

1 A bill to be entitled
 2 An act for the relief of Daniel and Amara Estrada;
 3 providing an appropriation to compensate Daniel and Amara
 4 Estrada, parents and guardians of Caleb Estrada, for the
 5 wrongful birth of Caleb Estrada and for damages sustained
 6 by Daniel and Amara Estrada as a result of negligence by
 7 employees of the University of South Florida Board of
 8 Trustees; providing a limitation on the payment of fees
 9 and costs; providing an effective date.

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

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13 WHEREAS, Amara and Daniel Estrada's first child, Aiden
 14 Estrada, was born on June 28, 2002, at Tampa General Hospital,
 15 and

16 WHEREAS, Aiden Estrada was born with numerous birth
 17 defects, including 2-3 syndactyly, hypospadias, cryptorchidism,
 18 small for gestational age, cleft palate, simian creases in both
 19 hands, ears low set and rotated, micropenis, micronathia,
 20 intrauterine growth retardation, microcephaly, and dysmorphic
 21 face, and

22 WHEREAS, these defects and conditions should have caused a
 23 geneticist to suspect and then confirm the diagnosis of Smith-
 24 Lemli-Opitz syndrome, and

25 WHEREAS, on June 28, 2002, the newborn nursery of Tampa
 26 General Hospital called for a genetic consultation concerning
 27 Aiden Estrada by Boris Kousseff, M.D., Director of Medical
 28 Genetics of the University of South Florida College of Medicine,

29 and

30 WHEREAS, Dr. Kousseff examined Aiden Estrada in St.
 31 Joseph's Hospital on July 1, 2002, but failed to suspect or
 32 diagnose Smith-Lemli-Opitz syndrome, and

33 WHEREAS, Dr. Kousseff followed the condition of Aiden
 34 Estrada as his treating geneticist and made an appointment for
 35 the Estradas to bring Aiden Estrada to his office at the
 36 University of South Florida Genetics Clinic on August 29, 2002,
 37 and

38 WHEREAS, at the time of such appointment, Dr. Kousseff
 39 failed once again to suspect or diagnose Smith-Lemli-Opitz
 40 syndrome, and

41 WHEREAS, Dr. Kousseff next saw Aiden Estrada and his
 42 parents at the University of South Florida Genetics Clinic on
 43 September 15, 2003, at which time it was apparent that Aiden was
 44 severely developmentally delayed, had severe psychomotor
 45 retardation, and was unable to take nutrition or hydration by
 46 mouth, requiring Aiden Estrada to depend on a gastrostomy tube
 47 that was surgically implanted through the abdominal and stomach
 48 wall in order to deliver nutrition and hydration, and

49 WHEREAS, Dr. Kousseff again failed to suspect or diagnose
 50 Smith-Lemli-Opitz syndrome, and

51 WHEREAS, Dr. Kousseff told Daniel and Amara Estrada that he
 52 believed Aiden Estrada's problems did not indicate any genetic
 53 disorder and they could expect pregnancies with "normal"
 54 children, and

55 WHEREAS, the standard of care calls for a geneticist under
 56 this situation, when he or she does not know the diagnosis, to

57 | advise parents that there is at least a 25 percent chance of
 58 | recurrence of the defects in the next child, and

59 | WHEREAS, if the Estradas been told the truth of the
 60 | possibility of recurrence of the birth defects in a subsequent
 61 | child, the Estradas would have chosen not to conceive again but
 62 | to adopt, and

63 | WHEREAS, instead, the parents relied on Dr. Kousseff's
 64 | advice and, after following all of the recommendations of Dr.
 65 | Kousseff, conceived a second child, and

66 | WHEREAS, Amara Estrada gave birth to Caleb Estrada on
 67 | November 18, 2004, at Shands Teaching Hospital of the University
 68 | of Florida, and

69 | WHEREAS, Caleb had the same or similar symptoms as his
 70 | older brother, Aiden Estrada, and

71 | WHEREAS, within an hour after his birth, the geneticist at
 72 | the University of Florida diagnosed Caleb Estrada as having
 73 | Smith-Lemli-Opitz syndrome, and

74 | WHEREAS, on the next day, November 19, 2004, Daniel and
 75 | Amara Estrada brought Aiden Estrada to Shands Hospital to meet
 76 | with the geneticist who diagnosed Aiden as having Smith-Lemli-
 77 | Opitz syndrome, and

78 | WHEREAS, the parents now had a second child who is severely
 79 | impaired and who also would be totally reliant on a gastrostomy
 80 | tube for nutrition and hydration and who would also require 24-
 81 | hour care and supervision, and

82 | WHEREAS, the physical, emotional, and financial resources
 83 | of Daniel and Amara Estrada have been exhausted in trying to
 84 | care for the severely impaired Aiden, who has needed 24-hour

85 care and supervision and could not survive without a gastrostomy
86 tube, and

87 WHEREAS, the testimony of witnesses, testifying on behalf
88 of the Estradas, as well as the witnesses testifying on behalf
89 the University of South Florida, agreed that the care provided
90 by Boris Kousseff, M.D., was completely below any acceptable
91 standard in his failure to recognize and diagnose Smith-Lemli-
92 Opitz syndrome from Aiden Estrada's many symptoms, and

93 WHEREAS, Robert Steiner, M.D., a leading geneticist in
94 Smith-Lemli-Opitz syndrome, testified that he could not
95 comprehend how Dr. Kousseff could possibly tell the parents on
96 September 15, 2003, that their chances of having a normal child
97 were the same as anybody else's, and

98 WHEREAS, Dr. Steiner testified that the conduct of Dr.
99 Kousseff was egregious, and

100 WHEREAS, the rehabilitation experts testifying on behalf of
101 the Estradas and the rehabilitation experts testifying on behalf
102 of the University of South Florida agreed that Caleb Estrada
103 needs one-on-one care 24 hours a day, 7 days a week, and

104 WHEREAS, after a trial, the jury returned a verdict in
105 favor of Daniel and Amara Estrada, as parents and guardians of
106 Caleb Estrada, in the amount of \$23,553,000, for the cost of
107 care for Caleb Estrada, and

108 WHEREAS, the jury assigned the University of South Florida
109 90 percent liability for the wrongful birth of Caleb Estrada,
110 and

111 WHEREAS, the University of South Florida has a self-
112 insurance fund of \$3 million through Health Science Insurance

113 Company, and such funds have been paid into the plan or into
 114 premiums by the University of South Florida and can never be
 115 returned to the University of South Florida or to the State of
 116 Florida, and

117 WHEREAS, the University of South Florida procured insurance
 118 (reinsurance) from Lloyds of London in the amount of \$15
 119 million, and

120 WHEREAS, the Health Science Insurance Plan provides that it
 121 will pay all costs taxed against the University of South Florida
 122 and all interest on the entire judgment up to the time the
 123 University of South Florida tenders \$200,000 under its waiver of
 124 sovereign immunity, leaving \$26,994.87 in costs and
 125 \$3,798,518.05 in interest, and

126 WHEREAS, the University of South Florida tendered \$200,000
 127 toward payment of this claim on April 2, 2009, and that payment
 128 should be credited toward payment of the judgment amount, NOW,
 129 THEREFORE,

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

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

135 Section 2. The sum of \$7,500,000 shall be paid by the
 136 University of South Florida, to the maximum extent possible out
 137 of insurance proceeds, to Daniel and Amara Estrada, parents and
 138 natural guardians of Caleb Estrada.

139 Section 3. The amount paid pursuant to s. 768.28, Florida
 140 Statutes, and the amount awarded under this act are intended to

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141 provide the sole compensation for all present and future claims
142 arising out of the factual situation described in this act which
143 resulted in the wrongful birth of Caleb Estrada. The total
144 amount paid for attorney's fees, lobbying fees, costs, and other
145 similar expenses relating to this claim may not exceed 25
146 percent of the total amount awarded under this act.

147 Section 4. This act shall take effect upon becoming a law.