

Bill No. SB 72-E

Amendment No. 2 Barcode 441306

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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The Committee on Judiciary recommended the following amendment
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Senate Amendment (with title amendment)

On page 3, between lines 21 and 22,

insert:

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

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

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

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

Bill No. SB 72-E

Amendment No. 2 Barcode 441306

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

Bill No. SB 72-E

Amendment No. 2 Barcode 441306

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.--

Bill No. SB 72-EAmendment No. 2 Barcode 441306

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

Bill No. SB 72-E

Amendment No. 2 Barcode 441306

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 provision of this act or the
 9 application thereof to any person or circumstance is held
 10 invalid, the invalidity does not affect other provisions or
 11 applications of this act which can be given effect without the
 12 invalid provision or application, and to this end the
 13 provisions of this act are declared severable.

14 Section 9. Sections 5, 6, 7 and 8 shall be effective
 15 upon becoming law.

16
 17 (Redesignate subsequent sections.)

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 19

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

21 And the title is amended as follows:

22 On page 1, lines 2 and 3, delete those lines

23

24 and insert:

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

Bill No. SB 72-E

Amendment No. 2 Barcode 441306

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assessments used for certain supervised
personnel; providing for severability; amending
s. 762.112, F.S.