

By Senator Benacquisto

28-00017A-11

201142__

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, in lieu of payment, to execute to Eric
8 Brody and his legal guardians an assignment of all
9 claims that the Broward County Sheriff's Office has
10 against its insurer arising out of the insurer's
11 handling of the claim against the sheriff's office;
12 clarifying that such assignment does not impair the
13 ability or right of the assignees to pursue the final
14 judgment and cost judgment against the insurer;
15 providing a limitation on the payment of fees and
16 costs related to the claim against the Broward County
17 Sheriff's Office and an exception to that limitation
18 as to any assigned claims brought against the insurer;
19 providing an effective date.
20

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

26 WHEREAS, that same evening, Broward County Sheriff's Deputy
27 Christopher Thieman, who had been visiting his girlfriend and
28 was running late for duty, was driving his Broward County
29 Sheriff's Office cruiser westbound on Oakland Park Boulevard. At

28-00017A-11

201142__

30 the time he left his girlfriend's house, Deputy Thieman had less
31 than 15 minutes to travel 11 miles to make roll call on time,
32 which was mandatory pursuant to sheriff's office policy and
33 procedure, and

34 WHEREAS, at approximately 10:36 p.m., Eric Brody began to
35 make a left-hand turn into his neighborhood at the intersection
36 of N.W. 117th Avenue and Oakland Park Boulevard. Deputy Thieman,
37 who was driving in excess of the 45-mile-per-hour posted speed
38 limit and traveling in the opposite direction, was not within
39 the intersection and was more than 430 feet away from Eric
40 Brody's car when Eric Brody began the turn. Eric Brody's car
41 cleared two of the three westbound lanes on Oakland Park
42 Boulevard, and

43 WHEREAS, Deputy Thieman, who was traveling in the inside
44 westbound lane closest to the median, suddenly and inexplicably
45 steered his vehicle to the right, across the center lane and
46 into the outside lane, where the front end of his car struck the
47 passenger side of Eric's car with great force, just behind the
48 right front wheel and near the passenger door, and

49 WHEREAS, Deputy Thieman testified at trial that although he
50 knew that the posted speed limit was 45 miles per hour, he
51 refused to provide an estimate as to how fast he was traveling
52 before the crash, and

53 WHEREAS, despite the appearance of a conflict of interest,
54 the Broward County Sheriff's Office chose to conduct the
55 official crash investigation instead of deferring to the City of
56 Sunrise Police Department, which also had jurisdiction, or the
57 Florida Highway Patrol (FHP), which often investigates motor
58 vehicle collisions involving non-FHP law enforcement officers so

28-00017A-11

201142__

59 as to avoid any possible conflict of interest, and

60 WHEREAS, in the course of the investigation, the Broward
61 County Sheriff's Office lost key evidence from the crashed
62 vehicles and did not report any witnesses even though the first
63 responders to the crash scene were police officers from the City
64 of Sunrise, and

65 WHEREAS, the Broward County detective who led the crash
66 investigation entered inaccurate data into a computerized
67 accident reconstruction program which skewed the speed that
68 Deputy Thieman was driving, but, nevertheless, determined that
69 he was still traveling well over the speed limit, and

70 WHEREAS, accident reconstruction experts called by both
71 parties testified that Deputy Thieman was driving at least 60 to
72 more than 70 miles per hour when his vehicle slammed into the
73 passenger side of Eric Brody's car, and

74 WHEREAS, Eric Brody was found unconscious 6 minutes later
75 by paramedics, his head and upper torso leaning upright and
76 toward the passenger-side door. Although he was out of his
77 shoulder harness and seat belt by the time paramedics arrived,
78 the Brody's attorney proved that Eric was wearing his seat belt
79 and that the 16-year-old seat belt buckle failed during the
80 crash. Photographs taken at the scene by the sheriff's office
81 investigators showed the belt to be fully spooled out because
82 the retractor was jammed, with the belt dangling outside the
83 vehicle from the driver-side door, providing proof that Eric
84 Brody was wearing his seat belt and shoulder harness during the
85 crash, and

86 WHEREAS, accident reconstruction and human factor experts
87 called by both the plaintiff and the defendant agreed that if

28-00017A-11

201142__

88 Deputy Thieman been driving at the speed limit, Eric Brody would
89 have easily completed his turn, and

90 WHEREAS, the experts also agreed that if Deputy Thieman
91 simply remained within his lane of travel, regardless of his
92 speed, there would not have been a collision, and

93 WHEREAS, in order to investigate the seat-belt defense,
94 experts for Eric Brody recreated the accident using an exact
95 car-to-car crash test that was conducted by a nationally
96 recognized crash test facility. The crash test involved vehicles
97 identical to the Brody and Thieman vehicles, a fully
98 instrumented hybrid III dummy, and high-speed action cameras,
99 and

100 WHEREAS, the crash test proved that Eric Brody was wearing
101 his restraint system during the crash because the seat-belted
102 test dummy struck its head on the passenger door within inches
103 of where Eric Brody's head actually struck the passenger door,
104 and

105 WHEREAS, when Eric Brody's head struck the passenger door
106 of his vehicle, the door crushed inward from the force of the
107 impact with the police cruiser while at the same time his upper
108 torso was moving toward the point of impact and the passenger
109 door. The impact resulted in skull fractures and massive brain
110 sheering, bleeding, bruising, and swelling, and

111 WHEREAS, Eric Brody was airlifted by helicopter to Broward
112 General Hospital where he was placed on a ventilator and
113 underwent an emergency craniotomy and neurosurgery. He began to
114 recover from a deep coma more than 7 months after his injury and
115 underwent extensive rehabilitation, having to relearn how to
116 walk, talk, feed himself, and perform other basic functions, and

28-00017A-11

201142__

117 WHEREAS, Eric Brody, who is now 30 years old, has been left
118 profoundly brain-injured, lives with his parents, and is mostly
119 isolated from his former friends and other young people his age.
120 His speech is barely intelligible and he has significant
121 cognitive dysfunction, judgment impairment, memory loss, and
122 neuro-visual disabilities. Eric Brody also has impaired fine and
123 gross motor skills and very poor balance. Although Eric is able
124 to use a walker for short distances, he mostly uses a wheelchair
125 to get around. The entire left side of his body is partially
126 paralyzed and spastic, and he needs help with many of his daily
127 functions. Eric Brody is permanently and totally disabled;
128 however, he has a normal life expectancy, and

129 WHEREAS, the cost of Eric Brody's life care plan is nearly
130 \$10 million, and he has been left totally dependent on public
131 health programs and taxpayer assistance since 1998, and

132 WHEREAS, the Broward County Sheriff's Office was insured
133 for this claim through Ranger Insurance Company and paid more
134 than \$400,000 for liability coverage that has a policy limit of
135 \$3 million, and

136 WHEREAS, Ranger Insurance Company ignored seven demand
137 letters and other attempts by the Brodys to settle the case for
138 the policy limit, and instead chose to wait for more than 7
139 years following the date of the accident until the day the trial
140 judge specially set the case for trial before offering to pay
141 the policy limit. By that time nearly \$750,000 had been spent
142 preparing the case for trial, and Eric Brody had past due bills
143 and liens of nearly \$1.5 million for health and rehabilitative
144 care services. Because so much money had been spent preparing
145 the case for trial, the exorbitant costs of Eric Brody's

28-00017A-11

201142__

146 medical bills and liens, and the costs of future care continued
147 to escalate, settlement for the policy limit was no longer
148 feasible, and

149 WHEREAS, on December 1, 2005, after a 2-month trial, a
150 Broward County jury consisting of three men and three women
151 found that that Deputy Thieman and the Broward County Sheriff's
152 Office were 100 percent negligent, and Eric Brody was not
153 comparatively negligent, and

154 WHEREAS, the jury found Eric Brody's damages to be
155 \$30,690,000, including a determination that his past and future
156 care and other economic damages were \$11,326,216, and

157 WHEREAS, final judgment was entered for \$30,690,000, and
158 the court entered a cost judgment for \$270,372.30, for a total
159 of \$30,960,372.30, and

160 WHEREAS, the court denied the Broward County Sheriff's
161 Office posttrial motions for judgment notwithstanding the
162 verdict, new trial, or remittitur, and

163 WHEREAS, the insurer of the Broward County Sheriff's Office
164 retained appellate counsel and elected to appeal the final
165 judgment but not the cost judgment, and

166 WHEREAS, the Fourth District Court of Appeal upheld the
167 verdict in the fall of 2007, and

168 WHEREAS, the insurer of the Broward County Sheriff's Office
169 subsequently petitioned the Florida Supreme Court to seek
170 another appeal, but the petition was denied in April of 2008,
171 and

172 WHEREAS, all legal remedies for all parties involved have
173 been exhausted and this case is ripe for a claim bill, and

174 WHEREAS, upon the passage of a claim bill for any amount in

28-00017A-11

201142__

175 excess of the insurance policy limit of \$3 million, the Broward
176 County Sheriff's Office may have a cause of action pursuant to
177 state law against its insurer for bad-faith-claims practices,
178 breach of fiduciary duty, breach of contract, and other possible
179 legal remedies which may result in a recovery from the insurer
180 to pay all outstanding sums owed to the guardianship of Eric
181 Brody, and

182 WHEREAS, the Broward County Sheriff's Office has paid
183 \$200,000 pursuant to s. 768.28, Florida Statutes, and the final
184 judgment and cost judgment remainder in the amount of
185 \$30,760,372.30 is sought through the submission of a claim bill
186 to the Legislature, and

187 WHEREAS, Eric Brody is willing to accept an assignment of
188 all claims the Broward County Sheriff's Office may have against
189 its insurer in lieu of the sheriff's office making any payment
190 on this claim, and

191 WHEREAS, if the Broward County Sheriff's Office assigns all
192 of its claims against its insurer to Eric Brody, he will not
193 hold the sheriff's office responsible for any payment, NOW,
194 THEREFORE,

195
196 Be It Enacted by the Legislature of the State of Florida:

197
198 Section 1. The facts stated in the preamble to this act are
199 found and declared to be true.

200 Section 2. The Sheriff of Broward County is authorized and
201 directed to appropriate from funds of the Broward County
202 Sheriff's Office not otherwise appropriated and to draw a
203 warrant payable to Eric Brody in the sum of \$30,760,372.30, or

28-00017A-11

201142

204 all amounts that remain unpaid in accordance with the final
205 judgment and cost judgment as provided for in the preamble of
206 this act. In lieu of payment, the Sheriff of Broward County may
207 assign to Eric Brody and his legal guardians all rights it may
208 have against its liability insurance carrier for breach of
209 contract, breach of fiduciary duty, bad faith, and any similar
210 or related claims that may exist pursuant to state law. If the
211 Sheriff of Broward County makes an assignment to the claimant as
212 provided for in this section, the Broward County Sheriff's
213 Office is not responsible for any further payment to the
214 claimant.

215 Section 3. If the Sheriff of Broward County makes the
216 assignment permitted under section 2 of this act, the protection
217 given to the Broward County Sheriff's Office does not impair in
218 any respect the ability or right of the assignees to pursue the
219 final judgment and cost judgment against the insurer of the
220 Broward County Sheriff's Office, less the \$200,000 already paid,
221 pursuant to state law.

222 Section 4. The amount paid by the Broward County Sheriff's
223 Office pursuant to s. 768.28, Florida Statutes, and the amount
224 awarded under this act are intended to provide the sole
225 compensation for all claims against the Broward County Sheriff's
226 Office arising out of the facts described in this act which
227 resulted in the injuries to Eric Brody. The total amount of
228 attorney's fees, lobbying fees, costs, and other similar
229 expenses relating to the claim against the Broward County
230 Sheriff's Office may not exceed 25 percent of the total amount
231 awarded under sections 2 and 3 of this act. Any attorney's fees,
232 costs, and related expenses awarded by a court or earned

28-00017A-11

201142__

233 pursuant to the prosecution of an assigned claim are not limited
234 by this section and shall be earned in accordance with state
235 law.

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