

Bill No. SB 72-E

Amendment No.      Barcode 510462

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Smith moved the following **substitute for amendment** (441306):

**Senate Amendment (with title amendment)**

On page 3, lines 19-27, delete those lines

and insert:

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

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

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1 this act for care that falls within the scope of child care  
2 duties and other services normally and gratuitously provided  
3 by family members. Family residential or custodial care shall  
4 be performed only at the direction and control of a physician  
5 when such care is medically necessary. Reasonable charges for  
6 expenses for family residential or custodial care provided by  
7 a family member shall be determined as follows:

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

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

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

24 Section 6. Paragraph (a) of subsection (1) of section  
25 766.31, Florida Statutes, is amended to read:

26 766.31 Administrative law judge awards for  
27 birth-related neurological injuries; notice of award.--

28 (1) Upon determining that an infant has sustained a  
29 birth-related neurological injury and that obstetrical  
30 services were delivered by a participating physician at the  
31 birth, the administrative law judge shall make an award

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1 providing compensation for the following items relative to  
2 such injury:

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

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

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

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

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

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

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1           Section 7. Paragraph (c) of subsection (4) of section  
2 766.314, Florida Statutes, is amended to read:

3           766.314 Assessments; plan of operation.--

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

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

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

11           Section 8. If any provision of this act or the  
 12 application thereof to any person or circumstance is held  
 13 invalid, the invalidity does not affect other provisions or  
 14 applications of this act which can be given effect without the  
 15 invalid provision or application, and to this end the  
 16 provisions of this act are declared severable.

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

22           Section 10. This act, except for this section and  
 23 sections 5, 6, 7, 8, and 9, which shall take effect upon  
 24 becoming a law, shall take effect January 7, 2003.

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

28 And the title is amended as follows:

29           Delete everything before the enacting clause

30  
 31 and insert:

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A bill to be entitled  
An act relating to liability; amending s.  
766.112, F.S.; prescribing applicability of  
provisions relating to comparative fault to  
boards of trustees; amending s. 768.28, F.S.;  
providing venue in actions brought against  
boards of trustees; providing applicability of  
provisions relating to waiver of sovereign  
immunity to boards of trustees; amending s.  
626.852, F.S.; providing inapplicability of  
provisions relating to insurance adjusters to  
employees and agents of a board of trustees;  
amending s. 766.302, F.S.; defining the terms  
"family member" and "family residential or  
custodial care"; amending s. 766.31, F.S.;  
authorizing compensation awards for  
professional or family residential or custodial  
care; amending s. 766.314, F.S.; revising  
requirements for assessments used for certain  
supervised personnel; providing for  
severability; providing for construction of  
laws enacted at the 2002 Regular Session in  
relation to this act; providing an effective  
date.