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LEGISLATIVE ACTION

Senate

.

House

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05/05/2011 05:57 PM

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Senator Benacquisto moved the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

Section 2. The Sheriff of Broward County is authorized and directed to appropriate from funds of the Broward County Sheriff's Office not otherwise appropriated and to draw a warrant payable to Eric Brody in the sum of \$12 million as compensation for injuries and damages sustained as a result of the negligence of the Broward County Sheriff's Office.

Section 3. The amount paid by the Broward County Sheriff's



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14 Office pursuant to s. 768.28, Florida Statutes, and the amount
15 awarded under this act are intended to provide the sole
16 compensation for all claims arising out of the facts described
17 in this act which resulted in the injuries to Eric Brody. The
18 total amount of attorney's fees, lobbying fees, costs, and other
19 similar expenses may not exceed 25 percent of the total amount
20 awarded under sections 2 and 3 of this act and shall be paid
21 exclusively to the attorneys and lobbyists currently retained by
22 the claimants at the time this act becomes a law and for their
23 benefit only.

24 Section 4. It is the intent of the Legislature that all
25 lien interests held by the state resulting from the treatment
26 and care of Eric Brody for the events described in the preamble
27 of this act are not waived and extinguished, and the claimant's
28 guardianship is not relieved of any obligation to reimburse
29 Medicaid, Medicare, or the Agency for Health Care Administration
30 for such expenses pursuant to s. 409.910, Florida Statutes. The
31 claimant's guardianship shall pay the amount due under s.
32 409.910, Florida Statutes, prior to distributing any funds to
33 the claimant.

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

36 ===== T I T L E A M E N D M E N T =====

37 And the title is amended as follows:

38 Delete everything before the enacting clause
39 and insert:

40 A bill to be entitled
41 An act for the relief of Eric Brody by the Broward
42 County Sheriff's Office; providing for an



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43 appropriation to compensate Eric Brody for injuries
44 sustained as a result of the negligence of the Broward
45 County Sheriff's Office; providing a limitation on the
46 payment of fees and costs related to the claim against
47 the Broward County Sheriff's Office; providing
48 legislative intent to prohibit a waiver of lien
49 interests held by the state; requiring that the
50 guardianship pay any such liens before distributing
51 funds to the claimant; providing an effective date.
52

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

58 WHEREAS, that same evening, Broward County Sheriff's Deputy
59 Christopher Thieman, who had been visiting his girlfriend and
60 was running late for duty, was driving his Broward County
61 Sheriff's Office cruiser westbound on Oakland Park Boulevard. At
62 the time he left his girlfriend's house, Deputy Thieman had less
63 than 15 minutes to travel 11 miles to make roll call on time,
64 which was mandatory pursuant to sheriff's office policy and
65 procedure, and

66 WHEREAS, at approximately 10:36 p.m., Eric Brody began to
67 make a left-hand turn into his neighborhood at the intersection
68 of N.W. 117th Avenue and Oakland Park Boulevard. Deputy Thieman,
69 who was driving in excess of the 45-mile-per-hour posted speed
70 limit and traveling in the opposite direction, was not within
71 the intersection and was more than 430 feet away from Eric



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72 Brody's car when Eric Brody began the turn. Eric Brody's car
73 cleared two of the three westbound lanes on Oakland Park
74 Boulevard, and

75 WHEREAS, Deputy Thieman, who was traveling in the inside
76 westbound lane closest to the median, suddenly and inexplicably
77 steered his vehicle to the right, across the center lane and
78 into the outside lane, where the front end of his car struck the
79 passenger side of Eric's car with great force, just behind the
80 right front wheel and near the passenger door, and

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

85 WHEREAS, despite the appearance of a conflict of interest,
86 the Broward County Sheriff's Office chose to conduct the
87 official crash investigation instead of deferring to the City of
88 Sunrise Police Department, which also had jurisdiction, or the
89 Florida Highway Patrol (FHP), which often investigates motor
90 vehicle collisions involving non-FHP law enforcement officers so
91 as to avoid any possible conflict of interest, and

92 WHEREAS, in the course of the investigation, the Broward
93 County Sheriff's Office lost key evidence from the crashed
94 vehicles and did not report any witnesses even though the first
95 responders to the crash scene were police officers from the City
96 of Sunrise, and

97 WHEREAS, the Broward County detective who led the crash
98 investigation entered inaccurate data into a computerized
99 accident reconstruction program which skewed the speed that
100 Deputy Thieman was driving, but, nevertheless, determined that



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101 he was still traveling well over the speed limit, and
102 WHEREAS, accident reconstruction experts called by both
103 parties testified that Deputy Thieman was driving at least 60 to
104 more than 70 miles per hour when his vehicle slammed into the
105 passenger side of Eric Brody's car, and

106 WHEREAS, Eric Brody was found unconscious 6 minutes later
107 by paramedics, his head and upper torso leaning upright and
108 toward the passenger-side door. Although he was out of his
109 shoulder harness and seat belt by the time paramedics arrived,
110 the Brody's attorney proved that Eric was wearing his seat belt
111 and that the 16-year-old seat belt buckle failed during the
112 crash. Photographs taken at the scene by the sheriff's office
113 investigators showed the belt to be fully spooled out because
114 the retractor was jammed, with the belt dangling outside the
115 vehicle from the driver-side door, providing proof that Eric
116 Brody was wearing his seat belt and shoulder harness during the
117 crash, and

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

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

125 WHEREAS, in order to investigate the seat-belt defense,
126 experts for Eric Brody recreated the accident using an exact
127 car-to-car crash test that was conducted by a nationally
128 recognized crash test facility. The crash test involved vehicles
129 identical to the Brody and Thieman vehicles, a fully



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130 instrumented hybrid III dummy, and high-speed action cameras,
131 and

132 WHEREAS, the crash test proved that Eric Brody was wearing
133 his restraint system during the crash because the seat-belted
134 test dummy struck its head on the passenger door within inches
135 of where Eric Brody's head actually struck the passenger door,
136 and

137 WHEREAS, when Eric Brody's head struck the passenger door
138 of his vehicle, the door crushed inward from the force of the
139 impact with the police cruiser while at the same time his upper
140 torso was moving toward the point of impact and the passenger
141 door. The impact resulted in skull fractures and massive brain
142 sheering, bleeding, bruising, and swelling, and

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

149 WHEREAS, Eric Brody, who is now 30 years old, has been left
150 profoundly brain-injured, lives with his parents, and is mostly
151 isolated from his former friends and other young people his age.
152 His speech is barely intelligible and he has significant
153 cognitive dysfunction, judgment impairment, memory loss, and
154 neuro-visual disabilities. Eric Brody also has impaired fine and
155 gross motor skills and very poor balance. Although Eric is able
156 to use a walker for short distances, he mostly uses a wheelchair
157 to get around. The entire left side of his body is partially
158 paralyzed and spastic, and he needs help with many of his daily



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159 functions. Eric Brody is permanently and totally disabled;
160 however, he has a normal life expectancy, and

161 WHEREAS, the cost of Eric Brody's life care plan is nearly
162 \$10 million, and he has been left totally dependent on public
163 health programs and taxpayer assistance since 1998, and

164 WHEREAS, the Broward County Sheriff's Office was insured
165 for this claim through Ranger Insurance Company and paid more
166 than \$400,000 for liability coverage that has a policy limit of
167 \$3 million, and

168 WHEREAS, Ranger Insurance Company ignored seven demand
169 letters and other attempts by the Brodys to settle the case for
170 the policy limit, and instead chose to wait for more than 7
171 years following the date of the accident until the day the trial
172 judge specially set the case for trial before offering to pay
173 the policy limit. By that time nearly \$750,000 had been spent
174 preparing the case for trial, and Eric Brody had past due bills
175 and liens of nearly \$1.5 million for health and rehabilitative
176 care services. Because so much money had been spent preparing
177 the case for trial, the exorbitant costs of Eric Brody's
178 medical bills and liens, and the costs of future care continued
179 to escalate, settlement for the policy limit was no longer
180 feasible, and

181 WHEREAS, on December 1, 2005, after a 2-month trial, a
182 Broward County jury consisting of three men and three women
183 found that that Deputy Thieman and the Broward County Sheriff's
184 Office were 100 percent negligent, and Eric Brody was not
185 comparatively negligent, and

186 WHEREAS, the jury found Eric Brody's damages to be
187 \$30,609,298, including a determination that his past and future



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188 care and other economic damages were \$11,326,216, and
189 WHEREAS, final judgment was entered for \$30,609,298, and
190 the court entered a cost judgment for \$270,372.30, and
191 WHEREAS, the court denied the Broward County Sheriff's
192 Office posttrial motions for judgment notwithstanding the
193 verdict, new trial, or remittitur, and
194 WHEREAS, the insurer of the Broward County Sheriff's Office
195 retained appellate counsel and elected to appeal the final
196 judgment but not the cost judgment, and
197 WHEREAS, the Fourth District Court of Appeal upheld the
198 verdict in the fall of 2007, and
199 WHEREAS, the insurer of the Broward County Sheriff's Office
200 subsequently petitioned the Florida Supreme Court to seek
201 another appeal, but the petition was denied in April of 2008,
202 and
203 WHEREAS, all legal remedies for all parties involved have
204 been exhausted and this case is ripe for a claim bill, and
205 WHEREAS, the Broward County Sheriff's Office has paid
206 \$200,000 pursuant to s. 768.28, Florida Statutes, and the amount
207 of \$12 million is sought through the submission of a claim bill
208 to the Legislature, NOW, THEREFORE,