

Committee Substitute for Senate Bill No. 18

An act for the relief of Kathleen McCarty, individually and as personal representative of the Estate of Laura Bailey, deceased, and George Decker and Joan Decker, individually and as co-personal representatives of the Estate of Christina Decker; providing appropriations to compensate them for losses sustained as a result of the actions of the Department of Children and Family Services; providing an effective date.

WHEREAS, Laura Bailey and Christina Decker, developmentally disabled adults unable to care for themselves, were institutionalized in various facilities on the grounds of Tacachale and were wholly dependent upon the care, custody, and control of the Department of Children and Family Services and its employees, Rachuel Sercey and Evertice Cole, and

WHEREAS, on April 19, 1998, Rachuel Sercey lost control of a facility-owned van that flipped and ejected Laura Bailey and Christina Decker from the vehicle, and

WHEREAS, Laura Bailey and Christina Decker subsequently died from their injuries, and

WHEREAS, Laura Bailey, Christina Decker, and their guardians relied upon the Department of Children and Family Services and its staff to provide for their safety and welfare and to make the proper decisions on their behalf concerning their day-to-day activities, and

WHEREAS, the facility-owned vehicle involved in the accident which is the subject of litigation was improperly and negligently maintained by the facility, including, but not limited to, negligent maintenance of the right rear tire on the van, and

WHEREAS, for almost 15 years before the accident, Rachuel Sercey worked at Tacachale, and

WHEREAS, before the accident, Rachuel Sercey was arrested and cited on numerous occasions for driving infractions and substance-abuse-related charges and was reprimanded by Tacachale for deviation from a trip ticket and neglecting residents in her care, and

WHEREAS, notwithstanding this history of which the Department of Children and Family Services knew or should have known, the department permitted Rachuel Sercey to drive residents in facility-owned vehicles for facility purposes, and

WHEREAS, the Department of Children and Family Services did not require mandatory drug testing of facility staff, nor did it conduct routine background checks on facility staff, and

WHEREAS, before April 19, 1998, Tacachale staff submitted for approval a request that certain residents be allowed to attend a picnic field trip to

Ginnie Springs, which request was approved by agents and employees of the Department of Children and Family Services, and

WHEREAS, Laura Bailey and Christina Decker were among those residents scheduled to attend the Ginnie Springs field trip, and

WHEREAS, on April 19, 1998, plaintiffs Laura Bailey, Christina Decker, and five developmentally disabled adult women were loaded into a facility-owned van along with two staff personnel, Evertice Cole and Rachuel Sercey, and

WHEREAS, the van was owned and maintained by the Department of Children and Family Services and used for the purpose of transporting facility residents, and

WHEREAS, even though the van was designed to accommodate eight persons and was equipped with only eight seatbelts, Evertice Cole and Rachuel Sercey allowed nine occupants, including the seven developmentally disabled women, to enter the van, and

WHEREAS, of these nine occupants, Evertice Cole and Rachuel Sercey sat in the front two seats with seatbelts, ensuring that at least one resident had no access to a seatbelt at the outset of the field trip, and

WHEREAS, the security guard at the Tacachale front gate was responsible for inspecting the paperwork authorizing the outing to Ginnie Springs and ensuring that all occupants were properly restrained and was otherwise required to ensure the safety of the van's occupants, and

WHEREAS, the security guard failed to ensure that all occupants were wearing their seatbelts, that the van had the appropriate number of occupants, and that the right rear tire of the van was properly inflated, and

WHEREAS, on April 19, 1998, Rachuel Sercey and Evertice Cole were in the course and scope of their employment when they took Laura Bailey, Christina Decker, and other residents on the scheduled field trip, and

WHEREAS, after leaving the facility and instead of going to Ginnie Springs, Laura Bailey, Christine Decker, and the other residents were taken to a location where Rachuel Sercey and Evertice Cole illegally consumed drugs and alcohol, leaving Laura Bailey, Christina Decker, and the other residents improperly supervised and unattended during this time, and

WHEREAS, after illegally consuming drugs and alcohol, Rachuel Sercey and Evertice Cole returned to the unsupervised residents and began to drive back to Tacachale, with Rachuel Sercey at the wheel, and

WHEREAS, Rachuel Sercey, without protest from Evertice Cole, operated the van in a negligent, reckless, and dangerous manner, including, but not limited to, driving at excessive speeds and ignoring an under-inflated right rear tire, and

WHEREAS, Evertice Cole had a duty to intervene on behalf of the occupants of the facility-owned van and prevent the accident, but did nothing to prevent Rachuel Sercey from causing the accident, and

WHEREAS, the representatives of the deceased and insured have been required to retain counsel and otherwise incur expenses and costs as a result of the actions of the Department of Children and Family Services and its employees, and

WHEREAS, the Department of Children and Family Services agreed in October 2001, not to oppose a claims bill up to the amount of \$400,000, and the Division of Risk Management has already paid the statutory limit of \$200,000 on behalf of the department, and

WHEREAS, of the remaining \$400,000 balance on the claim, after payment of attorney's fees and costs in the amount of \$84,000, \$246,000 is to be paid to Kathleen McCarty and \$70,000 is to be paid to George Decker and Joan Decker, 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. There is appropriated from the General Revenue Fund to the Department of Children and Family Services the sum of \$400,000 for the relief of Kathleen McCarty, individually and as personal representative of the Estate of Laura Bailey, and for the relief of George Decker and Joan Decker, individually and as co-personal representatives of the Estate of Christina Decker, for injuries and damages sustained. After payment of statutory attorney's fees and costs, the proceeds recovered through the passage of this act shall be apportioned in the following manner: \$246,000 to be paid to Kathleen McCarty, individually and as personal representative of the Estate of Laura Bailey; and \$70,000 to be paid to George Decker and Joan Decker, individually and as co-personal representatives of the Estate of Christina Decker.

Section 3. The Comptroller is directed to draw a warrant in favor of Kathleen McCarty, individually and as personal representative of the Estate of Laura Bailey, in the sum of \$246,000 upon funds of the Department of Children and Family Services in the State Treasury and the State Treasurer is directed to pay the same out of such funds in the State Treasury.

Section 4. The Comptroller is directed to draw a warrant in favor of George Decker and Joan Decker, individually and as co-personal representatives of the Estate of Christina Decker, in the sum of \$70,000 upon funds of the Department of Children and Family Services in the State Treasury and the State Treasurer is directed to pay the same out of such funds in the State Treasury.

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

Approved by the Governor June 5, 2002.

Filed in Office Secretary of State June 5, 2002.