

1 A bill to be entitled
2 An act relating to liability; amending s.
3 762.112, F.S.; prescribing applicability of
4 provisions relating to comparative fault to
5 boards of trustees; amending s. 768.28, F.S.;
6 providing venue in actions brought against
7 boards of trustees; providing applicability of
8 provisions relating to waiver of sovereign
9 immunity to boards of trustees; amending s.
10 626.852, F.S.; providing inapplicability of
11 provisions relating to insurance adjusters to
12 employees and agents of a board of trustees;
13 amending s. 766.302, F.S.; defining the terms
14 "family member" and "family residential or
15 custodial care"; amending s. 766.31, F.S.;
16 authorizing compensation awards for
17 professional or family residential or custodial
18 care; amending s. 766.314, F.S.; revising
19 requirements for assessments used for certain
20 supervised personnel; providing for
21 construction of laws enacted at the 2002
22 Regular Session in relation to this act;
23 providing effective dates.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Subsection (2) of section 766.112, Florida
28 Statutes, is amended to read:

29 766.112 Comparative fault.--

30 (2) In an action for damages for personal injury or
31 wrongful death arising out of medical malpractice, whether in

1 contract or tort, when an apportionment of damages pursuant to
2 s. 768.81 is attributed to a ~~the~~ board of trustees of a state
3 university Regents, the court shall enter judgment against the
4 board of trustees ~~Regents~~ on the basis of the board's ~~such~~
5 ~~party's~~ percentage of fault and not on the basis of the
6 doctrine of joint and several liability. The sole remedy
7 available to a claimant to collect a judgment or settlement
8 against a board of trustees ~~damages~~, subject to the provisions
9 of this subsection, ~~against the Board of Regents~~ shall be
10 pursuant to s. 768.28.

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

13 768.28 Waiver of sovereign immunity in tort actions;
14 recovery limits; limitation on attorney fees; statute of
15 limitations; exclusions; indemnification; risk management
16 programs.--

17 (1) In accordance with s. 13, Art. X of the State
18 Constitution, the state, for itself and for its agencies or
19 subdivisions, hereby waives sovereign immunity for liability
20 for torts, but only to the extent specified in this act.
21 Actions at law against the state or any of its agencies or
22 subdivisions to recover damages in tort for money damages
23 against the state or its agencies or subdivisions for injury
24 or loss of property, personal injury, or death caused by the
25 negligent or wrongful act or omission of any employee of the
26 agency or subdivision while acting within the scope of the
27 employee's office or employment under circumstances in which
28 the state or such agency or subdivision, if a private person,
29 would be liable to the claimant, in accordance with the
30 general laws of this state, may be prosecuted subject to the
31 limitations specified in this act. Any such action may be

1 brought in the county where the property in litigation is
2 located or, if the affected agency or subdivision has an
3 office in such county for the transaction of its customary
4 business, where the cause of action accrued. However, any such
5 action against a state university board of trustees shall be
6 brought in the county in which that university's main campus
7 is located or in the county in which the cause of action
8 accrued if the university maintains therein a substantial
9 presence for the transaction of its customary business.

10 (2) As used in this act, "state agencies or
11 subdivisions" include the executive departments, the
12 Legislature, the judicial branch (including public defenders),
13 and the independent establishments of the state, including
14 state university boards of trustees; counties and
15 municipalities; and corporations primarily acting as
16 instrumentalities or agencies of the state, counties, or
17 municipalities, including the Spaceport Florida Authority.

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

20 626.852 Scope of this part.--

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

26 Section 4. The amendments to sections 766.112(2) and
27 768.28(1) and (2) shall apply to causes of action arising on
28 or after January 7, 2003.

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

31

1 766.302 Definitions; ss. 766.301-766.316.--As used in
2 ss. 766.301-766.316, the term:

3 (9) "Family member" means a father, mother, or legal
4 guardian.

5 (10) "Family residential or custodial care" means care
6 normally rendered by trained professional attendants which is
7 beyond the scope of child care duties, but which is provided
8 by family members. Family members who provide nonprofessional
9 residential or custodial care may not be compensated under
10 this act for care that falls within the scope of child care
11 duties and other services normally and gratuitously provided
12 by family members. Family residential or custodial care shall
13 be performed only at the direction and control of a physician
14 when such care is medically necessary. Reasonable charges for
15 expenses for family residential or custodial care provided by
16 a family member shall be determined as follows:

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

19 (b) If the family member is employed and elects to
20 leave that employment to provide such care, the per-hour value
21 of that care shall equal the rates established by Medicaid for
22 private-duty services provided by a home health aide. A family
23 member or a combination of family members providing care in
24 accordance with this definition may not be compensated for
25 more than a total of 10 hours per day. Family care is in lieu
26 of professional residential or custodial care, and no
27 professional residential or custodial care may be awarded for
28 the period of time during the day that family care is being
29 provided.

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

4 Section 6. Paragraph (a) of subsection (1) of section
5 766.31, Florida Statutes, is amended to read:

6 766.31 Administrative law judge awards for
7 birth-related neurological injuries; notice of award.--

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

14 (a) Actual expenses for medically necessary and
15 reasonable medical and hospital, habilitative and training,
16 family residential or custodial care, professional
17 residential, and custodial care and service, for medically
18 necessary drugs, special equipment, and facilities, and for
19 related travel. However, such expenses shall not include:

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

24 2. Expenses for items or services that the infant has
25 received, or is contractually entitled to receive, from any
26 prepaid health plan, health maintenance organization, or other
27 private insuring entity.

28 3. Expenses for which the infant has received
29 reimbursement, or for which the infant is entitled to receive
30 reimbursement, under the laws of any state or the Federal
31

1 Government, except to the extent such exclusion may be
2 prohibited by federal law.

3 4. Expenses for which the infant has received
4 reimbursement, or for which the infant is contractually
5 entitled to receive reimbursement, pursuant to the provisions
6 of any health or sickness insurance policy or other private
7 insurance program.

8
9 Expenses included under this paragraph shall be limited to
10 reasonable charges prevailing in the same community for
11 similar treatment of injured persons when such treatment is
12 paid for by the injured person.

13 Section 7. Paragraph (c) of subsection (4) of section
14 766.314, Florida Statutes, is amended to read:

15 766.314 Assessments; plan of operation.--

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

19 (c) On or before December 1, 1988, each physician
20 licensed pursuant to chapter 458 or chapter 459 who wishes to
21 participate in the Florida Birth-Related Neurological Injury
22 Compensation Plan and who otherwise qualifies as a
23 participating physician under ss. 766.301-766.316 shall pay an
24 initial assessment of \$5,000. However, if the physician is
25 either a resident physician, assistant resident physician, or
26 intern in an approved postgraduate training program, as
27 defined by the Board of Medicine or the Board of Osteopathic
28 Medicine by rule, and is supervised in accordance with program
29 requirements established by the Accreditation Council for
30 Graduate Medical Education or the American Osteopathic
31 Association by a physician who is participating in the plan,

1 such resident physician, assistant resident physician, or
2 intern is deemed to be a participating physician without the
3 payment of the assessment. Participating physicians also
4 include any employee of the Board of Regents who has paid the
5 assessment required by this paragraph and paragraph (5)(a),
6 and any certified nurse midwife supervised by such employee.
7 Participating physicians include any certified nurse midwife
8 who has paid 50 percent of the physician assessment required
9 by this paragraph and paragraph (5)(a) and who is supervised
10 by a participating physician who has paid the assessment
11 required by this paragraph and paragraph (5)(a). Supervision
12 for nurse midwives shall require that the supervising
13 physician will be easily available and have a prearranged plan
14 of treatment for specified patient problems which the
15 supervised certified nurse midwife ~~or physician~~ may carry out
16 in the absence of any complicating features. Any physician
17 who elects to participate in such plan on or after January 1,
18 1989, who was not a participating physician at the time of
19 such election to participate and who otherwise qualifies as a
20 participating physician under ss. 766.301-766.316 shall pay an
21 additional initial assessment equal to the most recent
22 assessment made pursuant to this paragraph, paragraph (5)(a),
23 or paragraph (7)(b).

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

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