

By Representative Lee

1                                   A bill to be entitled  
 2           An act for the relief of Kathleen McCarty,  
 3           individually and as personal representative of  
 4           the Estate of Laura Bailey, deceased, and  
 5           George Decker and Joan Decker, individually and  
 6           as co-personal representatives of the Estate of  
 7           Christina Decker; providing appropriations to  
 8           compensate them for losses sustained as a  
 9           result of the actions of the Department of  
 10          Children and Family Services; providing an  
 11          effective date.  
 12  
 13           WHEREAS, Laura Bailey and Christina Decker,  
 14          developmentally disabled adults unable to care for themselves,  
 15          were institutionalized in various facilities on the grounds of  
 16          Tacachale and were wholly dependent upon the care, custody,  
 17          and control of the Department of Children and Family Services  
 18          and its employees, Rachuel Sercey and Evertice Cole, and  
 19            WHEREAS, on April 19, 1998, Rachuel Sercey lost control  
 20          of a facility-owned van that flipped and ejected Laura Bailey  
 21          and Christina Decker from the vehicle, and  
 22            WHEREAS, Laura Bailey and Christina Decker subsequently  
 23          died from their injuries, and  
 24            WHEREAS, Laura Bailey, Christina Decker, and their  
 25          guardians relied upon the Department of Children and Family  
 26          Services and its staff to provide for their safety and welfare  
 27          and to make the proper decisions on their behalf concerning  
 28          their day-to-day activities, and  
 29            WHEREAS, the facility-owned vehicle involved in the  
 30          accident which is the subject of litigation was improperly and  
 31          negligently maintained by the facility, including, but not

1 limited to, negligent maintenance of the right rear tire on  
2 the van, and

3           WHEREAS, for almost 15 years before the accident,  
4 Rachuel Sercey worked at Tacachale, and

5           WHEREAS, before the accident, Rachuel Sercey was  
6 arrested and cited on numerous occasions for driving  
7 infractions and substance-abuse-related charges and was  
8 reprimanded by Tacachale for deviation from a trip ticket and  
9 neglecting residents in her care, and

10           WHEREAS, notwithstanding this history of which the  
11 Department of Children and Family Services knew or should have  
12 known, the department permitted Rachuel Sercey to drive  
13 residents in facility-owned vehicles for facility purposes,  
14 and

15           WHEREAS, the Department of Children and Family Services  
16 did not require mandatory drug testing of facility staff, nor  
17 did it conduct routine background checks on facility staff,  
18 and

19           WHEREAS, before April 19, 1998, Tacachale staff  
20 submitted for approval a request that certain residents be  
21 allowed to attend a picnic field trip to Ginnie Springs, which  
22 request was approved by agents and employees of the Department  
23 of Children and Family Services, and

24           WHEREAS, Laura Bailey and Christina Decker were among  
25 those residents scheduled to attend the Ginnie Springs field  
26 trip, and

27           WHEREAS, on April 19, 1998, plaintiffs Laura Bailey,  
28 Christina Decker, and five developmentally disabled adult  
29 women were loaded into a facility-owned van along with two  
30 staff personnel, Evertice Cole and Rachuel Sercey, and

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1           WHEREAS, the van was owned and maintained by the  
2 Department of Children and Family Services and used for the  
3 purpose of transporting facility residents, and  
4           WHEREAS, even though the van was designed to  
5 accommodate eight persons and was equipped with only eight  
6 seatbelts, Evertice Cole and Rachuel Sercey allowed nine  
7 occupants, including the seven developmentally disabled women,  
8 to enter the van, and  
9           WHEREAS, of these nine occupants, Evertice Cole and  
10 Rachuel Sercey sat in the front two seats with seatbelts,  
11 ensuring that at least one resident had no access to a  
12 seatbelt at the outset of the field trip, and  
13           WHEREAS, the security guard at the Tacachale front gate  
14 was responsible for inspecting the paperwork authorizing the  
15 outing to Ginnie Springs and ensuring that all occupants were  
16 properly restrained and was otherwise required to ensure the  
17 safety of the van's occupants, and  
18           WHEREAS, the security guard failed to ensure that all  
19 occupants were wearing their seatbelts, that the van had the  
20 appropriate number of occupants, and that the right rear tire  
21 of the van was properly inflated, and  
22           WHEREAS, after leaving the facility and instead of  
23 going to Ginnie Springs, Laura Bailey, Christine Decker, and  
24 the other residents were taken to a location where Rachuel  
25 Sercey and Evertice Cole illegally consumed drugs and alcohol,  
26 leaving Laura Bailey, Christina Decker, and the other  
27 residents improperly supervised and unattended during this  
28 time, and  
29           WHEREAS, after illegally consuming drugs and alcohol,  
30 Rachuel Sercey and Evertice Cole returned to the unsupervised  
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1 residents and began to drive back to Tacachale, with Rachuel  
2 Sercey at the wheel, and

3           WHEREAS, Rachuel Sercey, without protest from Evertice  
4 Cole, operated the van in a negligent, reckless, and dangerous  
5 manner, including, but not limited to, driving at excessive  
6 speeds and ignoring an under-inflated right rear tire, and

7           WHEREAS, on April 19, 1998, Rachuel Sercey and Evertice  
8 Cole were in the course and scope of their employment when  
9 they took Laura Bailey, Christina Decker, and other residents  
10 on the scheduled field trip, and

11           WHEREAS, Evertice Cole had a duty to intervene on  
12 behalf of the occupants of the facility-owned van and prevent  
13 the accident, but did nothing to prevent Rachuel Sercey from  
14 causing the accident, and

15           WHEREAS, the representatives of the deceased and  
16 insured have been required to retain counsel and otherwise  
17 incur expenses and costs as a result of the actions of the  
18 Department of Children and Family Services and its employees,  
19 and

20           WHEREAS, the parties in this matter agreed to settle  
21 the claim in October 2001 for a total of \$600,000, of which  
22 the Department of Children and Family Services has already  
23 paid the statutory limit of \$200,000, and

24           WHEREAS, of the remaining \$400,000 balance on the  
25 claim, after payment of attorney's fees and costs in the  
26 amount of \$84,000, \$246,000 is to be paid to Kathleen McCarty  
27 and \$70,000 is to be paid to George Decker and Joan Decker,  
28 NOW, THEREFORE,

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

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

3           Section 2. There is appropriated from the General  
4 Revenue Fund to the Department of Children and Family Services  
5 the sum of \$400,000 for the relief of Kathleen McCarty,  
6 individually and as personal representative of the Estate of  
7 Laura Bailey, and for the relief of George Decker and Joan  
8 Decker, individually and as co-personal representatives of the  
9 Estate of Christina Decker, for injuries and damages  
10 sustained. After payment of statutory attorney's fees and  
11 costs, the proceeds recovered through the passage of this act  
12 shall be apportioned in the following manner: \$246,000 to be  
13 paid to Kathleen McCarty, individually and as personal  
14 representative of the Estate of Laura Bailey; and \$70,000 to  
15 be paid to George Decker and Joan Decker, individually and as  
16 co-personal representatives of the Estate of Christina Decker.

17           Section 3. The Comptroller is directed to draw a  
18 warrant in favor of Kathleen McCarty, individually and as  
19 personal representative of the Estate of Laura Bailey, in the  
20 sum of \$246,000 upon funds of the Department of Children and  
21 Family Services in the State Treasury and the State Treasurer  
22 is directed to pay the same out of such funds in the State  
23 Treasury.

24           Section 4. The Comptroller is directed to draw a  
25 warrant in favor of George Decker and Joan Decker,  
26 individually and as co-personal representatives of the Estate  
27 of Christina Decker, in the sum of \$70,000 upon funds of the  
28 Department of Children and Family Services in the State  
29 Treasury and the State Treasurer is directed to pay the same  
30 out of such funds in the State Treasury.

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