

By Senator Ring

32-00155-12

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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 fees and costs; providing an  
9 effective date.

10  
11 WHEREAS, on August 15, 1995, the Department of Children and  
12 Family Services (DCF) removed 14-month-old L.T. and her infant  
13 brother from their mother's custody because they were not  
14 receiving adequate care, and

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

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

29 WHEREAS, Ms. Mandrell and Ms. Pease ultimately concluded

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

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

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

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

57 WHEREAS, on January 31, 1997, Mr. Thomas went to trial for  
58 the charges against him, and the jury acquitted him of sexual

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

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

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

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

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

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88 to be around children." Jennifer Johnson, a child protective  
89 investigator for DCF, was assigned to investigate the  
90 allegations. Gayla Spivey, Ms. Johnson's supervisor, oversaw the  
91 investigation, and

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

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

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

114 WHEREAS, L.T. brought a lawsuit in the United States  
115 District Court for the Northern District of Florida alleging  
116 that Ms. Mandrell, Ms. Pease, Ms. Johnson, and Ms. Spivey were

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117 deliberately indifferent to the risk that Mr. Thomas would  
118 sexually abuse her, thus violating her right to substantive due  
119 process under the Fourteenth Amendment, and

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

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

132

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

134

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

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

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

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

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