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CHAMBER ACTION

Senate

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House

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1 The Committee on Health Regulation (Lawson) recommended the
2 following **amendment**:

3
4 **Senate Amendment (with title amendment)**

5 Delete everything after the enacting clause
6 and insert:

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

9 Section 2. For fiscal year 2008-2009, the sum of \$1,200,000
10 of nonrecurring General Revenue is appropriated to be paid to an
11 insurance company or other financial institution admitted and
12 authorized to issue annuity contracts in this state, selected by
13 the guardian of Marissa Amora, to finance and purchase a
14 structured settlement for the benefit of Marissa Amora, which
15 shall include an annuity that must be used for the habilitative
16 care of Marissa Amora over the duration of her lifetime and as
17 relief for the violations of her rights and for injuries and



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18 damages she sustained as a result of the wrongful conduct of the
19 Department of Children and Family Services.

20 Section 3. The Chief Financial Officer is directed to
21 execute all necessary agreements to implement the payment of this
22 claim and to draw a warrant in the amount of \$1,200,000 for
23 fiscal year 2008-2009 in favor of the financier of the structured
24 settlement to be paid from the General Revenue Fund.

25 Section 4. Beginning in fiscal year 2008-2009 and for the
26 next 9 fiscal years thereafter, the Department of Children and
27 Family Services shall include in its annual legislative budget
28 request a specific appropriation for \$1,700,000 of nonrecurring
29 funds for the relief of Marissa Amora in the Administrative Trust
30 Fund or the General Revenue Fund for a total of \$17,000,000 paid
31 over 10 years.

32 Section 5. This award and any subsequent awards
33 appropriated up to a grand total of \$18,200,000 in nonrecurring
34 funds, inclusive of this award, are intended to provide the sole
35 compensation for all present and future claims arising out of the
36 factual situation described in the preamble to this act which
37 resulted in the injury to Marissa Amora. The total amount paid
38 for attorney's fees, lobbying fees, costs, and other similar
39 expenses relating to this claim may not exceed 25 percent of each
40 annual payment awarded pursuant to this act.

41 Section 6. This act shall take effect upon becoming a law.

42

43 ===== T I T L E A M E N D M E N T =====

44 And the title is amended as follows:

45 Delete everything before the enacting clause
46 and insert:

47 A bill to be entitled



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48 An act for the relief of Marissa Amora; providing an
49 appropriation to compensate Marissa Amora, a minor, for
50 injuries she sustained as a result of the negligence of
51 employees of the Department of Children and Family
52 Services; requiring a specified legislative budget
53 request; providing a limitation on attorney's fees,
54 lobbying fees, costs, and other similar expenses relating
55 to the claim; providing an effective date relating to ;
56 providing an effective date.

57
58 WHEREAS, on November 8, 2000, Moesha Sylencieux, now known
59 as Marissa Amora, who was not yet 2 years old, was brought to the
60 emergency room of Bethesda Memorial Hospital in Palm Beach
61 County, Florida, and

62 WHEREAS, Marissa Amora's natural mother told the hospital
63 staff that Marissa Amora fell from a standing position and
64 consequently could not walk, and

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

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

71 WHEREAS, Marissa Amora was admitted to Miami Children's
72 Hospital on November 11, 2000, arriving with a working diagnosis
73 of "spinal cord tumor," and during the following month she was
74 fully evaluated for the tumor that was presumed to have accounted
75 for her sudden inability to walk, with all test results normal,
76 and



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77 WHEREAS, on December 4, 2000, Marissa Amora underwent a
78 biopsy of the mass in the area of her spine, which indicated that
79 the mass was benign, and

80 WHEREAS, during Marissa Amora's approximately 1-month
81 admission to Miami Children's Hospital, several incidents gave
82 rise to suspicions and concerns on the part of the hospital
83 nursing staff and social workers with respect to Marissa Amora's
84 safety, and

85 WHEREAS, the hospital staff and social workers were
86 concerned about the natural mother's lack of involvement with her
87 daughter and about the interactions between Marissa Amora and her
88 natural mother who, over the course of Marissa Amora's
89 hospitalization at Miami Children's Hospital, came to the
90 hospital only four times, and who failed to visit her at other
91 times during her hospitalization even though hospital social
92 workers provided her with directions and money for
93 transportation, and

94 WHEREAS, when Marissa Amora's natural mother did come to the
95 hospital, families of other patients observed her spanking
96 Marissa Amora while Marissa was in her hospital bed, and

97 WHEREAS, Marissa Amora's natural mother failed to come to
98 the hospital on December 9, 2000, the day that her daughter was
99 supposed to be discharged, and

100 WHEREAS, with Marissa Amora waiting to be discharged, the
101 social workers at the hospital appropriately called the
102 Department of Children and Family Services, the call being
103 designated as one for "special needs," given the mother's lack of
104 ability or desire to care for her daughter and the general lack
105 of bonding between mother and child, and



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

113 WHEREAS, Investigator Arias reviewed the hospital records
114 and found that there was evidence that Marissa Amora had an
115 unexplained fracture of her clavicle and that, though the mother
116 had been assisted and counseled by the social workers at the
117 hospital, the social workers continued to have serious concerns
118 for the mother's desire and ability to care for her child, and

119 WHEREAS, Investigator Arias observed that Marissa Amora
120 would cry when her mother walked into her hospital room and then
121 would become calm when her mother would leave, and also observed
122 a general lack of bonding between mother and child, and

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

128 WHEREAS, Dr. Biehler interviewed the natural mother in the
129 presence of Investigator Arias and reported that he "had
130 concerns" and recommended to Investigator Arias that the child
131 should not be given to the mother unless a home study was
132 completed to ensure that the environment in the home was safe for
133 the child, and

134 WHEREAS, the suggested home study was never performed by the
135 department, and



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136 WHEREAS, instead of initiating a home study, Investigator
137 Arias contacted the department's Palm Beach County District 9
138 office, whereupon the matter was referred to Protective
139 Investigator Evelyn Diaz Collins, and

140 WHEREAS, Investigator Collins failed to conduct or initiate
141 a home study, and

142 WHEREAS, Investigator Collins instead went to the family
143 home while Marissa Amora was still in the hospital, met with the
144 natural mother, noting that the apartment was devoid of any baby
145 items, and subsequently informed the natural mother that she
146 would need to purchase a crib and that she would return the
147 following week to make sure that this condition had been complied
148 with, and

149 WHEREAS, Investigator Collins never returned to the home and
150 performed no followup whatsoever, and

151 WHEREAS, the requested home study was never completed, yet
152 department supervisors in Miami incorrectly believed that a home
153 study had been completed, and incorrectly assumed that there was
154 no threat to the child, and

155 WHEREAS, Investigator Arias met with her supervisor, who
156 advised that she should refer the case to the Department of
157 Children and Family Services' legal department, whereupon
158 investigator Arias consulted with the legal department on
159 Wednesday, December 13, 2000, and was advised that Marissa Amora
160 should not be allowed to leave Miami Children's Hospital until
161 the department had completed a home study, spoken with Marissa
162 Amora's natural father in New Jersey, assigned staff to the case
163 from the child protection team, and conducted criminal checks of
164 the appropriate parties, and



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165 WHEREAS, deposition and trial testimony by Investigator
166 Arias revealed that she understood that the required home study,
167 the contact with Marissa Amora's natural father, the assignment
168 of staff to the case from the child protection team, and the
169 conduct of specified criminal checks were departmental "marching
170 orders" and that Marissa Amora should not have been allowed to
171 leave the hospital until all of these conditions had been
172 complied with, and

173 WHEREAS, on December 14, 2000, Investigator Arias completed
174 a departmental initial child safety assessment form, as required
175 by statute, which showed that Investigator Arias and her
176 supervisor concluded that physical abuse of Marissa Amora was
177 suspected, and

178 WHEREAS, Investigator Arias testified at trial that Marissa
179 Amora should never have been allowed to go home, that sending
180 Marissa Amora home was wrong, and that she should have voiced her
181 objection to her supervisors, and

182 WHEREAS, Investigator Arias' immediate supervisor, Robert
183 Boyak, testified under oath that the case should have been
184 assigned to the child protection team before Marissa Amora was
185 allowed to leave the hospital, but that no such referral to the
186 child protection team was completed, and

187 WHEREAS, on December 14, 2000, Investigator Arias began
188 contacting Marissa Amora's natural mother for the purpose of
189 having Marissa Amora picked up from the hospital, despite the
190 fact that a home study had not been completed, the case had not
191 been assigned to the child protection team, and Marissa Amora's
192 natural father had not been consulted, all of which had been
193 advisements of the Department of Children and Family Services'
194 legal department on December 13, 2000, and



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195 WHEREAS, the department's log written by Investigator Arias
196 reflects numerous contacts prior to discharge from the hospital
197 from the social workers at Miami Children's Hospital challenging
198 the department's decision to allow Marissa Amora to go home with
199 her natural mother, and

200 WHEREAS, calls placed by the hospital's social workers to
201 the department's Palm Beach County district office, to the Miami-
202 Dade district office, and to supervisors in the chain of command
203 at the department were either not returned or, when calls were
204 returned to social workers, they were given false assurances that
205 the department's investigation had revealed that there was no
206 danger to Marissa Amora, and

207 WHEREAS, on December 15, 2000, Marissa Amora cried while she
208 was being taken from Miami Children's Hospital by her natural
209 mother, and the department was repeatedly told that hospital
210 social workers were very dissatisfied with the decision to allow
211 the child to go home with her natural mother and that hospital
212 nurses were willing to adopt Marissa Amora, and

213 WHEREAS, on January 11, 2001, Marissa Amora was again
214 admitted to the hospital's pediatric intensive care unit for
215 treatment for massive brain injuries, leg fractures, arm
216 fractures, and multiple other injuries that the chief of
217 pediatric intensive care opined were likely due to being swung by
218 her arms and legs and smashed into a wall or the floor, and

219 WHEREAS, the child protection team in Palm Beach County, as
220 well as hospital physicians in Boca Raton and Delray Beach,
221 determined that Marissa Amora's problems, dating back to the
222 admission to Bethesda Memorial Hospital on November 8, 2000, and
223 the life-threatening trauma with severe brain damage sustained on



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224 January 11, 2001, were due to injuries caused by physical abuse,
225 and

226 WHEREAS, Marissa Amora remained in the hospital for several
227 months while undergoing a series of operations, including brain
228 surgery to relieve pressure from massive bleeding in her brain, a
229 tracheotomy to establish and maintain her ability to breathe, and
230 abdominal surgery to allow for nutrition to pass directly into
231 her stomach due to an inability to eat, and

232 WHEREAS, Marissa Amora has since required subsequent
233 additional surgical procedures to address many of the chronic
234 problems caused by her severe brain injury, and continues to
235 require tube feedings because she is unable to eat food by mouth,
236 and

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

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

243 WHEREAS, as a result of the negligence of the employees of
244 the Department of Children and Family Services, Marissa Amora has
245 suffered permanent and profound brain damage and will require
246 total care for the remainder of her life, and

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

252 WHEREAS, the life care plan for Marissa Amora, as devised by
253 former District 11 Administrator and Certified Life Care Planner



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254 | for the former Department of Health and Rehabilitative Services
255 | of the State of Florida, Lawrence Forman, M.Ed., has a present
256 | value cost of \$23,116,052.50, and

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

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