

By Senators Sullivan, Williams, Horne and Cowin

22-199D-98

1 A bill to be entitled
2 An act relating to medical malpractice
3 insurance; amending s. 766.301, F.S.;
4 clarifying legislative intent; amending s.
5 766.302, F.S.; modifying definitions; amending
6 s. 766.304, F.S.; providing exclusive
7 jurisdiction of administrative law judges in
8 claims filed under ss. 766.301-766.316, F.S.;
9 providing a limitation on bringing a civil
10 action under certain circumstances; amending s.
11 766.316, F.S.; providing hospitals and
12 physicians with alternative means of providing
13 notices to obstetrical patients relating to the
14 no-fault alternative for birth-related
15 neurological injuries; prescribing conditions
16 under which notice need not be given; providing
17 an effective date.

18

19 Be It Enacted by the Legislature of the State of Florida:

20

21 Section 1. Paragraph (d) of subsection (1) of Section
22 766.301, Florida Statutes, is amended to read:

23

766.301 Legislative findings and intent.--

24

(1) The Legislature makes the following findings:

25

(d) The costs of birth-related neurological injury

26

claims are particularly high and warrant the establishment of

27

a limited system of compensation irrespective of fault. The

28

issue of whether such claims are covered by this act must be

29

determined exclusively in an administrative proceeding.

30

Section 2. Subsection (2) of section 766.302, Florida

31

Statutes, is amended to read:

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

3 (2) "Birth-related neurological injury" means injury
4 to the brain or spinal cord of a live infant weighing at least
5 1,800 ~~2,500~~ grams at birth caused by oxygen deprivation or
6 mechanical injury occurring in the course of labor, delivery,
7 or resuscitation in the immediate postdelivery period in a
8 hospital, which renders the infant permanently and
9 substantially mentally and physically impaired. This
10 definition shall apply to live births only and shall not
11 include disability or death caused by genetic or congenital
12 abnormality.

13 Section 3. Section 766.304, Florida Statutes, is
14 amended to read:

15 766.304 Administrative law judge to determine
16 claims.--The administrative law judge shall hear and determine
17 all claims filed pursuant to ss. 766.301-766.316 and shall
18 exercise the full power and authority granted to her or him in
19 chapter 120, as necessary, to carry out the purposes of such
20 sections. The administrative law judge has exclusive
21 jurisdiction to determine whether a claim filed under this act
22 is compensable. No civil action may be brought until the
23 determinations under s. 766.309 have been made by the
24 administrative law judge. If the administrative law judge
25 determines that the claimant is entitled to compensation from
26 the association, no civil action may be brought or continued
27 in violation of the exclusiveness of remedy provisions of s.
28 766.303. An action may not be brought under ss.
29 766.301-766.316 if the claimant recovers or final judgment is
30 entered.The division may adopt rules to promote the efficient
31

1 administration of, and to minimize the cost associated with,
2 the prosecution of claims.

3 Section 4. Section 766.316, Florida Statutes, is
4 amended to read:

5 766.316 Notice to obstetrical patients of
6 participation in the plan.--Each hospital with a participating
7 physician on its staff and each participating physician, other
8 than residents, assistant residents, and interns deemed to be
9 participating physicians under s. 766.314(4)(c), under the
10 Florida Birth-Related Neurological Injury Compensation Plan
11 shall provide notice to the obstetrical patients any time
12 prior to delivery thereof as to the limited no-fault
13 alternative for birth-related neurological injuries. Such
14 notice shall be provided on forms furnished by the association
15 and shall include a clear and concise explanation of a
16 patient's rights and limitations under the plan. The hospital
17 or the participating physician may elect to give the patient
18 the association's notice form and to have the patient sign a
19 form acknowledging receipt of the notice form. Signature of
20 the patient acknowledging receipt of the notice form is proof
21 that the notice requirements of this section have been
22 satisfied. Notice need not be given to a patient when the
23 patient has an emergency medical condition as defined in s.
24 395.002(8)(b) or when providing the notice is not practicable.

25 Section 5. This act shall take effect July 1, 1998.

26
27
28
29
30
31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

SENATE SUMMARY

Amends statutes relating to medical malpractice insurance. Clarifies legislative intent related to exclusive remedy. Redefines birth-related neurological injury. Provides that an administrative law judge has exclusive jurisdiction to determine if a claim for compensation under the Florida Birth-Related Neurological Injury Compensation Plan is justified. Provides hospitals and physicians with alternative means of providing notice to obstetrical patients relating to no-fault alternatives to birth-related neurological injuries. Notice is not required if the patient has an emergency condition or if providing the notice is not practicable.