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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.

23
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 of this
10 state, and the association may invest plan funds only in the
11 investments and securities described in s. 215.47 and are
12 subject to the limitations on investments contained in that
13 section.~~Any funds held on behalf of the plan must be invested~~
14 ~~in interest-bearing investments by the association.~~All income
15 derived from such investments will be credited to the 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 1,800 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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