

## CHAPTER 2010-237

### Committee Substitute for Senate Bill No. 46

An act for the relief of Edwidge Valmyr Gabriel, as parent and natural guardian of her son, Stanley Valmyr, a minor, and as personal representative of the Estate of Stanley Valmyr, deceased, by the City of North Miami; providing for an appropriation to compensate her for the wrongful death of her son, Stanley Valmyr, as a result of the negligence of the City of North Miami; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on March 28, 2007, Edwidge Valmyr Gabriel registered her son, Stanley Valmyr, who was 7 years of age, for a Fun Day camp operated by the City of North Miami, and

WHEREAS, the Fun Day camp was supposed to consist of various arts and crafts activities at the community center, and

WHEREAS, before March 30, 2007, which was the day on which the Fun Day was scheduled, the City of North Miami planned a day at the Thomas Sasso Pool located in the City of North Miami, and

WHEREAS, on March 30, 2007, at approximately 8 a.m., Edwidge Valmyr Gabriel took Stanley to the camp, and

WHEREAS, the children who were taken to the pool were given swim tests, and

WHEREAS, Stanley and many other children who were unable to swim were sent to a more shallow area of the pool, and

WHEREAS, if the camp counselors had known that they were bringing the children to the pool that day, they would have been in the pool to observe and protect the children, and

WHEREAS, the City of North Miami had four lifeguards on duty that day at the Thomas Sasso Pool, and

WHEREAS, while the children swam in the pool, three of those four lifeguards were in the administrative office, rather than observing the children, and

WHEREAS, one lifeguard was sitting in the lifeguard chair furthest from the area where the children were swimming, and

WHEREAS, Stanley Valmyr drowned in the Thomas Sasso Pool on March 30, 2007, and died on July 26, 2007, as a result of injuries sustained from drowning, and

WHEREAS, the City of North Miami was negligent in its actions, which directly resulted in the death of Stanley Valmyr, and

WHEREAS, a tort claim was filed on behalf of Edwidge Valmyr Gabriel, as parent and natural guardian of her son, Stanley Valmyr, a minor, and as personal representative of his estate, case number 08-22810(13), in the Circuit Court for the Eleventh Judicial Circuit, and

WHEREAS, the claim against the City of North Miami was settled prior to trial, and

WHEREAS, the City of North Miami has agreed to pay \$200,000 to Edwidge Valmyr Gabriel, pursuant to the statutory limits of liability set forth in s. 768.28, Florida Statutes, and

WHEREAS, the settlement agreement provides for the entry of a consent judgment in the amount of \$750,000 to be paid in eight equal payments beginning on the first anniversary of the passage of this claims bill, and each year thereafter, and

WHEREAS, the City of North Miami has agreed to pay 50 percent of the negotiated medical lien asserted by Jackson Memorial Hospital, up to \$40,000, and

WHEREAS, the amount of the medical lien asserted by Medicare is resolved, and

WHEREAS, the total amount of the medical lien is \$134,007.61, and

WHEREAS, Medicare has agreed to installments until the lien is satisfied, and

WHEREAS, the prior attorneys for Edwidge Valmyr Gabriel asserted a charging lien, the charging liens has been satisfied, and the total amount of attorney's fees to be paid by Edwidge Valmyr Gabriel will not exceed 25 percent of the recovery, and

WHEREAS, pursuant to the settlement, the City of North Miami agrees that the passage of this act is appropriate and agrees to pay in accordance with this act, NOW, THEREFORE,

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

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

Section 2. The City of North Miami is authorized and directed to appropriate from funds of the city not otherwise appropriated and draw a warrant payable to Edwidge Valmyr Gabriel, as natural parent and guardian of her son, Stanley Valmyr, a minor, and personal representative of his estate, in the sum of \$750,000 to be paid in eight equal payments of \$93,750,

beginning on the first anniversary of the passage of this claim bill and each year thereafter, plus an additional \$4,185.50 to be included in the first warrant as payment for 50 percent of the negotiated medical lien asserted by Jackson Memorial Hospital, as compensation for the death of Stanley Valmyr due to the negligence of the City of North Miami.

Section 3. The amount paid by the City of North Miami pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in the death of Stanley Valmyr. The total amount paid for attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the amount awarded under this act.

Section 4. This act shall take effect upon becoming a law.

Approved by the Governor May 26, 2010.

Filed in Office Secretary of State May 26, 2010.