

By Senator Smith

29-00728-09

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1 A bill to be entitled
2 An act for the relief of Joseph Fatta, Jr., and
3 Josephine Fatta by the Broward County Sheriff's
4 Office; providing for an appropriation to compensate
5 them for the death of their son, Deputy Todd Fatta, as
6 a result of the negligence of the Broward County
7 Sheriff's Office; providing a limitation on the
8 payment of fees and costs; providing an effective
9 date.

10
11 WHEREAS, Kenneth Paul Wilk, a skilled marksman living in
12 Ft. Lauderdale with his boyfriend Kelly Ray Jones, owned several
13 firearms at his home, participated in shooting competitions
14 throughout the state, and harbored a deep-seated hatred toward
15 law enforcement personnel as evidenced by prior multiple
16 threats, and

17 WHEREAS, before August 18, 2004, Mr. Wilk was charged with
18 assault on a law enforcement officer, confronted and verbally
19 threatened a law enforcement officer in March of 2002, and
20 created a disturbance at the offices of the Federal Bureau of
21 Investigation in North Miami, Florida, in June of 2002, and

22 WHEREAS, on July 15, 2004, Mr. Jones was arrested for the
23 possession and transmission of child pornography, and in
24 effectuating that arrest, the Broward County Sheriff's Office
25 used its S.W.A.T team because of the dangers posed at the
26 residence that Mr. Jones and Mr. Wilk shared, and

27 WHEREAS, after the arrest of Mr. Jones, Mr. Wilk wrote to
28 Mr. Jones expressing that he desired to hurt someone, that he
29 had lost respect for human life to the point that killing would

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30 be justified and enjoyed, and that he wanted to vent his rage
31 against law enforcement personnel, and

32 WHEREAS, on or about August 18, 2004, a United States
33 magistrate judge issued federal search and arrest warrants for
34 Mr. Wilk and his residence, and

35 WHEREAS, due to Mr. Wilk's criminal history, his prior
36 multiple threats against law enforcement officers, and his
37 possession of firearms at his home, the S.W.A.T team of the
38 Broward County Sheriff's Office was required to execute the
39 search and arrest warrants pursuant to the policies and
40 procedures of the sheriff's office; however, the request for the
41 S.W.A.T team to execute the warrants was denied within the chain
42 of command of the sheriff's office, and

43 WHEREAS, as a result of the denial, regular uniformed
44 police officers, including Deputy Todd Fatta from the Auto Theft
45 Task Force of the Broward County Sheriff's Office, were ordered
46 to execute the search and arrest warrants, and

47 WHEREAS, on August 18, 2004, there was a detailed briefing
48 regarding Mr. Wilk, but Deputy Fatta or other police officers
49 from the Auto Theft Task Force were not invited to that
50 briefing, and

51 WHEREAS, when the Auto Theft Task Force attempted to
52 execute the search and arrest warrants the following day, Mr.
53 Wilk shot and killed Deputy Fatta as he entered Mr. Wilk's
54 residence, and

55 WHEREAS, even though Deputy Fatta and the officers from the
56 Auto Theft Task Force were given a very short briefing in a
57 parking lot before the execution of the search and arrest
58 warrants on August 19, 2004, Deputy Fatta had no knowledge about

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59 the investigation concerning Mr. Wilk and was unaware of the
60 information about Mr. Wilk gathered by the Broward County
61 Sheriff's Office, and

62 WHEREAS, the Broward County Sheriff's Office knew about Mr.
63 Wilk's criminal history, prior multiple threats against law
64 enforcement officers, and his possession of firearms in his
65 home, and the Broward County Sheriff's Office also knew that in
66 order to serve the search and arrest warrants on Mr. Wilk, the
67 S.W.A.T team was needed, and

68 WHEREAS, the Broward County Sheriff's Office knew or should
69 have known that its failure to use the S.W.A.T team would result
70 in great bodily injury or death; thus, the actions of the
71 Broward County Sheriff's Office constituted negligent conduct
72 certain to cause injury or death, and

73 WHEREAS, the tort claim on behalf of Joseph Fatta, Jr., and
74 Josephine Fatta, as co-personal representatives of the Estate of
75 Todd Fatta, deceased, was instituted in the circuit court of the
76 17th Judicial Circuit in and for Broward County, Florida, and

77 WHEREAS, former Broward County Sheriff Ken Jenne
78 acknowledged under oath in sworn testimony that the policies and
79 procedures of the Broward County Sheriff's Office were violated
80 when the sheriff's office failed to use the S.W.A.T team to
81 execute the search and arrest warrants, and that Deputy Fatta's
82 death would have been avoided if the policies and procedures had
83 been followed, and

84 WHEREAS, a prior claim against Mr. Wilk, which was
85 previously settled for \$300,000, was tendered and accepted by
86 the Plaintiffs, and a claim against the Broward County Sheriff's
87 Office was settled before trial and approved by the court on

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88 September 4, 2008, and

89 WHEREAS, the settlement agreement provided for the payment
90 of \$200,000 by the Broward County Sheriff's Office to the
91 Plaintiffs under the statutory limits of liability set forth in
92 s. 768.28, Florida Statutes, the entry of a consent judgment for
93 \$1.8 million, and an agreement with the Broward County Sheriff's
94 Office to cooperate and support the filing of a claim bill not
95 exceeding \$1.8 million, NOW, THEREFORE,

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

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

101 Section 2. Broward County Sheriff's Office is authorized
102 and directed to appropriate from funds of the sheriff's office
103 not otherwise encumbered and to draw a warrant in the sum of
104 \$1.8 million, payable to Joseph Fatta, Jr., and Josephine Fatta,
105 co-personal representatives of the Estate of Todd Fatta,
106 deceased, as compensation for the death of Deputy Todd Fatta
107 which was due to gross negligence by the Broward County
108 Sheriff's Office.

109 Section 3. This award is intended to provide the sole
110 compensation for all present and future claims arising out of
111 the factual situation described in this act which resulted in
112 the death of Deputy Todd Fatta. The total amount paid for
113 attorney's fees, lobbying fees, costs, and other similar
114 expenses relating to this claim may not exceed 25 percent of the
115 amount awarded under this act.

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