

By Senator Pruitt

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1 A bill to be entitled
2 An act for the relief of Eric Brody by the Broward
3 County Sheriff's Office; providing for an
4 appropriation to compensate Eric Brody for injuries
5 sustained as a result of the negligence of the Broward
6 County Sheriff's Office; providing a limitation on the
7 payment of fees and costs; providing an effective
8 date.

9
10 WHEREAS, on the evening of March 3, 1998, 18-year-old Eric
11 Brody, a college-bound high school senior, was returning home
12 from his part-time job at the Sawgrass Mills Sports Authority.
13 Eric was driving his 1982 AMC Concord eastbound on Oakland Park
14 Boulevard in Sunrise, Florida, and

15 WHEREAS, that same evening, Broward County Sheriff's Deputy
16 Christopher Thieman was driving his Broward Sheriff's Office
17 cruiser westbound on Oakland Park Boulevard on his way to work
18 at the Weston Station. At the time he had left the home of his
19 girlfriend, he had less than 15 minutes to travel 11 miles in
20 order to make roll call on time. The speed limit was 45 mph, and

21 WHEREAS, at approximately 10:36 p.m., Eric Brody attempted
22 to make a left-hand turn into his neighborhood at the
23 intersection of NW 117th Avenue and Oakland Park Boulevard.
24 Eric's car cleared two of the three westbound lanes on Oakland
25 Park Boulevard. Deputy Thieman, who had been traveling in the
26 inside westbound lane closest to the median, suddenly and
27 inexplicably steered his vehicle to the right, across the center
28 lane and into the outside lane, where the front end of his car
29 struck the passenger side of Eric's car, just behind the right

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30 front wheel and near the passenger door, and

31 WHEREAS, Deputy Thieman claimed at trial that he had no
32 idea how fast he was traveling and there were no reported
33 witnesses; however, experts for the claimant and the defendant
34 testified that Deputy Thieman was driving between 60 mph and 70
35 mph when he struck the passenger side of Eric Brody's car, and

36 WHEREAS, Eric Brody was found unconscious 6 minutes later
37 by paramedics, his head and upper torso leaning upright and
38 toward the passenger-side door. Although he was out of his seat
39 belt, it was photographed at the scene, fully spooled out, with
40 the retractor jammed, dangling out of the driver-side door,
41 indicating it had been in use at the time and involved in a
42 high-speed impact. The right side of Eric's head had struck the
43 intruding passenger-side door, causing skull fractures and brain
44 sheering, bruising, bleeding, and swelling, and

45 WHEREAS, Eric Brody was airlifted by helicopter to Broward
46 General Hospital where he was placed on a ventilator and
47 underwent an emergency craniotomy. He was in a coma for 6 months
48 and underwent extensive rehabilitation, having to relearn how to
49 walk and talk, and

50 WHEREAS, Eric Brody, who is now 28-years-old, has been left
51 profoundly brain-injured and lives with his parents. His speech
52 is barely intelligible, he has significant memory loss and
53 cognitive dysfunction, and he has visual problems. Eric also has
54 impaired fine and gross motor skills and has very poor balance.
55 Although Eric is able to use a walker for short distances, he
56 must mostly use a wheelchair to get around. The entire left side
57 of his body is partially paralyzed and spastic, and he needs
58 help with many of his daily functions. Eric is permanently and

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59 totally disabled. However, Eric has a normal life expectancy,
60 and

61 WHEREAS, the Brodys alleged in their lawsuit against the
62 Broward County Sheriff's Office that Deputy Thieman was
63 negligent in the operation of his vehicle by driving too fast
64 and by steering his vehicle two lanes to the right where the
65 impact occurred. In reconstructing the accident, experts
66 determined that if Deputy Thieman had remained within the inside
67 lane, there would have been no collision, and

68 WHEREAS, the Broward County Sheriff's Office alleged that
69 Eric failed to yield the right-of-way and use his seat belt.
70 However, the seat belt expert the Broward Sheriff's Office
71 called at trial admitted under cross-examination that the fact
72 that the seat belt was spooled out and the retractor jammed was
73 consistent with seat belt usage in a high-speed impact, and

74 WHEREAS, the Brodys proved at trial that Deputy Thieman's
75 speed caused Eric to misjudge the time and distance he had to
76 clear the intersection. The Brody's experts re-created the
77 accident by conducting an exact car-to-car crash test, using
78 identical vehicles, an instrumented hybrid III dummy, and fast-
79 action cameras. The crash test demonstrated that regardless of
80 the fact that the seat belt was spooled out and the retractor
81 was jammed, given the severity of this crash and the significant
82 amount of intrusion into the occupant compartment where Eric was
83 seated, Eric's head would have made contact with the passenger
84 door anyway and a seat belt could not have prevented his
85 injuries. During the crash, the test dummy, which was wearing a
86 seat belt, struck its head on the passenger door within inches
87 of where Eric Brody's head actually struck the passenger door,

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88 providing additional proof that Eric was wearing a seat belt,
89 and

90 WHEREAS, on December 1, 2005, a Broward County jury made up
91 of three men and three women found that Deputy Thieman and the
92 Broward County Sheriff's Office were 100 percent negligent and
93 Eric Brody was not comparatively negligent, and rendered a
94 \$30,690,000 verdict in favor of the then 25-year-old Eric Brody.
95 The trial lasted almost 2 months, including a 2-week break due
96 to Hurricane Wilma, and

97 WHEREAS, judgment was entered shortly after the jury
98 verdict for the full amount of \$30,690,000, and the court
99 entered a cost judgment for \$270,372.30, for a total judgment of
100 \$30,960,372.30. The trial court denied the Broward County
101 Sheriff's Office posttrial motions for judgment notwithstanding
102 the verdict, new trial, or remittitur. The Broward County
103 Sheriff's Office appealed the final judgment but not the cost
104 judgment. The Fourth District Court of Appeal upheld the verdict
105 and the amount of the verdict in the fall of 2007. The Broward
106 County Sheriff's Office subsequently petitioned the Florida
107 Supreme Court, which denied the petition in April of 2008.
108 Therefore, all legal remedies have been exhausted and this case
109 is ripe for a claim bill, and

110 WHEREAS, before the lawsuit was filed, the Brodys made a
111 demand for \$3 million, which was the limit of the insurance
112 policy of the Broward County Sheriff's Office, reiterated that
113 demand at mediation, and gave the carrier additional time after
114 mediation to pay the policy limit before the Brody's attorneys
115 began the expense of preparing the case for trial. The insurance
116 carrier ignored multiple attempts to settle the case, and

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117 instead waited until the day the trial judge set the case for
118 trial before offering to pay the limit. By that time, nearly
119 \$750,000 had been spent preparing the case for trial, and Eric
120 Brody had liens of nearly \$1 million for his health care costs.
121 Because so much money had been spent, it was determined that
122 settlement was no longer feasible. By the time the trial was
123 completed, an additional \$250,000 had been spent on trial costs,
124 and

125 WHEREAS, due to the failure of the liability insurance
126 carrier for the Broward County Sheriff's Office to settle and
127 pay the \$3 million policy limit when it could and should have on
128 multiple occasions, and thereby unreasonably exposed the Broward
129 County Sheriff's Office to an excess judgment and claim bill,
130 upon the passage of this bill, the Broward County Sheriff's
131 Office will have standing to initiate an action against the
132 insurer for bad-faith-claims practice in order to recover the
133 entire amount of the claim bill, and

134 WHEREAS, the Broward County Sheriff's Office has paid the
135 \$200,000 allowed under s. 768.28, Florida Statutes, and the
136 remainder in the amount of \$30,760,372.30 is sought through the
137 submission of a claim bill to the Legislature, NOW, THEREFORE,

138
139 Be It Enacted by the Legislature of the State of Florida:

140
141 Section 1. The facts stated in the preamble to this act are
142 found and declared to be true.

143 Section 2. The Sheriff of Broward County is authorized and
144 directed to appropriate from funds of the sheriff's office not
145 otherwise appropriated and to draw a warrant in the sum of

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146 \$30,760,372.30, payable to Eric Brody, as compensation for
147 injuries and damages sustained.

148 Section 3. The amount awarded in this act is intended to
149 provide the sole compensation for all present and future claims
150 arising out of the factual situation described in this act which
151 resulted in injury to Eric Brody. The total amount paid for
152 attorney's fees, lobbying fees, costs, and other similar
153 expenses relating to this act may not exceed 25 percent of the
154 total amount awarded under this act.

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