levels, using Medicaid and other comparable government assistance  
21 program payment levels as guidelines. Provided, providers and suppliers shall be  
22 reimbursed at no less than their verifiable cost or Medicaid rate, whichever is higher.  
23 When the Department authorizes payment for expenses incurred by or on behalf of an  
24 impaired person prior to determination of impairment by the Department,  
25 reimbursement shall be for the full amount of the expenses incurred, if reasonable.  
26 Fund payments to providers and suppliers shall constitute payment in full and any  
27 further billing is not permitted.

28 **"§ 130A-470. Appeals.**

29 Determinations pursuant to G.S. 130A-468 and G.S. 130A-469 are subject to  
30 administrative and judicial review under Chapter 150B of the General Statutes and  
31 applicable Department rules governing agency appeals. Without limiting the rights of  
32 any other person, the Secretary, representing the interests of the State in assuring  
33 accurate determinations, shall have standing to appeal. If an applicant prevails in any  
34 civil action seeking judicial review, the court may, in its discretion, allow that applicant  
35 to recover reasonable attorneys' fees incurred in pursuing the appeal, to be taxed as  
36 court costs against the Department, and to be reimbursed from the Fund. An applicant  
37 shall petition for attorneys' fees within 30 days of final disposition of the applicant's  
38 case.

39 **"§ 130A-471. Scope.**

40 This Article applies to all births occurring in North Carolina on or after the effective  
41 date of this Article.

42 **"§ 130A-472. North Carolina Birth-Related Neurological Impairment Trust Fund.**

43 (a) There is authorized and established in the Department the Birth-Related  
44 Neurological Impairment Trust Fund to finance payments under, and administrative

1 costs of, the Program. The Secretary shall administer the Fund, subject to review,  
2 recommendations, and approval by the Birth-Related Neurological Impairment Trust  
3 Fund Council. The Council shall consist of the Secretary, who shall serve as Chairman,  
4 the State Treasurer, and the State Controller. The Council shall advise the Secretary  
5 regarding administration of the Fund, including the establishment and adjustment of  
6 assessments, review and approval of budgets for expenditures and any revised budgets,  
7 distribution of Program funds, a retrospective review of all denials of service, and  
8 actuarial soundness of the Fund. The Council shall consider any reserve payment from  
9 an insurer or carrier to the Fund pursuant to G.S. 130A-474(b) in calculating  
10 assessments for providers insured by such insurer or carrier during the period set forth  
11 in G.S. 130A-474(b). The Council shall meet not less than quarterly each year. Prior to  
12 commencement of the Program, the Secretary shall cause, at the expense of the Fund, an  
13 actuarial investigation of long-term projected receipts and disbursements, with the  
14 assistance of an independent actuary, and the Program shall not commence until there is  
15 a written finding that, given reasonable assumptions, the Program should be expected to  
16 operate on an actuarially sound basis.

17 (b) The State Treasurer shall be custodian of the Fund assets and shall invest its  
18 assets in accordance with G.S. 147-69.2 and G.S. 147-69.3. The Fund is subject to the  
19 oversight of the State Auditor under Article 5A of Chapter 147 of the General Statutes.  
20 The Fund is hereby expressly designated and eligible to receive and accrue all interest  
21 and other earnings on its assets under G.S. 147-86.11(g).

22 (c) Subject to approval of the Birth-Related Neurological Impairment Trust Fund  
23 Council, necessary and reasonable administrative expenses of the Department, the  
24 Board of Medical Examiners, and any other appropriate licensing board to which an  
25 investigation is referred, for activities directed by this Article, may be charged against  
26 the Fund. After the initial two years of operation of the Program such expenses shall  
27 not exceed five percent (5%) of the previous year's Fund disbursements. Withdrawals  
28 from the Fund are hereby authorized as needed until expended to carry out the intent  
29 and purposes of this Article, and recognizing the importance thereof, all Fund principal  
30 and income shall be used to support the Program pursuant to this Article.

31 **"§ 130A-473. Fund; assessments.**

32 (a) The Department shall adopt rules to administer the Fund, including rules  
33 governing the establishment and management of the initial and annual assessments  
34 required by this section. The Fund is eligible to receive sums from private or public  
35 foundations, corporations, individuals, and other sources and from governmental  
36 appropriations, which if received shall serve to supplement the Fund.

37 (b) There shall be levied by the Birth-Related Neurological Impairment Trust  
38 Fund Council against the physician provider performing the delivery and the hospital or  
39 birthing facility in which the delivery is performed a total combined assessment on each  
40 delivery not to exceed one hundred seventy dollars (\$170.00). The Council shall  
41 determine an appropriate apportionment of the total amount of the assessment between  
42 the hospital or birthing facility, and the physician providers performing or assisting in  
43 performing the obstetrical, anesthesiological, or resuscitative care portion of the  
44 delivery, based on the average of three actuarial studies by Fellows of the Casualty

1 Actuarial Society of the comparative costs between physicians and hospitals or birthing  
2 facilities for birth-related neurological impairments in the civil liability system.  
3 Assessments shall not be required to be paid by a provider on deliveries for which no  
4 fee is charged. In the event that the Birth-Related Neurological Impairment Trust Fund  
5 Council finds that projected assessment receipts and receipts from all other sources are  
6 inadequate relative to projected disbursements for the Fund to be administered on an  
7 actuarially sound basis, there shall be levied by the Council an additional interim  
8 assessment of up to twenty-five percent (25%) of the maximum assessment, for a period  
9 not to exceed one year, and the General Assembly shall be promptly notified by the  
10 Council of such a finding and receive recommendations, prepared with the assistance of  
11 the Program Director, regarding receipts and disbursements of the Fund and benefits  
12 provided through the Program.

13 (c) The Secretary shall collect and enforce collection of all assessments required  
14 to be paid under this section. Any person who fails to pay or cause to be paid to the  
15 Fund the assessments required under this section within 90 days of the delivery shall, in  
16 addition to such unpaid assessments, pay to the Fund interest at the rate established by  
17 the Secretary of Revenue under G.S. 105-241(i), and there shall also be added to said  
18 unpaid assessments an amount equal to fifty percent (50%) of the amount of such  
19 unpaid assessments.

20 **"§ 130A-474. Actuarial investigation; valuations; gain/loss analysis; notice if**  
21 **assessments prove insufficient; reserves.**

22 (a) At least annually, the Secretary shall undertake, with the assistance of an  
23 independent actuary, an actuarial investigation of the requirements of the Fund in  
24 determining the amount of the assessment. The investigation shall be based on the  
25 Fund's experience in the first and succeeding years of operation, and shall include,  
26 without limitation, investigation of the actual and projected assets and liabilities of the  
27 Fund. Any determinations and recommendations shall be filed with the Birth-Related  
28 Neurological Impairment Trust Fund Council.

29 (b) For a period of five years, so long as the Fund is in effect and operating as  
30 authorized under this Article during that time, each professional medical liability  
31 insurance carrier and other entity insuring obstetrical risks in this State, under the  
32 authority and approval of the Commissioner of Insurance, shall establish reserve  
33 accounts for that portion of collected insurance premiums attributable to actuarially  
34 anticipated birth-related neurological impairment losses and expenses and hold the same  
35 for the five-year period. Such reserves shall be determined without regard to or  
36 consideration of the effect of G.S. 130A-462(b) on the rights and remedies of any  
37 person arising out of any birth-related neurological impairment. At the end of this  
38 period, and annually thereafter, actuarially indicated reserved funds, less funds held for  
39 claims alleging birth-related neurological impairments not covered by this act, and  
40 earnings approved by the Commissioner shall be paid by each insurance carrier and  
41 other insuring entity to the Fund. Such carriers and insurers may retain loss adjustment  
42 expenses incurred in connection with claims arising out of birth-related neurological  
43 impairments. In the event of the insolvency of a carrier or insurer prior to the end of  
44 this period, the reserves and earnings required by this section shall be held in trust by



1 the Commissioner as receiver until the end of this period. Insurance carriers and other  
2 insuring entities shall supply the Commissioner of Insurance with claims experience  
3 information and other relevant data, in the form and manner requested by the  
4 Commissioner of Insurance, regarding obstetrical risks and establishment of the  
5 reserves required in this section. The Commissioner of Insurance may adopt rules and  
6 regulations regarding the establishment, collection, maintenance, and payment of the  
7 reserves and earnings required by this section.

8 **"§ 130A-475. Right of State to bring action.**

9 The Secretary, on behalf of the Fund, to the extent of all current Fund payments and  
10 expenses and to the estimated present value of all future Fund payments and expenses,  
11 shall be subrogated to all rights of recovery of the impaired person against any person or  
12 entity not a provider as defined in this Article.

13 **"§ 130A-476. Provider responsibilities.**

14 (a) As a condition precedent to receiving the immunity from civil actions  
15 provided by G.S. 130A-462(b), each provider covered under this Article is required to  
16 participate in an obstetrical care coverage plan developed by their local health  
17 department or community, migrant, or rural health center, which assures continuity and  
18 quality of care, and provides services to indigent pregnant women. No physician  
19 provider shall be required to assume management of the care of any obstetrical patient if  
20 the level of care required for that patient is beyond the professional competence of that  
21 physician.

22 (b) The Department of Environment, Health, and Natural Resources, Division of  
23 Maternal and Child Health, and the Department of Human Resources, Division of  
24 Medical Assistance and Office of Rural Health and Resource Development, shall upon  
25 request, assist in the development of local obstetrical care coverage plans.

26 **"§ 130A-477. Reports.**

27 (a) The Department of Environment, Health, and Natural Resources, through the  
28 Secretary, shall evaluate the effectiveness of this Article in achieving its stated purposes  
29 and shall prepare a report of its findings no later than January 1, 1994. The report shall  
30 include an evaluation of the numerical and geographic redistribution of health care  
31 providers performing obstetrics in this State.

32 (b) The Department of Insurance shall use collected information from  
33 professional medical liability insurance carriers and other insuring entities to include in  
34 its annual report to the General Assembly an evaluation of the effectiveness of this  
35 Article on insurance claims experience, rate making, and rates.

36 (c) The Department of Environment, Health, and Natural Resources, Division of  
37 Maternal and Child Health, and the Department of Human Resources, Division of  
38 Medical Assistance and Office of Rural Health and Resource Development, shall  
39 prepare a report on the local obstetrical care coverage plans and the extent of  
40 participation by local providers in these plans. This report shall be provided to the  
41 General Assembly no later than March 15, 1993."

42 Sec. 2. No funds shall be appropriated to implement the provisions of this  
43 act. Any cost of the Program, including actuarial investigations, and any other costs of  
44 administration of the Program or Fund prior to July 1, 1992, shall be paid from sums

1 received from private or public foundations, corporations, individuals, and other  
2 sources.

3           Sec. 3. The provisions of this act are severable, and if any provision of this  
4 act is held invalid by a court of competent jurisdiction, the invalidity shall not affect  
5 other provisions of the act which can be given effect without the invalid provision.

6           Sec. 4. This act becomes effective July 1, 1992, except G.S. 130A-462(a),  
7 130A-472, 130A-473(a), and 130A-473(b) are effective upon ratification, and the  
8 Department of Environment, Health, and Natural Resources shall begin to adopt rules  
9 required in G.S. 130A-462(a) and G.S. 130A-473(a) to implement Article 20 of Chapter  
10 130A of the General Statutes, and the Birth-Related Neurological Impairment Trust  
11 Fund Council shall commence the actuarial investigations and determination of  
12 assessments required in G.S. 130A-472 and G.S. 130A-473(b). These rules and  
13 assessments do not become effective until July 1, 1992.