



206038

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/09/2010	.	
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The Committee on Health Regulation (Jones) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

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

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



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13 natural guardians of Caleb Estrada, for the wrongful birth of  
14 Caleb Estrada.

15 Section 3. The amount awarded under this act is intended to  
16 provide the sole compensation for all present and future claims  
17 arising out of the factual situation described in this act which  
18 resulted in the wrongful birth of Caleb Estrada. The total  
19 amount paid for attorney's fees, lobbying fees, costs, and other  
20 similar expenses relating to this claim may not exceed 25  
21 percent of the total amount awarded under this act.

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

23  
24 ===== T I T L E A M E N D M E N T =====

25 And the title is amended as follows:

26 Delete everything before the enacting clause  
27 and insert:

28 A bill to be entitled  
29 An act for the relief of Daniel and Amara Estrada;  
30 providing an appropriation to compensate Daniel and  
31 Amara Estrada, parents and guardians of Caleb Estrada,  
32 for the wrongful birth of Caleb Estrada and for  
33 damages sustained by Daniel and Amara Estrada as a  
34 result of negligence by employees of the University of  
35 South Florida Board of Trustees; providing a  
36 limitation on the payment of fees and costs; providing  
37 an effective date.

38  
39 WHEREAS, Amara and Daniel Estrada's first child, Aiden  
40 Estrada, was born on June 28, 2002, at Tampa General Hospital,  
41 and



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

47 WHEREAS, these defects and conditions should have caused a  
48 geneticist to suspect and then confirm the diagnosis of Smith-  
49 Lemli-Opitz syndrome, and

50 WHEREAS, on June 28, 2002, the newborn nursery of Tampa  
51 General Hospital called for a genetic consultation concerning  
52 Aiden Estrada by Boris Kousseff, M.D., Director of Medical  
53 Genetics of the University of South Florida College of Medicine,  
54 and

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

58 WHEREAS, Dr. Kousseff followed the condition of Aiden  
59 Estrada as his treating geneticist and made an appointment for  
60 the Estradas to bring Aiden Estrada to his office at the  
61 University of South Florida Genetics Clinic on August 29, 2002,  
62 and

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

66 WHEREAS, Dr. Kousseff next saw Aiden Estrada and his  
67 parents at the University of South Florida Genetics Clinic on  
68 September 15, 2003, at which time it was apparent that Aiden was  
69 severely developmentally delayed, had severe psychomotor  
70 retardation, and was unable to take nutrition or hydration by



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71 mouth, requiring Aiden Estrada to depend on a gastrostomy tube  
72 that was surgically implanted through the abdominal and stomach  
73 wall in order to deliver nutrition and hydration, and

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

76 WHEREAS, Dr. Kousseff told Daniel and Amara Estrada that he  
77 believed Aiden Estrada's problems did not indicate any genetic  
78 disorder and they could expect pregnancies with "normal"  
79 children, and

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

84 WHEREAS, if the Estradas been told the truth of the  
85 possibility of recurrence of the birth defects in a subsequent  
86 child, the Estradas would have chosen not to conceive again but  
87 to adopt, and

88 WHEREAS, instead, the parents relied on Dr. Kousseff's  
89 advice and, after following all of the recommendations of Dr.  
90 Kousseff, conceived a second child, and

91 WHEREAS, Amara Estrada gave birth to Caleb Estrada on  
92 November 18, 2004, at Shands Teaching Hospital of the University  
93 of Florida, and

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

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

99 WHEREAS, on the next day, November 19, 2004, Daniel and



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100 Amara Estrada brought Aiden Estrada to Shands Hospital to meet  
101 with the geneticist who diagnosed Aiden as having Smith-Lemli-  
102 Opitz syndrome, and

103 WHEREAS, the parents now had a second child who is severely  
104 impaired and who also would be totally reliant on a gastrostomy  
105 tube for nutrition and hydration and who would also require 24-  
106 hour care and supervision, and

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

112 WHEREAS, the testimony of witnesses, testifying on behalf  
113 of the Estradas, as well as the witnesses testifying on behalf  
114 the University of South Florida, agreed that the care provided  
115 by Boris Kousseff, M.D., was completely below any acceptable  
116 standard in his failure to recognize and diagnose Smith-Lemli-  
117 Opitz syndrome from Aiden Estrada's many symptoms, and

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

123 WHEREAS, Dr. Steiner testified that the conduct of Dr.  
124 Kousseff was egregious, and

125 WHEREAS, the rehabilitation experts testifying on behalf of  
126 the Estradas and the rehabilitation experts testifying on behalf  
127 of the University of South Florida agreed that Caleb Estrada  
128 needs one-on-one care 24 hours a day, 7 days a week, and



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129           WHEREAS, after a trial, the jury returned a verdict in  
130 favor of Daniel and Amara Estrada, as parents and guardians of  
131 Caleb Estrada, in the amount of \$23,553,000, for the cost of  
132 care for Caleb Estrada, and

133           WHEREAS, the jury assigned the University of South Florida  
134 90 percent liability for the wrongful birth of Caleb Estrada,  
135 and

136           WHEREAS, the University of South Florida has a self-  
137 insurance fund of \$3 million through Health Science Insurance  
138 Company, and such funds have been paid into the plan or into  
139 premiums by the University of South Florida and can never be  
140 returned to the University of South Florida or to the State of  
141 Florida, and

142           WHEREAS, the University of South Florida procured insurance  
143 (reinsurance) from Lloyds of London in the amount of \$15  
144 million, and

145           WHEREAS, the Health Science Insurance Plan provides that it  
146 will pay all costs taxed against the University of South Florida  
147 and all interest on the entire judgment up to the time the  
148 University of South Florida tenders \$200,000 under its waiver of  
149 sovereign immunity, leaving \$26,994.87 in costs and  
150 \$3,798,518.05 in interest, and

151           WHEREAS, the University of South Florida tendered \$200,000  
152 toward payment of this claim on April 2, 2009, and that payment  
153 should be credited toward payment of the judgment amount, NOW,  
154 THEREFORE,