

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

29 WHEREAS, Dr. Kousseff examined Aiden Estrada in St.

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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
57 recurrence of the defects in the next child, and

58 WHEREAS, if the Estradas been told the truth of the

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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
85 tube, and

86 WHEREAS, the testimony of witnesses, testifying on behalf
87 of the Estradas, as well as the witnesses testifying on behalf

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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 million through Health Science Insurance
112 Company, and such funds have been paid into the plan or into
113 premiums by the University of South Florida and can never be
114 returned to the University of South Florida or to the State of
115 Florida, and

116 WHEREAS, the University of South Florida procured insurance

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117 (reinsurance) from Lloyds of London in the amount of \$15
118 million, and

119 WHEREAS, the Health Science Insurance Plan provides that it
120 will pay all costs taxed against the University of South Florida
121 and all interest on the entire judgment up to the time the
122 University of South Florida tenders \$200,000 under its waiver of
123 sovereign immunity, leaving \$26,994.87 in costs and
124 \$3,798,518.05 in interest, and

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

129

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

131

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

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

142 Section 3. The amount paid pursuant to s. 768.28, Florida
143 Statutes, and the amount awarded under 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
147 amount paid for attorney's fees, lobbying fees, costs, and other
148 similar expenses relating to this claim may not exceed 25
149 percent of the total amount awarded under this act.

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