

By Senator Montford

3-00022-13

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1 A bill to be entitled

2 An act for the relief of Yvonne Morton; providing an
3 appropriation to compensate her for injuries and
4 damages sustained as a result of the negligence of an
5 employee of the Department of Health; providing a
6 limitation on the payment of fees and costs; providing
7 an effective date.

8
9 WHEREAS, on January 2, 2007, Yvonne Morton was driving her
10 automobile on Pinellas Avenue South in Tarpon Springs, Pinellas
11 County, when she was struck by William Herbert, a pharmacy
12 inspector for the Division of Medical Quality Assurance in the
13 Department of Health. Mr. Herbert was driving an automobile
14 owned by the Department of Health in the course and scope of his
15 employment, and

16 WHEREAS, Mr. Herbert failed to yield at a stop sign and
17 pulled out in front of Ms. Morton's vehicle, causing a
18 substantial collision. Mr. Herbert was issued a traffic citation
19 for failure to yield at a stop sign and violating Ms. Morton's
20 right of way, and

21 WHEREAS, Ms. Morton was transported by air to the Bayfront
22 Medical Center in St. Petersburg and remained a patient at
23 Bayfront until January 31, 2007. Ms. Morton, who was 85 years
24 old at the time of the collision, was determined to have
25 sustained multiple injuries, including multiple fractured ribs,
26 a scalp hematoma, and neck injuries later diagnosed as central
27 cord syndrome. During her hospital stay, her neurosurgeon, David
28 M. McKalip, M.D., performed surgery on her neck. During the
29 surgical procedure, described as a C5-C6 lateral mass

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30 instrumentation and fusion, metal hardware, including screws,
31 rods, and a crosslink, were implanted, and

32 WHEREAS, upon discharge, Ms. Morton was transported by
33 ambulance to Manor Care of Palm Harbor, a nursing facility in
34 Palm Harbor. Ms. Morton resided at Manor Care until February 6,
35 2007, when she was transported by ambulance to Mease Countryside
36 Hospital for dyspnea with the suspected cause being a pulmonary
37 embolus due to lengthy bed rest. She remained at Mease until
38 February 17, 2007, when she was discharged to a new nursing
39 facility, Orchard Ridge Rehabilitation in New Port Richey, for
40 continued rehabilitation of her injuries, and

41 WHEREAS, Ms. Morton resided at Orchard Ridge until August
42 9, 2007, when she was transported to La Casa Grande, an assisted
43 living facility also located in New Port Richey, where she
44 continues to reside. Her average monthly living expenses at the
45 facility are currently \$3,531.60, and

46 WHEREAS, before the accident, Ms. Morton was independent
47 and self-sufficient, living on her own in her own home, driving
48 her own car, and exercising regularly. Since the accident, she
49 has been confined to hospitals, nursing homes, and, now, an
50 assisted living facility. The injuries she sustained have caused
51 her to depend on others for the performance of most of the
52 activities of daily living, and have caused such difficulty and
53 inability to ambulate that she now is confined to a wheelchair,
54 and

55 WHEREAS, Ms. Morton's total medical expenses incurred as a
56 result of the accident, including hospitalizations, physician
57 services, surgical services, diagnostic imaging studies, air and
58 ambulance transportation, nursing home residency fees, and

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59 assisted living facility fees, through July 31, 2009, amount to
60 approximately \$570,000, and

61 WHEREAS, Ms. Morton's personal automobile insurer, State
62 Farm Mutual Automobile Insurance Company, has paid \$10,000
63 toward her medical bills in personal injury protection benefits
64 and \$100,000 in uninsured/underinsured motorist benefits.
65 Humana, the American Association of Retired Persons, and
66 Medicare have also paid portions of her bills and these
67 organizations retain subrogation interests on any recovery made
68 by Ms. Morton, and

69 WHEREAS, a lawsuit was filed by the law firm of Lucas,
70 Green, and Magazine on behalf of Ms. Morton in the Circuit Court
71 of Pinellas County, Case No. 07-9114-C-13, against the State of
72 Florida, Department of Health. In that lawsuit, the department
73 admitted liability and took the position that its employee,
74 William Hebert, was solely at fault for the accident. The
75 parties entered into a settlement under which the department
76 will pay its statutory limit of liability of \$100,000 pursuant
77 to s. 768.28, Florida Statutes, and agreed not to contest or
78 oppose any claim bill on behalf of Ms. Morton if the claim bill
79 did not seek compensation in excess of an additional \$650,000,
80 NOW, THEREFORE,

81

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

83

84 Section 1. The facts stated in the preamble to this act are
85 found and declared to be true.

86 Section 2. The sum of \$650,000 is appropriated from the
87 General Revenue Fund to the Department of Health for the relief

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88 of Yvonne Morton for injuries and damages sustained as a result
89 of the negligence of an employee of the Department of Health.

90 Section 3. The Chief Financial Officer is directed to draw
91 a warrant in favor of Yvonne Morton in the sum of \$650,000 upon
92 funds of the Department of Health in the State Treasury, and to
93 pay that amount out of such funds.

94 Section 4. The amount paid by the Department of Health
95 pursuant to s. 768.28, Florida Statutes, and the amount awarded
96 under this act are intended to provide the sole compensation for
97 all present and future claims arising out of the factual
98 situation described in this act which resulted in the injuries
99 and damages to Yvonne Morton. The total amount paid for attorney
100 fees, lobbying fees, and related costs may not exceed 15 percent
101 of the amount awarded under this act, absent a waiver of this
102 fee limitation executed by the claimant, and in such event, the
103 fee may not exceed 25 percent of the total amount awarded under
104 this act.

105 Section 5. This act shall take effect upon becoming a law.