

By the Committee on Health Regulation; and Senator Jones

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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
4 Amara Estrada, parents and guardians of Caleb Estrada,
5 for the wrongful birth of Caleb Estrada and for
6 damages sustained by Daniel and Amara Estrada as a
7 result of negligence by employees of the University of
8 South Florida Board of Trustees; providing a
9 limitation on the payment of fees and costs; providing
10 an effective date.

11
12 WHEREAS, Amara and Daniel Estrada's first child, Aiden
13 Estrada, was born on June 28, 2002, at Tampa General Hospital,
14 and

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

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

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

28 WHEREAS, Dr. Kousseff examined Aiden Estrada in St.
29 Joseph's Hospital on July 1, 2002, but failed to suspect or

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30 diagnose Smith-Lemli-Opitz syndrome, and

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

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

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

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

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

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

57 WHEREAS, if the Estradas been told the truth of the
58 possibility of recurrence of the birth defects in a subsequent

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59 child, the Estradas would have chosen not to conceive again but
60 to adopt, and

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

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

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

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

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

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

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

85 WHEREAS, the testimony of witnesses, testifying on behalf
86 of the Estradas, as well as the witnesses testifying on behalf
87 the University of South Florida, agreed that the care provided

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88 by Boris Kousseff, M.D., was completely below any acceptable
89 standard in his failure to recognize and diagnose Smith-Lemli-
90 Opitz syndrome from Aiden Estrada's many symptoms, and

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

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

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

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

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

109 WHEREAS, the University of South Florida has a self-
110 insurance fund of \$3 million through Health Science Insurance
111 Company, and such funds have been paid into the plan or into
112 premiums by the University of South Florida and can never be
113 returned to the University of South Florida or to the State of
114 Florida, and

115 WHEREAS, the University of South Florida procured insurance
116 (reinsurance) from Lloyds of London in the amount of \$15

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117 million, and

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

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

128

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

130

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

133 Section 2. The sum of \$24,823,212.92 shall be paid by the
134 University of South Florida, provided the claim is paid
135 exclusively, or at least to the maximum extent possible, out of
136 insurance proceeds, including any bad-faith claim that may exist
137 against Lloyds of London under state law. These proceeds shall
138 be paid for the relief of Daniel and Amara Estrada, parents and
139 natural guardians of Caleb Estrada, for the wrongful birth of
140 Caleb Estrada.

141 Section 3. The amount awarded under this act is intended to
142 provide the sole compensation for all present and future claims
143 arising out of the factual situation described in this act which
144 resulted in the wrongful birth of Caleb Estrada. The total
145 amount paid for attorney's fees, lobbying fees, costs, and other

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146 similar expenses relating to this claim may not exceed 25
147 percent of the total amount awarded under this act.

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