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## SENATE BILL NO. 89

Senate Amendments in [ ] — February 16, 1998

A BILL for the relief of Kenneth J. Settle, Sr., Dana Powell-Settle, Dana L. Settle, and Kenneth J. Settle, Jr.

Patron—Colgan

Referred to the Committee on Finance

Whereas, Kenneth J. Settle, Sr., his wife Dana Powell-Settle, and their children Dana L. Settle, then age 3, and Kenneth J. Settle, Jr., then age 2 (collectively, the members of the Settle family), were residents of Prince William County in July, 1993; and

Whereas, on July 4, 1993, as the members of the Settle family were driving through the intersection of Fuller Road and U.S. Route 1 near the entrance to the Quantico Marine Base in Prince William County, in conformity with the traffic light signal, their vehicle was struck by an ambulance of the Dumfries-Triangle Rescue Squad that was being driven through the intersection in violation of the traffic signal; and

Whereas, when the ambulance driver ran the red light at the intersection he (i) was traveling at a speed of sixty miles per hour in a thirty-five mile per hour speed zone, (ii) did not look in either direction, and (iii) failed to slow the vehicle as he entered the intersection; and

Whereas, immediately prior to the accident the ambulance driver was leaving the Quantico Marine Base to rendezvous with another unit from his rescue squad that had been dispatched to an incident on Interstate 95, though the ambulance driver did not know at which interstate mile marker the other unit was located; and

Whereas, at the time of the accident the ambulance driver was not driving to the scene of an incident, and instead his destination was a point near the on-ramp to Interstate 95, one tenth of a mile west of the accident site, where he intended to pull over and call the other unit on his radio to ascertain its location, if he could; and

Whereas, each of the members of the Settle family suffered severe physical injuries in the collision with the ambulance; and

Whereas, after the collision the ambulance driver was charged with reckless driving because, in his own words, he had been going "way too fast"; and

Whereas, the ambulance driver subsequently pled guilty to the charge of reckless driving in Prince William County Circuit Court; and

Whereas, § 46.2-920 authorizes the driver of an emergency vehicle to proceed past any red signal if the speed of the vehicle is sufficiently reduced to enable it to pass the traffic light with due regard to the safety of persons and property, and further provides that the limits on criminal prosecution afforded by such section shall not release the operator of such vehicle from civil liability for failure to use reasonable care in such operation; and

Whereas, the Virginia Tort Claims Act does not provide a procedure for recovering damages resulting from negligent actions in this case because the ambulance driver was not an employee of an agency of the Commonwealth; and

Whereas, the members of the Settle family subsequently brought suit in Prince William County Circuit Court to recover damages for their injuries; and

Whereas, in the civil suit the ambulance driver was accorded the defense of sovereign immunity from damages from his negligent actions; and

Whereas, the ambulance driver would not have been able to avail himself of the defense of sovereign immunity if his actions had been found to constitute gross negligence; and

Whereas, at trial, the attorney for the members of the Settle family tendered jury instructions regarding the ambulance driver's duties (i) under § 46.2-920, (ii) a Prince William County ordinance regulating the operation of vehicles in emergency conditions and (iii) to slow and stop if necessary, as he learned in the Emergency Vehicle Operator's Course required of all volunteer emergency vehicle drivers, all of which were refused by the trial court judge; and

Whereas, in order to establish that the ambulance driver's conduct constituted gross negligence, the jury was required to find that his deviation from his duties was sufficient to shock the conscience of the jury; and

Whereas, because the trial judge refused to instruct the jury on the nature of the ambulance driver's duties, the jury did not find that the ambulance driver's conduct constituted gross negligence; and

Whereas, as the ambulance driver was immune from liability for his negligent acts, the jury returned

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60 its verdict for the ambulance driver, which verdict was upheld on appeal; and

61 Whereas, the members of the Settle family have incurred as the direct and proximate result of the  
62 ambulance driver's negligence (i) approximately \$50,000 in accrued unpaid medical bills and likely  
63 future medical expenses; (ii) approximately \$50,000 in lost income; and (ii) in excess of \$40,000 in  
64 litigation expenses, exclusive of attorneys' fees; and

65 Whereas, Kenneth J. Settle, Sr., Dana Powell-Settle, Dana L. Settle, and Kenneth J. Settle, Jr., have  
66 no other means to obtain reimbursement for these expenses except by the action of this body; now,  
67 therefore,

68 **Be it enacted by the General Assembly of Virginia:**

69 1. *§ 1. That there is hereby appropriated from the general fund of the state treasury the sum of [*  
70 *~~\$140,000~~ \$100,000, together with the litigation costs actually incurred in connection with this matter for*  
71 *which receipts are presented, not to exceed \$40,000, ] for the relief Kenneth J. Settle, Sr., Dana*  
72 *Powell-Settle, Dana L. Settle, and Kenneth J. Settle, Jr., to be paid by check issued by the State*  
73 *Treasurer on warrant of the Comptroller to Kenneth J. Settle, Sr., Dana Powell-Settle, Dana L. Settle,*  
74 *and Kenneth J. Settle, Jr., upon execution of a release by them of all claims they may have against the*  
75 *Commonwealth or any of its political subdivisions or their officers, employees, or agents in connection*  
76 *with the aforesaid occurrence.*

77 *[ § 2. The County of Prince William shall reimburse the general fund of the state treasury in the amount*  
78 *of \$140,000, from the distribution of net profits appropriated to such county pursuant to § 4.1-117 of*  
79 *the Code of Virginia. ]*