

By the Committee on Health Regulation; and Senator Margolis

588-2391-07

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A bill to be entitled

An act for the relief of Katherine Selva, a minor, by and through Maria Alcobar, as parent and natural guardian of Katherine Selva, by the City of Miami; providing for an appropriation to compensate her for injuries sustained as a result of the negligence of the City of Miami; providing conditions for payment; providing an effective date.

WHEREAS, On October 19, 1999, Katherine Selva, then 4 years of age, was living with her mother and father, Maria Alcobar and Aldo Selva, who were married at that time, sharing the surname Selva, and living together with their two children, Katherine Selva and her younger sister, Karenlyn Selva, and

WHEREAS, in the early morning hours of October 19, 1999, Katherine Selva began having seizure activity, and

WHEREAS, prior to October 19, 1999, Katherine Selva had been diagnosed with a seizure disorder from infancy which occurred following a DPT immunization at approximately 2 months of age, and

WHEREAS, Katherine Selva had multiple epileptic episodes that required several hospitalizations; however, through the administration of appropriate medication, Katherine's condition was controlled and she was able to live an active life, and

WHEREAS, Katherine Selva had been attending prekindergarten and, according to physicians and therapists, was only mildly delayed as a result of her seizure disorder, and

1 WHEREAS, after Katherine Selva started seizing on
2 October 19, 1999, her parents called 911 for paramedic
3 assistance, and

4 WHEREAS, a rescue vehicle initially reported to the
5 Selva residence at approximately 1:28 a.m. and found Katherine
6 Selva having active seizures, and

7 WHEREAS, two agents of the City of Miami, fire rescue
8 personnel Ernesto Vila and Gustavo Busse, arrived and advised
9 that they found Katherine Selva actively seizing on a bed, and

10 WHEREAS, the two fire rescue personnel administered 2
11 milligrams of Valium and requested a second purportedly
12 better-equipped vehicle to transport Katherine Selva to
13 Jackson Memorial Hospital at approximately 1:30 a.m., and

14 WHEREAS, Rescue Ten, which included paramedic Henry
15 Rodriguez and one to three others, subsequently arrived at
16 approximately 1:43 a.m., and

17 WHEREAS, reports and testimony, albeit of highly
18 questionable reliability, indicated that Henry Rodriguez or
19 other Rescue Ten personnel found Katherine Selva in a state
20 resembling catatonia or still actively seizing, and

21 WHEREAS, however, rescue personnel claimed to have been
22 unable to obtain symptoms, and

23 WHEREAS, these reports and testimony indicate that
24 Rescue Ten personnel transported Katherine Selva to Jackson
25 Memorial Hospital immediately upon arrival at the Selva
26 residence or shortly thereafter, and

27 WHEREAS, during transport, one or more of the rescue
28 personnel claim to have made several attempts to start an
29 intravenous drip, but to no avail, and

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1 WHEREAS, this claim notwithstanding, rescue personnel
2 did successfully administer at least 1 additional milligram of
3 Valium intravenously, and

4 WHEREAS, critically however, the only oxygen the rescue
5 personnel administered to Katherine Selva during transport was
6 via standard mask instead of a valve mask, and the rescue
7 personnel did not have, and consequently did not use, an
8 oxygen-saturation monitor, and

9 WHEREAS, moreover, it was clear that the rescue
10 personnel did not watch Katherine Selva's oxygen intake as
11 they should have, and

12 WHEREAS, upon arrival at the hospital, Katherine Selva
13 was cyanotic, or oxygen starved, with her skin appearing blue
14 in color, and

15 WHEREAS, Katherine Selva's oxygen-saturation rates were
16 determined upon admission to be a mere 35 percent with a heart
17 rate of 210 beats per minute, and

18 WHEREAS, immediately, hospital personnel treated
19 Katherine Selva with Ativan and used a ventilation mask to
20 oxygenate her in preparation for intubation, and

21 WHEREAS, Katherine Selva's oxygen-saturation rates
22 improved dramatically to 85 percent and her heart rate
23 decreased to 169 beats per minute following initial treatment,
24 and

25 WHEREAS, despite heroic efforts by hospital personnel,
26 Katherine Selva had already suffered permanent brain damage as
27 a direct result of lack of oxygen, and

28 WHEREAS, the City of Miami's rescue personnel owed a
29 duty to Katherine Selva to respond appropriately and render
30 medical treatment in accordance with the generally accepted
31 standard of care, and

1 WHEREAS, the city's rescue personnel, notably one or
2 more paramedics in Rescue Ten, breached this duty by failing
3 to respond in a timely and appropriate fashion and by failing
4 specifically to treat the oxygen-starved condition of
5 Katherine Selva en route to the hospital, and

6 WHEREAS, this breach caused or substantially
7 contributed to the devastating injuries suffered by Katherine
8 Selva, which are uncontested as being permanent and
9 irreversible, and

10 WHEREAS, this breach also caused Katherine Selva to
11 incur past and future expenses, including, without limitation,
12 hospitalization, daily medical treatment and nursing care,
13 transportation, tutoring or teaching, and child care or
14 supervision, for which expenses Aldo Selva and Maria Alcobar
15 have been and will be responsible, and

16 WHEREAS, it has been determined that Medicaid alone has
17 paid nearly \$900,000 for medical expenses incurred for the
18 care and treatment of the incapacitated minor child and that
19 the Agency for Health Care Administration, through its
20 contract representative, Health Management Systems, Inc., has
21 filed or will file a Medicaid casualty lien associated with
22 these payments, and

23 WHEREAS, these economic losses to Katherine Selva are
24 permanent and continuing, and

25 WHEREAS, finally, both parents have suffered and will
26 continue to suffer the loss of society, companionship, and
27 comfort of their daughter, Katherine Selva, and

28 WHEREAS, plaintiffs have reached a conditional
29 settlement with the City of Miami to settle this case for the
30 gross amount of \$2,625,000, and

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1 WHEREAS, the plaintiffs are permitted under the terms
2 of the settlement to propose a plan to allocate the settlement
3 funds as they deem appropriate, subject to the approval of the
4 guardian ad litem and the court, and

5 WHEREAS, following payment by the City of Miami of the
6 sum of \$200,000, the limit of liability set forth under s.
7 768.28, Florida Statutes, the remaining amount of the claim
8 will be \$2,425,000, and

9 WHEREAS, the City of Miami has agreed to actively
10 support this claim bill, NOW, THEREFORE,

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

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

16 Section 2. The City of Miami is authorized and
17 directed to appropriate from funds of the city not otherwise
18 appropriated and to draw a warrant in the sum of \$2,425,000
19 payable to Maria Alcobar, parent and natural guardian of
20 Katherine Selva, minor child of Aldo Selva and Maria Alcobar,
21 to be placed in a Special Needs Trust created for the
22 exclusive use and benefit of Katherine Selva, a minor, as
23 compensation for injuries and damages sustained.

24 Section 3. This award is intended to provide the sole
25 compensation for any and all present and future claims arising
26 out of the factual situation in connection with the injury to
27 the claimant. Not more than 25 percent of the award may be
28 paid by the claimant for attorney's fees, lobbying fees,
29 costs, or other similar expenses.

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

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 56

The committee substitute provides that the award is intended to provide the sole compensation for claims arising out of the factual situation in connection with the injury to the claimant. The committee substitute restricts attorney's fees, lobbying fees, costs, or other similar expenses to no more than 25 percent of the amount awarded.