

1                   A bill to be entitled  
2           An act for the relief of "Survivor" and the Estate of  
3           "Victim"; providing an appropriation to compensate  
4           Survivor and the Estate of Victim for injuries and  
5           damages sustained as result of the negligence of the  
6           Department of Children and Families, formerly known as  
7           the Department of Children and Family Services;  
8           providing a limitation on the payment of compensation,  
9           fees, and costs; providing an effective date.

10  
11           WHEREAS, on May 30, 2000, 4 days after their birth, a baby  
12           boy, hereinafter referred to as "Survivor" and his twin sister,  
13           hereinafter referred to as "Victim," first came to the attention  
14           of the Department of Children and Families, formerly known as  
15           the Department of Children and Family Services, due to the fact  
16           that the children were to be sent to separate foster homes, and

17           WHEREAS, Survivor was reunited with his biological mother  
18           and father on July 26, 2000, and Victim was reunited with them  
19           on January 8, 2001, and

20           WHEREAS, on August 4, 2003, the court terminated the  
21           parental rights of Survivor's and Victim's biological mother,  
22           and

23           WHEREAS, on March 26, 2004, Survivor's and Victim's  
24           biological father was arrested, which resulted in both Survivor  
25           and Victim being placed in the custody of the state and moved

26 | into the foster home of Jorge and Carmen Barahona, and  
27 |       WHEREAS, within 4 days of the placement of Survivor and  
28 | Victim in foster care, contact was made with paternal relatives  
29 | in Texas, Mr. and Mrs. Reyes, to explore their potential role as  
30 | caregivers, and  
31 |       WHEREAS, on March 30, 2004, Mr. and Mrs. Reyes informed the  
32 | Department of Children and Families that they were interested in  
33 | caring for Survivor and Victim, and  
34 |       WHEREAS, pursuant to s. 39.521, Florida Statutes, placement  
35 | with adult relatives takes priority over out-of-home licensed  
36 | foster care placement, and Survivor and Victim should have been  
37 | placed in the Reyes's home as soon as due diligence allowed, and  
38 |       WHEREAS, pursuant to s. 39.001, Florida Statutes,  
39 | Department of Children and Families case workers are required to  
40 | achieve permanency within 1 year, either through reunification  
41 | with a child's natural parents or adoption, and  
42 |       WHEREAS, due to significant delays in the placement  
43 | process, the Reyes' were not permitted to adopt Survivor and  
44 | Victim, who were ultimately adopted by the Barahonas on May 29,  
45 | 2009, and  
46 |       WHEREAS, prior to the adoption of Survivor and Victim by  
47 | the Barahonas, significant events occurred which the Department  
48 | of Children and Families knew or should have known were  
49 | indicative of the perpetration of abuse of Survivor and Victim,  
50 | and

51 WHEREAS, in at least one instance, allegations of medical  
52 neglect were reported and, pursuant to Department of Children  
53 and Families Operating Procedure 175-28, the allegations should  
54 have been verified and Survivor and Victim should have been  
55 immediately removed from the Barahona home, and

56 WHEREAS, in January 2005, it was reported that Jorge  
57 Barahona had "tickled the private parts" of Victim, which the  
58 child protective investigator dismissed as being of "little  
59 concern," and

60 WHEREAS, on March 20, 2007, Survivor's and Victim's school  
61 principal called in an abuse report to the Department of  
62 Children and Families which alleged that, for 5 months, Victim  
63 had been going to school at least two to three times per week  
64 with serious body odor, smelling rotten, and appearing unkempt;  
65 that Victim's uniforms were not clean and her shoes were dirty;  
66 that on one occasion Victim had spilled applesauce in her hair  
67 at school and returned the following day with the applesauce  
68 still in her hair; that Victim was always hungry and eating a  
69 lot at school, hoarding food in her backpack from breakfast and  
70 lunch, and there was a concern that she was not eating at home;  
71 that Victim was afraid to talk; that Survivor also went to  
72 school appearing unkempt; and that both Survivor and Victim were  
73 having trouble staying awake during classes, and

74 WHEREAS, on March 29, 2007, the Department of Children and  
75 Families learned that Survivor and Victim had been absent from

76 | school approximately 20 days, taken out of school early about a  
77 | dozen times, and were expected to be retained in the first  
78 | grade, and

79 |       WHEREAS, on May 29, 2009, Victim and Survivor were adopted  
80 | by the Barahonas, despite numerous incidents that should have  
81 | led to an active investigation and discovery of abuse, and

82 |       WHEREAS, in February 2011, the Department of Children and  
83 | Families Abuse Hotline received another report concerning  
84 | Survivor and Victim, this time alleging that Survivor and Victim  
85 | were being severely abused and imprisoned from the world, and

86 |       WHEREAS, it was the duty of the Department of Children and  
87 | Families to remove Survivor and Victim from a placement in which  
88 | there was a substantial risk of harm and, over the course of 6  
89 | years, there were multiple instances of abuse which the  
90 | department either knew or should have known were occurring in  
91 | connection with their placement with the Barahonas, and

92 |       WHEREAS, on February 14, 2011, Victim, was found dead in a  
93 | truck parked off I-95 in Palm Beach County, and Survivor was  
94 | found near-death, in critical condition, and

95 |       WHEREAS, after the death of Victim and the discovery of the  
96 | severe abuse of both children, the Secretary of the Department  
97 | of Children and Families, David E. Wilkins, conducted an  
98 | investigation that culminated on March 14, 2011, with the  
99 | issuance of a report of findings and recommendations, and

100 |       WHEREAS, in the executive summary of the report,

101 | investigators reported that there were significant gaps and  
102 | failures in common sense, critical thinking, ownership, follow-  
103 | through, and timely and accurate information sharing, all of  
104 | which defined the care of Survivor and Victim from the inception  
105 | of their relationship with the state child welfare system, and

106 |       WHEREAS, investigators determined that the systematic  
107 | failure included both investigative and case management  
108 | processes, as well as the pre- and post-adoption processes, and

109 |       WHEREAS, the investigative report cited numerous incidents  
110 | of abuse of the children, including, but not limited to,  
111 | punching, kicking, choking, beatings, the denial of basic and  
112 | necessary medical care, forcing the children to eat cockroaches  
113 | and food that contained feces, sexual abuse, sticking cotton  
114 | swabs with human feces in the children's ears, suffocating one  
115 | child with a plastic bag while the other child watched, smearing  
116 | feces over the children's faces and placing feces on the  
117 | children's hands for extended periods of time, and binding the  
118 | children with duct tape and placing them naked in a bathtub  
119 | together for days on end, and

120 |       WHEREAS, after the death of Victim and the discovery of  
121 | Survivor, criminal charges were filed against the Barahonas, and

122 |       WHEREAS, tort claims were filed on behalf of Victim and  
123 | Survivor in the United States District Court for the Southern  
124 | District of Florida, Case No. 1:11-civ-24611-PAS, and a  
125 | complaint was also filed in the Circuit Court for the Eleventh

126 Judicial Circuit of Miami-Dade County, Case No. 13-2715 CA 25,  
 127 and

128 WHEREAS, the personal representative of the Estate of  
 129 Victim and the newly adoptive parents of Survivor have agreed to  
 130 amicably settle this matter and have entered into a settlement  
 131 agreement in which the Department of Children and Families has  
 132 agreed to pay \$5 million to Survivor and the Estate of Victim,  
 133 and

134 WHEREAS, as a result of the allegations of both negligence  
 135 and civil rights violations, and pursuant to s. 768.28, Florida  
 136 Statutes, the Department of Children and Families has paid \$1.25  
 137 million to Survivor and the Estate of Victim, and

138 WHEREAS, the balance of the settlement agreement is to be  
 139 paid through the passage of this claim bill in the amount of  
 140 \$3.75 million, and

141 WHEREAS, the Department of Children and Families fully  
 142 supports the passage of this claim bill, NOW, THEREFORE,

143

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

145

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

148 Section 2. The sum of \$3.75 million is appropriated from  
 149 the General Revenue Fund to the Department of Children and  
 150 Families for the relief of Survivor for the personal injuries he

151 sustained and to the Estate of Victim for damages relating to  
152 the death of Victim.

153 Section 3. The Chief Financial Officer is directed to draw  
154 a warrant in favor of the adoptive parents of Survivor, as legal  
155 guardians of Survivor, and to Richard Milstein, as personal  
156 representative of the Estate of Victim, in the sum of \$3.75  
157 million upon funds of the Department of Children and Families in  
158 the State Treasury, and the Chief Financial Officer is directed  
159 to pay the same out of such funds in the State Treasury.

160 Section 4. The amount paid by the Department of Children  
161 and Families pursuant to s. 768.28, Florida Statutes, and the  
162 amount awarded under this act are intended to provide the sole  
163 compensation for all present and future claims arising out of  
164 the factual situation described in the preamble to this act  
165 which resulted in the personal injuries of Survivor and the  
166 death of Victim. Of the amount awarded under this act, the total  
167 amount paid for attorney fees may not exceed \$750,000, the total  
168 amount paid for lobbyist fees may not exceed \$187,500, and the  
169 total amount paid for costs and other similar expenses relating  
170 to this claim may not exceed \$76,312.81.

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