

Council Substitute for
Council Substitute for House Bill No. 443

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, Investigator Collins instead went to the family home while Marissa Amora was still in the hospital, met with the natural mother, noting that the apartment was devoid of any baby items, and subsequently informed the natural mother that she would need to purchase a crib and that

she would return the following week to make sure that this condition had been complied with, and

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

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

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

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

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

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

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

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

WHEREAS, the department's log written by Investigator Arias reflects numerous contacts prior to discharge from the hospital from the social work-

ers at Miami Children's Hospital challenging the department's decision to allow Marissa Amora to go home with her natural mother, and

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

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

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

WHEREAS, the child protection team in Palm Beach County, as well as hospital physicians in Boca Raton and Delray Beach, determined that Marissa Amora's problems, dating back to the admission to Bethesda Memorial Hospital on November 8, 2000, and the life-threatening trauma with severe brain damage sustained on January 11, 2001, were due to injuries caused by physical abuse, and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 5. This award and any subsequent awards appropriated up to a grand total of \$18,200,000 in nonrecurring funds, inclusive of this award, are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in the preamble to this act which resulted in the injury to Marissa Amora. The total amount paid for attorney's fees, lobbying fees, costs, and other similar expenses relating

to this claim may not exceed 25 percent of each annual payment awarded pursuant to this act.

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

Approved by the Governor May 6, 2008.

Filed in Office Secretary of State May 6, 2008.