

1 A bill to be entitled
 2 An act for the relief of Daniel and Amara Estrada;
 3 providing for the compensation of 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 for such compensation to be paid from
 9 specified insurance proceeds; providing a limitation on
 10 the payment of fees and costs; providing an effective
 11 date.

12
 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 defects
 17 including 2-3 syndactyly, hypospadias, cryptorchidism, small for
 18 gestational age, cleft palate, simian creases in both hands,
 19 ears low set and rotated, micropenis, micronathia, intrauterine
 20 growth retardation, microcephaly, and dysmorphic face, and

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

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

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

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

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

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

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

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

54 WHEREAS, the standard of care calls for a geneticist under
55 this situation, when he or she does not know the diagnosis, to
56 advise parents that there is at least a 25 percent chance of

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57 recurrence of the defects in the next child, and

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

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

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

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

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

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

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

81 WHEREAS, the physical, emotional, and financial resources
82 of Daniel and Amara Estrada have been exhausted in trying to
83 care for the severely impaired Aiden, who has needed 24-hour
84 care and supervision and could not survive without a gastrostomy

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85 tube, and

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

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

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

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

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

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

110 WHEREAS, the University of South Florida has a self-
111 insurance fund of \$3,000,000 through Health Science Insurance
112 Company, which funds have been paid into a plan or into premiums

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113 by the University of South Florida and can never be returned to
 114 the University of South Florida or to the State of Florida, and

115 WHEREAS, the University of South Florida procured insurance
 116 in the form of reinsurance from Lloyds of London in the amount
 117 of \$15,000,000, and

118 WHEREAS, Health Science Insurance Plan provides that it
 119 will pay all costs taxed against the University of South Florida
 120 in the amount of \$26,994.87, and all interest on the entire
 121 judgment up to the time at which the University of South Florida
 122 tenders its payment of \$200,000 under the limits of liability
 123 set forth in s. 768.28, Florida Statutes, in the amount of
 124 \$3,798,518.05, NOW, THEREFORE,

125

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

127

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

130 Section 2. The sum of \$25,023,212.92 is to be paid by the
 131 University of South Florida for the relief of Daniel and Amara
 132 Estrada, parents and natural guardians of Caleb Estrada,
 133 provided that the claim is to be paid exclusively, or at least
 134 to the maximum extent possible, out of insurance proceeds,
 135 including any bad faith claim that may exist against Lloyds of
 136 London under Florida law, as compensation for the wrongful birth
 137 of Caleb Estrada.

138 Section 3. The amount awarded under this act is intended
 139 to provide the sole compensation for all present and future
 140 claims arising out of the factual situation described in this

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141 act which resulted in the wrongful birth of Caleb Estrada. The
142 total amount paid for attorney's fees, lobbying fees, costs, and
143 other similar expenses relating to this claim may not exceed 25
144 percent of the total amount awarded under this act.

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