

By the Committee on Rules; and Senator Benacquisto

595-00976-12

20124c1

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,

595-00976-12

20124c1

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

595-00976-12

20124c1

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

595-00976-12

20124c1

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

595-00976-12

20124c1

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

595-00976-12

20124c1

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

595-00976-12

20124c1

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.