

Bill No. CS for SB 1558, 1st Eng.

Amendment No. Barcode 504278

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Silver moved the following amendment to amendment (791604):

Senate Amendment (with title amendment)

On page 287, between lines 19 and 20,

insert:

Section 144. Effective upon this act becoming a law and applicable to claims under the Florida Birth-Related Neurological Injury Compensation Plan which date from the effective date of chapter 88-1, Laws of Florida, paragraph (e) is added to subsection (1) of section 766.301, Florida Statutes, to read:

766.301 Legislative findings and intent.--

(1) The Legislature makes the following findings:

(e) In order to maintain the actuarial soundness of the compensation scheme for birth-related neurological injuries as established in ss. 766.301-766.315, the Legislature clarifies the original intent of the Legislature with respect to the distinction between the payment of actual expenses for medical necessities, which is authorized in s.

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1 766.31(1)(a), and the award of up to \$100,000 for the parents
2 or legal guardians of a neurologically injured infant, which
3 is authorized in s. 766.31(1)(b). It has always been the
4 intent of the Legislature that the term "actual expenses," as
5 used in s. 766.31(1)(a), means only out-of-pocket, monetary
6 expenditures for the professionally rendered care of a
7 neurologically injured infant, as opposed to payments for the
8 time spent by a parent or other family member in providing
9 care to an eligible infant, and that s. 766.31(1)(b) has been
10 and remains the exclusive source of funds for parents or legal
11 guardians, irrespective of the time, activities, and services
12 they devote to the care and welfare of an eligible
13 neurologically injured infant.

14 Section 145. Effective upon this act becoming a law
15 and applicable to claims under the Florida Birth-Related
16 Neurological Injury Compensation Plan which date from the
17 effective date of chapter 88-1, Laws of Florida, paragraphs
18 (a) and (b) of subsection (1) of section 766.31, Florida
19 Statutes, are amended to read:

20 766.31 Administrative law judge awards for
21 birth-related neurological injuries; notice of award.--

22 (1) Upon determining that an infant has sustained a
23 birth-related neurological injury and that obstetrical
24 services were delivered by a participating physician at the
25 birth, the administrative law judge shall make an award
26 providing compensation for the following items relative to
27 such injury:

28 (a) Actual expenses for medically necessary and
29 reasonable medical and hospital costs for, habilitative and
30 training, nonfamilial residential, and custodial care and
31 service, for medically necessary drugs, special equipment, and

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1 facilities, and for related travel. However, such expenses
2 shall not include:

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

7 2. Expenses for items or services that the infant has
8 received, or is contractually entitled to receive, from any
9 prepaid health plan, health maintenance organization, or other
10 private insuring entity.

11 3. Expenses for which the infant has received
12 reimbursement, or for which the infant is entitled to receive
13 reimbursement, under the laws of any state or the Federal
14 Government, except to the extent such exclusion may be
15 prohibited by federal law.

16 4. Expenses for which the infant has received
17 reimbursement, or for which the infant is contractually
18 entitled to receive reimbursement, pursuant to the provisions
19 of any health or sickness insurance policy or other private
20 insurance program.

21 5. Compensation for the time, services, or activities
22 performed by the parents or legal guardians.

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24 Expenses included under this paragraph shall be limited to
25 reasonable charges prevailing in the same community for
26 similar treatment of injured persons when such treatment is
27 paid for by the injured person.

28 (b) Periodic payments of an award to the parents or
29 legal guardians of the infant found to have sustained a
30 birth-related neurological injury, which award shall not
31 exceed \$125,000~~\$100,000~~. However, at the discretion of the

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1 administrative law judge, such award may be made in a lump
2 sum. An award made under this paragraph shall be the exclusive
3 source of funds from the plan to the parents or legal
4 guardians of an eligible neurologically injured child, and
5 compensation shall not be provided under any other provision
6 of the plan for the time, services, or activities performed by
7 parents or legal guardians.

8 Section 146. The purpose of sections 144-148 of this
9 act is to clarify legislative intent with respect to the term
10 "actual expenses" as used in section 766.31(1)(a), Florida
11 Statutes, and the term "awards" as used in section
12 766.31(1)(b), Florida Statutes.

13 Section 147. Effective July 1, 2001, and applicable to
14 births occurring on or after that date, subsection (2) of
15 section 766.302, Florida Statutes, is amended to read:

16 766.302 Definitions; ss. 766.301-766.316.--As used in
17 ss. 766.301-766.316, the term:

18 (2) "Birth-related neurological injury" means injury
19 to the brain or spinal cord of a live infant weighing at least
20 2,500 grams for a single gestation or, in the case of a
21 multiple gestation, a live infant weighing at least 2,000
22 grams at birth caused by oxygen deprivation or mechanical
23 injury occurring in the course of labor, delivery, or
24 resuscitation in the immediate postdelivery period in a
25 hospital, which renders the infant permanently and
26 substantially mentally and physically impaired. This
27 definition shall apply to live births only and shall not
28 include disability or death caused by genetic or congenital
29 abnormality.

30 Section 148. Effective July 1, 2001, and applicable to
31 births occurring on or after that date, paragraph (b) of

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1 subsection (1) of section 766.31, Florida Statutes, is amended
2 to read:

3 766.31 Administrative law judge awards for
4 birth-related neurological injuries; notice of award.--

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

11 (b)1. Periodic payments of an award to the parents or
12 legal guardians of the infant found to have sustained a
13 birth-related neurological injury, which award shall not
14 exceed \$100,000. However, at the discretion of the
15 administrative law judge, such award may be made in a lump
16 sum.

17 2. Payment for funeral expenses not to exceed \$1,500.

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19 (Redesignate subsequent sections.)

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

23 And the title is amended as follows:

24 On page 300, line 20, after the semicolon

25
26 insert:

27 amending s. 766.301, F.S.; providing
28 legislative intent with respect to the payment
29 of medical expenses under the Florida
30 Birth-Related Neurological Injury Compensation
31 Plan; amending s. 766.31, F.S.; providing for

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1 compensation for certain additional services
2 and activities; increasing the limitation on an
3 award; providing for purpose; amending s.
4 766.302, F.S.; clarifying the definition of the
5 term "birth-related neurological injury";
6 amending s. 766.31, F.S.; providing for payment
7 of funeral expenses up a specified amount;
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