

1 A bill to be entitled

2 An act for the relief of Marissa Amora; providing an
3 appropriation to compensate Marissa Amora, a minor, for
4 injuries she sustained as a result of the negligence of
5 employees of the Department of Children and Family
6 Services; requiring a specified legislative budget
7 request; providing for a continuing appropriation;
8 providing a limitation on attorney's fees, lobbying fees,
9 costs, and other similar expenses relating to the claim;
10 providing an effective date.

11
12 WHEREAS, on November 8, 2000, Moesha Sylencieux, now known
13 as Marissa Amora, who was not yet 2 years old, was brought to
14 the emergency room of Bethesda Memorial Hospital in Palm Beach
15 County, Florida, and

16 WHEREAS, Marissa Amora's natural mother told the hospital
17 staff that Marissa Amora fell from a standing position and
18 consequently could not walk, and

19 WHEREAS, while she was at the hospital, Marissa Amora could
20 not bear weight on her legs, and

21 WHEREAS, during a 3-day admission that followed, an MRI
22 showed the presence of an unexplained mass in the area of
23 Marissa Amora's spine, and she was transferred to Miami
24 Children's Hospital for further testing and treatment, and

25 WHEREAS, Marissa Amora was admitted to Miami Children's
26 Hospital on November 11, 2000, arriving with a working diagnosis
27 of "spinal cord tumor," and during the following month she was
28 fully evaluated for the tumor that was presumed to have

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29 | accounted for her sudden inability to walk, with all test
30 | results normal, and

31 | WHEREAS, on December 4, 2000, Marissa Amora underwent a
32 | biopsy of the mass in the area of her spine, which indicated
33 | that the mass was benign, and

34 | WHEREAS, during Marissa Amora's approximately 1-month
35 | admission to Miami Children's Hospital, several incidents gave
36 | rise to suspicions and concerns on the part of the hospital
37 | nursing staff and social workers with respect to Marissa Amora's
38 | safety, and

39 | WHEREAS, the hospital staff and social workers were
40 | concerned about the natural mother's lack of involvement with
41 | her daughter and about the interactions between Marissa Amora
42 | and her natural mother who, over the course of Marissa Amora's
43 | hospitalization at Miami Children's Hospital, came to the
44 | hospital only four times, and who failed to visit her at other
45 | times during her hospitalization even though hospital social
46 | workers provided her with directions and money for
47 | transportation, and

48 | WHEREAS, when Marissa Amora's natural mother did come to
49 | the hospital, families of other patients observed her spanking
50 | Marissa Amora while Marissa was in her hospital bed, and

51 | WHEREAS, Marissa Amora's natural mother failed to come to
52 | the hospital on December 9, 2000, the day that her daughter was
53 | supposed to be discharged, and

54 | WHEREAS, with Marissa Amora waiting to be discharged, the
55 | social workers at the hospital appropriately called the
56 | Department of Children and Family Services, the call being

57 designated as one for "special needs," given the mother's lack
58 of ability or desire to care for her daughter and the general
59 lack of bonding between mother and child, and

60 WHEREAS, Marissa Amora's case was assigned to a protective
61 investigator for the Department of Children and Family Services
62 in District 11, Miami-Dade County, Shirley Arias, who commenced
63 her investigation by going to Miami Children's Hospital on
64 Monday, December 11, 2000, at which point she began compiling a
65 list of concerns and risk factors that indicated possible
66 physical abuse, and

67 WHEREAS, Investigator Arias reviewed the hospital records
68 and found that there was evidence that Marissa Amora had an
69 unexplained fracture of her clavicle and that, though the mother
70 had been assisted and counseled by the social workers at the
71 hospital, the social workers continued to have serious concerns
72 for the mother's desire and ability to care for her child, and

73 WHEREAS, Investigator Arias observed that Marissa Amora
74 would cry when her mother walked into her hospital room and then
75 would become calm when her mother would leave, and also observed
76 a general lack of bonding between mother and child, and

77 WHEREAS, on Monday, December 11, 2000, a meeting took place
78 in the hospital between Investigator Arias, Marissa Amora's
79 natural mother, and Dr. Jefry Biehler, an in-house director of
80 the Child Advocacy Team who was asked to be involved at the
81 request of the hospital's social workers, and

82 WHEREAS, Dr. Biehler interviewed the natural mother in the
83 presence of Investigator Arias and reported that he "had
84 concerns" and recommended to Investigator Arias that the child

85 | should not be given to the mother unless a home study was
86 | completed to ensure that the environment in the home was safe
87 | for the child, and

88 | WHEREAS, the suggested home study was never performed by
89 | the department, and

90 | WHEREAS, instead of initiating a home study, Investigator
91 | Arias contacted the department's Palm Beach County District 9
92 | office, whereupon the matter was referred to Protective
93 | Investigator Evelyn Diaz Collins, and

94 | WHEREAS, Investigator Collins failed to conduct or initiate
95 | a home study, and

96 | WHEREAS, Investigator Collins instead went to the family
97 | home while Marissa Amora was still in the hospital, met with the
98 | natural mother, noting that the apartment was devoid of any baby
99 | items, and subsequently informed the natural mother that she
100 | would need to purchase a crib and that she would return the
101 | following week to make sure that this condition had been
102 | complied with, and

103 | WHEREAS, Investigator Collins never returned to the home
104 | and performed no followup whatsoever, and

105 | WHEREAS, the requested home study was never completed, yet
106 | department supervisors in Miami incorrectly believed that a home
107 | study had been completed, and incorrectly assumed that there was
108 | no threat to the child, and

109 | WHEREAS, Investigator Arias met with her supervisor, who
110 | advised that she should refer the case to the Department of
111 | Children and Family Services' legal department, whereupon
112 | investigator Arias consulted with the legal department on

113 Wednesday, December 13, 2000, and was advised that Marissa Amora
114 should not be allowed to leave Miami Children's Hospital until
115 the department had completed a home study, spoken with Marissa
116 Amora's natural father in New Jersey, assigned staff to the case
117 from the child protection team, and conducted criminal checks of
118 the appropriate parties, and

119 WHEREAS, deposition and trial testimony by Investigator
120 Arias revealed that she understood that the required home study,
121 the contact with Marissa Amora's natural father, the assignment
122 of staff to the case from the child protection team, and the
123 conduct of specified criminal checks were departmental "marching
124 orders" and that Marissa Amora should not have been allowed to
125 leave the hospital until all of these conditions had been
126 complied with, and

127 WHEREAS, on December 14, 2000, Investigator Arias completed
128 a departmental initial child safety assessment form, as required
129 by statute, which showed that Investigator Arias and her
130 supervisor concluded that physical abuse of Marissa Amora was
131 suspected, and

132 WHEREAS, Investigator Arias testified at trial that Marissa
133 Amora should never have been allowed to go home, that sending
134 Marissa Amora home was wrong, and that she should have voiced
135 her objection to her supervisors, and

136 WHEREAS, Investigator Arias' immediate supervisor, Robert
137 Boyak, testified under oath that the case should have been
138 assigned to the child protection team before Marissa Amora was
139 allowed to leave the hospital, but that no such referral to the
140 child protection team was completed, and

141 WHEREAS, on December 14, 2000, Investigator Arias began
142 contacting Marissa Amora's natural mother for the purpose of
143 having Marissa Amora picked up from the hospital, despite the
144 fact that a home study had not been completed, the case had not
145 been assigned to the child protection team, and Marissa Amora's
146 natural father had not been consulted, all of which had been
147 advisements of the Department of Children and Family Services'
148 legal department on December 13, 2000, and

149 WHEREAS, the department's log written by Investigator Arias
150 reflects numerous contacts prior to discharge from the hospital
151 from the social workers at Miami Children's Hospital challenging
152 the department's decision to allow Marissa Amora to go home with
153 her natural mother, and

154 WHEREAS, calls placed by the hospital's social workers to
155 the department's Palm Beach County district office, to the
156 Miami-Dade district office, and to supervisors in the chain of
157 command at the department were either not returned or, when
158 calls were returned to social workers, they were given false
159 assurances that the department's investigation had revealed that
160 there was no danger to Marissa Amora, and

161 WHEREAS, on December 15, 2000, Marissa Amora cried while
162 she was being taken from Miami Children's Hospital by her
163 natural mother, and the department was repeatedly told that
164 hospital social workers were very dissatisfied with the decision
165 to allow the child to go home with her natural mother and that
166 hospital nurses were willing to adopt Marissa Amora, and

167 WHEREAS, on January 11, 2001, Marissa Amora was again
168 admitted to the hospital's pediatric intensive care unit for

169 treatment for massive brain injuries, leg fractures, arm
170 fractures, and multiple other injuries that the chief of
171 pediatric intensive care opined were likely due to being swung
172 by her arms and legs and smashed into a wall or the floor, and

173 WHEREAS, the child protection team in Palm Beach County, as
174 well as hospital physicians in Boca Raton and Delray Beach,
175 determined that Marissa Amora's problems, dating back to the
176 admission to Bethesda Memorial Hospital on November 8, 2000, and
177 the life-threatening trauma with severe brain damage sustained
178 on January 11, 2001, were due to injuries caused by physical
179 abuse, and

180 WHEREAS, Marissa Amora remained in the hospital for several
181 months while undergoing a series of operations, including brain
182 surgery to relieve pressure from massive bleeding in her brain,
183 a tracheotomy to establish and maintain her ability to breathe,
184 and abdominal surgery to allow for nutrition to pass directly
185 into her stomach due to an inability to eat, and

186 WHEREAS, Marissa Amora has since required subsequent
187 additional surgical procedures to address many of the chronic
188 problems caused by her severe brain injury, and continues to
189 require tube feedings because she is unable to eat food by
190 mouth, and

191 WHEREAS, Marissa Amora will require a high level of care
192 throughout the remainder of her life, and

193 WHEREAS, employees of the Miami-Dade County and Palm Beach
194 County offices of the Department of Children and Family Services
195 admitted to making critical errors with regard to this case and
196 admitted that department procedures were not followed, and

197 WHEREAS, as a result of the negligence of the employees of
 198 the Department of Children and Family Services, Marissa Amora
 199 has suffered permanent and profound brain damage and will
 200 require total care for the remainder of her life, and

201 WHEREAS, at trial the jury determined Marissa Amora's total
 202 past and future economic losses to be \$21,070,000, and her past
 203 and future noneconomic damages, which include disability, loss
 204 of enjoyment of life, bodily injury, physical and mental pain
 205 and suffering, and disfigurement, to be \$13,750,000, and

206 WHEREAS, the life care plan for Marissa Amora, as devised
 207 by former District 11 Administrator and Certified Life Care
 208 Planner for the former Department of Health and Rehabilitative
 209 Services of the State of Florida, Lawrence Forman, M.Ed., has a
 210 present value cost of \$23,116,052.50, and

211 WHEREAS, the department's own experts, Sharon Griffin,
 212 M.Ed., Habilitationist, and Bernard F. Pettingill, Jr., Ph.D.,
 213 Economist, developed a life care plan for Marissa Amora, at an
 214 estimated cost of \$19,767,867, some of which the state contended
 215 could be borne by Medicaid or Med-waiver, and

216 WHEREAS, Marissa Amora's past medical care and expenses,
 217 including liens, amount to \$458,719.89, NOW, THEREFORE,

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

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

223 Section 2. There is appropriated from the Administrative
 224 Trust Fund of the Department of Children and Family Services, or

225 any successor thereto, or, in the event sufficient funds are not
226 available from that fund to make payment for any given year or
227 otherwise, from the General Revenue Fund, the sum of \$1,200,000
228 for fiscal year 2008-2009, and \$1,700,000 each fiscal year
229 thereafter beginning fiscal year 2009-2010 through fiscal year
230 2018-2019, inclusive, to be paid to an insurance company or
231 other financial institution admitted and authorized to issue
232 annuity contracts in this state, selected by the guardian of
233 Marissa Amora, to finance and purchase a structured settlement
234 for the benefit of Marissa Amora, which shall include an annuity
235 that must be used for the habilitative care of Marissa Amora
236 over the duration of her lifetime and as relief for the
237 violations of her rights and for injuries and damages she
238 sustained as a result of the wrongful conduct of the Department
239 of Children and Family Services.

240 Section 3. The Chief Financial Officer is directed to
241 execute all necessary agreements to implement the payment of
242 this claim and to draw a warrant in the amount of \$1,200,000 for
243 fiscal year 2008-2009, and \$1,700,000 each fiscal year
244 thereafter beginning in fiscal year 2009-2010 through fiscal
245 year 2018-2019, inclusive, in favor of the financier of the
246 structured settlement and to be paid from the Administrative
247 Trust Fund of the Department of Children and Family Services, or
248 any successor thereto, or, in the event sufficient funds are not
249 available from that fund to make payment for any given fiscal
250 year or otherwise, from the General Revenue Fund. The financing
251 of this structured settlement shall constitute a state debt or
252 obligation as defined in section 216.0442(1)(j), Florida

253 Statutes, as in effect on the date this act becomes law.

254 Section 4. The Department of Children and Family Services
 255 shall include in its annual legislative budget request a
 256 specific appropriation for funds sufficient to make the payment
 257 due under this act during each relevant fiscal year, beginning
 258 in fiscal year 2008-2009 through fiscal year 2018-2019,
 259 inclusive.

260 Section 5. The appropriation made and authorized by this
 261 act shall be deemed a continuing appropriation within the
 262 meaning of section 216.011(1)(i), Florida Statutes, as in effect
 263 on the date this act becomes a law. The Chief Financial Officer
 264 shall not be obligated to make any payment to the insurance
 265 company or other financial institution in the event no funds are
 266 appropriated.

267 Section 6. This award is intended to provide the sole
 268 compensation for all present and future claims arising out of
 269 the factual situation described in the preamble to this act
 270 which resulted in the injury to Marissa Amora. The total amount
 271 paid for attorney's fees, lobbying fees, costs, and other
 272 similar expenses relating to this claim may not exceed 25
 273 percent of each annual payment awarded pursuant to this act.

274 Section 7. This act shall take effect upon becoming a law.