

By the Committee on Rules; and Senator Benacquisto

595-00976-12

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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, in the course of the investigation, the Broward
47 County Sheriff's Office lost key evidence from the crashed
48 vehicles and did not report any witnesses even though the first
49 responders to the crash scene were police officers from the City
50 of Sunrise, and

51 WHEREAS, the Broward County detective who led the crash
52 investigation entered inaccurate data into a computerized
53 accident reconstruction program which skewed the speed that
54 Deputy Thieman was driving, but, nevertheless, determined that
55 he was still traveling well over the speed limit, and

56 WHEREAS, accident reconstruction experts called by both
57 parties testified that Deputy Thieman was driving at least 60 to
58 more than 70 miles per hour when his vehicle slammed into the

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59 passenger side of Eric Brody's car, and

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

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

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

79 WHEREAS, in order to investigate the seat-belt defense,
80 experts for Eric Brody recreated the accident using an exact
81 car-to-car crash test that was conducted by a nationally
82 recognized crash test facility. The crash test involved vehicles
83 identical to the Brody and Thieman vehicles, a fully
84 instrumented hybrid III dummy, and high-speed action cameras,
85 and

86 WHEREAS, the crash test proved that Eric Brody was wearing
87 his restraint system during the crash because the seat-belted

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88 test dummy struck its head on the passenger door within inches
89 of where Eric Brody's head actually struck the passenger door,
90 and

91 WHEREAS, when Eric Brody's head struck the passenger door
92 of his vehicle, the door crushed inward from the force of the
93 impact with the police cruiser while at the same time his upper
94 torso was moving toward the point of impact and the passenger
95 door. The impact resulted in skull fractures and massive brain
96 sheering, bleeding, bruising, and swelling, and

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

103 WHEREAS, Eric Brody, who is now 32 years old, has been left
104 profoundly brain-injured, lives with his parents, and is mostly
105 isolated from his former friends and other young people his age.
106 His speech is barely intelligible and he has significant
107 cognitive dysfunction, judgment impairment, memory loss, and
108 neuro-visual disabilities. Eric Brody also has impaired fine and
109 gross motor skills and very poor balance. Although Eric is able
110 to use a walker for short distances, he mostly uses a wheelchair
111 to get around. The entire left side of his body is partially
112 paralyzed and spastic, and he needs help with many of his daily
113 functions. Eric Brody is permanently and totally disabled;
114 however, he has a normal life expectancy, and

115 WHEREAS, the cost of Eric Brody's life care plan is nearly
116 \$10 million, and he has been left totally dependent on public

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117 health programs and taxpayer assistance since 1998, and

118 WHEREAS, the Broward County Sheriff's Office was insured
119 for this claim through Ranger Insurance Company and paid more
120 than \$400,000 for liability coverage, and

121 WHEREAS, on December 1, 2005, after a 2-month trial, a
122 Broward County jury consisting of three men and three women
123 found that that Deputy Thieman and the Broward County Sheriff's
124 Office were 100 percent negligent, and Eric Brody was not
125 comparatively negligent, and

126 WHEREAS, the jury found Eric Brody's damages to be
127 \$30,609,298, including a determination that his past and future
128 care and other economic damages were \$11,326,216, and

129 WHEREAS, final judgment was entered for \$30,609,298, and
130 the court entered a cost judgment for \$270,372.30, for a total
131 of \$30,879,670.30, and

132 WHEREAS, the court denied the Broward County Sheriff's
133 Office posttrial motions for judgment notwithstanding the
134 verdict, new trial, or remittitur, and

135 WHEREAS, the insurer of the Broward County Sheriff's Office
136 retained appellate counsel and elected to appeal the final
137 judgment but not the cost judgment, and

138 WHEREAS, the Fourth District Court of Appeal upheld the
139 verdict in the fall of 2007, and

140 WHEREAS, the insurer of the Broward County Sheriff's Office
141 subsequently petitioned the Florida Supreme Court to seek
142 another appeal, but the petition was denied in April of 2008,
143 and

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

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146 WHEREAS, the Broward County Sheriff's Office has paid
147 \$200,000 pursuant to s. 768.28, Florida Statutes, and the amount
148 of \$15,575,021.30 is sought through the submission of a claim
149 bill to the Legislature, NOW, THEREFORE,

150
151 Be It Enacted by the Legislature of the State of Florida:

152
153 Section 1. The facts stated in the preamble to this act are
154 found and declared to be true.

155 Section 2. The Sheriff of Broward County is authorized and
156 directed to appropriate from funds of the Broward County
157 Sheriff's Office not otherwise appropriated and to draw a
158 warrant payable to the Guardianship of Eric Brody for one-half
159 of all amounts that remain unpaid in accordance with the final
160 judgment, plus the cost judgment, in the sum of \$15,575,021.30
161 as compensation for injuries and damages sustained as a result
162 of the negligence of the Broward County Sheriff's Office.

163 Section 3. The amount to be paid by the Broward County
164 Sheriff's Office pursuant to s. 768.28, Florida Statutes, and
165 the amount awarded under this act are intended to provide the
166 sole compensation for all claims arising out of the facts
167 described in this act which resulted in the injuries to Eric
168 Brody. The total amount of attorney fees, lobbying fees, costs,
169 and other similar expenses may not exceed 25 percent of the
170 total amount awarded under section 2 of this act.

171 Section 4. It is the intent of the Legislature that one-
172 half of the lien interests held by the state resulting from the
173 treatment and care of Eric Brody for the events described in the
174 preamble of this act are not waived and extinguished, and the

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175 claimant's guardianship shall reimburse the state for one-half
176 of the expenses of Medicaid, Medicare, or the Agency for Health
177 Care Administration pursuant to s. 409.910, Florida Statutes.
178 The claimant's guardianship shall pay the amount due pursuant to
179 this act prior to distributing any funds to the claimant.

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