

001768996

HOUSE BILL NO. 398**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee for Courts of Justice
on January 27, 2000)

(Patron Prior to Substitute—Delegate Woodrum)

A BILL to amend and reenact § 8.01-273.1 of the Code of Virginia, relating to the Virginia Birth-Related Neurological Injury Compensation Act; referral to Workers' Compensation Commission.

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-273.1 of the Code of Virginia is amended and reenacted as follows:

§ 8.01-273.1. Motion for judgment; motion to refer; Virginia Birth-Related Neurological Injury Compensation Act.

A. In any civil action, where a party, who is a participating hospital or physician as defined in § 38.2-5001, moves to refer a cause of action to the Workers' Compensation Commission for the purposes of determining whether the cause of action satisfies the requirements of the Virginia Birth-Related Neurological Injury Compensation Act (§ 38.2-5000 et seq.), the court shall forward the motion to refer together with a copy of the motion for judgment to the Commission and stay all proceedings on the cause of action pending an award and notification by the Commission of its disposition; *provided, however, that the motion to refer the cause of action to the Workers' Compensation Commission shall be filed no later than 120 days after the date of filing a grounds of defense by the party seeking the referral.*

B. *Upon entry of the order of referral by the court, the clerk of the circuit court shall file with the Workers' Compensation Commission within thirty days a copy of the motion for judgment and the responsive pleadings of all the parties to the action. The clerk shall copy all counsel of record in the civil action on the transmittal letter accompanying the materials being filed with the Workers' Compensation Commission. All parties to the civil action shall be entitled to participate before the Commission upon filing a notice of appearance with the Clerk of the Commission within twenty-one days after receipt of the transmittal letter to the clerk of the circuit court. Notwithstanding the provisions of § 32.1-127.1:03, the moving party shall provide the Commission with an original and five copies of the following: appropriate assessments, evaluations, and prognoses and such other records obtained during discovery and are reasonably necessary for the determination of whether the infant has suffered a birth-related neurological injury. The medical records and the pleadings referenced in this subsection shall constitute a petition as referenced in § 38.2-5004. The moving party shall be reimbursed for all copying costs upon entry of an award of benefits as referenced in § 38.2-5009.*