

By Senator Hays

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1                                   A bill to be entitled  
2           An act relating to compensation for personal injury or  
3           wrongful death arising out of medical injury; amending  
4           s. 456.013, F.S.; requiring the boards or the  
5           Department of Health to require the completion of a  
6           course relating to communication of medical errors;  
7           providing a directive to the Division of Statutory  
8           Revision to divide ch. 766, F.S., into parts; creating  
9           part IV of ch. 766, F.S.; creating s. 766.401, F.S.;  
10          providing a short title; creating s. 766.402, F.S.;  
11          providing definitions; creating s. 766.403, F.S.;  
12          providing legislative findings and intent; providing  
13          that the remedy created in the part is an exclusive  
14          remedy for personal injury or wrongful death arising  
15          out of or related to a medical negligence claim;  
16          creating s. 766.404, F.S.; creating the Patient  
17          Compensation System; providing for a governing board;  
18          providing for membership and terms of appointment;  
19          providing for officers and meetings; limiting  
20          compensation of members to certain expenses; providing  
21          for an executive director and other staff; providing  
22          for offices of medical review, compensation, and  
23          quality improvement; providing for committees for  
24          medical review and compensation and other purposes as  
25          needed and providing their membership and terms;  
26          providing requirements for damage payments; providing  
27          for independent medical review panels and authorizing  
28          a stipend for panelists; providing powers and duties  
29          of the board, staff, committees, offices, and panels;

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30 prohibiting certain conflicts of interest; requiring  
31 rulemaking; creating s. 766.405, F.S.; providing a  
32 process for filing applications; providing an  
33 application filing period; creating s. 766.406, F.S.;  
34 providing for disposition of applications; providing  
35 for notice to providers and insurers; providing for  
36 support of an application pursuant to expedited  
37 medical review; providing for formal medical review  
38 when there is no support of application; providing for  
39 referral to law enforcement of an invalid application  
40 determined to be fraudulent; providing for a  
41 determination of compensation upon prima facie proof  
42 of medical injury; providing that compensation for a  
43 claim shall be offset by any past and future  
44 collateral source payments; providing for payment of  
45 compensation awards, including interest accruing on  
46 unpaid awards; providing for determinations of  
47 malpractice for purposes of a specified constitutional  
48 provision; providing for notice of applications  
49 determined to constitute medical injury for purposes  
50 of professional discipline; creating s. 766.407, F.S.;  
51 providing for review of appeals by an administrative  
52 law judge; providing that determinations of the  
53 administrative law judge are conclusive and binding;  
54 providing for appeal of such determinations; creating  
55 s. 766.408, F.S.; requiring annual contributions from  
56 specified providers to provide administrative  
57 expenses; providing maximum contribution rates;  
58 specifying payment dates; providing for disciplinary

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59 proceedings for failure to pay; providing for deposit  
60 of funds; creating s. 766.409, F.S.; requiring an  
61 annual report to the Governor and Legislature;  
62 providing retroactive application; providing for  
63 severability; providing an effective date.  
64

65 Be It Enacted by the Legislature of the State of Florida:  
66

67 Section 1. Subsection (7) of section 456.013, Florida  
68 Statutes, is amended to read:

69 456.013 Department; general licensing provisions.—

70 (7) The boards, or the department when there is no board,  
71 shall require the completion of a 2-hour course relating to  
72 prevention and communication of medical errors as part of the  
73 licensure and renewal process. The 2-hour course shall count  
74 towards the total number of continuing education hours required  
75 for the profession. The course shall be approved by the board or  
76 department, as appropriate, and shall include a study of root-  
77 cause analysis, error reduction and prevention, ~~and~~ patient  
78 safety, and communication of medical errors to patients and  
79 their families. In addition, the course approved by the Board of  
80 Medicine and the Board of Osteopathic Medicine shall include  
81 information relating to the five most misdiagnosed conditions  
82 during the previous biennium, as determined by the board. If the  
83 course is being offered by a facility licensed pursuant to  
84 chapter 395 for its employees, the board may approve up to 1  
85 hour of the 2-hour course to be specifically related to error  
86 reduction and prevention methods used in that facility.

87 Section 2. The Division of Statutory Revision is directed

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88 to designate sections 766.101 through 766.1185 of chapter 766,  
89 Florida Statutes, as part I of that chapter, entitled  
90 "Litigation Procedures"; sections 766.201 through 766.212 as  
91 part II of that chapter, entitled "Voluntary Binding  
92 Arbitration"; sections 766.301 through 766.316 as part III of  
93 that chapter, entitled "Birth-Related Neurological Injuries";  
94 and sections 766.401 through 766.409, as created by this act, as  
95 part IV of that chapter, entitled "Patient Compensation System."

96 Section 3. Section 766.401, Florida Statutes, is created to  
97 read:

98 766.401 Short title.—This part may be cited as the "Patient  
99 Injury Act."

100 Section 4. Section 766.402, Florida Statutes, is created to  
101 read:

102 766.402 Definitions.—As used in this part, the term:

103 (1) "Applicant" means a person who files an application  
104 under this part requesting the investigation of an alleged  
105 occurrence of a medical injury.

106 (2) "Application" means a request for investigation by the  
107 Patient Compensation System of an alleged occurrence of a  
108 medical injury.

109 (3) "Board" means the Patient Compensation Board as created  
110 in s. 766.404.

111 (4) "Collateral source" means any payment made to the  
112 applicant, or made on his or her behalf, by or pursuant to:

113 (a) The federal Social Security Act; any federal, state, or  
114 local income disability act; or any other public program  
115 providing medical expenses, disability payments, or other  
116 similar benefits, except as prohibited by federal law.

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117 (b) Any health, sickness, or income disability insurance;  
118 any automobile accident insurance that provides health benefits  
119 or income disability coverage; and any other similar insurance  
120 benefits, except life insurance benefits available to the  
121 applicant, whether purchased by the applicant or provided by  
122 others.

123 (c) Any contract or agreement of any group, organization,  
124 partnership, or corporation to provide, pay for, or reimburse  
125 the costs of hospital, medical, dental, or other health care  
126 services.

127 (d) Any contractual or voluntary wage continuation plan  
128 provided by employers or by any other system intended to provide  
129 wages during a period of disability.

130 (5) "Committee" means, as the context requires, the Medical  
131 Review Committee or the Compensation Committee.

132 (6) "Compensation schedule" means a schedule of damages for  
133 medical injuries.

134 (7) "Department" means the Department of Health.

135 (8) "Independent medical review panel" or "panel" means a  
136 multidisciplinary panel convened by the chief medical officer to  
137 review each application.

138 (9) "Medical injury" means a personal injury or wrongful  
139 death due to medical treatment, including a missed diagnosis,  
140 which would have been avoided under the care of an experienced  
141 specialist provider practicing in the same field of care under  
142 the same circumstances or, for a general practitioner provider,  
143 an experienced general practitioner provider practicing under  
144 the same circumstances. Determination of the validity of a  
145 medical injury may only include consideration of an alternate

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146 course of treatment if the harm could have been avoided through  
147 a different but equally effective manner with respect to the  
148 treatment of the underlying condition. The term does not include  
149 an injury or wrongful death:

150 (a) That is the consequence of a necessary procedure to  
151 diagnose or treat an illness or an injury which, if left  
152 untreated, would be directly life-threatening or lead to severe  
153 disability;

154 (b) Caused by a drug, as defined in s. 499.003, unless the  
155 injury or wrongful death is due to a prescription error or  
156 administration error; or

157 (c) Caused by a device, as defined in s. 499.003.

158 (10) "Office" means, as the context requires, the Office of  
159 Compensation, the Office of Medical Review, or the Office of  
160 Quality Improvement.

161 (11) "Panelist" means a hospital administrator, a person  
162 licensed under chapter 458, chapter 459, chapter 460, part I of  
163 chapter 464, or chapter 466, or any other person involved in the  
164 management of a health care facility as deemed by the board to  
165 be appropriate.

166 (12) "Patient Compensation System" means the organization  
167 created pursuant to s. 766.404.

168 (13) "Provider" means a birth center licensed under chapter  
169 383; any facility licensed under chapter 390, chapter 395,  
170 chapter 400, or chapter 429; a home health agency or nurse  
171 registry licensed under part III of chapter 400; a health care  
172 services pool registered under part IX of chapter 400; any  
173 person licensed under s. 401.27 or chapter 457, chapter 458,  
174 chapter 459, chapter 460, chapter 461, chapter 462, chapter 463,

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175 chapter 464, chapter 465, chapter 466, chapter 467, part I, part  
176 II, part III, part IV, part V, part X, part XIII, or part XIV of  
177 chapter 468, chapter 478, part III of chapter 483, or chapter  
178 486; a clinical lab licensed under part I of chapter 483; a  
179 multiphasic health testing center licensed under part II of  
180 chapter 483; a health maintenance organization certificated  
181 under part I of chapter 641; a blood bank; a plasma center; an  
182 industrial clinic; a renal dialysis facility; or a professional  
183 association partnership, corporation, joint venture, or other  
184 association for professional activity by health care providers.

185 Section 5. Section 766.403, Florida Statutes, is created to  
186 read:

187 766.403 Legislative findings and intent; exclusive remedy.-

188 (1) LEGISLATIVE FINDINGS.-

189 (a) The Legislature finds that the lack of legal  
190 representation, and, thus, compensation, for the vast majority  
191 of patients with legitimate injuries is creating an access-to-  
192 courts crisis.

193 (b) The Legislature finds that seeking compensation through  
194 medical malpractice litigation is a costly and protracted  
195 process to the extent that legal counsel may afford to finance  
196 only a small number of legitimate claims.

197 (c) The Legislature finds that, even for patients who are  
198 able to obtain legal representation, the delay in obtaining  
199 compensation is averaging approximately 5 years, creating a  
200 significant hardship for patients and their caregivers who often  
201 need access to immediate care and compensation.

202 (d) The Legislature finds that, because of continued  
203 exposure to liability, an overwhelming majority of physicians

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204 practice defensive medicine by ordering unnecessary tests and  
205 procedures, increasing the cost of health care for individuals  
206 covered by public and private health insurance coverage and  
207 exposing patients to unnecessary clinical risks.

208 (e) The Legislature finds that a significant percentage of  
209 physicians are continuing to retire from practice as a result of  
210 the cost and risk of medical liability in this state.

211 (f) The Legislature finds that recruiting physicians to  
212 this state and ensuring that physicians currently practicing in  
213 this state continue their practice is an overwhelming public  
214 necessity.

215 (2) LEGISLATIVE INTENT.—

216 (a) The Legislature intends to create an alternative to  
217 medical malpractice litigation whereby patients are fairly and  
218 expeditiously compensated for avoidable medical injuries. As  
219 provided in this part, this alternative is intended to  
220 significantly reduce the practice of defensive medicine, thereby  
221 reducing health care costs, increasing the number of physicians  
222 practicing in this state, and providing patients fair and timely  
223 compensation without the expense and delay of the court system.  
224 The Legislature intends that the provisions of this part apply  
225 to all health care facilities and health care practitioners who  
226 are either insured or self-insured against claims for medical  
227 malpractice.

228 (b) The Legislature intends that an application filed under  
229 this part does not constitute a claim for medical malpractice  
230 and any action on such an application does not constitute a  
231 judgment or adjudication for medical malpractice, and,  
232 therefore, professional liability carriers are not obligated to



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233 report such applications or actions on such applications to the  
234 National Practitioner Data Bank.

235 (c) The Legislature intends that the definition of the term  
236 "medical injury" be construed to encompass a broader range of  
237 personal injuries as compared to a negligence standard, such  
238 that a greater number of applications qualify for compensation  
239 under this part as compared to claims filed under a negligence  
240 standard.

241 (d) The Legislature intends that because the Patient  
242 Compensation System has the primary duty to determine the  
243 validity and compensation of each application, an insurer shall  
244 not be subject to a statutory or common law bad faith cause of  
245 action relating to an application filed under this part.

246 (3) EXCLUSIVE REMEDY.—With the exception of part III, the  
247 rights and remedies granted by this part on account of a  
248 personal injury or wrongful death exclude all other rights and  
249 remedies of the applicant, his or her personal representative,  
250 parents, dependents, and the next of kin, at common law or as  
251 provided in general law, against any provider directly involved  
252 in providing the medical treatment from which such injury or  
253 death occurred, arising out of or related to a medical  
254 negligence claim, whether in tort or in contract, with respect  
255 to such injury. Notwithstanding any other law, this part applies  
256 exclusively to applications submitted under this part. An  
257 applicant whose injury falls within the scope of part III may  
258 not file an application under this part.

259 Section 6. Section 766.404, Florida Statutes, is created to  
260 read:

261 766.404 Patient Compensation System; board; committees.—

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262       (1) PATIENT COMPENSATION SYSTEM.—The Patient Compensation  
263 System is created and shall be administratively housed within  
264 the department. The Patient Compensation System is a separate  
265 budget entity that is responsible for its administrative  
266 functions and is not subject to control, supervision, or  
267 direction by the department in any manner. The Patient  
268 Compensation System shall administer this part.

269       (2) PATIENT COMPENSATION BOARD.—The Patient Compensation  
270 Board is established to govern the Patient Compensation System.

271       (a) Members.—The board shall be composed of 11 members who  
272 represent the medical, legal, patient, and business communities  
273 from diverse geographic areas throughout the state. Members of  
274 the board shall be appointed as follows:

275       1. Five members shall be appointed by, and serve at the  
276 pleasure of, the Governor, one of whom shall be an allopathic or  
277 osteopathic physician who actively practices in this state, one  
278 of whom shall be an executive in the business community, one of  
279 whom shall be a hospital administrator, one of whom shall be a  
280 certified public accountant who actively practices in this  
281 state, and one of whom shall be a member of The Florida Bar.

282       2. Three members shall be appointed by, and serve at the  
283 pleasure of, the President of the Senate, one of whom shall be  
284 an allopathic or osteopathic physician who actively practices in  
285 this state and one of whom shall be a patient advocate.

286       3. Three members shall be appointed by, and serve at the  
287 pleasure of, the Speaker of the House of Representatives, one of  
288 whom shall be an allopathic or osteopathic physician who  
289 actively practices in this state and one of whom shall be a  
290 patient advocate.

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291 (b) Terms of appointment.—Each member shall be appointed  
292 for a 4-year term. For the purpose of providing staggered terms,  
293 of the initial appointments, the five members appointed by the  
294 Governor shall be appointed to 2-year terms and the remaining  
295 six members shall be appointed to 3-year terms. If a vacancy  
296 occurs on the board before the expiration of a term, the  
297 original appointing authority shall appoint a successor to serve  
298 the unexpired portion of the term.

299 (c) Chair and vice chair.—The board shall annually elect  
300 from its membership one member to serve as chair of the board  
301 and one member to serve as vice chair.

302 (d) Meetings.—The first meeting of the board shall be held  
303 no later than August 1, 2012. Thereafter, the board shall meet  
304 at least quarterly upon the call of the chair. A majority of the  
305 board members constitutes a quorum. Meetings may be held by  
306 teleconference, webconference, or other electronic means.

307 (e) Compensation.—Members of the board and the committees  
308 shall serve without compensation but may be reimbursed for per  
309 diem and travel expenses for required attendance at board and  
310 committee meetings in accordance with s. 112.061.

311 (f) Powers and duties of the board.—The board shall have  
312 the following powers and duties:

313 1. Ensuring the operation of the Patient Compensation  
314 System in accordance with applicable federal and state laws,  
315 rules, and regulations.

316 2. Entering into contracts as necessary to administer this  
317 part.

318 3. Employing an executive director and other staff as are  
319 necessary to perform the functions of the Patient Compensation

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320 System, except that the Governor shall appoint the initial  
321 executive director.

322 4. Approving the hiring of a chief compensation officer and  
323 a chief medical officer, as recommended by the executive  
324 director.

325 5. Approving a schedule of compensation for medical  
326 injuries, as recommended by the Compensation Committee.

327 6. Approving medical review panelists, as recommended by  
328 the Medical Review Committee.

329 7. Approving an annual budget.

330 8. Annually approving provider contribution amounts.

331 (g) Powers and duties of staff.—The executive director  
332 shall oversee the operation of the Patient Compensation System  
333 in accordance with this part. The following staff shall report  
334 directly to and serve at the pleasure of the executive director:

335 1. Advocacy director.—The advocacy director shall ensure  
336 that each applicant is provided high quality individual  
337 assistance throughout the application process, from initial  
338 filing to disposition of the application.

339 2. Chief compensation officer.—The chief compensation  
340 officer shall manage the Office of Compensation. The chief  
341 compensation officer shall recommend to the Compensation  
342 Committee a compensation schedule for each type of injury. The  
343 chief compensation officer may not be a licensed physician or an  
344 attorney.

345 3. Chief financial officer.—The chief financial officer  
346 shall be responsible for overseeing the financial operations of  
347 the Patient Compensation System, including the annual  
348 development of a budget.

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349 4. Chief legal officer.—The chief legal officer shall  
350 represent the Patient Compensation System in all contested  
351 applications, oversee the operation of the Patient Compensation  
352 System to ensure compliance with established procedures, and  
353 ensure adherence to all applicable federal and state laws,  
354 rules, and regulations.

355 5. Chief medical officer.—The chief medical officer shall  
356 be a physician licensed under chapter 458 or chapter 459 who  
357 shall manage the Office of Medical Review. The chief medical  
358 officer shall recommend to the Medical Review Committee a  
359 qualified list of multidisciplinary panelists for independent  
360 medical review panels. In addition, the chief medical officer  
361 shall convene independent medical review panels as necessary to  
362 review applications.

363 6. Chief quality officer.—The chief quality officer shall  
364 manage the Office of Quality Improvement.

365 (3) OFFICES.—The following offices are established within  
366 the Patient Compensation System:

367 (a) Office of Medical Review.—The chief medical officer  
368 shall manage the Office of Medical Review. The Office of Medical  
369 Review shall evaluate and, as necessary, investigate all  
370 applications in accordance with this part. For the purpose of an  
371 investigation of an application, the office may administer  
372 oaths, take depositions, issue subpoenas, compel the attendance  
373 of witnesses and the production of papers, documents, and other  
374 evidence, and obtain patient records pursuant to the applicant's  
375 release of protected health information.

376 (b) Office of Compensation.—The chief compensation officer  
377 shall manage the Office of Compensation. The office shall

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378 allocate compensation for each application in accordance with  
379 the compensation schedule.

380 (c) Office of Quality Improvement.—The chief quality  
381 officer shall manage the Office of Quality Improvement. The  
382 office shall regularly review applications data to conduct root  
383 cause analyses and develop and disseminate best practices based  
384 on such reviews.

385 (4) COMMITTEES.—The board shall create a Medical Review  
386 Committee and a Compensation Committee. The board may create  
387 additional committees as necessary to assist in the performance  
388 of its duties and responsibilities.

389 (a) Members.—Each committee shall be composed of three  
390 board members chosen by a majority vote of the board.

391 1. The Medical Review Committee shall be composed of two  
392 physicians and a board member who is not an attorney. The board  
393 shall designate a physician committee member as chair of the  
394 committee.

395 2. The Compensation Committee shall be composed of a  
396 certified public accountant and two board members who are not  
397 physicians or attorneys. The certified public accountant shall  
398 serve as chair of the committee.

399 (b) Terms of appointment.—Members of each committee shall  
400 serve 2-year terms, within their respective terms as board  
401 members. If a vacancy occurs on a committee, the board shall  
402 appoint a successor to serve the unexpired portion of the term.  
403 A committee member who is removed or resigns from the board  
404 shall be removed from the committee.

405 (c) Chair and vice chair.—The board shall annually  
406 designate a chair and vice chair of each committee in accordance

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407 with this subsection.

408 (d) Meetings.—Each committee shall meet at least quarterly  
409 or at the specific direction of the board. Meetings may be held  
410 by teleconference, webconference, or other electronic means.

411 (e) Powers and duties.—

412 1. The Medical Review Committee shall recommend to the  
413 board a comprehensive, multidisciplinary list of panelists who  
414 shall serve on the independent medical review panels as needed.

415 2. The Compensation Committee shall, in consultation with  
416 the chief compensation officer, recommend to the board a  
417 compensation schedule. The initial compensation schedule shall  
418 be formulated such that the aggregate cost of medical  
419 malpractice and the aggregate of provider contributions are  
420 equal to, or less than, the prior fiscal year aggregate cost of  
421 medical malpractice. In addition, damage payments for each  
422 injury shall be no less than the average indemnity payment  
423 reported by the Physician Insurers Association of America or its  
424 successor organization for like injuries with like severity.  
425 Thereafter, the compensation schedule shall be annually reviewed  
426 and, if necessary, revised to ensure that a projected increase  
427 in the upcoming fiscal year aggregate cost of medical  
428 malpractice, including insured and self-insured providers, does  
429 not exceed the percentage change from the prior fiscal year in  
430 the medical care component of the Consumer Price Index for All  
431 Urban Consumers. Damage payments for each medical injury shall  
432 be apportioned among multiple providers, if applicable,  
433 conforming to historical apportionment among multiple providers  
434 reported by the Physician Insurers Association of America or its  
435 successor organization for like injuries with like severity.

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436       (5) INDEPENDENT MEDICAL REVIEW PANELS.—The chief medical  
437 officer shall convene an independent medical review panel to  
438 evaluate whether an application constitutes medical injury. Each  
439 panel shall be composed of an odd number of at least three  
440 panelists chosen from the list of panelists recommended by the  
441 Medical Review Committee and approved by the board, and shall be  
442 convened upon the call of the chief medical officer. Each  
443 panelist shall be paid a stipend as determined by the board for  
444 his or her service. In order to expedite the review of  
445 applications, the chief medical officer may, whenever  
446 practicable, group related applications together for  
447 consideration by a single panel.

448       (6) CONFLICTS OF INTEREST.—A board member, panelist, or  
449 employee of the Patient Compensation System may not engage in  
450 any conduct that constitutes a conflict of interest. For  
451 purposes of this subsection, a conflict of interest exists in a  
452 situation in which the private interest of a board member,  
453 panelist, or employee could influence his or her judgment in the  
454 performance of his or her duties under this part. A board  
455 member, panelist, or employee must immediately disclose in  
456 writing the presence of a conflict of interest when the board  
457 member, panelist, or employee knows or should know that the  
458 factual circumstances surrounding a particular application  
459 constitute or constituted a conflict of interest. A board  
460 member, panelist, or employee who violates this subsection is  
461 subject to disciplinary action as determined by the board. A  
462 conflict of interest includes, but is not limited to:

463       (a) Any conduct that would lead a reasonable person having  
464 knowledge of all of the circumstances to conclude that a



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465 panelist or employee is biased against or in favor of an  
466 applicant.

467 (b) Participation in any application in which the board  
468 member, panelist, or employee, or the parent, spouse, or child  
469 of a board member, panelist, or employee, has a financial  
470 interest.

471 (7) RULEMAKING.—The board shall adopt rules pursuant to ss.  
472 120.536(1) and 120.54 to implement and administer this part,  
473 which shall include rules addressing:

474 (a) The application process, including forms necessary to  
475 collect relevant information from applicants.

476 (b) Disciplinary procedures for a board member, panelist,  
477 or employee who violates the conflict-of-interest provisions of  
478 this part.

479 (c) Stipends paid to panelists for their service on an  
480 independent medical review panel, which stipends may be scaled  
481 in accordance with the relative scarcity of the provider's  
482 specialty, if applicable.

483 Section 7. Section 766.405, Florida Statutes, is created to  
484 read:

485 766.405 Filing of applications.—

486 (1) CONTENT.—In order to obtain compensation for medical  
487 injury under this part, an applicant must file an application  
488 with the Patient Compensation System. The advocacy director  
489 shall assist each applicant in filing an application and shall  
490 regularly provide status reports to the applicant regarding his  
491 or her application. The application must include:

492 (a) The name and address of the applicant or his or her  
493 representative and the basis of the representation.

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494 (b) The name and address of any provider who provided  
495 medical treatment allegedly resulting in the medical injury.

496 (c) A brief statement of the facts and circumstances  
497 surrounding the personal injury or wrongful death that gave rise  
498 to the application.

499 (d) An authorization for release to the Office of Medical  
500 Review of all protected health information that is potentially  
501 relevant to the application.

502 (e) Any other information that the applicant believes will  
503 be beneficial to the investigatory process, including the names  
504 of potential witnesses.

505 (f) Documentation of any applicable private or governmental  
506 source of services or reimbursement relative to the personal  
507 injury or wrongful death.

508 (2) INCOMPLETE APPLICATIONS.—If an application is not  
509 complete, the Patient Compensation System shall, within 30 days  
510 after the receipt of the initial application, notify the  
511 applicant in writing of any errors or omissions. An applicant  
512 shall have 30 days within which to correct the errors or  
513 omissions in the initial application.

514 (3) LIMITATION ON APPLICATIONS.—Any application that is  
515 filed more than 4 years after the personal injury or wrongful  
516 death giving rise to the application is barred.

517 Section 8. Section 766.406, Florida Statutes, is created to  
518 read:

519 766.406 Disposition of applications.—

520 (1) INITIAL MEDICAL REVIEW.—The Office of Medical Review  
521 shall, within 10 days after receipt of a completed application,  
522 determine whether the application, prima facie, constitutes a

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523 medical injury.

524 (a) If the Office of Medical Review determines that the  
525 application, prima facie, constitutes a medical injury, the  
526 office shall immediately notify, by registered or certified  
527 mail, each provider named in the application and, for providers  
528 that are not self-insured, the insurer that provides coverage  
529 for the provider. The notification shall inform the provider  
530 that he or she may support the application to expedite the  
531 processing of the application. A provider shall have 15 days  
532 after the receipt of notification of an application to support  
533 the application. If the provider supports the application, the  
534 Office of Medical Review shall review the application in  
535 accordance with subsection (2).

536 (b) If the Office of Medical Review determines that the  
537 application does not, prima facie, constitute a medical injury,  
538 the office shall send a rejection letter to the applicant by  
539 registered or certified mail, which shall inform the applicant  
540 of his or her right of appeal. The applicant shall have 15 days  
541 after the receipt of the letter in which to appeal the  
542 determination of the office pursuant to s. 766.407.

543 (2) EXPEDITED MEDICAL REVIEW.—An application that is  
544 supported by a provider in accordance with subsection (1) shall  
545 be reviewed by the Office of Medical Review, within 30 days  
546 after notification of the provider's support of the application,  
547 to determine the validity of the application. If the Office of  
548 Medical Review finds that the application is valid, the Office  
549 of Compensation shall determine an award of compensation in  
550 accordance with subsection (4). If the Office of Medical Review  
551 finds that the application is not valid, the office shall

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552 immediately notify the applicant of the rejection of the  
553 application, and, in the case of fraud, the office shall  
554 immediately notify relevant law enforcement authorities.

555 (3) FORMAL MEDICAL REVIEW.—If the Office of Medical Review  
556 determines that the application, prima facie, constitutes a  
557 medical injury, and the provider does not elect to support the  
558 application, the office shall complete a thorough investigation  
559 of the application within 60 days after the determination by the  
560 office. Within 15 days after the completion of the  
561 investigation, the chief medical officer shall allow the  
562 applicant and the provider to access records, statements, and  
563 other information obtained in the course of its investigation,  
564 in accordance with relevant state and federal laws. Within 30  
565 days after the completion of the investigation, an independent  
566 medical review panel shall be convened to determine whether the  
567 application constitutes a medical injury. The independent  
568 medical review panel shall have access to all redacted  
569 information obtained by the office in the course of its  
570 investigation of the application, and shall conclude its  
571 determination within 10 days after the convening of the panel.  
572 The standard of review shall be a preponderance of the evidence.

573 (a) If the independent medical review panel determines that  
574 the application constitutes a medical injury, the Office of  
575 Medical Review shall immediately notify the provider by  
576 registered or certified mail of the right to appeal the finding  
577 of the office. The provider shall have 15 days after the receipt  
578 of the letter in which to appeal the determination of the panel  
579 pursuant to s. 766.407.

580 (b) If the independent medical review panel determines that

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581 the application does not constitute a medical injury, the Office  
582 of Medical Review shall send a rejection letter to the applicant  
583 by registered or certified mail, which shall explain, in detail,  
584 the reasons for the rejection of the application and the process  
585 to appeal the determination of the panel. The applicant shall  
586 have 15 days from the receipt of the letter to appeal the  
587 determination of the panel pursuant to s. 766.407.

588 (4) COMPENSATION REVIEW.—If an independent medical review  
589 panel finds that an application constitutes a medical injury  
590 pursuant to subsection (3), and all appeals of that finding have  
591 been exhausted by the provider pursuant to s. 766.407, the  
592 Office of Compensation shall, within 30 days after either the  
593 finding of the panel or the exhaustion of all appeals of that  
594 finding, whichever occurs later, determine an award of  
595 compensation in accordance with the compensation schedule and  
596 the findings of the panel. The office shall, by registered or  
597 certified mail, inform the applicant of the amount of  
598 compensation and the process to appeal the determination of the  
599 office. The applicant shall have 15 days after receipt of the  
600 letter to appeal the determination of the office pursuant to s.  
601 766.407.

602 (5) LIMITATION ON COMPENSATION.—Compensation for each  
603 application shall be offset by any past and future collateral  
604 source payments and shall be paid by periodic payments.

605 (6) PAYMENT OF COMPENSATION.—Within 14 days after either  
606 the acceptance of compensation by the applicant or the  
607 conclusion of all appeals pursuant to s. 766.407, the provider,  
608 or for a provider who has insurance coverage, the insurer, shall  
609 pay the compensation award. Beginning 45 days after the

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610 acceptance of compensation by the applicant or the conclusion of  
611 all appeals pursuant to s. 766.407, whichever occurs later, an  
612 unpaid award shall begin to accrue interest at the rate of 18  
613 percent per year. An applicant may petition the circuit court  
614 for enforcement of an award under this part.

615 (7) DETERMINATION OF MEDICAL MALPRACTICE.—For purposes of  
616 s. 26, Art. X of the State Constitution, a physician who is the  
617 subject of an application under this part must be found to have  
618 committed medical malpractice only upon a specific finding of  
619 the Board of Medicine or Board of Osteopathic Medicine, as  
620 applicable, in accordance with s. 456.50.

621 (8) PROFESSIONAL BOARD NOTICE.—The Patient Compensation  
622 System shall provide the department with electronic access to  
623 applications determined to constitute a medical injury related  
624 to persons licensed under chapter 458, chapter 459, chapter 460,  
625 part I of chapter 464, or chapter 466. The department shall  
626 review such applications to determine whether any of the  
627 incidents that resulted in the application potentially involved  
628 conduct by the licensee that is subject to disciplinary action,  
629 in which case s. 456.073 applies.

630 Section 9. Section 766.407, Florida Statutes, is created to  
631 read:

632 766.407 Review by administrative law judge; appellate  
633 review.—

634 (1) An administrative law judge shall hear and determine  
635 appeals filed pursuant to s. 766.406 and shall exercise the full  
636 power and authority granted to him or her in chapter 120, as  
637 necessary, to carry out the purposes of such sections. The  
638 administrative law judge shall be limited in his or her review

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639 to determining whether the Office of Medical Review, the  
640 independent medical review panel, or the Office of Compensation,  
641 as appropriate, has faithfully followed the requirements of this  
642 part and rules adopted thereunder in reviewing applications. If  
643 the administrative law judge determines that such requirements  
644 were not followed in reviewing an application, he or she shall  
645 require the chief medical officer to reconvene the original  
646 panel or convene a new panel or require the Office of  
647 Compensation to redetermine the compensation amount in  
648 accordance with the determination by the judge.

649 (2) A determination by an administrative law judge under  
650 this section regarding the faithful following of the  
651 requirements of this part and rules adopted thereunder shall be  
652 conclusive and binding as to all questions of fact. Such  
653 determination with findings of fact and conclusions of law shall  
654 be provided to the applicant and the provider. An applicant or  
655 provider may appeal the determination of the administrative law  
656 judge to a district court of appeal. Appeals shall be filed in  
657 accordance with rules of procedure adopted by the Supreme Court  
658 for the review of such orders.

659 Section 10. Section 766.408, Florida Statutes, is created  
660 to read:

661 766.408 Expenses of administration.—

662 (1) The board shall annually determine a contribution to be  
663 paid by each provider for the expense of the administration of  
664 this part. The contribution amount shall be determined by  
665 January 1 of each year and shall be based on the anticipated  
666 expenses of the administration of this part for the next state  
667 fiscal year.

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668       (2) The contribution rate may not exceed the following  
669 amounts:

670       (a) For an individual licensed under s. 401.27, a  
671 chiropractic assistant licensed under chapter 460, or an  
672 individual licensed under chapter 461, chapter 462, chapter 463,  
673 chapter 464, with the exception of a certified registered nurse  
674 anesthetist, chapter 465, chapter 466, chapter 467, part I, part  
675 II, part III, part IV, part V, part X, part XIII, or part XIV of  
676 chapter 468, chapter 478, part III of chapter 483, or chapter  
677 486, \$100 per licensee.

678       (b) For an anesthesiology assistant or physician assistant  
679 licensed under chapter 458 or chapter 459 or a certified  
680 registered nurse anesthetist certified under part I of chapter  
681 464, \$250 per licensee.

682       (c) For a physician licensed under chapter 458, chapter  
683 459, or chapter 460, \$600 per licensee. The contribution for the  
684 initial fiscal year for a licensee described in this paragraph  
685 shall be \$500 per licensee.

686       (d) For a facility licensed under part II of chapter 400 or  
687 a facility licensed under part I of chapter 429, \$100 per bed.

688       (e) For a facility licensed under chapter 395, \$200 per  
689 bed. The contribution for the initial fiscal year shall be \$100  
690 per bed.

691       (f) For any other provider not otherwise described in this  
692 subsection, \$2,500 per registrant or licensee.

693       (3) The contribution determined under this section is  
694 payable by each provider upon notice delivered on or after July  
695 1 of the next state fiscal year. Each provider shall pay the  
696 contribution amount within 30 days after the date that notice is



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697 delivered to the provider. If any provider fails to pay the  
698 contribution determined under this section within 30 days after  
699 such notice, the board shall notify the provider by certified or  
700 registered mail that the provider's license shall be subject to  
701 revocation if the contribution is not paid within 60 days after  
702 the date of the original notice.

703 (4) A provider who fails to pay the contribution amount  
704 determined under this section within 60 days after receipt of  
705 the original notice is subject to licensure revocation action by  
706 the department, the Agency for Health Care Administration, or  
707 the relevant regulatory board, as appropriate.

708 (5) All amounts collected under this section shall be paid  
709 into the Patient Compensation Trust Fund established in s.  
710 766.410.

711 Section 11. Section 766.409, Florida Statutes, is created  
712 to read:

713 766.409 Annual report.—The board shall annually, by October  
714 1, submit to the Governor, the President of the Senate, and the  
715 Speaker of the House of Representatives a report that describes  
716 the filing and disposition of applications in the prior fiscal  
717 year. The report shall include, in the aggregate, the number of  
718 applications, the disposition of such applications, and the  
719 compensation awarded.

720 Section 12. It is the intent of the Legislature to apply  
721 this act to prior medical incidents for which a notice of intent  
722 to initiate litigation has not been mailed before the effective  
723 date of this act.

724 Section 13. If any provision of this act or its application  
725 to any person or circumstance is held invalid, the invalidity

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726 does not affect other provisions or applications of the act  
727 which may be given effect without the invalid provision or  
728 application, and to this end the provisions of this act are  
729 severable.

730 Section 14. This act shall take effect upon becoming a law.