

By the Committee on Health Regulation; and Senator Lawson

588-08757-08

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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 a limitation on attorney's fees,
8 lobbying fees, costs, and other similar expenses relating
9 to the claim; providing an effective date.

10
11 WHEREAS, on November 8, 2000, Moesha Sylencieux, now known
12 as Marissa Amora, who was not yet 2 years old, was brought to the
13 emergency room of Bethesda Memorial Hospital in Palm Beach
14 County, Florida, and

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

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

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

24 WHEREAS, Marissa Amora was admitted to Miami Children's
25 Hospital on November 11, 2000, arriving with a working diagnosis
26 of "spinal cord tumor," and during the following month she was
27 fully evaluated for the tumor that was presumed to have accounted
28 for her sudden inability to walk, with all test results normal,
29 and

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

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

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

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

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

53 WHEREAS, with Marissa Amora waiting to be discharged, the
54 social workers at the hospital appropriately called the
55 Department of Children and Family Services, the call being
56 designated as one for "special needs," given the mother's lack of
57 ability or desire to care for her daughter and the general lack
58 of bonding between mother and child, and

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

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

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

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

81 WHEREAS, Dr. Biehler interviewed the natural mother in the
82 presence of Investigator Arias and reported that he "had
83 concerns" and recommended to Investigator Arias that the child
84 should not be given to the mother unless a home study was
85 completed to ensure that the environment in the home was safe for
86 the child, and

87 WHEREAS, the suggested home study was never performed by the

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88 | department, and

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

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

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

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

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

108 | WHEREAS, Investigator Arias met with her supervisor, who
109 | advised that she should refer the case to the Department of
110 | Children and Family Services' legal department, whereupon
111 | investigator Arias consulted with the legal department on
112 | Wednesday, December 13, 2000, and was advised that Marissa Amora
113 | should not be allowed to leave Miami Children's Hospital until
114 | the department had completed a home study, spoken with Marissa
115 | Amora's natural father in New Jersey, assigned staff to the case
116 | from the child protection team, and conducted criminal checks of

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117 | the appropriate parties, and

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

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

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

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

140 | WHEREAS, on December 14, 2000, Investigator Arias began
141 | contacting Marissa Amora's natural mother for the purpose of
142 | having Marissa Amora picked up from the hospital, despite the
143 | fact that a home study had not been completed, the case had not
144 | been assigned to the child protection team, and Marissa Amora's
145 | natural father had not been consulted, all of which had been

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146 advisements of the Department of Children and Family Services'
147 legal department on December 13, 2000, and

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

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

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

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

172 WHEREAS, the child protection team in Palm Beach County, as
173 well as hospital physicians in Boca Raton and Delray Beach,
174 determined that Marissa Amora's problems, dating back to the

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175 admission to Bethesda Memorial Hospital on November 8, 2000, and
176 the life-threatening trauma with severe brain damage sustained on
177 January 11, 2001, were due to injuries caused by physical abuse,
178 and

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

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

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

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

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

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

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204 suffering, and disfigurement, to be \$13,750,000, and

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

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

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

217

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

219

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

222 Section 2. For fiscal year 2008-2009, the sum of \$1,200,000
223 of nonrecurring General Revenue is appropriated to be paid to an
224 insurance company or other financial institution admitted and
225 authorized to issue annuity contracts in this state, selected by
226 the guardian of Marissa Amora, to finance and purchase a
227 structured settlement for the benefit of Marissa Amora, which
228 shall include an annuity that must be used for the habilitative
229 care of Marissa Amora over the duration of her lifetime and as
230 relief for the violations of her rights and for injuries and
231 damages she sustained as a result of the wrongful conduct of the
232 Department of Children and Family Services.

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

238 Section 4. Beginning in fiscal year 2008-2009 and for the
239 next 9 fiscal years thereafter, the Department of Children and
240 Family Services shall include in its annual legislative budget
241 request a specific appropriation for \$1,700,000 of nonrecurring
242 funds for the relief of Marissa Amora in the Administrative Trust
243 Fund or the General Revenue Fund for a total of \$17,000,000 paid
244 over 10 years.

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

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