

Bill No. HB 67-E

Amendment No. ____ Barcode 404384

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. Any such action may be
22 brought in the county where the property in litigation is
23 located or, if the affected agency or subdivision has an
24 office in such county for the transaction of its customary
25 business, where the cause of action accrued. However, any such
26 action against a state university board of trustees shall be
27 brought in the county in which that university's main campus
28 is located or in the county in which the cause of action
29 accrued if the university maintains therein a substantial
30 presence for the transaction of its customary business.

31 (2) As used in this act, "state agencies or

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

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

10 626.852 Scope of this part.--

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

16 Section 4. The amendments to sections 766.112(2) and
17 768.28(1) and (2) shall apply to causes of action arising on
18 or after January 7, 2003.

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

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

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

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

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

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

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

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

22 Section 6. Paragraph (a) of subsection (1) of section
23 766.31, Florida Statutes, is amended to read:

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

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

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1 (a) Actual expenses for medically necessary and
2 reasonable medical and hospital, habilitative and training,
3 family residential or custodial care, professional
4 residential, and custodial care and service, for medically
5 necessary drugs, special equipment, and facilities, and for
6 related travel. However, such expenses shall not include:

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

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

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

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

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

30 Section 7. Paragraph (c) of subsection (4) of section
31 766.314, Florida Statutes, is amended to read:

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1 766.314 Assessments; plan of operation.--

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

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

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

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

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

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

21 And the title is amended as follows:

22 Delete everything before the enacting clause

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24 and insert:

25 A bill to be entitled
 26 An act relating to liability; amending s.
 27 762.112, F.S.; prescribing applicability of
 28 provisions relating to comparative fault to
 29 boards of trustees; amending s. 768.28, F.S.;
 30 providing venue in actions brought against
 31 boards of trustees; providing applicability of

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1 provisions relating to waiver of sovereign
2 immunity to boards of trustees; amending s.
3 626.852, F.S.; providing inapplicability of
4 provisions relating to insurance adjusters to
5 employees and agents of a board of trustees;
6 amending s. 766.302, F.S.; defining the terms
7 "family member" and "family residential or
8 custodial care"; amending s. 766.31, F.S.;

9 authorizing compensation awards for
10 professional or family residential or custodial
11 care; amending s. 766.314, F.S.; revising
12 requirements for assessments used for certain
13 supervised personnel; providing for
14 construction of laws enacted at the 2002
15 Regular Session in relation to this act;
16 providing effective dates.

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