

970565176

HOUSE BILL NO. 2014

Offered January 13, 1997

A *BILL to amend and reenact § 38.2-5002 of the Code of Virginia, relating to the Virginia Birth-Related Neurological Injury Compensation Act; certain civil actions permitted.*

Patron—Cranwell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-5002 of the Code of Virginia is amended and reenacted as follows:

§ 38.2-5002. Virginia Birth-Related Neurological Injury Compensation Program; exclusive remedy; exception.

A. There is hereby established the Virginia Birth-Related Neurological Injury Compensation Program.

B. Except as provided in subsection D hereafter, the rights and remedies herein granted to an infant on account of a birth-related neurological injury shall exclude all other rights and remedies of such infant, his personal representative, parents, dependents or next of kin, at common law or otherwise arising out of or related to a medical malpractice claim with respect to such injury.

C. Notwithstanding anything to the contrary in this section or in the provisions of § 8.01-243.1, a civil action shall not be foreclosed against a ~~any~~ physician or a hospital where there is clear and convincing evidence that such physician or hospital intentionally or willfully caused or intended to cause a birth-related neurological injury, provided that such suit is filed prior to and in lieu of payment of an award under this chapter. Such suit shall be filed before the award of the Commission becomes conclusive and binding as provided for in ~~§ 38.2-5011~~ if the same is brought by an infant, his personal representative, parents, dependents, or next of kin within five years following the determination of such infant's claim pursuant to this chapter and the conclusion of any rehearing or appeals therefrom.

D. Notwithstanding anything to the contrary in this section, If a civil action arising out of or related to a birth-related neurological injury under this chapter, is brought by an infant, his personal representative, parents, dependents, or next of kin, shall not be foreclosed against a nonparticipating physician or hospital, provided that (i) no participating physician or hospital shall be made a party to any such action or related action, and (ii) the commencement of any such action, regardless of its outcome, shall constitute an election of remedies, to the exclusion of any claim under this chapter; provided that and if a claim related to such injury is made, and accepted, and benefits are provided by the Fund established under this Virginia Birth-Related Neurological Injury Compensation Program, the Fund shall have the right, and be subrogated, to all of the common law rights, based on negligence or malpractice, which the said infant, his personal representative, parents, dependents or next of kin may have or may have had against the non-participating physician or hospital, as the case may be any person.

INTRODUCED

HB2014