

CHAPTER 2015-220

Committee Substitute for House Bill No. 3519

An act for the relief of Joseph Stewart and Audrey Stewart on behalf of their son, Aubrey Stewart, by the City of Jacksonville; providing for an appropriation to compensate Aubrey Stewart for injuries and damages sustained as a result of the negligence of the City of Jacksonville; providing a limitation on the payment of fees and costs; providing for repayment of Medicaid liens; providing an effective date.

WHEREAS, on June 27, 2011, Aubrey Stewart, who was 15 years of age, briefly left his home at 1512 Dyal Street in Jacksonville, and

WHEREAS, the tree across the street from Aubrey Stewart's home, where he lives with his parents, Joseph and Audrey Stewart, was owned by the City of Jacksonville, and

WHEREAS, a large tree limb, extending across Dyal Street, fell from the tree and crushed Aubrey Stewart, resulting in life-threatening injuries and leaving him paralyzed, and

WHEREAS, the City of Jacksonville had received four complaints about the dangerous condition of the tree before the tree limb crushed Aubrey Stewart, yet failed to act, and

WHEREAS, the City of Jacksonville's records confirm that 9 months before the accident, on September 7, 2010, the Stewarts' neighbor complained to the city about several trees along Dyal Street which needed to be trimmed due to falling tree limbs, and

WHEREAS, the City of Jacksonville's records confirm that a few days later, Joseph Stewart also filed a complaint with the city about two trees in dangerous condition on Dyal Street, and

WHEREAS, the City of Jacksonville's records confirm that the city received an additional complaint on January 6, 2011, about a falling tree limb that struck a car, and the city's Risk Management Division investigated the claim and subsequently paid for the damage to the car, but failed to address the dangerous trees, and

WHEREAS, the City of Jacksonville's records confirm that on May 13, 2011, a neighbor called the city and reported that one of the trees that was the subject of previous complaints had fallen in the road and was blocking traffic, and the city responded by removing only the fallen debris, failing to remedy the continued and known dangerous condition, and

WHEREAS, despite these four complaints, the City of Jacksonville took no action to address the dangerous tree on Dyal Street until almost a month

after a limb from that tree crushed and critically injured Aubrey Stewart, and

WHEREAS, as a result of the foregoing incident, Aubrey Stewart sustained multiple injuries, including, but not limited to, multiple spinal fractures with a complete spinal cord injury, an open pelvic fracture wound, a complex anal laceration, a left lateral buttocks wound, a large perineal wound, and multiple abscesses, and

WHEREAS, Aubrey Stewart spent 5 months in the Shands' Pediatric Intensive Care Unit, where he underwent approximately a dozen surgeries to stabilize his condition, and spent an additional month at Brooks Rehabilitation, and

WHEREAS, Aubrey Stewart is now paralyzed and confined to a wheelchair, depends on others for many daily life activities, and must wear diapers and use a catheter and colostomy bag, and

WHEREAS, the City of Jacksonville recognizes the potential for a sizeable jury verdict in favor of Aubrey Stewart, given the liability and damages stemming from the city's negligence, and

WHEREAS, during court-ordered mediation on May 8, 2013, the City of Jacksonville agreed to pay \$200,000 under the statutory limits of liability set forth in s. 768.28, Florida Statutes, within 60 days and then \$3.3 million, to be paid in installments in order to minimize any potential financial impact on the city, and

WHEREAS, the negotiated settlement agreement was designed with the claim bill process specifically in mind, is in the best interest of all parties involved, and was passed unanimously by the Jacksonville City Council on July 23, 2013, and

WHEREAS, the City of Jacksonville fully supports the passage of this claim bill, 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 Jacksonville is authorized and directed to appropriate from funds of the city not otherwise appropriated and to draw a warrant in the sum of \$1.2 million, less the amount paid for repayment of Medicaid liens, payable to the Aubrey Javaris Stewart Special Needs Trust, by the first November 1 after the passage of this act as compensation for injuries and damages sustained as a result of the negligence of the City of Jacksonville. In addition, the City of Jacksonville is further authorized and directed to appropriate from funds of the city not otherwise appropriated and to draw a warrant in the sum of \$1 million payable to the Aubrey Javaris

Stewart Special Needs Trust, 1 year from the first payment; the sum of \$600,000, 1 year from the second payment; and the sum of \$500,000, 1 year from the third payment, for a total of \$3.3 million as compensation for injuries and damages sustained as a result of the negligence of the City of Jacksonville.

Section 3. The amount paid by the City of Jacksonville 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 the preamble to this act which resulted in the injuries and damages to Aubrey Stewart, and to release the city from any further liability. The total amount paid for attorney 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. The City of Jacksonville shall pay to the Agency for Health Care Administration the amount due under s. 409.910, Florida Statutes, before disbursing any funds to the claimant. The amount due to the agency shall be equal to all unreimbursed medical payments paid by Medicaid up to the date that this bill becomes a law.

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

Approved by the Governor June 16, 2015.

Filed in Office Secretary of State June 16, 2015.