

Bill No. CS for CS for SB 660

Amendment No.

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senator Brown-Waite moved the following amendment:		
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13	Senate Amendment (with title amendment)		
14	On page 4, line 12, through page 5, line 6, delete		
15	those lines		
16			
17	and insert:		
18	<u>(c) The Legislature finds that the state has</u>		
19	<u>traditionally provided foster care services to children who</u>		
20	<u>have been the responsibility of the state. As such, foster</u>		
21	<u>children have not had the right to recover for injuries beyond</u>		
22	<u>the limitations specified in s. 768.28. The Legislature has</u>		
23	<u>determined that foster care and related services need to be</u>		
24	<u>privatized pursuant to s. 409.1671 and that the provision of</u>		
25	<u>such services is of paramount importance to the state. The</u>		
26	<u>purpose for such privatization is to increase the level of</u>		
27	<u>safety, security and stability of children who are or become</u>		
28	<u>the responsibility of the state. One of the components</u>		
29	<u>necessary to secure a safe and stable environment for such</u>		
30	<u>children is that private providers maintain liability</u>		
31	<u>insurance. As such, insurance needs to be available and remain</u>		

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1 available to non-governmental foster care and related services
2 providers without the resources of such providers being
3 significantly reduced by the cost of maintaining such
4 insurance.

5 The Legislature further finds that, by requiring the
6 following minimum levels of insurance, children in privatized
7 foster care and related services will gain increased
8 protection and rights of recovery in the event of injury than
9 provided for in s. 768.28.

10 (d) Any eligible lead community-based provider, as
11 defined in paragraph (b), or its employees or officers, except
12 as otherwise provided in paragraph (e), must, as a part of its
13 contract, obtain a minimum of \$1,000,000 per claim/\$3 million
14 per incident in general liability insurance coverage. In any
15 tort action brought against such an eligible lead
16 community-based provider, net economic damages shall be
17 limited to \$1 million per claim, including, but not limited
18 to, past and future medical expenses, wage loss, and loss of
19 earning capacity, offset by any collateral source payment paid
20 or payable. In any tort action brought against such an
21 eligible lead community-based provider, non-economic damages
22 shall be limited to \$200,000 per claim. This paragraph does
23 not preclude the filing of a claims bill pursuant to s. 768.28
24 by the claimant for any amount exceeding the limits specified
25 in this paragraph. Any offset of collateral source payments
26 made as of the date of the settlement or judgment shall be in
27 accordance with s. 768.76. The lead community-based provider
28 shall not be liable in tort for the acts or omissions of its
29 subcontractors or the officers, agents, or employees of its
30 subcontractors.

31 (e) The liability of an eligible lead community-based

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1 provider described in this section shall be exclusive and in
2 place of all other liability of such provider. The same
3 immunities from liability enjoyed by such providers shall
4 extend as well to each employee of the provider when such
5 employee is acting in furtherance of the provider's business.
6 Such immunities shall not be applicable to a provider or an
7 employee who acts in a culpably negligent manner or with
8 willful and wanton disregard or unprovoked physical aggression
9 when such acts result in injury or death or such acts
10 proximately cause such injury or death; nor shall such
11 immunities be applicable to employees of the same provider
12 when each is operating in the furtherance of the provider's
13 business, but they are assigned primarily to unrelated works
14 within private or public employment. The same immunity
15 provisions enjoyed by a provider shall also apply to any sole
16 proprietor, partner, corporate officer or director,
17 supervisor, or other person who is in the course and scope of
18 his or her duties act in a managerial or policymaking capacity
19 and the conduct which caused the alleged injury arose within
20 the course and scope of said managerial or policymaking
21 duties. Culpable negligence is defined as reckless
22 indifference or grossly careless disregard of human life.

23 (f) Any subcontractor of an eligible lead
24 community-based provider, as defined in paragraph (b), which
25 is a direct provider of foster care and related services to
26 children and families, and its employees or officers, except
27 as otherwise provided in paragraph (e), must, as a part of its
28 contract, obtain a minimum of \$1,000,000 per claim/\$3 million
29 per incident in general liability insurance coverage. In any
30 tort action brought against such subcontractor, net economic
31 damages shall be limited to \$1 million per claim, including,

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1 but not limited to, past and future medical expenses, wage
2 loss, and loss of earning capacity, offset by any collateral
3 source payment paid or payable. In any tort action brought
4 against such subcontractor, non-economic damages shall be
5 limited to \$200,000 per claim. This paragraph does not
6 preclude the filing of a claims bill pursuant to section s.
7 768.28 by the claimant for any amount exceeding the limits
8 specified in this paragraph. Any offset of collateral source
9 payments made as of the date of the settlement or judgment
10 shall be in accordance with s. 768.76.

11 (g) The liability of a subcontractor of an eligible
12 lead community-based provider which is a direct provider of
13 foster care and related services as described in this section
14 shall be exclusive and in place of all other liability of such
15 provider. The same immunities from liability enjoyed by such
16 subcontractor provider shall extend as well to each employee
17 of the subcontractor when such employee is acting in
18 furtherance of the subcontractor's business. Such immunities
19 shall not be applicable to a subcontractor or an employee who
20 acts in a culpably negligent manner or with willful and wanton
21 disregard or unprovoked physical aggression when such acts
22 result in injury or death or such acts proximately cause such
23 injury or death; nor shall such immunities be applicable to
24 employees of the same subcontractor when each is operating in
25 the furtherance of the subcontractor's business, but they are
26 assigned primarily to unrelated works within private or public
27 employment. The same immunity provisions enjoyed by a
28 subcontractor shall also apply to any sole proprietor,
29 partner, corporate officer or director, supervisor, or other
30 person who in the course and scope of his or her duties acts
31 in a managerial or policymaking capacity and the conduct which

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1 caused the alleged injury arose within the course and scope of
2 said managerial or policymaking duties. Culpable negligence is
3 defined as reckless indifference or grossly careless disregard
4 of human life.

5 (h) The Legislature is cognizant of the increasing
6 costs of goods and services each year and recognizes that
7 fixing a set amount of compensation actually has the effect of
8 a reduction in compensation each year. Accordingly, the
9 conditional limitations on damages in this section shall be
10 increased at the rate of 5 percent each year, prorated from
11 the effective date of this paragraph to the date at which
12 damages subject to such limitations are awarded by final
13 judgment or settlement.

14 Section 2. If any provision of this act or its
15 application to any person or circumstance is held invalid, the
16 invalidity does not affect other provisions or applications of
17 the act which can be given effect without the invalid
18 provision or application, and to this end the provisions of
19 this act are declared severable.

20
21 (Redesignate subsequent sections.)

22
23
24 ===== T I T L E A M E N D M E N T =====

25 And the title is amended as follows:

26 On page 1, lines 11-20, delete those lines

27
28 and insert:

29 funds; requiring community-based providers and
30 their subcontractors to obtain certain
31 liability insurance; prescribing limits on

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1 liability; prescribing immunity of employees of
2 providers and their subcontractors; defining
3 the term "culpable negligence"; declaring
4 legislative intent with respect to inflationary
5 increases in liability amounts; providing for
6 severability; providing an effective date.
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