

By the Committee on Civil Justice & Claims and
Representatives Byrd, Cosgrove, Flanagan and Thrasher

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 under which notice need not be given; requiring
19 the Auditor General to conduct a study of the
20 impact of expanding eligibility for
21 compensation under the plan; providing for
22 applicability of amendments made by this act;
23 providing effective dates.

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25 Be It Enacted by the Legislature of the State of Florida:

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27 Section 1. Paragraph (d) of subsection (1) of section
28 766.301, Florida Statutes, is amended to read:

29 766.301 Legislative findings and intent.--

30 (1) The Legislature makes the following findings:

31

1 (d) The costs of birth-related neurological injury
2 claims are particularly high and warrant the establishment of
3 a limited system of compensation irrespective of fault. The
4 issue of whether such claims are covered by this act must be
5 determined exclusively in an administrative proceeding.

6 Section 2. Section 766.304, Florida Statutes, is
7 amended to read:

8 766.304 Administrative law judge to determine
9 claims.--The administrative law judge shall hear and determine
10 all claims filed pursuant to ss. 766.301-766.316 and shall
11 exercise the full power and authority granted to her or him in
12 chapter 120, as necessary, to carry out the purposes of such
13 sections. The administrative law judge has exclusive
14 jurisdiction to determine whether a claim filed under this act
15 is compensable. No civil action may be brought until the
16 determinations under s. 766.309 have been made by the
17 administrative law judge. If the administrative law judge
18 determines that the claimant is entitled to compensation from
19 the association, no civil action may be brought or continued
20 in violation of the exclusiveness of remedy provisions of s.
21 766.303. In the event that it is determined that a claim filed
22 under this act is not compensable, neither the doctrine of
23 collateral estoppel nor res judicata shall prohibit the
24 claimant from pursuing any and all civil remedies available
25 under common law and statutory law. The findings of fact and
26 conclusions of law of the administrative law judge shall not
27 be admissible in any subsequent proceeding; however, the sworn
28 testimony of any person and the exhibits introduced into
29 evidence in the administrative case are admissible as
30 impeachment in any subsequent civil action, subject to the
31 limitations of ss. 90.401, 90.402, and 90.403. An action may

1 not be brought under ss. 766.301-766.316 if the claimant
2 recovers or final judgment is entered.The division may adopt
3 rules to promote the efficient administration of, and to
4 minimize the cost associated with, the prosecution of claims.

5 Section 3. Paragraph (e) of subsection (5) of section
6 766.315, Florida Statutes, is amended to read:

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

9 (5)

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

18 Section 4. Section 766.316, Florida Statutes, is
19 amended to read:

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

1 may elect to have the patient sign a form acknowledging
2 receipt of the notice form. Signature of the patient
3 acknowledging receipt of the notice form raises a rebuttable
4 presumption that the notice requirements of this section have
5 been met. Notice need not be given to a patient when the
6 patient has an emergency medical condition as defined in s.
7 395.002(8)(b) or when notice is not practicable.

8 Section 5. (1) The Auditor General shall conduct an
9 analysis of the reserve adequacy and funding rates in order to
10 determine the actuarial soundness of the Florida Birth-Related
11 Neurological Injury Compensation Plan. The study shall include
12 an evaluation of future medical costs for the existing plan
13 claimants including life expectancy evaluation, and
14 utilization of appropriate discount rates based on annual
15 funding for expected future losses, estimated annual cost to
16 lower the birth weight to 2,000 grams or 1,800 grams; and the
17 estimated cost for lowering the birth weight for multiple
18 births. The Auditor General shall contract with an actuarial
19 consulting firm which has never conducted a previous actuarial
20 analysis of the NICA program.

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

1 one selected by the Physician Insurers Association of America
2 who provides obstetrical medical malpractice insurance
3 coverage in Florida; one medical malpractice insurer selected
4 by the Florida Insurance Council; one property and casualty
5 insurer selected by the Florida Association of Insurance
6 Agents; the chairman of the Board of the Florida Birth-Related
7 Neurological Injury Compensation Association, or his designee;
8 and one selected by the Florida Medical Association who is a
9 practicing neonatologist. The technical advisory group will
10 assist the Auditor General in developing the specific elements
11 to be studied as part of the actuarial analysis, review an
12 interim report and provide feedback to the Auditor General,
13 and provide a written response which will be included in the
14 final report of the 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 no later than
18 January 1, 1999.

19 Section 6. The amendments to ss. 766.301 and 766.304
20 shall take effect July 1, 1998, and shall apply retroactively
21 regardless of the date of birth.

22 Section 7. Amendments to s. 766.316 shall take effect
23 July 1, 1998, and shall apply only to causes of action
24 accruing on or after said date.

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

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