

By Senator Ring

32-00046-11

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1 A bill to be entitled

2 An act for the relief of L.T., a minor; providing an
3 appropriation to compensate L.T., a minor, by and
4 through Vicki McSwain, the Permanent Custodian for
5 L.T., for injuries and damages sustained as a result
6 of the negligence of employees of the Department of
7 Children and Family Services; providing a limitation
8 of the payment of attorney's fees, lobbying fees,
9 costs, and other similar expenses relating to the
10 claim; providing an effective date.

11
12 WHEREAS, on August 15, 1995, the Department of Children and
13 Family Services (DCF) removed 14-month-old L.T., and her infant
14 brother from their mother's custody because they were not
15 receiving adequate care, and

16 WHEREAS, Judy Mandrell, a protective supervision counselor
17 for DCF, was assigned to find a foster home for the children.
18 Ms. Mandrell conducted a home study of the children's great aunt
19 and uncle, Vicki and Eddie Thomas. Ms. Mandrell recommended
20 temporarily placing the children in the Thomases' custody. Ms.
21 Mandrell's immediate supervisor, Lillie S. Pease, approved the
22 recommendation, and

23 WHEREAS, a background check was conducted shortly after the
24 children were placed in the Thomases' home. It indicated that
25 many years earlier Mr. Thomas had been convicted of a
26 misdemeanor and possession of narcotics equipment and that Ms.
27 Thomas had been charged with, but apparently not convicted of,
28 larceny. The background check did not reveal any prior history
29 of violence, sex offenses, or child abuse, and

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30 WHEREAS, Ms. Mandrell and Ms. Pease ultimately concluded
31 that the Thomases were capable of providing the children a safe
32 and loving home and approved the placement. Ms. Mandrell
33 continued to make monthly home visits to assess the living
34 arrangements and the children's welfare, and

35 WHEREAS, on August 21, 1996, Mr. Thomas was charged with a
36 lewd and lascivious act on a child under the age of 16. The
37 alleged victim was the 13-year-old daughter of a woman Mr.
38 Thomas was seeing despite being married to Ms. Thomas. The state
39 later amended the charge to add a count for sexual battery on a
40 child by a familial or custodial authority, and

41 WHEREAS, while the charges were pending, the Florida trial
42 court ordered Mr. Thomas to not have any contact with the victim
43 or her family, to vacate the home where Mr. Thomas had lived
44 with Ms. Thomas, L.T., and her brother, and to not have any
45 contact with any children. Mr. Thomas moved into his mother's
46 garage just down the street from the home where Ms. Thomas lived
47 with L.T. and her brother, and

48 WHEREAS, DCF became aware of the charges against Mr. Thomas
49 and of the court's no-contact order when L.T.'s biological
50 mother advised Ms. Mandrell of the charges and asked that L.T.
51 be removed from the home of Ms. Thomas. Ms. Mandrell spoke with
52 Ms. Thomas about the allegations and visited Mr. Thomas's
53 mother's home to confirm that Mr. Thomas was living there. Ms.
54 Mandrell continued to report that L.T. and her brother were
55 thriving and that Ms. Thomas was providing good care. On several
56 occasions, Ms. Mandrell reminded Mr. Thomas that he must not
57 have contact with the children, and

58 WHEREAS, on January 31, 1997, the charges against Mr.

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59 Thomas went to trial. The jury acquitted him of sexual battery
60 but was unable to reach a verdict on the charge of committing a
61 lewd and lascivious act. On March 25, 1997, a retrial of the
62 charge of committing a lewd and lascivious act again produced a
63 hung jury. On April 9, 1997, Mr. Thomas pled no contest to that
64 charge and was sentenced to 5 years' probation. As part of the
65 sentence, Mr. Thomas was ordered to not have any contact with
66 the victim and her family and was required to attend sex
67 offender classes, and

68 WHEREAS, the same judge who presided over both trials of
69 Mr. Thomas also presided over the dependency case involving L.T.
70 and her brother. On May 9, 1997, 1 month after Mr. Thomas
71 entered his plea and was sentenced to probation, the judge
72 entered an order allowing Mr. Thomas to return to the home of
73 Ms. Thomas and the children. The judge authorized Mr. Thomas to
74 have unsupervised contact with the children, and

75 WHEREAS, Ms. Mandrell continued to make monthly home
76 visits. She noted that the case against Mr. Thomas involving
77 commission of a lewd and lascivious act barred the Thomases from
78 adopting, but she recommended the continuation of the foster-
79 care arrangement. Each month, Ms. Mandrell's report indicated
80 that there was little or no risk of abuse to the children, and

81 WHEREAS, on March 3, 2000, the same judge, acting in the
82 dependency case, approved the children's long-term placement
83 with the Thomases, removing them from protective services, and

84 WHEREAS, 3 years later, on March 24, 2003, an anonymous
85 caller to DCF alleged that L.T. was being abused by Mr. Thomas
86 and that both Mr. and Ms. Thomas were using drugs in the
87 children's presence. The anonymous caller incorrectly asserted

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88 that Mr. Thomas was "a proven sex offender and is not supposed
89 to be around children." Jennifer Johnson, a child protective
90 investigator for DCF, was assigned to investigate the
91 allegations. Gayla Spivey, Ms. Johnson's supervisor, oversaw the
92 investigation, and

93 WHEREAS, on March 25, 2003, the day after the anonymous
94 report was received, Ms. Johnson interviewed L.T., her brother,
95 and Ms. Thomas. Both children denied the abuse allegations and
96 said that they were happy in the Thomases' home. The children
97 said they understood the difference between good and bad touches
98 and had never been touched in a manner that made them
99 uncomfortable, and

100 WHEREAS, Ms. Johnson ran additional background checks on
101 the Thomases and required that they submit to drug tests. The
102 background checks revealed nothing new, and the drug tests came
103 back negative. Ms. Johnson prepared a report concluding that
104 L.T. and her brother were not being abused and were not at risk
105 of abuse. Ms. Johnson concluded that the case should be closed,
106 and her supervisor, Ms. Spivey, approved the report and the
107 closing of the case, and

108 WHEREAS, on February 24, 2005, L.T. ran away from the
109 Thomases' home and was found by law enforcement officers. She
110 said she ran away because she had been sexually abused by Mr.
111 Thomas and physically abused by Ms. Thomas. L.T. told the
112 officers that Mr. Thomas sexually abused her from October 2004
113 to late December 2004. DCF immediately removed L.T. and her
114 brother from the Thomases' home, and

115 WHEREAS, L.T. brought a lawsuit in the United States
116 District Court for the Northern District of Florida alleging

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117 that Ms. Mandrell, Ms. Pease, Ms. Johnson, and Ms. Spivey were
118 deliberately indifferent to the risk that Mr. Thomas would
119 sexually abuse her, thus violating her right to substantive due
120 process under the Fourteenth Amendment, and

121 WHEREAS, Ms. Mandrell, Ms. Pease, Ms. Johnson, and Ms.
122 Spivey filed a motion for summary judgment, and the trial court
123 granted it. All federal law claims against Judy Mandrell, Lillie
124 S. Pease, Jennifer Johnson, and Gayla Spivey were dismissed with
125 prejudice, and all state law claims were dismissed without
126 prejudice, and

127 WHEREAS, on June 21, 2010, the parties agreed to a mediated
128 settlement under which L.T. shall receive \$1 million, of which
129 \$200,000 shall be submitted by check to the trust account of
130 Haas, Lewis, Difiore, & Amos, P.A., and the balance of \$800,000
131 shall be submitted through a claim bill that DCF agrees to
132 support, NOW, THEREFORE,

133

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

135

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

138 Section 2. There is appropriated from the General Revenue
139 Fund to the Department of Children and Family Services the sum
140 of \$1 million for the relief of L.T., by and through Vicki
141 McSwain, Permanent Custodian for L.T., for injuries and damages
142 sustained. After payment of attorney's fees and costs, lobbying
143 fees, other similar expenses relating to this claim, outstanding
144 medical liens, and other immediate needs, the remaining funds
145 shall be placed into a special-needs trust created for the

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146 exclusive use and benefit of L.T.

147 Section 3. The Chief Financial Officer is directed to draw
148 a warrant in the sum of \$1 million, payable to L.T., by and
149 through Vicki McSwain, Permanent Custodian for L.T., upon funds
150 in the State Treasury to the credit of the Department of
151 Children and Family Services, and the Chief Financial Officer is
152 directed to pay the same out of such funds in the State Treasury
153 not otherwise appropriated.

154 Section 4. Any amount awarded pursuant to the waiver of
155 sovereign immunity under s. 768.28, Florida Statutes, and the
156 amount awarded under this act are intended to provide the sole
157 compensation for all present and future claims arising out of
158 the factual situation described in the preamble to this act
159 which resulted in the injury to L.T. The total amount paid for
160 attorney's fees, lobbying fees, costs, and other similar
161 expenses relating to this claim may not exceed 25 percent of the
162 total amount awarded under this act.

163 Section 5. This act shall take effect upon becoming a law.