

Bill No. HB 67-E

Amendment No.      Barcode 083132

CHAMBER ACTION

Senate

House

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Senator Smith moved the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

Section 1. Subsection (2) of section 766.112, Florida Statutes, is amended to read:

766.112 Comparative fault.--

(2) In an action for damages for personal injury or wrongful death arising out of medical malpractice, whether in contract or tort, when an apportionment of damages pursuant to s. 768.81 is attributed to a the board of trustees of a state university ~~Regents~~, the court shall enter judgment against the board of trustees ~~Regents~~ on the basis of the board's ~~such party's~~ percentage of fault and not on the basis of the doctrine of joint and several liability. The sole remedy available to a claimant to collect a judgment or settlement against a board of trustees ~~damages~~, subject to the provisions of this subsection, ~~against the Board of Regents~~ shall be pursuant to s. 768.28.

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1           Section 2. Subsections (1) and (2) of section 768.28,  
2 Florida Statutes, are amended to read:

3           768.28 Waiver of sovereign immunity in tort actions;  
4 recovery limits; limitation on attorney fees; statute of  
5 limitations; exclusions; indemnification; risk management  
6 programs.--

7           (1) In accordance with s. 13, Art. X of the State  
8 Constitution, the state, for itself and for its agencies or  
9 subdivisions, hereby waives sovereign immunity for liability  
10 for torts, but only to the extent specified in this act.  
11 Actions at law against the state or any of its agencies or  
12 subdivisions to recover damages in tort for money damages  
13 against the state or its agencies or subdivisions for injury  
14 or loss of property, personal injury, or death caused by the  
15 negligent or wrongful act or omission of any employee of the  
16 agency or subdivision while acting within the scope of the  
17 employee's office or employment under circumstances in which  
18 the state or such agency or subdivision, if a private person,  
19 would be liable to the claimant, in accordance with the  
20 general laws of this state, may be prosecuted subject to the  
21 limitations specified in this act. Other than an action  
22 against a state university board of trustees, which must be  
23 brought in the county in which that university's main campus  
24 is located or in which it maintains a substantial presence for  
25 the transaction of its customary business,any such action may  
26 be brought in the county where the property in litigation is  
27 located or, if the affected agency or subdivision has an  
28 office in such county for the transaction of its customary  
29 business, where the cause of action accrued.

30           (2) As used in this act, "state agencies or  
31 subdivisions" include the executive departments, the

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1 Legislature, the judicial branch (including public defenders),  
2 and the independent establishments of the state, including  
3 state university boards of trustees; counties and  
4 municipalities; and corporations primarily acting as  
5 instrumentalities or agencies of the state, counties, or  
6 municipalities, including the Spaceport Florida Authority.

7 Section 3. Subsection (5) of section 626.852, Florida  
8 Statutes, is amended to read:

9 626.852 Scope of this part.--

10 (5) This part does not apply to any employee or agent  
11 of a state university ~~the board of trustees~~ ~~Regents~~ providing  
12 services in support of any self-insurance program created  
13 under s. 240.213 or s. 1004.24 ~~adopted by such Board of~~  
14 ~~Regents.~~

15 Section 4. The amendments to sections 766.112(2) and  
16 768.28(1) and (2) shall apply to actions filed on or after  
17 July 1, 2002.

18 Section 5. Subsections (9) and (10) are added to  
19 section 766.302, Florida Statutes, to read:

20 766.302 Definitions; ss. 766.301-766.316.--As used in  
21 ss. 766.301-766.316, the term:

22 (9) "Family member" means a father, mother, or legal  
23 guardian.

24 (10) "Family residential or custodial care" means care  
25 normally rendered by trained professional attendants which is  
26 beyond the scope of child care duties, but which is provided  
27 by family members. Family members who provide nonprofessional  
28 residential or custodial care may not be compensated under  
29 this act for care that falls within the scope of child care  
30 duties and other services normally and gratuitously provided  
31 by family members. Family residential or custodial care shall

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1 be performed only at the direction and control of a physician  
 2 when such care is medically necessary. Reasonable charges for  
 3 expenses for family residential or custodial care provided by  
 4 a family member shall be determined as follows:

5 (a) If the family member is not employed, the per-hour  
 6 value equals the federal minimum hourly wage.

7 (b) If the family member is employed and elects to  
 8 leave that employment to provide such care, the per-hour value  
 9 of that care shall equal the rates established by Medicaid for  
 10 private-duty services provided by a home health aide. A family  
 11 member or a combination of family members providing care in  
 12 accordance with this definition may not be compensated for  
 13 more than a total of 10 hours per day. Family care is in lieu  
 14 of professional residential or custodial care, and no  
 15 professional residential or custodial care may be awarded for  
 16 the period of time during the day that family care is being  
 17 provided.

18 (c) The award of family residential or custodial care  
 19 as defined in this section shall not be included in the  
 20 current estimates for purposes of s. 766.314(9)(c).

21 Section 6. Paragraph (a) of subsection (1) of section  
 22 766.31, Florida Statutes, is 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, habilitative and training,  
2 family residential or custodial care, professional  
3 residential, and custodial care and service, for medically  
4 necessary drugs, special equipment, and facilities, and for  
5 related travel. However, such expenses 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  
25 Expenses included under this paragraph shall be limited to  
26 reasonable charges prevailing in the same community for  
27 similar treatment of injured persons when such treatment is  
28 paid for by the injured person.

29 Section 7. Paragraph (c) of subsection (4) of section  
30 766.314, Florida Statutes, is amended to read:

31 766.314 Assessments; plan of operation.--

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1           (4) The following persons and entities shall pay into  
2 the association an initial assessment in accordance with the  
3 plan of operation:

4           (c) On or before December 1, 1988, each physician  
5 licensed pursuant to chapter 458 or chapter 459 who wishes to  
6 participate in the Florida Birth-Related Neurological Injury  
7 Compensation Plan and who otherwise qualifies as a  
8 participating physician under ss. 766.301-766.316 shall pay an  
9 initial assessment of \$5,000. However, if the physician is  
10 either a resident physician, assistant resident physician, or  
11 intern in an approved postgraduate training program, as  
12 defined by the Board of Medicine or the Board of Osteopathic  
13 Medicine by rule, and is supervised in accordance with program  
14 requirements established by the Accreditation Council for  
15 Graduate Medical Education by a physician who is participating  
16 in the plan, such resident physician, assistant resident  
17 physician, or intern is deemed to be a participating physician  
18 without the payment of the assessment. Participating  
19 physicians also include any employee of the Board of Regents  
20 who has paid the assessment required by this paragraph and  
21 paragraph (5)(a), and any certified nurse midwife supervised  
22 by such employee. Participating physicians include any  
23 certified nurse midwife who has paid 50 percent of the  
24 physician assessment required by this paragraph and paragraph  
25 (5)(a) and who is supervised by a participating physician who  
26 has paid the assessment required by this paragraph and  
27 paragraph (5)(a). Supervision for nurse midwives shall require  
28 that the supervising physician will be easily available and  
29 have a prearranged plan of treatment for specified patient  
30 problems which the supervised certified nurse midwife ~~or~~  
31 ~~physician~~ may carry out in the absence of any complicating

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1 features. Any physician who elects to participate in such  
 2 plan on or after January 1, 1989, who was not a participating  
 3 physician at the time of such election to participate and who  
 4 otherwise qualifies as a participating physician under ss.  
 5 766.301-766.316 shall pay an additional initial assessment  
 6 equal to the most recent assessment made pursuant to this  
 7 paragraph, paragraph (5)(a), or paragraph (7)(b).

8 Section 8. If any law that is amended by this act was  
 9 also amended by a law enacted at the 2002 Regular Session of  
 10 the Legislature, such laws shall be construed as if they had  
 11 been enacted at the same session of the Legislature, and full  
 12 effect should be given to each if that is possible.

13 Section 9. This act, except for this section and  
 14 sections 5, 6, 7, 8, and 9, which shall take effect upon  
 15 becoming a law, shall take effect January 7, 2003.

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

19 And the title is amended as follows:

20 Delete everything before the enacting clause

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22 and insert:

23 A bill to be entitled  
 24 An act relating to liability; amending s.  
 25 766.302, F.S.; defining the terms "family  
 26 member" and "family residential or custodial  
 27 care"; amending s. 766.31, F.S.; authorizing  
 28 compensation awards for professional or family  
 29 residential or custodial care; amending s.  
 30 766.314, F.S.; revising requirements for  
 31 assessments used for certain supervised

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1 personnel; amending s. 762.112, F.S.;

2 prescribing applicability of provisions

3 relating to comparative fault to boards of

4 trustees; amending s. 768.28, F.S.; providing

5 venue in actions brought against boards of

6 trustees; providing applicability of provisions

7 relating to waiver of sovereign immunity to

8 boards of trustees; amending s. 626.852, F.S.;

9 providing inapplicability of provisions

10 relating to insurance adjusters to employees

11 and agents of a board of trustees; providing

12 for construction of laws enacted at the 2002

13 Regular Session in relation to this act;

14 providing effective dates.

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