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

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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.

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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

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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.

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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.