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LEGISLATIVE ACTION

Senate

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House

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Floor: WD/RM

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04/29/2021 09:39 AM

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Senator Burgess moved the following:

1           **Senate Amendment to House Amendment (401309) (with title**  
2 **amendment)**

3  
4           Delete lines 44 - 342

5 and insert:

6 At a minimum, compensation must be provided for the following  
7 actual expenses:

8           1. A total annual benefit of up to \$10,000 for immediate  
9 family members who reside with the infant for psychotherapeutic  
10 services obtained from providers licensed under chapter 490 or  
11 chapter 491.



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12           2. For the life of the child, providing parents or legal  
13 guardians with a reliable method of transportation for the care  
14 of the child or reimbursing the cost of upgrading an existing  
15 vehicle to accommodate the child's needs when it becomes  
16 medically necessary for wheelchair transportation. The mode of  
17 transportation must take into account the special accommodations  
18 required for the specific child. The plan may not limit such  
19 transportation assistance based on the child's age or weight.  
20 The plan must replace any vans purchased by the plan every 7  
21 years or 150,000 miles, whichever comes first.

22           3. Housing assistance of up to \$100,000 for the life of the  
23 child, including home construction and modification costs.

24           (b) However, the following expenses are not subject to  
25 compensation such expenses shall not include:

26           1. Expenses for items or services that the infant has  
27 received, or is entitled to receive, under the laws of any state  
28 or the Federal Government, except to the extent such exclusion  
29 may be prohibited by federal law.

30           2. Expenses for items or services that the infant has  
31 received, or is contractually entitled to receive, from any  
32 prepaid health plan, health maintenance organization, or other  
33 private insuring entity.

34           3. Expenses for which the infant has received  
35 reimbursement, or for which the infant is entitled to receive  
36 reimbursement, under the laws of any state or the Federal  
37 Government, except to the extent such exclusion may be  
38 prohibited by federal law.

39           4. Expenses for which the infant has received  
40 reimbursement, or for which the infant is contractually entitled



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41 to receive reimbursement, pursuant to the provisions of any  
42 health or sickness insurance policy or other private insurance  
43 program.

44 (c) Expenses included under this paragraph (a) are shall be  
45 limited to reasonable charges prevailing in the same community  
46 for similar treatment of injured persons when such treatment is  
47 paid for by the injured person. The parents or legal guardians  
48 receiving benefits under the plan may file a petition with the  
49 Division of Administrative Hearings to dispute the amount of  
50 actual expenses reimbursed or a denial of reimbursement.

51 (d)1.a.(b)1. Periodic payments of an award to the parents  
52 or legal guardians of the infant found to have sustained a  
53 birth-related neurological injury, which award may shall not  
54 exceed \$100,000. However, at the discretion of the  
55 administrative law judge, such award may be made in a lump sum.  
56 Beginning on January 1, 2021, the award may not exceed \$250,000,  
57 and each January 1 thereafter, the maximum award authorized  
58 under this paragraph shall increase by 3 percent.

59 b. Parents or legal guardians who received an award  
60 pursuant to this section before January 1, 2021, and whose child  
61 currently receives benefits under the plan must receive a  
62 retroactive payment in an amount sufficient to bring the total  
63 award paid to the parents or legal guardians pursuant to sub-  
64 paragraph a. to \$250,000. This additional payment may be made  
65 in a lump sum or in periodic payments as designated by the  
66 parents or legal guardians.

67 2.a. Death benefit for the infant in an amount of \$50,000.

68 b. Parents or legal guardians who received an award  
69 pursuant to this section, and whose child died since the



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70 inception of the program, must receive a retroactive payment in  
71 an amount sufficient to bring the total award paid to the  
72 parents or legal guardians pursuant to sub-subparagraph a. to  
73 \$50,000. This additional payment may be made in a lump sum or in  
74 periodic payments as designated by the parents or legal  
75 guardians \$10,000.

76 Section 4. Section 766.3145, Florida Statutes, is created  
77 to read:

78 766.3145 Code of ethics.—

79 (1) On or before July 1 of each year, employees of the  
80 association must sign and submit a statement attesting that they  
81 do not have a conflict of interest as defined in part III of  
82 chapter 112. As a condition of employment, all prospective  
83 employees must sign and submit to the association a conflict-of-  
84 interest statement.

85 (2) The executive director, senior managers, and members of  
86 the board of directors are subject to the code of ethics under  
87 part III of chapter 112. For purposes of applying part III of  
88 chapter 112 to activities of the executive director, senior  
89 managers, and members of the board of directors, those persons  
90 are considered public officers or employees and the association  
91 is considered their agency. A board member may not vote on any  
92 measure that would inure to his or her special private gain or  
93 loss and, notwithstanding s. 112.3143(2), may not vote on any  
94 measure that he or she knows would inure to the special private  
95 gain or loss of any principal by whom he or she is retained or  
96 to the parent organization or subsidiary of a corporate  
97 principal by which he or she is retained, other than an agency  
98 as defined in s. 112.312; or that he or she knows would inure to



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99 the special private gain or loss of a relative or business  
100 associate of the public officer. Before the vote is taken, such  
101 member shall publicly state to the board the nature of his or  
102 her interest in the matter from which he or she is abstaining  
103 from voting and, within 15 days after the vote occurs, disclose  
104 the nature of his or her interest as a public record in a  
105 memorandum filed with the person responsible for recording the  
106 minutes of the meeting, who shall incorporate the memorandum in  
107 the minutes.

108 (3) Notwithstanding s. 112.3148, s. 112.3149, or any other  
109 law, an employee or board member may not knowingly accept,  
110 directly or indirectly, any gift or expenditure from a person or  
111 entity, or an employee or representative of such person or  
112 entity, which has a contractual relationship with the  
113 association or which is under consideration for a contract.

114 (4) An employee or board member who fails to comply with  
115 subsection (2) or subsection (3) is subject to penalties  
116 provided under ss. 112.317 and 112.3173.

117 (5) Any senior manager or executive director of the  
118 association who is employed on or after January 1, 2022,  
119 regardless of the date of hire, who subsequently retires or  
120 terminates employment is prohibited from representing another  
121 person or entity before the association for 2 years after  
122 retirement or termination of employment from the association.

123 Section 5. Section 766.315, Florida Statutes, is amended to  
124 read:

125 766.315 Florida Birth-Related Neurological Injury  
126 Compensation Association; board of directors; notice of  
127 meetings; report.-



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128 (1) (a) The Florida Birth-Related Neurological Injury  
129 Compensation Plan shall be governed by a board of seven ~~five~~  
130 directors which shall be known as the Florida Birth-Related  
131 Neurological Injury Compensation Association. The association is  
132 not a state agency, board, or commission. Notwithstanding the  
133 provision of s. 15.03, the association is authorized to use the  
134 state seal.

135 (b) The directors shall be appointed for staggered terms of  
136 3 years or until their successors are appointed and have  
137 qualified; however, a director may not serve for more than 6  
138 consecutive years.

139 (c) The directors shall be appointed by the Chief Financial  
140 Officer as follows:

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

143 2. One representative of participating physicians.

144 3. One representative of hospitals.

145 4. One representative of casualty insurers.

146 5. One representative of physicians other than  
147 participating physicians.

148 6. One parent or legal guardian representative of an  
149 injured infant under the plan.

150 7. One representative of an advocacy organization for  
151 children with disabilities.

152 (2) (a) The Chief Financial Officer may select the  
153 representative of the participating physicians from a list of at  
154 least three names recommended by the American Congress of  
155 Obstetricians and Gynecologists, District XII; the  
156 representative of hospitals from a list of at least three names



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157 recommended by the Florida Hospital Association; the  
158 representative of casualty insurers from a list of at least  
159 three names, one of which is recommended by the American  
160 Insurance Association, one of which is recommended by the  
161 Florida Insurance Council, and one of which is recommended by  
162 the Property Casualty Insurers Association of America; and the  
163 representative of physicians, other than participating  
164 physicians, from a list of three names recommended by the  
165 Florida Medical Association and a list of three names  
166 recommended by the Florida Osteopathic Medical Association.  
167 However, the Chief Financial Officer is not required to make an  
168 appointment from among the nominees of the respective  
169 associations. A participating physician who is named in a  
170 pending petition for a claim may not be appointed to the board.  
171 An appointed director who is a participating physician may not  
172 vote on any board matter relating to a claim accepted for an  
173 award for compensation if the physician is named in the petition  
174 for the claim.

175 (b) If applicable, the Chief Financial Officer shall  
176 promptly notify the appropriate ~~medical~~ association or person  
177 identified in paragraph (a) to make recommendations upon the  
178 occurrence of any vacancy, and like nominations may be made for  
179 the filling of the vacancy.

180 (c) The Governor or the Chief Financial Officer may remove  
181 a director from office for misconduct, malfeasance, misfeasance,  
182 or neglect of duty in office. Any vacancy so created shall be  
183 filled as provided in paragraph (a).

184 (3) The directors may ~~shall~~ not transact any business or  
185 exercise any power of the plan except upon the affirmative vote



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186 of four ~~three~~ directors. The directors shall serve without  
187 salary, but are entitled to receive reimbursement ~~each director~~  
188 ~~shall be reimbursed~~ for actual and necessary expenses incurred  
189 in the performance of his or her official duties as a director  
190 of the plan in accordance with s. 112.061. The directors are  
191 ~~shall~~ not ~~be~~ subject to any liability with respect to the  
192 administration of the plan.

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

194 (a) Administer the plan.

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

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

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

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

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

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

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

208 (i) Employ or retain such persons as are necessary to  
209 perform the administrative and financial transactions and  
210 responsibilities of the plan and to perform other necessary and  
211 proper functions not prohibited by law.

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

214 (k) Indemnify any employee, agent, member of the board of





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215 directors or alternate thereof, or person acting on behalf of  
216 the plan in an official capacity, for expenses, including  
217 attorney ~~attorney's~~ fees, judgments, fines, and amounts paid in  
218 settlement actually and reasonably incurred in connection with  
219 any action, suit, or proceeding, including any appeal thereof,  
220 arising out of such person's capacity to act ~~acting~~ on behalf of  
221 the plan, ~~if, provided that~~ such person acted in good faith and  
222 in a manner he or she reasonably believed to be in, or not  
223 opposed to, the best interests of the plan and the health and  
224 best interest of the child having birth-related neurological  
225 injuries, and ~~if provided that~~, with respect to any criminal  
226 action or proceeding, such ~~the~~ person had reasonable cause to  
227 believe his or her conduct was lawful.

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

230 (b) All meetings of the board of directors are subject to  
231 the requirements of s. 286.011, and all books, records, and  
232 audits of the plan are open to the public for reasonable  
233 inspection ~~to the general public~~, except that a claim file in  
234 the possession of the association or its representative is  
235 confidential and exempt from the provisions of s. 119.07(1) and  
236 s. 24(a), Art. I of the State Constitution until termination of  
237 litigation or settlement of the claim, although medical records  
238 and other portions of the claim file may remain confidential and  
239 exempt as otherwise provided by law. Any book, record, document,  
240 audit, or asset acquired by, prepared for, or paid for by the  
241 association is subject to the authority of the board of  
242 directors, which is responsible therefor.

243 (c) Except in the case of emergency meetings, the



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244 association shall give notice of any board meeting by  
245 publication on the association's website not fewer than 7 days  
246 before the meeting. The association shall prepare an agenda in  
247 time to ensure that a copy of the agenda may be received at  
248 least 7 days before the meeting by any person who requests a  
249 copy and who pays the reasonable cost of the copy. The agenda,  
250 along with any meeting materials available in electronic form,  
251 excluding confidential and exempt information, shall be  
252 published on the association's website. The agenda shall contain  
253 the items to be considered in order of presentation and a  
254 telephone number for members of the public to participate  
255 telephonically at the board meeting. After the agenda has been  
256 made available, a change shall be made only for good cause, as  
257 determined by the person designated to preside, and must be  
258 stated in the record. Notification of such change shall be at  
259 the earliest practicable time.

260 (d) Each person authorized to receive deposits, issue  
261 vouchers, or withdraw or otherwise disburse any funds shall post  
262 a blanket fidelity bond in an amount reasonably sufficient to  
263 protect plan assets, as determined by the plan of operation. The  
264 cost of such bond will be paid from the assets of the plan.

265 (e) ~~(d)~~ Annually, the association shall furnish audited  
266 financial reports to any plan participant upon request, to the  
267 Office of Insurance Regulation of the Financial Services  
268 Commission, and to the Joint Legislative Auditing Committee. The  
269 reports must be prepared in accordance with accepted accounting  
270 procedures and must include such information as may be required  
271 by the Office of Insurance Regulation or the Joint Legislative  
272 Auditing Committee. At any time determined to be necessary, the



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273 Office of Insurance Regulation or the Joint Legislative Auditing  
274 Committee may conduct an audit of the plan.

275 (f)~~(e)~~ Funds held on behalf of the plan are funds of the  
276 State of Florida. The association may only invest plan funds in  
277 the investments and securities described in s. 215.47, and shall  
278 be subject to the limitations on investments contained in that  
279 section. All income derived from such investments will be  
280 credited to the plan. The State Board of Administration may  
281 invest and reinvest funds held on behalf of the plan in  
282 accordance with the trust agreement approved by the association  
283 and the State Board of Administration and within the provisions  
284 of ss. 215.44-215.53.

285 (6) The association shall furnish annually to each parent  
286 and legal guardian receiving benefits under the plan either by  
287 mail or electronically a list of expenses compensable under the  
288 plan.

289 (7) The association shall publish a report on its website  
290 by January 1, 2022, and every January 1 thereafter. The report  
291 shall include:

292 (a) The names and terms of each board member and executive  
293 staff member.

294 (b) The amount of compensation paid to each association  
295 employee.

296 (c) A summary of reimbursement disputes and resolutions.

297 (d) A list of expenditures for attorney fees and lobbying  
298 fees.

299 (e) Other expenses to oppose each plan claim. Any personal  
300 identifying information of the parent, legal guardian, or child  
301 involved in the claim must be removed from this list.



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302       (8) On or before November 1, 2021, and by each November 1  
303 thereafter, the association shall submit a report to the  
304 Governor, the President of the Senate, the Speaker of the House  
305 of Representatives, and the Chief Financial Officer. The report  
306 must include:

307       (a) The number of petitions filed for compensation with the  
308 division, the number of claimants awarded compensation, the  
309 number of claimants denied compensation, and the reasons for the  
310 denial of compensation.

311       (b) The number and dollar amount of paid and denied  
312 compensation for expenses by category and the reasons for any  
313 denied compensation for expenses by category.

314       (c) The average turnaround time for paying or denying  
315 compensation for expenses.

316       (d) Legislative recommendations to improve the program.

317       (e) A summary of any pending or resolved litigation during  
318 the year which affects the plan.

319       (f) The amount of compensation paid to each association  
320 employee or member of the board of directors.

321       (g) For the initial report due on or before November 1,  
322 2021, an actuarial report conducted by an independent actuary  
323 which provides an analysis of the estimated costs of  
324 implementing the following changes to the plan:

325           1. Reducing the minimum birth weight eligibility for a  
326 participant in the plan from 2,500 grams to 2,000 grams.

327           2. Revising the eligibility for participation in the plan  
328 by providing that an infant must be permanently and  
329 substantially mentally or physically impaired, rather than  
330 permanently and substantially mentally and physically impaired.



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331 3. Increasing the annual special benefit or quality of life  
332 benefit from \$500 to \$2,500 per calendar year.

333 Section 6. The amendments made to s. 766.31, Florida  
334 Statutes, by this act, apply to petitions pending or filed under  
335 s. 766.305, Florida Statutes, on or after January 1, 2021.  
336 However, s. 766.31(1)(d)1.b. and 2.b., Florida Statutes, as  
337 created by this act, apply retroactively.

338  
339 ===== T I T L E A M E N D M E N T =====

340 And the title is amended as follows:

341 Delete lines 376 - 386

342 and insert:

343 766.31, F.S.; revising requirements for the award for  
344 compensation for claims under the plan; authorizing  
345 parents or legal guardians receiving benefits under  
346 the plan to file a petition with the Division of  
347 Administrative Hearings to dispute the denial or  
348 amount of reimbursement of actual expenses; increasing  
349 the amount that may be awarded to the parents or legal  
350 guardians of an infant found to have sustained a  
351 birth-related neurological injury; requiring that such  
352 amount be increased annually; requiring the plan to  
353 provide retroactive payments to certain parents or  
354 legal guardians which are sufficient to bring the  
355 total award to a specified amount; authorizing such  
356 payments to be made in a lump sum or periodically;  
357 increasing the death benefit for an infant found to  
358 have sustained a birth-related neurological injury;  
359 requiring the plan to provide retroactive payments to



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360 certain parents or legal guardians which are  
361 sufficient to bring the total death benefit award to a  
362 specified amount; authorizing such payments to be made  
363 in a lump sum or periodically; creating s. 766.3145,  
364 F.S.; requiring