

By Senator Holzendorf

2-786-00

1 A bill to be entitled
2 An act relating to the Florida Birth-Related
3 Neurological Injury Compensation Association;
4 amending ss. 766.301, 766.31, F.S.; providing
5 clarification of legislative intent as to the
6 circumstances in which awards may be made,
7 respectively, under s. 766.31(1)(a), F.S., or
8 s. 766.31(1)(b), F.S.; providing retroactive
9 applicability; providing an effective date.

10

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

12

13 Section 1. Paragraph (e) is added to subsection (1) of
14 section 766.301, Florida Statutes, to read:

15 766.301 Legislative findings and intent.--

16 (1) The Legislature makes the following findings:

17 (e) In order to maintain the actuarial soundness of
18 the compensation scheme for birth-related neurological
19 injuries as established in ss. 766.301-766.315, the
20 Legislature hereby restates and clarifies its original intent
21 with respect to the distinction between the payment of actual
22 expenses for medical necessities, which is authorized in s.
23 766.31(1)(a), and the award of up to \$100,000 for the parents
24 or legal guardians of neurologically injured children, which
25 is authorized in s. 766.31(1)(b). It has always been the
26 intent of the Legislature that the term "actual expenses," as
27 used in s. 766.31(1)(a), means only out-of-pocket, monetary
28 expenditures for the professionally rendered care of a
29 neurologically injured child, as opposed to payments for the
30 time spent by a parent or other family member in providing
31 care to an eligible child, and that s. 766.31(1)(b) has been

1 and remains the exclusive source of nonreimbursement funds for
2 parents or legal guardians irrespective of the time,
3 activities, and services they devote to the care and welfare
4 of an eligible neurologically injured child.

5 Section 2. Paragraphs (a) and (b) of subsection (1) of
6 section 766.31, Florida Statutes, are amended to read:

7 766.31 Administrative law judge awards for
8 birth-related neurological injuries; notice of award.--

9 (1) Upon determining that an infant has sustained a
10 birth-related neurological injury and that obstetrical
11 services were delivered by a participating physician at the
12 birth, the administrative law judge shall make an award
13 providing compensation for the following items relative to
14 such injury:

15 (a) Actual expenses for medically necessary and
16 reasonable medical and hospital expenditures for~~habilitative~~
17 and training, nonfamilial residential, and custodial care and
18 service, for medically necessary drugs, special equipment, and
19 facilities, and for related travel. However, such expenses
20 shall not include:

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

25 2. Expenses for items or services that the infant has
26 received, or is contractually entitled to receive, from any
27 prepaid health plan, health maintenance organization, or other
28 private insuring entity.

29 3. Expenses for which the infant has received
30 reimbursement, or for which the infant is entitled to receive
31 reimbursement, under the laws of any state or the Federal

1 Government, except to the extent such exclusion may be
2 prohibited by federal law.

3 4. Expenses for which the infant has received
4 reimbursement, or for which the infant is contractually
5 entitled to receive reimbursement, pursuant to the provisions
6 of any health or sickness insurance policy or other private
7 insurance program.

8
9 Expenses included under this paragraph shall be limited to
10 reasonable charges prevailing in the same community for
11 similar treatment of injured persons when such treatment is
12 paid for by the injured person.

13 (b) Periodic payments of an award to the parents or
14 legal guardians of the infant found to have sustained a
15 birth-related neurological injury, which award shall not
16 exceed \$100,000. However, at the discretion of the
17 administrative law judge, such award may be made in a lump
18 sum. An award made under this paragraph must be the exclusive
19 source of nonreimbursement funds from the plan to the parents
20 or legal guardians of an eligible neurologically injured
21 child, and compensation may not be provided under any other
22 provision of the plan for the time, services, or activities
23 performed by parents or legal guardians.

24 Section 3. The purpose of this act is to reaffirm
25 legislative intent with respect to the term "actual expenses"
26 as used in section 766.31(1)(a), Florida Statutes, and the
27 term "awards" as used in section 766.31(1)(b), Florida
28 Statutes, in order to remedy any misimpression as to the
29 exclusive and distinct operation of these provisions. No
30 substantive law change is intended or is effected.

31

1 Section 4. This act shall take effect upon becoming a
2 law and shall apply to all claims under the Florida
3 Birth-Related Neurological Injury Compensation Plan which
4 claims date from the effective date of chapter 88-1, Laws of
5 Florida.

6
7 *****

8 SENATE SUMMARY

9 Provides a clarification of legislative intent relating
10 to certain awards arising out of birth-related
11 neurological injuries. Provides that the legislative
12 intent expressed in this act applies retroactively to the
13 effective date of ch. 88-1, Laws of Florida, which
14 created the Florida Birth-Related Neurological Injury
15 Compensation Plan.

16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31