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SENATE BILL NO. 632

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on March 6, 2006)

(Patron Prior to Substitute—Senator Edwards)

A BILL to amend and reenact §§ 38.2-5010 and 38.2-5013 of the Code of Virginia and to provide for review of certain birth-related neurological injury cases, relating to neurological birth-related injuries.

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-5010 and 38.2-5013 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-5010. Rehearing on Commission determination or award.

A. If an application for review is made to the Commission within twenty days from the date of a determination pursuant to subdivisions A 1 through A 3 of § 38.2-5008, or within twenty days from the date of an award by the Commission pursuant to § 38.2-5009, the full Commission, excluding any member of the Commission who made the determination or award, if the first hearing was not held before the full Commission, shall review the evidence. If deemed advisable and as soon as practicable, the Commission instead may hear the parties, their representatives and witnesses and shall make a determination or award, as appropriate. Such review or determination, together with a statement of the findings of fact, rulings of law and other matters pertinent to the questions at issue, shall be filed with the record of the proceedings and shall be sent immediately to the parties.

B. The legal representative of a child who was born between January 1, 1988, and July 1, 1990, may file an application for review by July 1, 2000, upon meeting the following conditions: (i) a claim was timely filed for such child and was dismissed; upon an application for review, on the basis of a determination pursuant to subdivision A 1 of § 38.2-5008 that, although the child's injuries were caused by deprivation of oxygen or mechanical injury occurring in the course of labor, delivery or resuscitation in the immediate postdelivery period in a hospital, such injuries had not rendered the child permanently nonambulatory, aphasic, incontinent, and in need of assistance in all phases of daily living as required by the definition of "birth-related neurological injury" as such definition was in effect prior to July 1, 1990, and (ii) the panel required by subsection B of § 38.2-5008 had reported to the Commission in the hearing held pursuant to the dismissed claim that such injuries did meet the definition as effective on July 1, 1990, i.e., that the injuries had rendered the child permanently motorically disabled and developmentally disabled or, if the child is sufficiently developed to be cognitively evaluated, cognitively disabled, and permanently in need of assistance in all activities of daily living. Such application for review may be filed regardless of whether or not the legal representative has filed for review of the dismissed claim by the Commission. Such review shall only be filed for live births and shall not be filed for claims dismissed as caused by genetic or congenital abnormalities, degenerative neurological diseases, or maternal substance abuse.

The full Commission shall review the evidence and make a determination on the petition as though the definition in effect on July 1, 1990, had been in effect on the date of the child's birth and no previous review or dismissal had occurred.

§ 38.2-5013. Limitation on claims.

Any claim under this chapter that is filed more than ten years after the birth of an infant alleged to have a birth-related neurological injury is barred; however an application for review filed in accordance with the provisions of § 38.2-5010 B may be filed by July 1, 2000, for a child whose birth occurred more than ten years prior to such application, if the dismissed claim upon which the application is filed was filed before the child's tenth birthday.

2. § 1. Review of certain neurological birth-related injury cases.

Notwithstanding any other provision of law, the legal representative of a child who was born between January 1, 1988, and July 1, 1990, may file an application for review by July 1, 2007, upon meeting the following conditions: (i) a claim was timely filed for such child and was dismissed, upon an application for review, on the basis of a determination pursuant to subdivision A 1 of § 38.2-5008 that the child's injuries were not caused by deprivation of oxygen or mechanical injury occurring in the course of labor, delivery or resuscitation in the immediate postdelivery period in a hospital as required by the definition of "birth-related neurological injury", and (ii) the panel required by subsection B of § 38.2-5008 had reported to the Commission in the hearing held pursuant to the dismissed claim that such injuries did not meet the definition of birth-related neurological injury. Such application for review may be filed regardless of whether or not the legal representative has filed for review of the dismissed claim by the Commission. Such review shall only be filed for live births and shall not be filed for claims dismissed as caused by genetic or congenital abnormalities, degenerative neurological diseases, or

60 *maternal substance abuse.*

61 The full Commission shall review the evidence and make a determination on the petition as though

62 no previous review or dismissal had occurred.