

By Senator Benacquisto

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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; providing a limitation on the
7 payment of fees and costs related to the claim against
8 the Broward County Sheriff's Office; providing
9 legislative intent regarding lien interests held by
10 the state; requiring that the guardianship pay a
11 portion of such liens before distributing funds to the
12 claimant; providing an effective date.
13

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

19 WHEREAS, that same evening, Broward County Sheriff's Deputy
20 Christopher Thieman, who had been visiting his girlfriend and
21 was running late for duty, was driving his Broward County
22 Sheriff's Office cruiser westbound on Oakland Park Boulevard. At
23 the time he left his girlfriend's house, Deputy Thieman had less
24 than 15 minutes to travel 11 miles to make roll call on time,
25 which was mandatory pursuant to sheriff's office policy and
26 procedure, and

27 WHEREAS, at approximately 10:36 p.m., Eric Brody began to
28 make a left-hand turn into his neighborhood at the intersection
29 of N.W. 117th Avenue and Oakland Park Boulevard. Deputy Thieman,

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30 who was driving in excess of the 45-mile-per-hour posted speed
31 limit and traveling in the opposite direction, was not within
32 the intersection and was more than 430 feet away from Eric
33 Brody's car when Eric Brody began the turn. Eric Brody's car
34 cleared two of the three westbound lanes on Oakland Park
35 Boulevard, and

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

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

46 WHEREAS, despite the appearance of a conflict of interest,
47 the Broward County Sheriff's Office chose to conduct the
48 official crash investigation instead of deferring to the City of
49 Sunrise Police Department, which also had jurisdiction, or the
50 Florida Highway Patrol (FHP), which often investigates motor
51 vehicle collisions involving non-FHP law enforcement officers so
52 as to avoid any possible conflict of interest, and

53 WHEREAS, in the course of the investigation, the Broward
54 County Sheriff's Office lost key evidence from the crashed
55 vehicles and did not report any witnesses even though the first
56 responders to the crash scene were police officers from the City
57 of Sunrise, and

58 WHEREAS, the Broward County detective who led the crash

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59 investigation entered inaccurate data into a computerized
60 accident reconstruction program which skewed the speed that
61 Deputy Thieman was driving, but, nevertheless, determined that
62 he was still traveling well over the speed limit, and

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

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

79 WHEREAS, accident reconstruction and human factor experts
80 called by both the plaintiff and the defendant agreed that if
81 Deputy Thieman been driving at the speed limit, Eric Brody would
82 have easily completed his turn, and

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

86 WHEREAS, in order to investigate the seat-belt defense,
87 experts for Eric Brody recreated the accident using an exact

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88 car-to-car crash test that was conducted by a nationally
89 recognized crash test facility. The crash test involved vehicles
90 identical to the Brody and Thieman vehicles, a fully
91 instrumented hybrid III dummy, and high-speed action cameras,
92 and

93 WHEREAS, the crash test proved that Eric Brody was wearing
94 his restraint system during the crash because the seat-belted
95 test dummy struck its head on the passenger door within inches
96 of where Eric Brody's head actually struck the passenger door,
97 and

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

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

110 WHEREAS, Eric Brody, who is now 30 years old, has been left
111 profoundly brain-injured, lives with his parents, and is mostly
112 isolated from his former friends and other young people his age.
113 His speech is barely intelligible and he has significant
114 cognitive dysfunction, judgment impairment, memory loss, and
115 neuro-visual disabilities. Eric Brody also has impaired fine and
116 gross motor skills and very poor balance. Although Eric is able

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117 to use a walker for short distances, he mostly uses a wheelchair
118 to get around. The entire left side of his body is partially
119 paralyzed and spastic, and he needs help with many of his daily
120 functions. Eric Brody is permanently and totally disabled;
121 however, he has a normal life expectancy, and

122 WHEREAS, the cost of Eric Brody's life care plan is nearly
123 \$10 million, and he has been left totally dependent on public
124 health programs and taxpayer assistance since 1998, and

125 WHEREAS, the Broward County Sheriff's Office was insured
126 for this claim through Ranger Insurance Company and paid more
127 than \$400,000 for liability coverage that has a policy limit of
128 \$3 million, and

129 WHEREAS, Ranger Insurance Company ignored seven demand
130 letters and other attempts by the Brodys to settle the case for
131 the policy limit, and instead chose to wait for more than 7
132 years following the date of the accident until the day the trial
133 judge specially set the case for trial before offering to pay
134 the policy limit. By that time nearly \$750,000 had been spent
135 preparing the case for trial, and Eric Brody had past due bills
136 and liens of nearly \$1.5 million for health and rehabilitative
137 care services. Because so much money had been spent preparing
138 the case for trial, the exorbitant costs of Eric Brody's medical
139 bills and liens, and the costs of future care continued to
140 escalate, settlement for the policy limit was no longer
141 feasible, and

142 WHEREAS, on December 1, 2005, after a 2-month trial, a
143 Broward County jury consisting of three men and three women
144 found that that Deputy Thieman and the Broward County Sheriff's
145 Office were 100 percent negligent, and Eric Brody was not

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146 comparatively negligent, and

147 WHEREAS, the jury found Eric Brody's damages to be
148 \$30,609,298, including a determination that his past and future
149 care and other economic damages were \$11,326,216, and

150 WHEREAS, final judgment was entered for \$30,609,298, and
151 the court entered a cost judgment for \$270,372.30, and

152 WHEREAS, the court denied the Broward County Sheriff's
153 Office posttrial motions for judgment notwithstanding the
154 verdict, new trial, or remittitur, and

155 WHEREAS, the insurer of the Broward County Sheriff's Office
156 retained appellate counsel and elected to appeal the final
157 judgment but not the cost judgment, and

158 WHEREAS, the Fourth District Court of Appeal upheld the
159 verdict in the fall of 2007, and

160 WHEREAS, the insurer of the Broward County Sheriff's Office
161 subsequently petitioned the Florida Supreme Court to seek
162 another appeal, but the petition was denied in April of 2008,
163 and

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

166 WHEREAS, the Broward County Sheriff's Office has paid
167 \$200,000 pursuant to s. 768.28, Florida Statutes, and the amount
168 of \$12 million is sought through the submission of a claim bill
169 to the Legislature, NOW, THEREFORE,

170

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

172

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

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175 Section 2. The Sheriff of Broward County is authorized and
176 directed to appropriate from funds of the Broward County
177 Sheriff's Office not otherwise appropriated and to draw a
178 warrant payable to the Guardianship of Eric Brody for one-half
179 of all amounts that remain unpaid in accordance with the final
180 judgment, plus the cost judgment, in the sum of \$15,575,021.30
181 as compensation for injuries and damages sustained as a result
182 of the negligence of the Broward County Sheriff's Office.

183 Section 3. The amount to be paid by the Broward County
184 Sheriff's Office pursuant to s. 768.28, Florida Statutes, and
185 the amount awarded under this act are intended to provide the
186 sole compensation for all claims arising out of the facts
187 described in this act which resulted in the injuries to Eric
188 Brody. The total amount of attorney's fees, lobbying fees,
189 costs, and other similar expenses may not exceed 25 percent of
190 the total amount awarded under section 2 of this act.

191 Section 4. It is the intent of the Legislature that one-
192 half of the lien interests held by the state resulting from the
193 treatment and care of Eric Brody for the events described in the
194 preamble of this act are not waived and extinguished, and the
195 claimant's guardianship shall reimburse the state for one-half
196 of the expenses of Medicaid, Medicare, or the Agency for Health
197 Care Administration pursuant to s. 409.910, Florida Statutes.
198 The claimant's guardianship shall pay the amount due pursuant to
199 this act prior to distributing any funds to the claimant.

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