

By Senator Jones

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1 A bill to be entitled

2 An act relating to the relief of Judge Joseph G. Donahey,  
3 Jr., and Tena Donahey, his spouse; providing an  
4 appropriation to compensate them for injuries received by  
5 Joseph Donahey, Jr., and for damages sustained by Mr. and  
6 Mrs. Donahey as a result of the medical treatment of Judge  
7 Joseph G. Donahey, Jr., by employees of the State of  
8 Florida; providing a limitation on the payment of fees and  
9 costs; providing an effective date.

10  
11 WHEREAS, Joseph G. Donahey, Jr., a circuit judge of the  
12 State of Florida, has for years suffered a continually worsening  
13 condition of the back which caused him significant pain and  
14 suffering and was beginning to affect his ability to serve as a  
15 circuit judge, and

16 WHEREAS, Joseph G. Donahey, Jr., consulted with his personal  
17 physician and was referred by his personal physician to a surgeon  
18 who was reputed to be skilled in orthopedic surgery, and

19 WHEREAS, Joseph G. Donahey, Jr., consulted with the surgeon  
20 and was advised that a surgical procedure could be performed on  
21 his back which would probably significantly improve the condition  
22 of his back, and

23 WHEREAS, Joseph G. Donahey, Jr., consented to surgery by the  
24 surgeon, to be conducted at Tampa General Hospital in Tampa,  
25 Florida, and

26 WHEREAS, unknown to Joseph G. Donahey, Jr., the surgeon who  
27 was to perform such surgery was an employee of the Board of  
28 Regents of the State of Florida, and

29 WHEREAS, the surgery was performed on January 11, 1999, at

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30 Tampa General Hospital, and

31 WHEREAS, a series of events took place which together  
32 resulted in Joseph G. Donahey, Jr.'s becoming totally blind  
33 during the surgery. As is so often true, any individual event may  
34 not have been determinative; however, in combination, the result  
35 to Judge Donahey was blindness, and such blindness occurred not  
36 through any fault on his part but, undoubtedly, as a result of a  
37 series of events attributable to several employees of the Board  
38 of Regents. Those events are summarized as follows:

39 (1) The spinal surgery performed on Judge Donahey's back  
40 was a complicated and lengthy surgery.

41 (a) Complicated surgery exposes patients to longer bouts of  
42 anesthesia, greater blood loss, and decreased blood pressure and,  
43 therefore, increases the risk of decreased blood flow and loss of  
44 vision due to ischemic optic neuropathy.

45 (b) Joseph G. Donahey, Jr., was advised that such surgery  
46 would likely last approximately 4 ½ hours.

47 (c) The surgery lasted for approximately 10 hours instead  
48 of the estimated 4 ½ hours. During this unexpectedly long time,  
49 the surgeon who had been employed by Judge Donahey also  
50 supervised or performed surgery on two other patients. The  
51 supervising anesthesiologist overseeing anesthesia services being  
52 performed on Joseph G. Donahey, Jr., likewise at the same time  
53 supervised anesthesia services performed on the other two  
54 patients.

55 (d) Unknown to Joseph G. Donahey, Jr., such surgery was not  
56 performed solely by the surgeon whom he thought would perform the  
57 surgery but, in fact, was performed in part by a different doctor  
58 who was only a resident physician who, as part of his training

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59 procedure, was employed by the Board of Regents and received  
60 training by observing and participating in surgery conducted by  
61 the surgeon who was expected by Judge Donahey to perform the  
62 surgery and who was the resident physician's professor.

63 (e) Unknown to Joseph G. Donahey, Jr., the anesthesiologist  
64 who was to provide anesthesia services was also a resident  
65 student employed by the Board of Regents and, as such, performed  
66 anesthesiology services on patients being operated on by Joseph  
67 Donahey's surgeon and others while under only partial supervision  
68 by a board-certified anesthesiologist who was likewise the  
69 anesthetist's professor.

70 (2) The risk factors associated with this complicated and  
71 lengthy surgery, as known to all of the physicians participating  
72 in the surgery, were increased by a combination of factors. The  
73 risks, which were not known by Judge Donahey nor conveyed to him  
74 by his physicians, included:

75 (a) Hypotension anesthesia was employed for Joseph G.  
76 Donahey, Jr.'s surgery.

77 (b) Hypotensive anesthesia is a technique employed during  
78 spinal surgery in which blood pressure is kept artificially low  
79 through the administration of medicine in order to achieve the  
80 goal of minimal bleeding.

81 (c) As known to all of the physicians involved in Judge  
82 Donahey's surgery, low blood pressure has an additive ischemic  
83 effect on blood flow when combined with blood loss, ultimately  
84 placing certain vital organs at risk for decreased blood flow.  
85 The optic nerve, which stimulates vision through the brain, is  
86 part of the organ of the eyes and, during spinal surgery, is at  
87 risk for decreased blood flow.

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88 (d) Hemoglobin drops with blood loss and, as such, is the  
89 parameter monitored, together with systolic and diastolic blood  
90 pressures, to ensure adequate blood flow to all parts of the body  
91 during surgery, especially during utilization of the practice of  
92 hypotensive anesthesia.

93 (e) Prone body positioning is known to exacerbate the  
94 cumulative effects of low hemoglobin and low blood pressures, and  
95 Judge Donahey's surgery was performed in the prone position.

96 (f) The resident who provided anesthesia services under the  
97 partial supervision of a board-certified anesthesiologist was  
98 educated and trained in the increasing cumulative risk of visual  
99 loss in the face of low blood pressure blood loss (reduced  
100 hemoglobin) and lengthy surgery and, further, knew that increased  
101 risk of visual loss may occur due to ischemic optic neuropathy  
102 when hemoglobin drops below 10.

103 (g) Testimony indicated that Judge Donahey's hemoglobin was  
104 below 10 for about 4 hours.

105 (h) The resident who provided anesthesia services under the  
106 partial supervision of a board-certified anesthesiologist was  
107 educated and trained in these additive effects and, furthermore,  
108 knew that increased risk of visual loss may occur due to ischemic  
109 optic neuropathy when systolic blood pressure drops below 100 mm.  
110 Hg.

111 (i) Judge Donahey's systolic blood pressure dropped below  
112 100 mm. Hg during the same time period in which his hemoglobin  
113 was below 10, and, further, Judge Donahey required and received  
114 neo-synephrine in order to elevate his systolic blood pressure.

115 (j) The surgeons who performed Judge Donahey's spinal  
116 surgery were never directly informed of the low hemoglobin or low

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117 | systolic blood pressure, since those symptoms were not deemed a  
118 | risk requiring the interruption of surgery.

119 |       (k) Despite the knowledge of the risks associated with  
120 | hypotensive anesthesia and complicated spinal surgery, the  
121 | physicians ultimately relied on and employed slightly differing  
122 | minimum standards for blood pressure and hemoglobin, thereby  
123 | creating confusion in the context of this specific surgery, and  
124 | thus increased the overall risk under which Judge Donahey's  
125 | surgery was performed and, correspondingly, increased the  
126 | likelihood that ischemic optic neuropathy would occur.

127 |       (3) The physicians involved in Judge Donahey's surgery all  
128 | acknowledged that the occurrence of blindness arising from  
129 | decreased blood flow to the optic nerve, or ischemic optic  
130 | neuropathy, had increased in the 5 years immediately preceding  
131 | Judge Donahey's surgery.

132 |       (4) Vision problems related to surgery had been reported  
133 | approximately 120 times in medical literature for this surgery  
134 | and, on three previous patients, the particular surgeon involved  
135 | had performed surgery that resulted in unilateral vision loss. A  
136 | significant portion of these cases involved patients who were in  
137 | the prone position during lengthy surgery. This problem had been  
138 | discussed by the surgeon involved, his resident students, and  
139 | staff and had been discussed at national meetings. Both the  
140 | literature and the discussions reflected that a significant  
141 | causative effect was reduced blood pressure and lowered  
142 | hemoglobin, which would cause damage to the optic nerve.

143 |       (5) The surgeons who performed Judge Donahey's surgery  
144 | acknowledged the option of performing the surgery in two stages,  
145 | first to one level of the spine and then in a second stage to the

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146 second level; however, Judge Donahey was never informed of the  
147 cumulative risks as described above which were exacerbated by the  
148 length of his surgery nor of the option of having his surgery  
149 performed in two stages. If Judge Donahey had been informed of  
150 all the risks and of the option of staged surgery, he would not  
151 be blind today, and

152 WHEREAS, in accordance with the Florida Medical Malpractice  
153 Act, Joseph G. Donahey, Jr., joined by his wife, Tena Donahey,  
154 filed a notice of intent to commence litigation and took  
155 statements of the physicians and the anesthesiologists involved  
156 and supported their notice of intent to commence litigation with  
157 the requisite affidavits required by law, and

158 WHEREAS, the Board of Regents of the State of Florida denied  
159 liability as authorized by the Florida Medical Malpractice Act,  
160 and

161 WHEREAS, Joseph G. Donahey, Jr., filed a lawsuit against the  
162 Board of Regents of the State of Florida in the Thirteenth  
163 Judicial Circuit of Hillsborough County, Florida, and took  
164 discovery depositions of the physicians involved and obtained the  
165 records relating to the care and treatment involved and fully  
166 complied with all pretrial requirements of law, and

167 WHEREAS, the Board of Regents formally offered to settle all  
168 claims of the plaintiffs, Joseph G. Donahey, Jr., and Tena  
169 Donahey, by the payment of \$200,000, which represented the  
170 maximum amount that the Board of Regents could be required to pay  
171 Joseph G. Donahey, Jr., and Tena Donahey if they won their  
172 lawsuit, absent the passage of a legislative claim bill; and the  
173 penalty for not accepting that offer would be that Joseph G.  
174 Donahey, Jr., and Tena Donahey would have to pay the attorney's

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175 fees of the Board of Regents if they lost the litigation,  
176 although there is no like provision that would allow the Donaheys  
177 to recover more than the \$200,000 without a claim bill, no matter  
178 what occurred at the trial, and

179 WHEREAS, Joseph G. Donahey, Jr., and Tena Donahey formally  
180 accepted the proposed offer of settlement conditioned upon the  
181 release being a standard release of a defendant from liability,  
182 and

183 WHEREAS, the Board of Regents submitted for signature to  
184 Joseph and Tena Donahey a proposed release that would have  
185 prevented them from seeking relief from the Legislature, and

186 WHEREAS, Joseph and Tena Donahey refused to sign a release  
187 containing such a limitation and, thereafter, the Board of  
188 Regents tendered a release from which the restriction from  
189 seeking legislative relief had been removed, which release was  
190 executed to the Board of Regents of the State of Florida and  
191 accepted by the board, and

192 WHEREAS, it was the intent of Joseph G. Donahey, Jr., and  
193 Tena Donahey that the acceptance of the offer of settlement and  
194 the giving and tendering of the release would have the effect of  
195 removing financial responsibility from the University of South  
196 Florida but would allow Joseph G. Donahey, Jr., and Tena Donahey  
197 to make application to the Legislature for equitable relief under  
198 the circumstances set forth in this act, and

199 WHEREAS, Joseph G. Donahey, Jr., has suffered significant  
200 mental pain and suffering and loss of the enjoyment of his life  
201 by reason of his blindness and has continued to serve as a  
202 circuit judge with great difficulty, and, upon his retirement  
203 from the bench, his earning capacity either as a teacher or as a

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204 lawyer will be significantly and adversely affected by his  
205 blindness, and

206 WHEREAS, Joseph G. Donahey, Jr., has incurred economic  
207 expenses in his attempt to seek relief from his blindness not  
208 compensated by insurance, and

209 WHEREAS, Tena Donahey has suffered an economic loss by  
210 reason of her husband's injuries by her need to assist him in his  
211 daily life and has also suffered a significant loss of  
212 consortium, NOW, THEREFORE,

213

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

215

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

218 Section 2. (1) The sum of \$1 million is appropriated from  
219 the Faculty Practice Plan Revenue affiliated at the University of  
220 South Florida Health Center for the relief of Joseph G. Donahey,  
221 Jr., for damages sustained.

222 (2) The Chief Financial Officer is directed to draw a  
223 warrant in favor of Joseph G. Donahey, Jr., in the sum of \$1  
224 million upon funds in the Faculty Practice Plan Revenue  
225 affiliated at the University of South Florida Health Center and  
226 to pay the same out of such funds.

227 Section 3. (1) The sum of \$500,000 is appropriated from  
228 the Faculty Practice Plan Revenue affiliated at the University of  
229 South Florida Health Center for the relief of Tena Donahey for  
230 damages sustained.

231 (2) The Chief Financial Officer is directed to draw a  
232 warrant in favor of Tena Donahey in the sum of \$500,000 upon



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233 funds in the Faculty Practice Plan Revenue affiliated at the  
234 University of South Florida Health Center and to pay the same out  
235 of such funds.

236 Section 4. The amounts awarded in this act are intended to  
237 provide the sole compensation for all present and future claims  
238 arising out of the factual situation described in this act which  
239 resulted in injury to Judge Joseph G. Donahey, Jr. The total  
240 amount paid for attorney's fees, lobbying fees, costs, and other  
241 similar expenses relating to this claim may not exceed 25 percent  
242 of the total amount awarded under this act.

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