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# **Civil Justice Subcommittee**

**Monday, April 1, 2013**

**4:00 PM**

**404 HOB**

**Will Weatherford  
Speaker**

**Larry Metz  
Chair**

**Committee Meeting Notice**  
**HOUSE OF REPRESENTATIVES**

**Civil Justice Subcommittee**

**Start Date and Time:** Monday, April 01, 2013 04:00 pm  
**End Date and Time:** Monday, April 01, 2013 05:00 pm  
**Location:** 404 HOB  
**Duration:** 1.00 hrs

**Workshop on the following:**

HB 103 Qualified Portable Consumer Fuel Containers by Hooper

HB 897 Compensation for Personal Injury or Wrongful Death Arising from Medical Injury by Brodeur

**NOTICE FINALIZED on 03/28/2013 16:17 by Jones.Missy**



1                   A bill to be entitled  
 2           An act relating to qualified portable consumer fuel  
 3           containers; creating s. 768.1258, F.S.; providing  
 4           definitions; providing that manufacturers, sellers,  
 5           and suppliers of qualified portable consumer fuel  
 6           containers are not liable for injury, death, or loss,  
 7           subject to specified actions, and not responsible for  
 8           other relief relating to misuse of qualified portable  
 9           consumer fuel containers; providing exceptions;  
 10          providing for award of attorney fees in certain  
 11          circumstances; providing an effective date.

12  
 13 Be It Enacted by the Legislature of the State of Florida:

14  
 15           Section 1. Section 768.1258, Florida Statutes, is created  
 16 to read:

17           768.1258 Qualified portable consumer fuel containers.-

18           (1) As used in this section, the term:

19           (a) "Misuse" means use of a qualified portable consumer  
 20 fuel container in a manner that is inconsistent with the  
 21 specifications and standards applicable to the container;  
 22 contrary to an instruction, caution, or warning provided by the  
 23 manufacturer or seller of the container; or determined to be  
 24 improper by a federal or state agency charged with protecting  
 25 consumers or insuring the safety of consumer products. The term  
 26 includes, but is not limited to, use of a qualified portable  
 27 consumer fuel container to apply gasoline or other fuel for  
 28 purposes of igniting or accelerating a fire.

29           (b) "Qualified portable consumer fuel container" means a  
 30 portable consumer fuel container that has been tested and  
 31 certified by an independent, accredited testing agency in  
 32 compliance with the following:

33           1. Standards for portable consumer fuel containers issued  
 34 by the American Society for Testing and Materials (ASTM), as  
 35 applicable to the type of container: F852-08, F839-06, F2517-09,  
 36 F926-07, or F976-08.

37           2. Any applicable state and federal mandates or standards  
 38 set by recognized regulatory bodies.

39           (c) "Seller" means, with respect to a qualified portable  
 40 consumer fuel container, a person lawfully engaged in the  
 41 business of marketing, distributing, advertising, or selling the  
 42 container in the regular course of the person's trade or  
 43 business.

44           (2) Except as provided in subsection (3), with respect to  
 45 any claim of injury, death, or loss to person or property  
 46 arising out of, resulting from, or related to misuse of a  
 47 qualified portable consumer fuel container, the manufacturer,  
 48 seller, or supplier of such container is not liable for damages,  
 49 restitution, or declaratory, injunctive, or other relief for  
 50 such injury, death, or loss.

51           (3) The immunity from liability provided in subsection (2)  
 52 does not apply if the manufacturer, seller, or supplier of the  
 53 qualified portable consumer fuel container involved did any of  
 54 the following and it, alone or in combination with any of the  
 55 following, was the predominate proximate cause of the claim of  
 56 injury, death, or loss:

57        (a) The intentional misbranding of the qualified portable  
58 consumer fuel container involved.

59        (b) Any knowing and willful violation of state or federal  
60 law that applies to the qualified portable consumer fuel  
61 container involved.

62        (4) A party that prevails on a motion to dismiss an action  
63 under subsection (2) may recover reasonable attorney fees and  
64 costs that the party incurred in connection with the motion to  
65 dismiss.

66        Section 2. This act shall take effect July 1, 2013.



1 A bill to be entitled  
 2 An act relating to compensation for personal injury or  
 3 wrongful death arising from a medical injury; amending  
 4 s. 456.013, F.S.; requiring the Department of Health  
 5 or certain boards thereof to require the completion of  
 6 a course relating to communication of medical errors;  
 7 providing a directive to the Division of Law Revision  
 8 and Information; creating s. 766.401, F.S.; providing  
 9 a short title; creating s. 766.402, F.S.; providing  
 10 definitions; creating s. 766.403, F.S.; providing  
 11 legislative findings and intent; specifying that  
 12 certain provisions are an exclusive remedy for  
 13 personal injury or wrongful death; providing for early  
 14 offer of settlement; creating s. 766.404, F.S.;  
 15 creating the Patient Compensation System; providing  
 16 for a board; providing for membership, meetings, and  
 17 certain compensation; providing for specific staff,  
 18 offices, committees, and panels and the powers and  
 19 duties thereof; prohibiting certain conflicts of  
 20 interest; authorizing rulemaking; creating s. 766.405,  
 21 F.S.; providing a process for filing applications;  
 22 providing for notice to providers and insurers;  
 23 providing an application filing period; creating s.  
 24 766.406, F.S.; providing for disposition, support, and  
 25 review of applications; providing for a determination  
 26 of compensation upon a prima facie claim of a medical  
 27 injury having been made; providing that compensation  
 28 for an application shall be offset by any past and



29 future collateral source payments; providing for  
 30 determinations of malpractice for purposes of a  
 31 specified constitutional provision; providing for  
 32 notice of applications determined to constitute a  
 33 medical injury for purposes of professional  
 34 discipline; providing for payment of compensation  
 35 awards; creating s. 766.407, F.S.; providing for  
 36 review of awards by an administrative law judge;  
 37 creating s. 766.408, F.S.; requiring annual  
 38 contributions from specified providers to provide  
 39 administrative expenses; providing maximum  
 40 contribution rates; specifying payment dates;  
 41 providing for disciplinary proceedings for failure to  
 42 pay; providing for deposit of funds; authorizing  
 43 providers to opt out of participation; providing  
 44 requirements for such an election; creating s.  
 45 766.409, F.S.; requiring notice to patients of  
 46 provider participation in the Patient Compensation  
 47 System; creating s. 766.410, F.S.; requiring an annual  
 48 report to the Governor and Legislature; providing  
 49 retroactive application; providing severability;  
 50 providing an effective date.

51

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

53

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

56 456.013 Department; general licensing provisions.—

57 (7) The boards, or the department when there is no board,  
 58 shall require the completion of a 2-hour course relating to  
 59 prevention and communication of medical errors as part of the  
 60 licensure and renewal process. The 2-hour course shall count  
 61 towards the total number of continuing education hours required  
 62 for the profession. The course shall be approved by the board or  
 63 department, as appropriate, and shall include a study of root-  
 64 cause analysis, error reduction and prevention, ~~and~~ patient  
 65 safety, and communication of medical errors to patients and  
 66 their families. In addition, the course approved by the Board of  
 67 Medicine and the Board of Osteopathic Medicine shall include  
 68 information relating to the five most misdiagnosed conditions  
 69 during the previous biennium, as determined by the board. If the  
 70 course is being offered by a facility licensed pursuant to  
 71 chapter 395 for its employees, the board may approve up to 1  
 72 hour of the 2-hour course to be specifically related to error  
 73 reduction and prevention methods used in that facility.

74 Section 2. The Division of Law Revision and Information is  
 75 directed to designate sections 766.101 through 766.1185 of  
 76 chapter 766, Florida Statutes, as part I of that chapter,  
 77 entitled "Litigation Procedures"; sections 766.201 through  
 78 766.212 as part II of that chapter, entitled "Voluntary Binding  
 79 Arbitration"; sections 766.301 through 766.316 as part III of  
 80 that chapter, entitled "Birth-Related Neurological Injuries";  
 81 and sections 766.401 through 766.410, as created by this act, as  
 82 part IV of that chapter, entitled "Patient Compensation System."

83 Section 3. Section 766.401, Florida Statutes, is created  
 84 to read:

85 766.401 Short title.—This part may be cited as the  
 86 "Patient Injury Act."

87 Section 4. Section 766.402, Florida Statutes, is created  
 88 to read:

89 766.402 Definitions.—As used in this part, the term:

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

93 (2) "Application" means a request for investigation by the  
 94 Patient Compensation System of an alleged occurrence of a  
 95 medical injury.

96 (3) "Board" means the Patient Compensation Board as  
 97 created in s. 766.404.

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

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

104 (b) Any health, sickness, or income disability insurance;  
 105 any automobile accident insurance that provides health benefits  
 106 or income disability coverage; and any other similar insurance  
 107 benefits, except life insurance benefits available to the  
 108 applicant, whether purchased by the applicant or provided by  
 109 others.

110 (c) Any contract or agreement of any group, organization,  
 111 partnership, or corporation to provide, pay for, or reimburse  
 112 the costs of hospital, medical, dental, or other health care

113 services.

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

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

119 (6) "Compensation schedule" means a schedule of damages  
 120 for medical injuries.

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

122 (8) "Independent medical review panel" or "panel" means a  
 123 multidisciplinary panel convened by the chief medical officer to  
 124 review each application.

125 (9) (a) "Medical injury" means a personal injury or  
 126 wrongful death due to medical treatment, including a missed  
 127 diagnosis, which injury or death could have been avoided:

128 1. For care provided by an individual participating  
 129 provider, under the care of an experienced specialist provider  
 130 practicing in the same field of care under the same or similar  
 131 circumstances or, for a general practitioner provider, an  
 132 experienced general practitioner provider practicing under the  
 133 same or similar circumstances; or

134 2. For care provided by a participating provider in a  
 135 system of care, if such care is rendered within an optimal  
 136 system of care under the same or similar circumstances.

137 (b) A medical injury only includes consideration of an  
 138 alternate course of treatment if the injury or death could have  
 139 been avoided through a different but equally effective manner of  
 140 treatment for the underlying condition. In addition, a medical

141 injury only includes consideration of information that would  
 142 have been known to an experienced specialist or readily  
 143 available to an optimal system of care at the time of the  
 144 medical treatment.

145 (c) For purposes of this subsection, the term "medical  
 146 injury" does not include an injury or wrongful death caused by a  
 147 product defect in a drug or device as defined in s. 499.003.

148 (10) "Office" means, as the context requires, the Office  
 149 of Compensation, the Office of Medical Review, or the Office of  
 150 Quality Improvement.

151 (11) "Panelist" means a hospital administrator, a person  
 152 licensed under chapter 458, chapter 459, chapter 460, part I of  
 153 chapter 464, or chapter 466, or any other person involved in the  
 154 management of a health care facility deemed by the board to be  
 155 appropriate.

156 (12) "Participating provider" means a provider who, at the  
 157 time of the medical injury, had paid the contribution required  
 158 for participation in the Patient Compensation System for the  
 159 year in which the medical injury occurred.

160 (13) "Patient Compensation System" means the organization  
 161 created in s. 766.404.

162 (14) "Provider" means a birth center licensed under  
 163 chapter 383; a facility licensed under chapter 390, chapter 395,  
 164 or chapter 400; a home health agency or nurse registry licensed  
 165 under part III of chapter 400; a health care services pool  
 166 registered under part IX of chapter 400; a person licensed under  
 167 s. 401.27, chapter 457, chapter 458, chapter 459, chapter 460,  
 168 chapter 461, chapter 462, chapter 463, chapter 464, chapter 465,

169 chapter 466, chapter 467, part I, part II, part III, part IV,  
 170 part V, part X, part XIII, or part XIV of chapter 468, chapter  
 171 478, part III of chapter 483, or chapter 486; a clinical  
 172 laboratory licensed under part I of chapter 483; a multiphasic  
 173 health testing center licensed under part II of chapter 483; a  
 174 health maintenance organization certificated under part I of  
 175 chapter 641; a blood bank; a plasma center; an industrial  
 176 clinic; a renal dialysis facility; or a professional association  
 177 partnership, corporation, joint venture, or other association  
 178 pertaining to the professional activity of health care  
 179 providers.

180 Section 5. Section 766.403, Florida Statutes, is created  
 181 to read:

182 766.403 Legislative findings and intent; exclusive remedy;  
 183 early offers.—

184 (1) LEGISLATIVE FINDINGS.—The Legislature finds that:

185 (a) The lack of legal representation, and, thus,  
 186 compensation, for the vast majority of patients with legitimate  
 187 injuries is creating an access to courts crisis.

188 (b) Seeking compensation through medical malpractice  
 189 litigation is a costly and protracted process, such that legal  
 190 counsel may only afford to finance a small number of legitimate  
 191 claims.

192 (c) Even for patients who are able to obtain legal  
 193 representation, the delay in obtaining compensation averages 5  
 194 years, creating a significant hardship for patients and their  
 195 caregivers who often need access to immediate care and  
 196 compensation.

197 (d) Because of continued exposure to liability, an  
 198 overwhelming majority of physicians practice defensive medicine  
 199 by ordering unnecessary tests and procedures, increasing the  
 200 cost of health care for individuals covered by public and  
 201 private health insurance coverage and exposing patients to  
 202 unnecessary clinical risks.

203 (e) A significant percentage of physicians retire from  
 204 practice as a result of the cost and risk of medical liability  
 205 in this state.

206 (f) Recruiting physicians to practice in this state and  
 207 ensuring that current physicians continue to practice in this  
 208 state is an overwhelming public necessity.

209 (2) LEGISLATIVE INTENT.—The Legislature intends:

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

221 (b) That an application filed under this part not  
 222 constitute a claim for medical malpractice, any action on such  
 223 an application not constitute a judgment or adjudication for  
 224 medical malpractice, and, therefore, professional liability

225 carriers not be obligated to report such applications or actions  
 226 on such applications to the National Practitioner Data Bank.

227 (c) That the definition of the term "medical injury" be  
 228 construed to encompass a broader range of personal injuries as  
 229 compared to a negligence standard, such that a greater number of  
 230 applications qualify for compensation under this part as  
 231 compared to claims filed under a negligence standard.

232 (d) That, because the Patient Compensation System has the  
 233 primary duty to determine the validity and compensation of each  
 234 application, an insurer not be subject to a statutory or common  
 235 law bad faith cause of action relating to an application filed  
 236 under this part.

237 (3) EXCLUSIVE REMEDY.—Except as provided in part III, the  
 238 rights and remedies granted by this part due to a personal  
 239 injury or wrongful death exclude all other rights and remedies  
 240 of the applicant and his or her personal representative,  
 241 parents, dependents, and next of kin, at common law or as  
 242 provided in general law, against any participating provider  
 243 directly involved in providing the medical treatment resulting  
 244 in such injury or death, arising out of or related to a medical  
 245 negligence claim, whether in tort or in contract, with respect  
 246 to such injury. Notwithstanding any other law, this part applies  
 247 exclusively to applications submitted under this part. An  
 248 applicant whose injury is excluded from coverage under this part  
 249 may file a claim for recovery of damages in accordance with part  
 250 I.

251 (4) EARLY OFFER.—This part does not prohibit a self-  
 252 insured provider or an insurer from providing an early offer of



253 settlement in satisfaction of a medical injury. A person who  
 254 accepts a settlement offer may not file an application under  
 255 this part for the same medical injury. In addition, if an  
 256 application has been filed before the offer of settlement, the  
 257 acceptance of the settlement offer by the applicant shall result  
 258 in the withdrawal of the application.

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

261 766.404 Patient Compensation System; board; committees.-

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 shall be 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.

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, 2013. 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, web conference, or other electronic means.

307 (e) Compensation.—Members of the board shall serve without  
 308 compensation but may be reimbursed for per diem and travel

309 expenses for required attendance at board meetings in accordance  
 310 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  
 319 necessary to perform the functions of the Patient Compensation  
 320 System, except that the Governor shall appoint the initial  
 321 executive director.

322 4. Approving the hiring of a chief compensation officer  
 323 and 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 process, from initial filing to  
338 disposition of the application. The advocacy director shall  
339 assist each applicant in determining whether to retain an  
340 attorney, which assistance shall include an explanation of  
341 possible fee arrangements and the advantages and disadvantages  
342 of retaining an attorney. If the applicant seeks to file an  
343 application without an attorney, the advocacy director shall  
344 assist the applicant in filing the application. In addition, the  
345 advocacy director shall regularly provide status reports to the  
346 applicant regarding his or her application.

347 2. Chief compensation officer.—The chief compensation  
348 officer shall manage the Office of Compensation. The chief  
349 compensation officer shall recommend to the Compensation  
350 Committee a compensation schedule for each type of medical  
351 injury. The chief compensation officer may not be a licensed  
352 physician or an attorney.

353 3. Chief financial officer.—The chief financial officer  
354 shall be responsible for overseeing the financial operations of  
355 the Patient Compensation System, including the annual  
356 development of a budget.

357 4. Chief legal officer.—The chief legal officer shall  
358 represent the Patient Compensation System in all contested  
359 applications, oversee the operation of the Patient Compensation  
360 System to ensure compliance with established procedures, and  
361 ensure adherence to all applicable federal and state laws,  
362 rules, and regulations.

363 5. Chief medical officer.—The chief medical officer shall  
364 be a physician licensed under chapter 458 or chapter 459 and

365 shall manage the Office of Medical Review. The chief medical  
 366 officer shall recommend to the Medical Review Committee a  
 367 qualified list of multidisciplinary panelists for independent  
 368 medical review panels. In addition, the chief medical officer  
 369 shall convene independent medical review panels as necessary to  
 370 review applications.

371 6. Chief quality officer.—The chief quality officer shall  
 372 manage the Office of Quality Improvement.

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

375 (a) Office of Medical Review.—The Office of Medical Review  
 376 shall evaluate and, as necessary, investigate all applications  
 377 in accordance with this part. For the purpose of an  
 378 investigation of an application, the office shall have the power  
 379 to administer oaths, take depositions, issue subpoenas, compel  
 380 the attendance of witnesses and the production of papers,  
 381 documents, and other evidence, and obtain patient records  
 382 pursuant to the applicant's release of protected health  
 383 information.

384 (b) Office of Compensation.—The Office of Compensation  
 385 shall allocate compensation for each application in accordance  
 386 with the compensation schedule.

387 (c) Office of Quality Improvement.—The Office of Quality  
 388 Improvement shall regularly review application data to conduct  
 389 root-cause analyses and develop and disseminate best practices  
 390 based on such reviews. In addition, the office shall capture and  
 391 record safety-related data obtained during an investigation  
 392 conducted by the Office of Medical Review, including the cause

393 of, the factors contributing to, and any interventions that may  
 394 have prevented the medical injury.

395 (4) COMMITTEES.—The board shall create a Medical Review  
 396 Committee and a Compensation Committee. The board may create  
 397 additional committees as necessary to assist in the performance  
 398 of its duties and responsibilities.

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

401 1. The Medical Review Committee shall be composed of two  
 402 physicians and a board member who is not an attorney. The board  
 403 shall designate a physician committee member as chair of the  
 404 committee.

405 2. The Compensation Committee shall be composed of a  
 406 certified public accountant and two board members who are not  
 407 physicians or attorneys. The certified public accountant shall  
 408 serve as chair of the committee.

409 (b) Terms of appointment.—Members of each committee shall  
 410 serve 2-year terms concurrent with their respective terms as  
 411 board members. If a vacancy occurs on a committee, the board  
 412 shall appoint a successor to serve the unexpired portion of the  
 413 term. A committee member who is removed or resigns from the  
 414 board shall be removed from the committee.

415 (c) Chair and vice chair.—The board shall annually  
 416 designate a chair and vice chair of each committee.

417 (d) Meetings.—Each committee shall meet at least quarterly  
 418 or at the specific direction of the board. Meetings may be held  
 419 by teleconference, web conference, or other electronic means.

420 (e) Compensation.—Members of the committees shall serve

421 without compensation but may be reimbursed for per diem and  
 422 travel expenses for required attendance at committee meetings in  
 423 accordance with s. 112.061.

424 (f) Powers and duties.-

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

428 2. The Compensation Committee shall, in consultation with  
 429 the chief compensation officer, recommend to the board:

430 a. A compensation schedule, formulated such that the  
 431 aggregate cost of medical malpractice and the aggregate of  
 432 provider contributions are equal to or less than the prior  
 433 fiscal year's aggregate cost of medical malpractice. In  
 434 addition, damage payments for each injury shall be no less than  
 435 the average indemnity payment reported by the Physician Insurers  
 436 Association of America or its successor organization for similar  
 437 medical injuries with similar severity. Thereafter, the  
 438 committee shall annually review the compensation schedule and,  
 439 if necessary, recommend a revised schedule, such that a  
 440 projected increase in the upcoming fiscal year's aggregate cost  
 441 of medical malpractice, including insured and self-insured  
 442 providers, does not exceed the percentage change from the prior  
 443 year in the medical care component of the Consumer Price Index  
 444 for All Urban Consumers.

445 b. Guidelines for the payment of compensation awards  
 446 through periodic payments.

447 c. Guidelines for the apportionment of compensation among  
 448 multiple providers, which guidelines shall be based on the

449 historical apportionment among multiple providers for similar  
 450 injuries with similar severity.

451 (5) INDEPENDENT MEDICAL REVIEW PANELS.—The chief medical  
 452 officer shall convene an independent medical review panel to  
 453 evaluate each application to determine whether a medical injury  
 454 occurred. Each panel shall be composed of an odd number of at  
 455 least three panelists chosen from the list of panelists  
 456 recommended by the Medical Review Committee and approved by the  
 457 board and shall convene upon the call of the chief medical  
 458 officer. Each panelist shall be paid a stipend as determined by  
 459 the board for his or her service on the panel. In order to  
 460 expedite the review of applications, the chief medical officer  
 461 may, whenever practicable, group related applications together  
 462 for consideration by a single panel.

463 (6) CONFLICTS OF INTEREST.—A board member, panelist, or  
 464 employee of the Patient Compensation System may not engage in  
 465 any conduct that constitutes a conflict of interest. For  
 466 purposes of this subsection, the term "conflict of interest"  
 467 means a situation in which the private interest of a board  
 468 member, panelist, or employee could influence his or her  
 469 judgment in the performance of his or her duties under this  
 470 part. A board member, panelist, or employee shall immediately  
 471 disclose in writing the presence of a conflict of interest when  
 472 the board member, panelist, or employee knows or should  
 473 reasonably have known that the factual circumstances surrounding  
 474 a particular application constitute or constituted a conflict of  
 475 interest. A board member, panelist, or employee who violates  
 476 this subsection is subject to disciplinary action as determined



477 by the board. A conflict of interest includes, but is not  
 478 limited to:

479 (a) Any conduct that would lead a reasonable person having  
 480 knowledge of all of the circumstances to conclude that a board  
 481 member, panelist, or employee is biased against or in favor of  
 482 an applicant.

483 (b) Participation in any application in which the board  
 484 member, panelist, or employee, or the parent, spouse, or child  
 485 of a board member, panelist, or employee, has a financial  
 486 interest.

487 (7) RULEMAKING.—The board shall adopt rules to implement  
 488 and administer this part, including rules addressing:

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

491 (b) Disciplinary procedures for a board member, panelist,  
 492 or employee who violates the conflict of interest provisions of  
 493 this part.

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

498 (d) Payment of compensation awards through periodic  
 499 payments and the apportionment of compensation among multiple  
 500 providers, as recommended by the Compensation Committee.

501 (e) The opt-out process for providers who do not want to  
 502 participate in the Patient Compensation System.

503 Section 7. Section 766.405, Florida Statutes, is created  
 504 to read:

505           766.405 Filing of applications.-  
 506           (1) CONTENT.-In order to obtain compensation for a medical  
 507 injury, an applicant, or his or her legal representative, shall  
 508 file an application with the Patient Compensation System. The  
 509 application shall include the following:  
 510           (a) The name and address of the applicant or his or her  
 511 representative and the basis of the representation.  
 512           (b) The name and address of any participating provider who  
 513 provided medical treatment allegedly resulting in the medical  
 514 injury.  
 515           (c) A brief statement of the facts and circumstances  
 516 surrounding the medical injury that gave rise to the  
 517 application.  
 518           (d) An authorization for release to the Office of Medical  
 519 Review of all protected health information that is potentially  
 520 relevant to the application.  
 521           (e) Any other information that the applicant believes will  
 522 be beneficial to the investigatory process, including the names  
 523 of potential witnesses.  
 524           (f) Documentation of any applicable private or  
 525 governmental source of services or reimbursement relative to the  
 526 medical injury.  
 527           (2) INCOMPLETE APPLICATIONS.-If an application is not  
 528 complete, the Patient Compensation System shall, within 30 days  
 529 after the receipt of the initial application, notify the  
 530 applicant in writing of any errors or omissions. An applicant  
 531 shall have 30 days after receipt of the notice in which to  
 532 correct the errors or omissions in the initial application.

533 (3) TIME LIMITATION ON APPLICATIONS.—An application shall  
 534 be filed within the time periods specified in s. 95.11(4) for  
 535 medical malpractice actions.

536 (4) SUPPLEMENTAL INFORMATION.—After the filing of an  
 537 application, the applicant may supplement the initial  
 538 application with additional information that the applicant  
 539 believes may be beneficial in the resolution of the application.

540 (5) LEGAL COUNSEL.—This part does not prohibit an  
 541 applicant or participating provider from retaining an attorney  
 542 to represent the applicant or participating provider in the  
 543 review and resolution of an application.

544 Section 8. Section 766.406, Florida Statutes, is created  
 545 to read:

546 766.406 Disposition of applications.—

547 (1) INITIAL MEDICAL REVIEW.—Individuals with relevant  
 548 clinical expertise in the Office of Medical Review shall, within  
 549 10 days after the receipt of a completed application, determine  
 550 whether the application, prima facie, constitutes a medical  
 551 injury.

552 (a) If the Office of Medical Review determines that the  
 553 application, prima facie, constitutes a medical injury, the  
 554 office shall immediately notify, by registered or certified  
 555 mail, each participating provider named in the application and,  
 556 for participating providers that are not self-insured, the  
 557 insurer that provides coverage for the provider. The  
 558 notification shall inform the participating provider that he or  
 559 she may support the application to expedite the processing of  
 560 the application. A participating provider shall have 15 days

561 after the receipt of notification of an application to support  
 562 the application. If the participating provider supports the  
 563 application, the Office of Medical Review shall review the  
 564 application in accordance with subsection (2).

565 (b) If the Office of Medical Review determines that the  
 566 application does not, prima facie, constitute a medical injury,  
 567 the office shall send a rejection letter to the applicant by  
 568 registered or certified mail informing the applicant of his or  
 569 her right of appeal. The applicant shall have 15 days after the  
 570 receipt of the letter in which to appeal the determination of  
 571 the office pursuant to s. 766.407.

572 (2) EXPEDITED MEDICAL REVIEW.—An application that is  
 573 supported by a participating provider in accordance with  
 574 subsection (1) shall be reviewed by individuals with relevant  
 575 clinical expertise in the Office of Medical Review within 30  
 576 days after notification of the participating provider's support  
 577 of the application to determine the validity of the application.  
 578 If the Office of Medical Review finds that the application is  
 579 valid, the Office of Compensation shall determine an award of  
 580 compensation in accordance with subsection (4). If the Office of  
 581 Medical Review finds that the application is not valid, the  
 582 office shall immediately notify the applicant of the rejection  
 583 of the application and, in the case of fraud, shall immediately  
 584 notify relevant law enforcement authorities.

585 (3) FORMAL MEDICAL REVIEW.—If the Office of Medical Review  
 586 determines that the application, prima facie, constitutes a  
 587 medical injury and the participating provider does not elect to  
 588 support the application, the office shall complete a thorough

589 investigation of the application within 60 days after the  
 590 determination by the office. The investigation shall be  
 591 conducted by a multidisciplinary team with relevant clinical  
 592 expertise and shall include a thorough investigation of all  
 593 available documentation, witnesses, and other information.  
 594 Within 15 days after the completion of the investigation, the  
 595 chief medical officer shall allow the applicant and the  
 596 participating provider to access records, statements, and other  
 597 information obtained in the course of its investigation, in  
 598 accordance with relevant state and federal laws. Within 30 days  
 599 after the completion of the investigation, the chief medical  
 600 officer shall convene an independent medical review panel to  
 601 determine whether the application constitutes a medical injury.  
 602 The independent medical review panel shall have access to all  
 603 redacted information obtained by the office in the course of its  
 604 investigation of the application and shall make a written  
 605 determination within 10 days after the convening of the panel,  
 606 which written determination shall be immediately provided to the  
 607 applicant and the participating provider. The standard of review  
 608 shall be a preponderance of the evidence.

609 (a) If the independent medical review panel determines  
 610 that the application constitutes a medical injury, the Office of  
 611 Medical Review shall immediately notify the participating  
 612 provider by registered or certified mail of the right to appeal  
 613 the determination of the panel. The participating provider shall  
 614 have 15 days after the receipt of the letter in which to appeal  
 615 the determination of the panel pursuant to s. 766.407.

616 (b) If the independent medical review panel determines

617 that the application does not constitute a medical injury, the  
 618 Office of Medical Review shall immediately notify the applicant  
 619 by registered or certified mail of the right to appeal the  
 620 determination of the panel. The applicant shall have 15 days  
 621 from the receipt of the letter to appeal the determination of  
 622 the panel pursuant to s. 766.407.

623 (4) COMPENSATION REVIEW.—If an independent medical review  
 624 panel finds that an application constitutes a medical injury  
 625 under subsection (3) and all appeals of that finding have been  
 626 exhausted by the participating provider pursuant to s. 766.407,  
 627 the Office of Compensation shall, within 30 days after either  
 628 the finding of the panel or the exhaustion of all appeals of  
 629 that finding, whichever occurs later, make a written  
 630 determination of an award of compensation in accordance with the  
 631 compensation schedule and the findings of the panel. The office  
 632 shall notify the applicant and the participating provider by  
 633 registered or certified mail of the amount of compensation and  
 634 shall also explain to the applicant the process to appeal the  
 635 determination of the office. The applicant shall have 15 days  
 636 from the receipt of the letter to appeal the determination of  
 637 the office pursuant to s. 766.407.

638 (5) LIMITATION ON COMPENSATION.—Compensation for each  
 639 application shall be offset by any past and future collateral  
 640 source payments. In addition, compensation may be paid by  
 641 periodic payments as determined by the Office of Compensation in  
 642 accordance with rules adopted by the board.

643 (6) PAYMENT OF COMPENSATION.—Within 14 days after either  
 644 the acceptance of compensation by the applicant or the

645 conclusion of all appeals pursuant to s. 766.407, the  
 646 participating provider, or for a participating provider who has  
 647 insurance coverage, the insurer, shall remit the compensation  
 648 award to the Patient Compensation System, which shall  
 649 immediately provide compensation to the applicant in accordance  
 650 with the final compensation award. Beginning 45 days after the  
 651 acceptance of compensation by the applicant or the conclusion of  
 652 all appeals pursuant to s. 766.407, whichever occurs later, an  
 653 unpaid award shall begin to accrue interest at the rate of 18  
 654 percent per year.

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

661 (8) PROFESSIONAL BOARD NOTICE.—The Patient Compensation  
 662 System shall provide the department with electronic access to  
 663 applications for which a medical injury was determined to exist,  
 664 related to persons licensed under chapter 458, chapter 459,  
 665 chapter 460, part I of chapter 464, or chapter 466, where the  
 666 provider represents an imminent risk of harm to the public. The  
 667 department shall review such applications to determine whether  
 668 any of the incidents that resulted in the application  
 669 potentially involved conduct by the licensee that is subject to  
 670 disciplinary action, in which case s. 456.073 applies.

671 Section 9. Section 766.407, Florida Statutes, is created  
 672 to read:

673 766.407 Review by administrative law judge; appellate  
 674 review; extensions of time.-

675 (1) REVIEW BY ADMINISTRATIVE LAW JUDGE.-An administrative  
 676 law judge shall hear and determine appeals filed pursuant to s.  
 677 766.406 and shall exercise the full power and authority granted  
 678 to him or her in chapter 120, as necessary, to carry out the  
 679 purposes of that section. The administrative law judge shall be  
 680 limited in his or her review to determining whether the Office  
 681 of Medical Review, the independent medical review panel, or the  
 682 Office of Compensation, as appropriate, has faithfully followed  
 683 the requirements of this part and rules adopted thereunder in  
 684 reviewing applications. If the administrative law judge  
 685 determines that such requirements were not followed in reviewing  
 686 an application, he or she shall require the chief medical  
 687 officer to either reconvene the original panel or convene a new  
 688 panel, or require the Office of Compensation to redetermine the  
 689 compensation amount, in accordance with the determination of the  
 690 judge.

691 (2) APPELLATE REVIEW.-A determination by an administrative  
 692 law judge under this section regarding the award or denial of  
 693 compensation under this part shall be conclusive and binding as  
 694 to all questions of fact and shall be provided to the applicant  
 695 and the participating provider. An applicant may appeal the  
 696 award or denial of compensation to the District Court of Appeal.  
 697 Appeals shall be filed in accordance with rules of procedure  
 698 adopted by the Supreme Court for review of such orders.

699 (3) EXTENSIONS OF TIME.-Upon a written petition by either  
 700 the applicant or the participating provider, an administrative



701 law judge may grant, for good cause, an extension of any of the  
 702 time periods specified in this part.

703 Section 10. Section 766.408, Florida Statutes, is created  
 704 to read:

705 766.408 Expenses of administration; opt out.—

706 (1) The board shall annually determine a contribution that  
 707 shall be paid by each provider, unless the provider opts out of  
 708 participation in the Patient Compensation System pursuant to  
 709 subsection (6). The contribution amount shall be determined by  
 710 January 1 of each year and shall be based on the anticipated  
 711 expenses of the administration of this part for the next state  
 712 fiscal year.

713 (2) The contribution rate may not exceed the following  
 714 amounts:

715 (a) For an individual licensed under section 401.27, a  
 716 chiropractic assistant licensed under chapter 460, or an  
 717 individual licensed under chapter 461, chapter 462, chapter 463,  
 718 chapter 464 with the exception of a certified registered nurse  
 719 anesthetist, chapter 465, chapter 466, chapter 467, part I, part  
 720 II, part III, part IV, part V, part X, part XIII, or part IV of  
 721 chapter 468, chapter 478, part III of chapter 483, or chapter  
 722 486, \$100 per licensee.

723 (b) For an anesthesiology assistant or physician assistant  
 724 licensed under chapter 458 or chapter 459 or a certified  
 725 registered nurse anesthetist certified under part I of chapter  
 726 464, \$250 per licensee.

727 (c) For a physician licensed under chapter 458, chapter  
 728 459, or chapter 460, \$600 per licensee. The contribution for the

729 initial fiscal year shall be \$500 per licensee.

730 (d) For a facility licensed under part II of chapter 400,  
 731 \$100 per bed.

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

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

737 (3) The contribution determined under this section shall  
 738 be payable by each participating provider upon notice delivered  
 739 on or after July 1 of the next state fiscal year. Each  
 740 participating provider shall pay the contribution amount within  
 741 30 days after the date the notice is delivered to the provider.  
 742 If a provider fails to pay the contribution determined under  
 743 this section within 30 days after such notice, the board shall  
 744 notify the provider by certified or registered mail that the  
 745 provider's license shall be subject to revocation if the  
 746 contribution is not paid within 60 days from the date of the  
 747 original notice.

748 (4) A provider that has not opted out of participation  
 749 pursuant to subsection (6) who fails to pay the contribution  
 750 amount determined under this section within 60 days after  
 751 receipt of the original notice shall be subject to a licensure  
 752 revocation action by the department, the Agency for Health Care  
 753 Administration, or the relevant regulatory board, as applicable.

754 (5) All amounts collected under this section shall be paid  
 755 into the Patient Compensation Trust Fund established in s.  
 756 766.4105.

757       (6) A provider may elect to opt out of participation in  
 758 the Patient Compensation System. The election to opt out must  
 759 made in writing no later than 15 days before the due date of the  
 760 contribution required under this section. A provider who opts  
 761 out may subsequently elect to participate by paying the  
 762 appropriate contribution amount for the current fiscal year.

763       Section 11. Section 766.409, Florida Statutes, is created  
 764 to read:

765       766.409 Notice to patients of participation in the Patient  
 766 Compensation System.-

767       (1) Each participating provider shall provide notice to  
 768 patients that the provider is participating in the Patient  
 769 Compensation System. Such notice shall be provided on a form  
 770 furnished by the Patient Compensation System and shall include a  
 771 concise explanation of a patient's rights and benefits under the  
 772 system.

773       (2) Notice is not required to be given to a patient when  
 774 the patient has an emergency medical condition as defined in s.  
 775 395.002(8)(b) or when notice is not practicable.

776       Section 12. Section 766.410, Florida Statutes, is created  
 777 to read:

778       766.410 Annual report.-The board shall annually, by  
 779 October 1, submit to the Governor, the President of the Senate,  
 780 and the Speaker of the House of Representatives a report that  
 781 describes the filing and disposition of applications in the  
 782 preceding fiscal year. The report shall include, in the  
 783 aggregate, the number of applications, the disposition of such  
 784 applications, and the compensation awarded.

785           Section 13. This act to applies to medical incidents for  
 786 which a notice of intent to initiate litigation has not been  
 787 mailed before July 1, 2013.

788           Section 14. If any provision of this act or its  
 789 application to any person or circumstance is held invalid, the  
 790 invalidity does not affect other provisions or applications of  
 791 the act which may be given effect without the invalid provision  
 792 or application, and to this end the provisions of this act are  
 793 severable.

794           Section 15. This act shall take effect July 1, 2013.