

By Senator Aronberg

27-00198-08

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

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

18 WHEREAS, these defects and conditions should have caused a
19 geneticist to suspect and then confirm the diagnosis of Smith-
20 Lemli-Opitz disease, and

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

26 WHEREAS, Dr. Kousseff examined Aiden in St. Joseph's
27 Hospital on July 1, 2002, but failed to suspect or diagnose
28 Smith-Lemli-Opitz disease, and

29 WHEREAS, Dr. Kousseff undertook to follow Aiden Estrada as

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30 | his treating geneticist and made an appointment for the Estradas
31 | to bring Aiden to his office at the University of South Florida
32 | Genetics Clinic on August 29, 2002, and

33 | WHEREAS, at the time of the appointment, Dr. Kousseff failed
34 | once again to suspect or diagnose Smith-Lemli-Opitz disease, and

35 | WHEREAS, Dr. Kousseff next saw Aiden and his parents at the
36 | University of South Florida Genetics Clinic on September 15,
37 | 2003, at which time it was apparent that Aiden was severely
38 | developmentally delayed, had severe psychomotor retardation, and
39 | was unable to take nutrition or hydration by mouth, requiring
40 | Aiden to depend on a gastrostomy tube that was surgically
41 | implanted through the abdominal and stomach wall in order to
42 | deliver nutrition and hydration, and

43 | WHEREAS, Dr. Kousseff continued to fail to suspect or
44 | diagnose Smith-Lemli-Opitz disease, and

45 | WHEREAS, Dr. Kousseff told Daniel and Amara Estrada that he
46 | believed Aiden's problems were just some fluke of nature that was
47 | probably related to an environmental cause, and their chances
48 | were were good for having a "normal" baby the next time the
49 | parents attempted to have a child, and

50 | WHEREAS, the standard of care calls for a geneticist under
51 | this situation, when he or she does not know the diagnosis, to
52 | advise parents that there is at least a 25 percent chance of
53 | recurrence of the defects in the next child, and

54 | WHEREAS, if the Estradas been told the truth of the
55 | possibility of recurrence of the birth defects in a subsequent
56 | child, the Estradas would have chosen not to conceive again but
57 | to adopt, and

58 | WHEREAS, instead, the parents relied on Dr. Kousseff's

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59 advice and, after following all of the recommendations of Dr.
60 Kousseff, conceived a second child, and

61 WHEREAS, Amara Estrada gave birth to Caleb Estrada on
62 November 18, 2004, at Shands Teaching Hospital of the University
63 of Florida, and

64 WHEREAS, Caleb had the same or similar symptoms as his older
65 brother, Aiden, and

66 WHEREAS, within hours after his birth, the geneticist at the
67 University of Florida diagnosed Caleb as having Smith-Lemli-Opitz
68 disease, and

69 WHEREAS, on the next day, November 19, 2004, Daniel and
70 Amara Estrada brought Aiden to Shands Hospital to meet with the
71 geneticist who diagnosed Aiden as having Smith-Lemli-Opitz
72 disease, and

73 WHEREAS, the parents now had a second child who is severely
74 impaired and who also would be totally reliant on a gastrostomy
75 tube for nutrition and hydration and who would also require 24-
76 hour care and supervision, and

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

81 WHEREAS, the evidence at trial was unanimous that Daniel and
82 Amara Estrada have been absolutely heroic in their efforts to
83 care for both of their severely disabled children, and

84 WHEREAS, their extended family fears that Daniel and Amara
85 Estrada will not be able to continue the exhausting pace they
86 have kept for the past 2 years and 8 months, and

87 WHEREAS, the testimony of witnesses, testifying on behalf of

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

93 WHEREAS, Robert Steiner, M.D., a leading geneticist in
94 Smith-Lemli-Opitz disease, testified he could not comprehend how
95 Dr. Kousseff could possibly tell the parents on September 15,
96 2003, that their chances of having a normal child were the same
97 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 for
105 Daniel and Amara Estrada, as parents and guardians of Caleb
106 Estrada, in the amount of \$16,697,700, for the cost of care for
107 Caleb Estrada, and to Daniel Estrada, individually, and Amara
108 Estrada, individually, \$2,250,000, and

109 WHEREAS, the University of South Florida Board of Trustees
110 have offered the parents \$3 million as payment for the damages,
111 NOW, THEREFORE,

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

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

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117 Section 2. (1) The sum of \$16,697,700 is appropriated from
118 the General Revenue Fund to the University of South Florida Board
119 of Trustees for the relief of Daniel and Amara Estrada, parents
120 and guardians of Caleb Estrada, for the wrongful birth of Caleb
121 Estrada.

122 (2) The Chief Financial Officer is directed to draw a
123 warrant in favor of Daniel and Amara Estrada, as parents and
124 guardians of Caleb Estrada, in the sum of \$16,697,700 upon funds
125 of the University of South Florida Board of Trustees and to pay
126 the same out of such funds.

127 Section 3. (1) The sum of \$2,250,000 is appropriated from
128 the General Revenue Fund to the University of South Florida Board
129 of Trustees for the relief of Daniel Estrada, individually, for
130 damages sustained.

131 (2) The Chief Financial Officer is directed to draw a
132 warrant in favor of Daniel Estrada in the sum of \$2,250,000 upon
133 funds of the University of South Florida Board of Trustees and to
134 pay the same out of such funds.

135 Section 4. (1) The sum of \$2,250,000 is appropriated from
136 the General Revenue Fund to the University of South Florida Board
137 of Trustees for the relief of Amara Estrada, individually, for
138 damages sustained.

139 (2) The Chief Financial Officer is directed to draw a
140 warrant in favor of Amara Estrada in the sum of \$2,250,000 upon
141 funds of the University of South Florida Board of Trustees and to
142 pay the same out of such funds.

143 Section 5. The amounts awarded in this act are intended to
144 provide the sole compensation for all present and future claims
145 arising out of the factual situation described in this act which

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

150 Section 6. This act shall take effect upon becoming a law.