

By the Committee on Judiciary and Senators Sullivan, Williams, Horne, Cowin and Latvala

308-2081-98

1                                   A bill to be entitled  
2           An act relating to medical malpractice  
3           insurance; amending s. 766.301, F.S.;  
4           clarifying legislative intent; amending s.  
5           766.304, F.S.; providing exclusive jurisdiction  
6           of administrative law judges in claims filed  
7           under ss. 766.301-766.316, F.S.; providing a  
8           limitation on bringing a civil action under  
9           certain circumstances; amending s. 766.315,  
10          F.S.; authorizing the association to invest  
11          plan funds only in investments and securities  
12          described in s. 215.47, F.S.; amending s.  
13          766.316, F.S.; providing hospitals and  
14          physicians with alternative means of providing  
15          notices to obstetrical patients relating to the  
16          no-fault alternative for birth-related  
17          neurological injuries; prescribing conditions;  
18          providing for applicability of amendments;  
19          requiring the Auditor General to conduct a  
20          study of the effects of expanding eligibility  
21          for compensation under the plan; providing an  
22          effective date.

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24 Be It Enacted by the Legislature of the State of Florida:  
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26           Section 1. Paragraph (d) of subsection (1) of Section  
27 766.301, Florida Statutes, is amended to read:

28           766.301 Legislative findings and intent.--

29           (1) The Legislature makes the following findings:

30           (d) The costs of birth-related neurological injury  
31 claims are particularly high and warrant the establishment of

1 a limited system of compensation irrespective of fault. The  
2 issue of whether such claims are covered by this act must be  
3 determined exclusively in an administrative proceeding.

4 Section 2. Section 766.304, Florida Statutes, is  
5 amended to read:

6 766.304 Administrative law judge to determine  
7 claims.--The administrative law judge shall hear and determine  
8 all claims filed pursuant to ss. 766.301-766.316 and shall  
9 exercise the full power and authority granted to her or him in  
10 chapter 120, as necessary, to carry out the purposes of such  
11 sections. The administrative law judge has exclusive  
12 jurisdiction to determine whether a claim filed under this act  
13 is compensable. No civil action may be brought until the  
14 determinations under s. 766.309 have been made by the  
15 administrative law judge. If the administrative law judge  
16 determines that the claimant is entitled to compensation from  
17 the association, no civil action may be brought or continued  
18 in violation of the exclusiveness of remedy provisions of s.  
19 766.303. If it is determined that a claim filed under this act  
20 is not compensable, the doctrine of neither collateral  
21 estoppel nor res judicata shall prohibit the claimant from  
22 pursuing any and all civil remedies available under common law  
23 and statutory law. The findings of fact and conclusions of law  
24 of the administrative law judge shall not be admissible in any  
25 subsequent proceeding; however, the sworn testimony of any  
26 person and the exhibits introduced into evidence in the  
27 administrative case are admissible as impeachment in any  
28 subsequent civil action only against a party to the  
29 administrative proceeding, subject to the Rules of Evidence.  
30 An action may not be brought under ss. 766.301-766.316 if the  
31 claimant recovers or final judgment is entered.The division

1 may adopt rules to promote the efficient administration of,  
2 and to minimize the cost associated with, the prosecution of  
3 claims.

4 Section 3. Paragraph (e) of subsection (5) of section  
5 766.315, Florida Statutes, is amended to read:

6 766.315 Florida Birth-Related Neurological Injury  
7 Compensation Association; board of directors.--

8 (5)

9 (e) Funds held on behalf of the plan are funds only in  
10 the investments and securities described in s. 215.47 and are  
11 subject to the limitations on investments contained in that  
12 section.~~Any funds held on behalf of the plan must be invested~~  
13 ~~in interest-bearing investments by the association.~~ All  
14 income derived from such investments will be credited to the  
15 plan.

16 Section 4. Section 766.316, Florida Statutes, is  
17 amended to read:

18 766.316 Notice to obstetrical patients of  
19 participation in the plan.--Each hospital with a participating  
20 physician on its staff and each participating physician, other  
21 than residents, assistant residents, and interns deemed to be  
22 participating physicians under s. 766.314(4)(c), under the  
23 Florida Birth-Related Neurological Injury Compensation Plan  
24 shall provide notice to the obstetrical patients ~~thereof~~ as to  
25 the limited no-fault alternative for birth-related  
26 neurological injuries. Such notice shall be provided on forms  
27 furnished by the association and shall include a clear and  
28 concise explanation of a patient's rights and limitations  
29 under the plan. The hospital or the participating physician  
30 may elect to have the patient sign a form acknowledging  
31 receipt of the notice form. Signature of the patient

1 acknowledging receipt of the notice form raises a rebuttable  
2 presumption that the notice requirements of this section have  
3 been met. Notice need not be given to a patient when the  
4 patient has an emergency medical condition as defined in s.  
5 395.002(8)(b) or when notice is not practicable.

6 Section 5. (1) The Auditor General shall conduct an  
7 analysis of the reserve adequacy and funding rates in order to  
8 determine the actuarial soundness of the Florida Birth-Related  
9 Neurological Injury Compensation Plan. The study shall include  
10 an evaluation of future medical costs for the existing plan  
11 claimants, including life expectancy evaluation, and  
12 utilization of appropriate discount rates based on annual  
13 funding for expected future losses, estimated annual cost to  
14 lower the birth weight to 2,000 grams or 1,000 grams, and the  
15 estimated cost for lowering the birth weight for multiple  
16 births. The Auditor General shall contract with an actuarial  
17 consulting firm that has never previously conducted an  
18 actuarial analysis of the NICA program.

19 (2) To assist the Auditor General in the development  
20 and performance of the actuarial analysis of the plan, a  
21 technical advisory group shall be appointed which shall be  
22 composed of the following members: one selected by the  
23 Florida Hospital Association representing general acute care  
24 hospitals; one selected by the Academy of Florida Trial  
25 Lawyers; one selected by the Florida League of Health Systems  
26 representing for-profit hospitals; one selected by the  
27 Association of Community Hospitals and Health Systems of  
28 Florida representing private not-for-profit hospitals; one  
29 selected by the Florida Obstetrical and Gynecological Society;  
30 one selected by the Physician Insurers Association of America  
31 who provides obstetrical medical malpractice insurance

1 coverage in Florida; one medical malpractice insurer selected  
2 by the Florida Insurance Council; the Board of Regents Vice  
3 Chancellor of Health Affairs, or her or his designee; one  
4 property and casualty insurer selected by the Florida  
5 Association of Insurance Agents; the chairman of the Board of  
6 the Florida Birth-Related Neurological Injury Compensation  
7 Association, or his or her designee; and one selected by the  
8 Florida Medical Association who is a practicing neonatologist.  
9 The technical advisory group will assist the Auditor General  
10 in developing the specific elements to be studied as part of  
11 the actuarial analysis; review an interim report and provide  
12 feedback to the Auditor General; and provide a written  
13 response that will be included in the final report of the  
14 Auditor General.

15 (3) The Auditor General shall submit the required  
16 report to the President of the Senate and the Speaker of the  
17 House of Representatives and their designees by January 1,  
18 1999.

19 Section 6. The amendments to sections 766.301 and  
20 766.304, Florida Statutes, shall take effect July 1, 1998, and  
21 shall apply only to claims filed on or after that date and to  
22 that extent shall apply retroactively regardless of the date  
23 of birth.

24 Section 7. Amendments to section 766.316, Florida  
25 Statutes, shall take effect July 1, 1998, and shall apply only  
26 to causes of action accruing on or after that date.

27 Section 8. Except as otherwise provided in this act,  
28 this act shall take effect July 1, 1998.

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1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2                   COMMITTEE SUBSTITUTE FOR  
3                   Senate Bill 1070

4 The Committee Substitute for Senate Bill 1070:

- 5 - Deletes portions of bill that would have lowered infant  
6 eligibility weight from 2,500 grams to 1,800 grams;  
7 - Provides that certain testimony and documents may be used  
8 in a subsequent civil action for the purpose of  
9 impeachment, subject to the rules of evidence;  
10 - Retains current law regarding notice to obstetrical  
11 patients as to medical personnel's participation in NICA;  
12 - Specifies approved vehicles for investment of NICA funds;  
13 - Provides for a study by the auditor general to evaluate  
14 the NICA reserve adequacy and funding rates; and  
15 - Provides effective dates.