

By Senator Jones

13-00149-12

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1 A bill to be entitled

2 An act for the relief of Daniel and Amara Estrada by  
3 the University of South Florida; providing an  
4 appropriation to compensate Daniel and Amara Estrada,  
5 parents and guardians of Caleb Estrada, for the  
6 wrongful birth of Caleb Estrada and for damages  
7 sustained by Daniel and Amara Estrada as a result of  
8 negligence of an employee of the University of South  
9 Florida Board of Trustees; 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  
17 defects, including 2-3 syndactyly, hypospadias, cryptorchidism,  
18 cleft palate, simian creases in both hands, low-set and rotated  
19 ears, micropenis, micronathia, intrauterine growth retardation,  
20 microcephaly, and dysmorphic face, and was small for gestational  
21 age, and

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

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

13-00149-12

201234\_\_

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

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

13-00149-12

201234

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 Hospital at the University of  
67 Florida, and

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

70 WHEREAS, within 1 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 to Shands Hospital to meet with the  
75 geneticist, who diagnosed Aiden as having Smith-Lemli-Opitz  
76 syndrome, and

77 WHEREAS, the parents now had a second child who is severely  
78 impaired and who also will be totally reliant on a gastrostomy  
79 tube for nutrition and hydration and who will 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 witnesses testifying on behalf of the Estradas  
87 and the witnesses testifying on behalf of the University of

13-00149-12

201234

88 South Florida agreed that the care provided by Boris Kousseff,  
89 M.D., was completely below any acceptable standard in his  
90 failure to recognize and diagnose Smith-Lemli-Opitz syndrome  
91 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 \$21,197,700, 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

13-00149-12

201234\_\_

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, 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 paid pursuant to s. 768.28, Florida  
142 Statutes, and the amount awarded under this act are intended to  
143 provide the sole compensation for all present and future claims  
144 arising out of the factual situation described in this act which  
145 resulted in the wrongful birth of Caleb Estrada. The total

13-00149-12

201234\_\_

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

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