

By Senator Montford

3-00106-14

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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, and

14 WHEREAS, Mr. Herbert was driving an automobile owned by the
15 Department of Health in the course and scope of his employment,
16 and

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

22 WHEREAS, Ms. Morton was transported by air to Bayfront
23 Medical Center in St. Petersburg and remained a patient at
24 Bayfront until January 31, 2007, and

25 WHEREAS, Ms. Morton, who was 85 years old at the time of
26 the collision, was determined to have sustained multiple
27 injuries, including multiple fractured ribs, a scalp hematoma,
28 and neck injuries later diagnosed as central cord syndrome, and

29 WHEREAS, during her hospital stay, Ms. Morton's

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30 neurosurgeon, David M. McKalip, M.D., performed surgery on her
31 neck and, during the surgical procedure, described as a C5-C6
32 lateral mass instrumentation and fusion, metal hardware,
33 including screws, rods, and a crosslink, were implanted, and

34 WHEREAS, upon discharge, Ms. Morton was transported by
35 ambulance to Manor Care of Palm Harbor, a nursing facility,
36 where she resided until February 6, 2007, at which time she was
37 transported by ambulance to Mease Countryside Hospital for
38 dyspnea with the suspected cause being a pulmonary embolus due
39 to lengthy bed rest, and

40 WHEREAS, Ms. Morton remained at Mease until February 17,
41 2007, when she was discharged to a new nursing facility, Orchard
42 Ridge Rehabilitation in New Port Richey, for continued
43 rehabilitation of her injuries, and

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

49 WHEREAS, before the accident, Ms. Morton was independent
50 and self-sufficient, living on her own in her own home, driving
51 her own car, and exercising regularly, and since the accident,
52 has been confined to hospitals, nursing homes, and, now, an
53 assisted living facility, and

54 WHEREAS, the injuries sustained by Ms. Morton have caused
55 her to depend on others for the performance of most of the
56 activities of daily living, and have caused such difficulty and
57 inability to ambulate that she now is confined to a wheelchair,
58 and

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59 WHEREAS, as of July 31, 2009, Ms. Morton's total medical
60 expenses incurred as a result of the accident, including
61 hospitalizations, physician services, surgical services,
62 diagnostic imaging studies, air and ambulance transportation,
63 nursing home residency fees, and assisted living facility fees,
64 totaled approximately \$570,000, and

65 WHEREAS, Ms. Morton's personal automobile insurer, State
66 Farm Mutual Automobile Insurance Company, paid \$10,000 toward
67 her medical bills through personal injury protection benefits
68 and \$100,000 in uninsured/underinsured motorist benefits, and

69 WHEREAS, Humana, the American Association of Retired
70 Persons, and Medicare have also paid portions of Ms. Morton's
71 bills and these organizations retain subrogation interests on
72 any recovery made by Ms. Morton, and

73 WHEREAS, a lawsuit was filed on behalf of Yvonne Morton by
74 the law firm of Lucas, Green, and Magazine in the Circuit Court
75 of Pinellas County, Case No. 07-9114-C-13, against the State of
76 Florida, Department of Health, and

77 WHEREAS, in that lawsuit, the department admitted
78 liability, taking the position that its employee, William
79 Hebert, was solely at fault for the accident, and the parties
80 entered into a settlement under which the department agreed to
81 pay its statutory limit of liability of \$100,000 pursuant to s.
82 768.28, Florida Statutes, and agreed not to contest or oppose
83 any claim bill filed on behalf of Yvonne Morton so long as it
84 did not seek compensation in excess of an additional \$650,000,
85 NOW, THEREFORE,

86
87 Be It Enacted by the Legislature of the State of Florida:

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

91 Section 2. The sum of \$650,000 is appropriated from the
92 General Revenue Fund to the Department of Health for the relief
93 of Yvonne Morton for injuries and damages sustained as a result
94 of the negligence of an employee of the Department of Health.

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

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

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