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LEGISLATIVE ACTION

Senate

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House

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Floor: WD

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04/28/2021 03:42 PM

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Senator Farmer moved the following:

**Senate Amendment (with title amendment)**

Delete lines 71 - 342

and insert:

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



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12 paragraph shall increase by 3 percent.

13 b. Parents or legal guardians who received an award  
14 pursuant to this section before January 1, 2021, and whose child  
15 currently receives benefits under the plan must receive a  
16 retroactive payment in an amount sufficient to bring the total  
17 award paid to the parents or legal guardians pursuant to sub-  
18 subparagraph a. to \$250,000. This additional payment may be made  
19 in a lump sum or in periodic payments as designated by the  
20 parents or legal guardians.

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

22 b. Parents or legal guardians who received an award  
23 pursuant to this section, and whose child died since the  
24 inception of the program, must receive a retroactive payment in  
25 an amount sufficient to bring the total award paid to the  
26 parents or legal guardians pursuant to sub-subparagraph a. to  
27 \$50,000. This additional payment may be made in a lump sum or in  
28 periodic payments as designated by the parents or legal  
29 guardians \$10,000.

30 Section 4. Section 766.3145, Florida Statutes, is created  
31 to read:

32 766.3145 Code of ethics.—

33 (1) On or before July 1 of each year, employees of the  
34 association must sign and submit a statement attesting that they  
35 do not have a conflict of interest as defined in part III of  
36 chapter 112. As a condition of employment, all prospective  
37 employees must sign and submit to the association a conflict-of-  
38 interest statement.

39 (2) The executive director, senior managers, and members of  
40 the board of directors are subject to the code of ethics under



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41 part III of chapter 112. For purposes of applying part III of  
42 chapter 112 to activities of the executive director, senior  
43 managers, and members of the board of directors, those persons  
44 are considered public officers or employees and the association  
45 is considered their agency. A board member may not vote on any  
46 measure that would inure to his or her special private gain or  
47 loss and, notwithstanding s. 112.3143(2), may not vote on any  
48 measure that he or she knows would inure to the special private  
49 gain or loss of any principal by whom he or she is retained or  
50 to the parent organization or subsidiary of a corporate  
51 principal by which he or she is retained, other than an agency  
52 as defined in s. 112.312; or that he or she knows would inure to  
53 the special private gain or loss of a relative or business  
54 associate of the public officer. Before the vote is taken, such  
55 member shall publicly state to the board the nature of his or  
56 her interest in the matter from which he or she is abstaining  
57 from voting and, within 15 days after the vote occurs, disclose  
58 the nature of his or her interest as a public record in a  
59 memorandum filed with the person responsible for recording the  
60 minutes of the meeting, who shall incorporate the memorandum in  
61 the minutes.

62 (3) Notwithstanding s. 112.3148, s. 112.3149, or any other  
63 law, an employee or board member may not knowingly accept,  
64 directly or indirectly, any gift or expenditure from a person or  
65 entity, or an employee or representative of such person or  
66 entity, which has a contractual relationship with the  
67 association or which is under consideration for a contract.

68 (4) An employee or board member who fails to comply with  
69 subsection (2) or subsection (3) is subject to penalties



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70 provided under ss. 112.317 and 112.3173.

71 (5) Any senior manager or executive director of the  
72 association who is employed on or after January 1, 2022,  
73 regardless of the date of hire, who subsequently retires or  
74 terminates employment is prohibited from representing another  
75 person or entity before the association for 2 years after  
76 retirement or termination of employment from the association.

77 Section 5. Section 766.315, Florida Statutes, is amended to  
78 read:

79 766.315 Florida Birth-Related Neurological Injury  
80 Compensation Association; board of directors; notice of  
81 meetings; report.-

82 (1) (a) The Florida Birth-Related Neurological Injury  
83 Compensation Plan shall be governed by a board of seven ~~five~~  
84 directors which shall be known as the Florida Birth-Related  
85 Neurological Injury Compensation Association. The association is  
86 not a state agency, board, or commission. Notwithstanding the  
87 provision of s. 15.03, the association is authorized to use the  
88 state seal.

89 (b) The directors shall be appointed for staggered terms of  
90 3 years or until their successors are appointed and have  
91 qualified; however, a director may not serve for more than 6  
92 consecutive years.

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

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

97 2. One representative of participating physicians.

98 3. One representative of hospitals.



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99 4. One representative of casualty insurers.

100 5. One representative of physicians other than  
101 participating physicians.

102 6. One parent or legal guardian representative of an  
103 injured infant under the plan.

104 7. One representative of an advocacy organization for  
105 children with disabilities.

106 (2) (a) The Chief Financial Officer may select the  
107 representative of the participating physicians from a list of at  
108 least three names recommended by the American Congress of  
109 Obstetricians and Gynecologists, District XII; the  
110 representative of hospitals from a list of at least three names  
111 recommended by the Florida Hospital Association; the  
112 representative of casualty insurers from a list of at least  
113 three names, one of which is recommended by the American  
114 Insurance Association, one of which is recommended by the  
115 Florida Insurance Council, and one of which is recommended by  
116 the Property Casualty Insurers Association of America; and the  
117 representative of physicians, other than participating  
118 physicians, from a list of three names recommended by the  
119 Florida Medical Association and a list of three names  
120 recommended by the Florida Osteopathic Medical Association.

121 However, the Chief Financial Officer is not required to make an  
122 appointment from among the nominees of the respective  
123 associations. A participating physician who is named in a  
124 pending petition for a claim may not be appointed to the board.  
125 An appointed director who is a participating physician may not  
126 vote on any board matter relating to a claim accepted for an  
127 award for compensation if the physician is named in the petition



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128 for the claim.

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

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

138 (3) The directors may ~~shall~~ not transact any business or  
139 exercise any power of the plan except upon the affirmative vote  
140 of four ~~three~~ directors. The directors shall serve without  
141 salary, but are entitled to receive reimbursement ~~each director~~  
142 ~~shall be reimbursed~~ for actual and necessary expenses incurred  
143 in the performance of his or her official duties as a director  
144 of the plan in accordance with s. 112.061. The directors are  
145 ~~shall~~ not ~~be~~ subject to any liability with respect to the  
146 administration of the plan.

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

148 (a) Administer the plan.

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

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

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

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

155 (f) Sue and be sued, and appear and defend, in all actions  
156 and proceedings in its name to the same extent as a natural



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157 person.

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

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

162 (i) Employ or retain such persons as are necessary to  
163 perform the administrative and financial transactions and  
164 responsibilities of the plan and to perform other necessary and  
165 proper functions not prohibited by law.

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

168 (k) Indemnify any employee, agent, member of the board of  
169 directors or alternate thereof, or person acting on behalf of  
170 the plan in an official capacity, for expenses, including  
171 attorney ~~attorney's~~ fees, judgments, fines, and amounts paid in  
172 settlement actually and reasonably incurred in connection with  
173 any action, suit, or proceeding, including any appeal thereof,  
174 arising out of such person's capacity to act ~~acting~~ on behalf of  
175 the plan, ~~if, provided that~~ such person acted in good faith and  
176 in a manner he or she reasonably believed to be in, or not  
177 opposed to, the best interests of the plan and the health and  
178 best interest of the child having birth-related neurological  
179 injuries, and if ~~provided that,~~ with respect to any criminal  
180 action or proceeding, such ~~the~~ person had reasonable cause to  
181 believe his or her conduct was lawful.

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

184 (b) All meetings of the board of directors are subject to  
185 the requirements of s. 286.011, and all books, records, and



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186 audits of the plan are open to the public for reasonable  
187 inspection ~~to the general public~~, except that a claim file in  
188 the possession of the association or its representative is  
189 confidential and exempt from the provisions of s. 119.07(1) and  
190 s. 24(a), Art. I of the State Constitution until termination of  
191 litigation or settlement of the claim, although medical records  
192 and other portions of the claim file may remain confidential and  
193 exempt as otherwise provided by law. Any book, record, document,  
194 audit, or asset acquired by, prepared for, or paid for by the  
195 association is subject to the authority of the board of  
196 directors, which is responsible therefor.

197 (c) Except in the case of emergency meetings, the  
198 association shall give notice of any board meeting by  
199 publication on the association's website not fewer than 7 days  
200 before the meeting. The association shall prepare an agenda in  
201 time to ensure that a copy of the agenda may be received at  
202 least 7 days before the meeting by any person who requests a  
203 copy and who pays the reasonable cost of the copy. The agenda,  
204 along with any meeting materials available in electronic form,  
205 excluding confidential and exempt information, shall be  
206 published on the association's website. The agenda shall contain  
207 the items to be considered in order of presentation and a  
208 telephone number for members of the public to participate  
209 telephonically at the board meeting. After the agenda has been  
210 made available, a change shall be made only for good cause, as  
211 determined by the person designated to preside, and must be  
212 stated in the record. Notification of such change shall be at  
213 the earliest practicable time.

214 (d) Each person authorized to receive deposits, issue





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215 vouchers, or withdraw or otherwise disburse any funds shall post  
216 a blanket fidelity bond in an amount reasonably sufficient to  
217 protect plan assets, as determined by the plan of operation. The  
218 cost of such bond will be paid from the assets of the plan.

219 (e)~~(d)~~ Annually, the association shall furnish audited  
220 financial reports to any plan participant upon request, to the  
221 Office of Insurance Regulation of the Financial Services  
222 Commission, and to the Joint Legislative Auditing Committee. The  
223 reports must be prepared in accordance with accepted accounting  
224 procedures and must include such information as may be required  
225 by the Office of Insurance Regulation or the Joint Legislative  
226 Auditing Committee. At any time determined to be necessary, the  
227 Office of Insurance Regulation or the Joint Legislative Auditing  
228 Committee may conduct an audit of the plan.

229 (f)~~(e)~~ Funds held on behalf of the plan are funds of the  
230 State of Florida. The association may only invest plan funds in  
231 the investments and securities described in s. 215.47, and shall  
232 be subject to the limitations on investments contained in that  
233 section. All income derived from such investments will be  
234 credited to the plan. The State Board of Administration may  
235 invest and reinvest funds held on behalf of the plan in  
236 accordance with the trust agreement approved by the association  
237 and the State Board of Administration and within the provisions  
238 of ss. 215.44-215.53.

239 (6) The association shall furnish annually to each parent  
240 and legal guardian receiving benefits under the plan either by  
241 mail or electronically a list of expenses compensable under the  
242 plan.

243 (7) The association shall publish a report on its website



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244 by January 1, 2022, and every January 1 thereafter. The report  
245 shall include:

246 (a) The names and terms of each board member and executive  
247 staff member.

248 (b) The amount of compensation paid to each association  
249 employee.

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

251 (d) A list of expenditures for attorney fees and lobbying  
252 fees.

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

256 (8) On or before November 1, 2021, and by each November 1  
257 thereafter, the association shall submit a report to the  
258 Governor, the President of the Senate, the Speaker of the House  
259 of Representatives, and the Chief Financial Officer. The report  
260 must include:

261 (a) The number of petitions filed for compensation with the  
262 division, the number of claimants awarded compensation, the  
263 number of claimants denied compensation, and the reasons for the  
264 denial of compensation.

265 (b) The number and dollar amount of paid and denied  
266 compensation for expenses by category and the reasons for any  
267 denied compensation for expenses by category.

268 (c) The average turnaround time for paying or denying  
269 compensation for expenses.

270 (d) Legislative recommendations to improve the program.

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



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

275 (g) For the initial report due on or before November 1,  
276 2021, an actuarial report conducted by an independent actuary  
277 which provides an analysis of the estimated costs of  
278 implementing the following changes to the plan:

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

281 2. Revising the eligibility for participation in the plan  
282 by providing that an infant must be permanently and  
283 substantially mentally or physically impaired, rather than  
284 permanently and substantially mentally and physically impaired.

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

287 Section 6. The amendments made to s. 766.31, Florida  
288 Statutes, by this act, apply to petitions pending or filed under  
289 s. 766.305, Florida Statutes, on or after January 1, 2021.  
290 However, s. 766.31(1)(b)1.b. and 2.b., Florida Statutes, as  
291 created by this act, apply retroactively.

292  
293 ===== T I T L E A M E N D M E N T =====

294 And the title is amended as follows:

295 Delete lines 384 - 386

296 and insert:

297 annually; requiring the plan to provide retroactive  
298 payments to certain parents or legal guardians which  
299 are sufficient to bring the total award to a specified  
300 amount; authorizing such payments to be made in a lump  
301 sum or periodically; increasing the death benefit for



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302 an infant found to have sustained a birth-related  
303 neurological injury; requiring the plan to provide  
304 retroactive payments to certain parents or legal  
305 guardians which are sufficient to bring the total  
306 death benefit award to a specified amount; authorizing  
307 such payments to be made in a lump sum or  
308 periodically; creating s. 766.3145, F.S.; requiring