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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
11/16/2011	.	
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	.	
	.	

The Committee on Rules (Gardiner) recommended 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 the Guardianship of Eric Brody for one-half of all amounts that remain unpaid in accordance with the final judgment, plus the cost judgment, in the sum of \$15,575,021.30 as compensation for injuries and damages sustained as a result



615420

14 of the negligence of the Broward County Sheriff's Office.

15 Section 3. The amount to be paid by the Broward County
16 Sheriff's Office pursuant to s. 768.28, Florida Statutes, and
17 the amount awarded under this act are intended to provide the
18 sole compensation for all claims arising out of the facts
19 described in this act which resulted in the injuries to Eric
20 Brody. The total amount of attorney's fees, lobbying fees,
21 costs, and other similar expenses may not exceed 25 percent of
22 the total amount awarded under section 2 of this act.

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

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

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

35 And the title is amended as follows:

36 Delete everything before the enacting clause
37 and insert:

38 A bill to be entitled
39 An act for the relief of Eric Brody by the Broward
40 County Sheriff's Office; providing for an
41 appropriation to compensate Eric Brody for injuries
42 sustained as a result of the negligence of the Broward



615420

43 County Sheriff's Office; providing a limitation on the
44 payment of fees and costs related to the claim against
45 the Broward County Sheriff's Office; providing
46 legislative intent regarding lien interests held by
47 the state; requiring that the guardianship pay a
48 portion of such liens before distributing funds to the
49 claimant; providing an effective date.

50
51 WHEREAS, on the evening of March 3, 1998, 18-year-old Eric
52 Brody, a college-bound high school senior, was returning home
53 from his part-time job at the Sawgrass Mills Sports Authority.
54 Eric was driving his 1982 AMC Concord eastbound on Oakland Park
55 Boulevard in Sunrise, Florida, and

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

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



615420

72 Boulevard, and

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

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

83 WHEREAS, in the course of the investigation, the Broward
84 County Sheriff's Office lost key evidence from the crashed
85 vehicles and did not report any witnesses even though the first
86 responders to the crash scene were police officers from the City
87 of Sunrise, and

88 WHEREAS, the Broward County detective who led the crash
89 investigation entered inaccurate data into a computerized
90 accident reconstruction program which skewed the speed that
91 Deputy Thieman was driving, but, nevertheless, determined that
92 he was still traveling well over the speed limit, and

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

97 WHEREAS, Eric Brody was found unconscious 6 minutes later
98 by paramedics, his head and upper torso leaning upright and
99 toward the passenger-side door. Although he was out of his
100 shoulder harness and seat belt by the time paramedics arrived,



615420

101 the Brody's attorney proved that Eric was wearing his seat belt
102 and that the 16-year-old seat belt buckle failed during the
103 crash. Photographs taken at the scene by the sheriff's office
104 investigators showed the belt to be fully spooled out because
105 the retractor was jammed, with the belt dangling outside the
106 vehicle from the driver-side door, providing proof that Eric
107 Brody was wearing his seat belt and shoulder harness during the
108 crash, and

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

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

116 WHEREAS, in order to investigate the seat-belt defense,
117 experts for Eric Brody recreated the accident using an exact
118 car-to-car crash test that was conducted by a nationally
119 recognized crash test facility. The crash test involved vehicles
120 identical to the Brody and Thieman vehicles, a fully
121 instrumented hybrid III dummy, and high-speed action cameras,
122 and

123 WHEREAS, the crash test proved that Eric Brody was wearing
124 his restraint system during the crash because the seat-belted
125 test dummy struck its head on the passenger door within inches
126 of where Eric Brody's head actually struck the passenger door,
127 and

128 WHEREAS, when Eric Brody's head struck the passenger door
129 of his vehicle, the door crushed inward from the force of the



615420

130 impact with the police cruiser while at the same time his upper
131 torso was moving toward the point of impact and the passenger
132 door. The impact resulted in skull fractures and massive brain
133 sheering, bleeding, bruising, and swelling, and

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

140 WHEREAS, Eric Brody, who is now 32 years old, has been left
141 profoundly brain-injured, lives with his parents, and is mostly
142 isolated from his former friends and other young people his age.
143 His speech is barely intelligible and he has significant
144 cognitive dysfunction, judgment impairment, memory loss, and
145 neuro-visual disabilities. Eric Brody also has impaired fine and
146 gross motor skills and very poor balance. Although Eric is able
147 to use a walker for short distances, he mostly uses a wheelchair
148 to get around. The entire left side of his body is partially
149 paralyzed and spastic, and he needs help with many of his daily
150 functions. Eric Brody is permanently and totally disabled;
151 however, he has a normal life expectancy, and

152 WHEREAS, the cost of Eric Brody's life care plan is nearly
153 \$10 million, and he has been left totally dependent on public
154 health programs and taxpayer assistance since 1998, and

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

158 WHEREAS, on December 1, 2005, after a 2-month trial, a



615420

159 Broward County jury consisting of three men and three women
160 found that that Deputy Thieman and the Broward County Sheriff's
161 Office were 100 percent negligent, and Eric Brody was not
162 comparatively negligent, and

163 WHEREAS, the jury found Eric Brody's damages to be
164 \$30,609,298, including a determination that his past and future
165 care and other economic damages were \$11,326,216, and

166 WHEREAS, final judgment was entered for \$30,609,298, and
167 the court entered a cost judgment for \$270,372.30, for a total
168 of \$30,879,670.30, and

169 WHEREAS, the court denied the Broward County Sheriff's
170 Office posttrial motions for judgment notwithstanding the
171 verdict, new trial, or remittitur, and

172 WHEREAS, the insurer of the Broward County Sheriff's Office
173 retained appellate counsel and elected to appeal the final
174 judgment but not the cost judgment, and

175 WHEREAS, the Fourth District Court of Appeal upheld the
176 verdict in the fall of 2007, and

177 WHEREAS, the insurer of the Broward County Sheriff's Office
178 subsequently petitioned the Florida Supreme Court to seek
179 another appeal, but the petition was denied in April of 2008,
180 and

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

183 WHEREAS, the Broward County Sheriff's Office has paid
184 \$200,000 pursuant to s. 768.28, Florida Statutes, and the amount
185 of \$15,575,021.30 is sought through the submission of a claim
186 bill to the Legislature, NOW, THEREFORE,