

By the Committee on Criminal Justice; and 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; authorizing the Sheriff of
7 Broward County to execute an assignment to the legal
8 guardians of Eric Brody of all claims the Broward
9 County Sheriff's Office has against its insurer
10 arising out of its handling of the claim against the
11 Broward County Sheriff's Office; providing that the
12 Broward County Sheriff's Office has a complete and
13 absolute covenant on the part of Eric Brody and his
14 legal guardians never to enforce the act, any award
15 pursuant to the act, or the Brody's final judgment and
16 cost judgment directly against the Broward County
17 Sheriff's Office under certain circumstances;
18 requiring the legal guardians to execute a
19 satisfaction and release under certain conditions;
20 providing legislative intent to permit the prosecution
21 of a bad faith claim; providing a limitation on the
22 payment of fees and costs; providing an exception to
23 that limitation on the payment of fees and costs
24 related to the prosecution of an assigned claim;
25 providing an effective date.

26
27 WHEREAS, on the evening of March 3, 1998, 18-year-old Eric
28 Brody, a college-bound high school senior, was returning home
29 from his part-time job at the Sawgrass Mills Sports Authority.

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30 Eric was driving his 1982 AMC Concord eastbound on Oakland Park
31 Boulevard in Sunrise, Florida, and

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

38 WHEREAS, at approximately 10:36 p.m., Eric Brody attempted
39 to make a left-hand turn into his neighborhood at the
40 intersection of NW 117th Avenue and Oakland Park Boulevard.
41 Eric's car cleared two of the three westbound lanes on Oakland
42 Park Boulevard. Deputy Thieman, who had been traveling in the
43 inside westbound lane closest to the median, suddenly and
44 inexplicably steered his vehicle to the right, across the center
45 lane and into the outside lane, where the front end of his car
46 struck the passenger side of Eric's car, just behind the right
47 front wheel and near the passenger door, and

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

53 WHEREAS, Eric Brody was found unconscious 6 minutes later
54 by paramedics, his head and upper torso leaning upright and
55 toward the passenger-side door. Although he was out of his seat
56 belt, it was photographed at the scene, fully spooled out, with
57 the retractor jammed, dangling out of the driver-side door,
58 indicating it had been in use at the time and involved in a

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59 high-speed impact. The right side of Eric's head had struck the
60 intruding passenger-side door, causing skull fractures and brain
61 sheering, bruising, bleeding, and swelling, and

62 WHEREAS, Eric Brody was airlifted by helicopter to Broward
63 General Hospital where he was placed on a ventilator and
64 underwent an emergency craniotomy. He was in a coma for 6 months
65 and underwent extensive rehabilitation, having to relearn how to
66 walk and talk, and

67 WHEREAS, Eric Brody, who is now 28-years-old, has been left
68 profoundly brain-injured and lives with his parents. His speech
69 is barely intelligible, he has significant memory loss and
70 cognitive dysfunction, and he has visual problems. Eric also has
71 impaired fine and gross motor skills and has very poor balance.
72 Although Eric is able to use a walker for short distances, he
73 must mostly use a wheelchair to get around. The entire left side
74 of his body is partially paralyzed and spastic, and he needs
75 help with many of his daily functions. Eric is permanently and
76 totally disabled. However, Eric has a normal life expectancy,
77 and

78 WHEREAS, the Brodys alleged in their lawsuit against the
79 Broward County Sheriff's Office that Deputy Thieman was
80 negligent in the operation of his vehicle by driving too fast
81 and by steering his vehicle two lanes to the right where the
82 impact occurred. In reconstructing the accident, experts
83 determined that if Deputy Thieman had remained within the inside
84 lane, there would have been no collision, and

85 WHEREAS, the Broward County Sheriff's Office alleged that
86 Eric failed to yield the right-of-way and use his seat belt.
87 However, the seat belt expert the Broward Sheriff's Office

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88 called at trial admitted under cross-examination that the fact
89 that the seat belt was spooled out and the retractor jammed was
90 consistent with seat belt usage in a high-speed impact, and

91 WHEREAS, the Brodys proved at trial that Deputy Thieman's
92 speed caused Eric to misjudge the time and distance he had to
93 clear the intersection. The Brody's experts re-created the
94 accident by conducting an exact car-to-car crash test, using
95 identical vehicles, an instrumented hybrid III dummy, and fast-
96 action cameras. The crash test demonstrated that regardless of
97 the fact that the seat belt was spooled out and the retractor
98 was jammed, given the severity of this crash and the significant
99 amount of intrusion into the occupant compartment where Eric was
100 seated, Eric's head would have made contact with the passenger
101 door anyway and a seat belt could not have prevented his
102 injuries. During the crash, the test dummy, which was wearing a
103 seat belt, struck its head on the passenger door within inches
104 of where Eric Brody's head actually struck the passenger door,
105 providing additional proof that Eric was wearing a seat belt,
106 and

107 WHEREAS, on December 1, 2005, a Broward County jury made up
108 of three men and three women found that Deputy Thieman and the
109 Broward County Sheriff's Office were 100 percent negligent and
110 Eric Brody was not comparatively negligent, and rendered a
111 \$30,690,000 verdict in favor of the then 25-year-old Eric Brody.
112 The trial lasted almost 2 months, including a 2-week break due
113 to Hurricane Wilma, and

114 WHEREAS, judgment was entered shortly after the jury
115 verdict for the full amount of \$30,690,000, and the court
116 entered a cost judgment for \$270,372.30, for a total judgment of

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117 \$30,960,372.30. The trial court denied the Broward County
118 Sheriff's Office posttrial motions for judgment notwithstanding
119 the verdict, new trial, or remittitur. The Broward County
120 Sheriff's Office appealed the final judgment but not the cost
121 judgment. The Fourth District Court of Appeal upheld the verdict
122 and the amount of the verdict in the fall of 2007. The Broward
123 County Sheriff's Office subsequently petitioned the Florida
124 Supreme Court, which denied the petition in April of 2008.
125 Therefore, all legal remedies have been exhausted and this case
126 is ripe for a claim bill, and

127 WHEREAS, before the lawsuit was filed, the Brodys made a
128 demand for \$3 million, which was the limit of the insurance
129 policy of the Broward County Sheriff's Office, reiterated that
130 demand at mediation, and gave the carrier additional time after
131 mediation to pay the policy limit before the Brody's attorneys
132 began the expense of preparing the case for trial. The insurance
133 carrier ignored multiple attempts to settle the case, and
134 instead waited until the day the trial judge set the case for
135 trial before offering to pay the limit. By that time, nearly
136 \$750,000 had been spent preparing the case for trial, and Eric
137 Brody had liens of nearly \$1 million for his health care costs.
138 Because so much money had been spent, it was determined that
139 settlement was no longer feasible. By the time the trial was
140 completed, an additional \$250,000 had been spent on trial costs,
141 and

142 WHEREAS, due to the failure of the liability insurance
143 carrier for the Broward County Sheriff's Office to settle and
144 pay the \$3 million policy limit when it could and should have on
145 multiple occasions, and thereby unreasonably exposed the Broward

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146 County Sheriff's Office to an excess judgment and claim bill,
147 upon the passage of this bill, the Broward County Sheriff's
148 Office will have standing to initiate an action against the
149 insurer for bad-faith-claims practice in order to recover the
150 entire amount of the claim bill, and

151 WHEREAS, the Broward County Sheriff's Office has paid the
152 \$200,000 allowed under s. 768.28, Florida Statutes, and the
153 remainder in the amount of \$30,760,372.30 is sought through the
154 submission of a claim bill to the Legislature, NOW, THEREFORE,

155

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

157

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

160 Section 2. The Sheriff of Broward County is authorized and
161 directed to appropriate from funds of the Broward County
162 Sheriff's Office not otherwise appropriated and to draw a
163 warrant payable to Eric Brody in the sum of \$30,760,372.30 as
164 compensation for the claimant's injuries and damages sustained.

165 Section 3. Within 30 days after the enactment of this act,
166 and before paying the sum specified in section 2, the Sheriff of
167 Broward County may execute an assignment to the legal guardians
168 of Eric Brody of all claims the Broward County Sheriff's Office
169 has against its insurer arising out of its handling of Eric
170 Brody's claim against the Broward County Sheriff's Office,
171 including its claim for policy benefits, bad faith, breach of
172 fiduciary duty, breach of contract and any other similar claim
173 that may result in recovery from the insurer of all sums that
174 remain unpaid in accordance with the final judgment and cost

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175 judgment after the previous payment of the statutory limit of
176 \$200,000 under s. 768.28, Florida Statutes, made by or on behalf
177 of the Broward County Sheriff's Office. If the Sheriff of
178 Broward County elects to make an assignment of all claims
179 against its insurer to the legal guardians of Eric Brody, upon
180 making the assignment the Broward County Sheriff's Office shall
181 have a complete and absolute covenant on the part of Eric Brody
182 and his legal guardians never to enforce this act, any award
183 pursuant to this act, or the Brody's final judgment and cost
184 judgment directly against the Broward County Sheriff's Office
185 regardless of whether Eric Brody and his legal guardians accept
186 or refuse the assignment and regardless of whether they file
187 suit pursuant to the assignment. At the conclusion of any claims
188 brought pursuant to that assignment, the legal guardians of Eric
189 Brody shall execute a complete satisfaction and release of their
190 final judgment and cost judgment against the Broward County
191 Sheriff's Office. If the Sheriff of Broward County makes the
192 assignment permitted under this act, the protection given to the
193 Broward County Sheriff's Office pursuant to this act or
194 otherwise shall not impair in any respect the ability or right
195 of the assignees to pursue and recover Eric Brody's final
196 judgment and cost judgment less \$200,000 paid by or on behalf of
197 the insurers of the Broward County Sheriff's Office. It is the
198 intent of the Legislature to permit the prosecution of a bad
199 faith claim and any other related claim against the insurer for
200 the full amount remaining unpaid at the time of the assignment.

201 Section 4. Any amount awarded under this act pursuant to
202 the waiver of sovereign immunity permitted under s. 768.28,
203 Florida Statutes, is intended to provide the sole compensation

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204 for all claims against the Broward County Sheriff's Office
205 arising out of the facts described in the preamble to this act
206 which resulted in the injuries to Eric Brody. The total amount
207 of attorney's fees, lobbying fees, costs, and other similar
208 expenses relating to this claim is to be paid only to the
209 claimant's currently retained attorneys and lobbyists and may
210 not exceed 25 percent of the total amount awarded under sections
211 2 and 3. Any attorney's fees, costs, and related expenses
212 awarded by a court or earned pursuant to the prosecution of an
213 assigned claim are not limited by this section.

214 Section 5. This act shall take effect upon becoming a law.