

Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Representative(s) Littlefield offered the following:

Amendment to Amendment (390469) (with title amendment)

On page 1, between lines 16 & 17, of the amendment

insert:

Section 1. (1) Subsection (3) is added to section 766.301, Florida Statutes, to read:

766.301 Legislative findings and intent.--

(3) In order to maintain the actuarial soundness of the compensation scheme for birth-related neurological injuries as established in ss. 766.301-766.316, the Legislature hereby clarifies its original intent with respect to the distinction between the payment of actual expenses for medical necessities, which is authorized in s. 766.31(1)(a), and the award of up to \$125,000 for the parents or legal guardians of neurologically injured infants, which is authorized in s. 766.31(1)(b). It has always been the intent of the Legislature that the term "actual expenses," as used in s. 766.31(1)(a), means only out-of-pocket, monetary expenditures for the professionally rendered care of a

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1 neurologically injured infant, as opposed to payments for the
2 time spent by a parent or other family member in providing
3 care to an eligible infant, and that s. 766.31(1)(b) has been
4 and remains the exclusive source of funds for parents or legal
5 guardians irrespective of the time, activities, and services
6 they devote to the care and welfare of an eligible
7 neurologically injured infant.

8 (2)(a) The addition of subsection (3) to section
9 766.301, Florida Statutes, by this section shall take effect
10 upon this act becoming a law and shall apply to all claims
11 under the Florida Birth-Related Neurological Injury
12 Compensation Plan which date from the effective date of
13 chapter 88-1, Laws of Florida.

14 (b) The purpose of the addition of subsection (3) to
15 section 766.301, Florida Statutes, by this section is to
16 clarify legislative intent with respect to the term "actual
17 expenses" as used in paragraph (a) of subsection (1) of
18 section 766.31, Florida Statutes, and the term "award" as used
19 in paragraph (b) of subsection (1) of section 766.31, Florida
20 Statutes.

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

23 766.31 Administrative law judge awards for
24 birth-related neurological injuries; notice of award.--

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

31 (a) Actual expenses for medically necessary and

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1 reasonable medical and hospital costs forhabilitative and
2 training, nonfamilial residential, and custodial care and
3 service, for medically necessary drugs, special equipment, and
4 facilities, and for related travel. However, such expenses
5 shall not include:

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

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

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

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

24 5. Compensation for the time, services, or activities
25 performed by the parents or legal guardians of the infant.

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

31 (b) Periodic payments of an award to the parents or

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1 legal guardians of the infant found to have sustained a
2 birth-related neurological injury, which award shall not
3 exceed ~~\$125,000~~~~\$100,000~~. However, at the discretion of the
4 administrative law judge, such award may be made in a lump
5 sum. An award made under this paragraph shall be the exclusive
6 source of funds from the plan to the parents or legal
7 guardians of an eligible neurologically injured infant, and
8 compensation shall not be provided under any other provision
9 of the plan for the time, services, or activities performed by
10 the parents or legal guardians of the infant.

11 (2)(a) The amendment of paragraphs (a) and (b) of
12 subsection (1) of section 766.31, Florida Statutes, by this
13 section shall take effect upon this act becoming a law and
14 shall apply to all claims under the Florida Birth-Related
15 Neurological Injury Compensation Plan which date from the
16 effective date of chapter 88-1, Laws of Florida.

17 (b) The purpose of the amendment of paragraphs (a) and
18 (b) of subsection (1) of section 766.31, Florida Statutes, by
19 this section is to clarify legislative intent with respect to
20 the term "actual expenses" as used in paragraph (a) of
21 subsection (1) of section 766.31, Florida Statutes, and the
22 term "award" as used in paragraph (a) of subsection (1) of
23 section 766.31, Florida Statutes.

24 Section 3. (1) Subsection (2) of section 766.302,
25 Florida Statutes, is amended to read:

26 766.302 Definitions; ss. 766.301-766.316.--As used in
27 ss. 766.301-766.316, the term:

28 (2) "Birth-related neurological injury" means injury
29 to the brain or spinal cord of a live infant weighing at least
30 2,500 grams at birth, in the case of a single gestation, or a
31 live infant weighing at least 2,000 grams at birth, in the

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1 case of a multiple gestation, caused by oxygen deprivation or
2 mechanical injury occurring in the course of labor, delivery,
3 or resuscitation in the immediate postdelivery period in a
4 hospital, which renders the infant permanently and
5 substantially mentally and physically impaired. This
6 definition shall apply to live births only and shall not
7 include disability or death caused by genetic or congenital
8 abnormality.

9 (2) The amendment of subsection (2) of section
10 766.302, Florida Statutes, by this section shall take effect
11 July 1, 2001, and shall apply to all births occurring on or
12 after that date.

13 Section 4. (1) Paragraph (b) of subsection (1) of
14 section 766.31, Florida Statutes, as amended by this act, is
15 amended to read:

16 766.31 Administrative law judge awards for
17 birth-related neurological injuries; notice of award.--

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

24 (b)1. Periodic payments of an award to the parents or
25 legal guardians of the infant found to have sustained a
26 birth-related neurological injury, which award shall not
27 exceed \$125,000. However, at the discretion of the
28 administrative law judge, such award may be made in a lump
29 sum. An award made under this paragraph shall be the exclusive
30 source of funds from the plan to the parents or legal
31 guardians of an eligible neurologically injured infant, and

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1 compensation shall not be provided under any other provision
2 of the plan for the time, services, or activities performed by
3 the parents or legal guardians of the infant.

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

5 (2) The amendment of paragraph (b) of subsection (1)
6 of section 766.31, Florida Statutes, by this section shall
7 take effect July 1, 2001, and shall apply to all births
8 occurring on or after that date.

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

12 And the title is amended as follows:

13 On page 300, line 17, of the amendment after the
14 semicolon
15 remove: all of said line

16

17 and insert in lieu thereof:

18 amending s. 766.301, F.S.; providing additional
19 and clarifying legislative intent with respect
20 to expenses and awards for birth-related
21 neurologically injured infants; providing
22 applicability and purpose; amending s. 766.31,
23 F.S.; revising requirements as to what
24 constitutes actual expenses for which
25 compensation for birth-related neurological
26 injury may be awarded; increasing the cap on
27 periodic payments; authorizing certain
28 compensation for funeral expenses; providing
29 applicability and purpose; amending s. 766.302,
30 F.S.; revising the definition of "birth-related
31 neurological injury"; providing applicability;