

Bill No. HB 1867, 1st Eng.

Amendment No. Barcode 661372

	CHAMBER ACTION	
<u>Senate</u>		<u>House</u>

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Senator Silver moved the following amendment:

Senate Amendment (with title amendment)

On page 167, between lines 14 and 15,

insert:

Section 56. 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. 766.31(1)(a), and the award of up to \$100,000 for the parents

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

13 Section 57. Effective upon this act becoming a law and
14 applicable to 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, paragraphs
17 (a) and (b) of subsection (1) of section 766.31, Florida
18 Statutes, are amended to read:

19 766.31 Administrative law judge awards for
20 birth-related neurological injuries; notice of award.--

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

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

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1 shall not include:

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

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

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

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

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

22
23 Expenses included under this paragraph shall be limited to
24 reasonable charges prevailing in the same community for
25 similar treatment of injured persons when such treatment is
26 paid for by the injured person.

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

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

7 Section 58. The purpose of sections 56-60 of this act
8 is to clarify legislative intent with respect to the term
9 "actual expenses" as used in section 766.31(1)(a), Florida
10 Statutes, and the term "awards" as used in section
11 766.31(1)(b), Florida Statutes.

12 Section 59. Effective July 1, 2001, and applicable to
13 births occurring on or after that date, subsection (2) of
14 section 766.302, Florida Statutes, is amended to read:

15 766.302 Definitions; ss. 766.301-766.316.--As used in
16 ss. 766.301-766.316, the term:

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

29 Section 60. Effective July 1, 2001, and applicable to
30 births occurring on or after that date, paragraph (b) of
31 subsection (1) of section 766.31, Florida Statutes, is amended

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1 to read:

2 766.31 Administrative law judge awards for
3 birth-related neurological injuries; notice of award.--

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

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

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

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18 (Redesignate subsequent sections.)
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21 ===== T I T L E A M E N D M E N T =====

22 And the title is amended as follows:

23 On page 3, line 23, after the semicolon

24
25 insert:

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

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