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

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

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

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29 | than 15 minutes to travel 11 miles to make roll call on time,
30 | which was mandatory pursuant to sheriff's office policy and
31 | procedure, and

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

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

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

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

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57 as to avoid any possible conflict of interest, and

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

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

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

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

84 WHEREAS, accident reconstruction and human factor experts

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85 called by both the plaintiff and the defendant agreed that if
86 Deputy Thieman had been driving at the speed limit, Eric Brody
87 would have easily completed his turn, and

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

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

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

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

109 WHEREAS, Eric Brody was airlifted by helicopter to Broward
110 General Hospital where he was placed on a ventilator and
111 underwent an emergency craniotomy and neurosurgery. He began to
112 recover from a deep coma more than 7 months after his injury and

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113 | underwent extensive rehabilitation, having to relearn how to
114 | walk, talk, feed himself, and perform other basic functions, and

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

127 | WHEREAS, the cost of Eric Brody's life care plan is nearly
128 | \$10 million, and he has been left totally dependent on public
129 | health programs and taxpayer assistance since 1998, and

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

134 | WHEREAS, Ranger Insurance Company ignored seven demand
135 | letters and other attempts by the Brodys to settle the case for
136 | the policy limit, and instead chose to wait for more than 7
137 | years following the date of the accident until the day the trial
138 | judge specially set the case for trial before offering to pay
139 | the policy limit. By that time nearly \$750,000 had been spent
140 | preparing the case for trial, and Eric Brody had past due bills

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141 and liens of nearly \$1.5 million for health and rehabilitative
142 care services. Because of the considerable expenditure of money
143 in preparing the case for trial, the exorbitant costs of Eric
144 Brody's medical bills and liens, and the continually escalating
145 costs of future care, settlement for the policy limit was no
146 longer feasible, and

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

152 WHEREAS, the jury found Eric Brody's damages to be
153 \$30,690,000, including a determination that his past and future
154 care and other economic damages were \$11,326,216, and

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

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

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

164 WHEREAS, the Fourth District Court of Appeal upheld the
165 verdict in the fall of 2007, and

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

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169 and

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

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

180 WHEREAS, the Broward County Sheriff's Office has paid
 181 \$200,000 pursuant to s. 768.28, Florida Statutes, and the final
 182 judgment and cost judgment remainder in the amount of
 183 \$30,760,372.30 is sought through the submission of a claim bill
 184 to the Legislature, and

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

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

193

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

195

196 Section 1. The facts stated in the preamble to this act

197 are found and declared to be true.

198 Section 2. The Sheriff of Broward County is authorized and
 199 directed to appropriate from funds of the Broward County
 200 Sheriff's Office not otherwise appropriated and to draw a
 201 warrant payable to Eric Brody in the sum of \$30,760,372.30, or
 202 all amounts that remain unpaid in accordance with the final
 203 judgment and cost judgment as provided for in the preamble of
 204 this act. In lieu of payment, the Sheriff of Broward County may
 205 assign to Eric Brody and his legal guardians all rights it may
 206 have against its liability insurance carrier for breach of
 207 contract, breach of fiduciary duty, bad faith, and any similar
 208 or related claims that may exist pursuant to state law. If the
 209 Sheriff of Broward County makes an assignment to the claimant as
 210 provided for in this section, the Broward County Sheriff's
 211 Office is not responsible for any further payment to the
 212 claimant.

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

220 Section 4. The amount paid by the Broward County Sheriff's
 221 Office pursuant to s. 768.28, Florida Statutes, and the amount
 222 awarded under this act are intended to provide the sole
 223 compensation for all claims against the Broward County Sheriff's
 224 Office arising out of the facts described in this act which

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225 resulted in the injuries to Eric Brody. The total amount of
226 attorney's fees, lobbying fees, costs, and other similar
227 expenses relating to the claim against the Broward County
228 Sheriff's Office may not exceed 25 percent of the total amount
229 awarded under sections 2 and 3 of this act. Any attorney's fees,
230 costs, and related expenses awarded by a court or earned
231 pursuant to the prosecution of an assigned claim are not limited
232 by this section and shall be earned in accordance with state
233 law.

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