

HB 1597

2010

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

8
9 WHEREAS, on the evening of March 3, 1998, 18-year-old Eric
10 Brody, a college-bound high school senior, was returning home
11 from his part-time job at the Sawgrass Mills Sports Authority,
12 driving his 1982 AMC Concord eastbound on Oakland Park Boulevard
13 in Sunrise, Florida, and

14 WHEREAS, that same evening, Broward County Sheriff's Deputy
15 Christopher Thieman was driving his Broward County Sheriff's
16 Office cruiser westbound on Oakland Park Boulevard on his way to
17 work at the Weston Station, and

18 WHEREAS, at the time that Deputy Thieman left the home of
19 his girlfriend, he had less than 15 minutes to travel 11 miles
20 in order to make roll call on time. The speed limit on his route
21 to the Weston Station was 45 mph, and

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

HB 1597

2010

29 | lane and into the outside lane, where the front end of his car
30 | struck the passenger side of Eric Brody's car, just behind the
31 | right front wheel and near the passenger door, and

32 | WHEREAS, Deputy Thieman claimed at trial that he had no
33 | idea how fast he was traveling and there were no reported
34 | witnesses to the accident; however, experts for the claimant and
35 | the defendant testified that Deputy Thieman was driving between
36 | 60 mph and 70 mph when he struck the passenger side of Eric
37 | Brody's car, and

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

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

53 | WHEREAS, Eric Brody, who is now 29 years old, has been left
54 | profoundly brain-injured and lives with his parents. His speech
55 | is barely intelligible, he has significant memory loss and
56 | cognitive dysfunction, and he has visual problems. Eric also has

HB 1597

2010

57 | impaired fine and gross motor skills and has very poor balance.
58 | Although Eric is able to use a walker for short distances, he
59 | must mostly uses a wheelchair to get around. The entire left
60 | side of his body is partially paralyzed and spastic, and he
61 | needs help with many of his daily functions. Though he has a
62 | normal life expectancy, Eric Brody is permanently and totally
63 | disabled, and

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

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

77 | WHEREAS, the Brodys proved at trial that Deputy Thieman's
78 | speed caused Eric Brody to misjudge the time and distance he had
79 | to clear the intersection. The Brody's experts re-created the
80 | accident by conducting an exact car-to-car crash test, using
81 | identical vehicles, an instrumented hybrid III dummy, and fast-
82 | action cameras. The crash test demonstrated that regardless of
83 | the fact that the seat belt was spooled out and the retractor
84 | was jammed, given the severity of this crash and the significant

HB 1597

2010

85 amount of intrusion into the occupant compartment where Eric was
86 seated, Eric's head would have made contact with the passenger
87 door anyway and a seat belt could not have prevented his
88 injuries. During the crash, the test dummy, which was wearing a
89 seat belt, struck its head on the passenger door within inches
90 of where Eric Brody's head actually struck the passenger door,
91 providing additional proof that Eric was wearing a seat belt,
92 and

93 WHEREAS, on December 1, 2005, a Broward County jury made up
94 of three men and three women found that Deputy Thieman and the
95 Broward County Sheriff's Office were 100 percent negligent and
96 Eric Brody was not comparatively negligent, and rendered a
97 \$30,690,000 verdict in favor of the then 25-year-old Eric Brody.
98 The trial lasted almost 2 months, including a 2-week break due
99 to Hurricane Wilma, and

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

HB 1597

2010

113 recourse available to Eric Brody, and

114 WHEREAS, before the lawsuit was filed, the Brodys made a
115 demand for \$3 million, which was the limit of the insurance
116 policy of the Broward County Sheriff's Office, reiterated that
117 demand at mediation, and gave the carrier additional time after
118 mediation to pay the policy limit before the Brody's attorneys
119 began the expense of preparing the case for trial. The insurance
120 carrier ignored multiple attempts to settle the case and,
121 instead, waited until the day the trial judge set the case for
122 trial before offering to pay the limit of the policy. By that
123 time, nearly \$750,000 had been spent preparing the case for
124 trial and Eric Brody had liens of nearly \$1 million for his
125 health care costs. Because so much money had been spent, it was
126 determined that settlement was no longer feasible. By the time
127 the trial was completed, an additional \$250,000 had been spent
128 on trial costs, and

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

138 WHEREAS, the Broward County Sheriff's Office has paid
139 \$200,000 pursuant to the limits of liability set forth under s.
140 768.28, Florida Statutes, and

HB 1597

2010

141 WHEREAS, Eric Brody seeks the remaining amount of the
142 judgment through the submission of a claim bill to the
143 Legislature, NOW, THEREFORE,

144

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

146

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

149 Section 2. The Sheriff of Broward County is authorized and
150 directed to appropriate from funds of the Broward County
151 Sheriff's Office not otherwise appropriated and to draw a
152 warrant payable to Eric Brody in the sum of \$10,000,000 as
153 compensation for injuries and damages sustained.

154 Section 3. Any amount awarded under this act pursuant to
155 the waiver of sovereign immunity permitted under s. 768.28,
156 Florida Statutes, and this award is intended to provide the sole
157 compensation for all present and future claims arising out of
158 the factual situation described in the preamble to this act
159 which resulted in the injury to Eric Brody. The total amount
160 paid for attorney's fees, lobbying fees, costs, and other
161 similar expenses relating to this claim may not exceed 25
162 percent of the total amount awarded under section 2.

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