

1                                   A bill to be entitled  
 2           An act for the relief of Eric Brody by the Broward County  
 3           Sheriff's Office; providing for an appropriation to  
 4           compensate Eric Brody for injuries sustained as a result  
 5           of the negligence of the Broward County Sheriff's Office;  
 6           authorizing the Sheriff of Broward County, in lieu of  
 7           payment, to execute to Eric Brody and his legal guardians  
 8           an assignment of all claims that the Broward County  
 9           Sheriff's Office has against its insurer arising out of  
 10          the insurer's handling of the claim against the sheriff's  
 11          office; clarifying that such assignment does not impair  
 12          the ability or right of the assignees to pursue the final  
 13          judgment and cost judgment against the insurer; providing  
 14          a limitation on the payment of fees and costs related to  
 15          the claim against the Broward County Sheriff's Office and  
 16          an exception to that limitation as to any assigned claims  
 17          brought against the insurer; providing an effective date.

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

24                   WHEREAS, that same evening, Broward County Sheriff's Deputy  
 25          Christopher Thieman, who had been visiting his girlfriend and  
 26          was running late for duty, was driving his Broward County  
 27          Sheriff's Office cruiser westbound on Oakland Park Boulevard. At  
 28          the time he left his girlfriend's house, Deputy Thieman had less

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29 | than 15 minutes to travel 11 miles to make roll call on time,  
30 | which was mandatory pursuant to sheriff's office policy and  
31 | procedure, and

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

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

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

51 |       WHEREAS, despite the appearance of a conflict of interest,  
52 | the Broward County Sheriff's Office chose to conduct the  
53 | official crash investigation instead of deferring to the City of  
54 | Sunrise Police Department, which had jurisdiction, or the  
55 | Florida Highway Patrol (FHP), which often investigates motor

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56 | vehicle collisions involving non-FHP law enforcement officers so  
57 | as to avoid any possible conflict of interest, and

58 |       WHEREAS, in the course of the investigation, the Broward  
59 | County Sheriff's Office lost key evidence from the crashed  
60 | vehicles and did not report any witnesses even though the first  
61 | responders to the crash scene were police officers from the City  
62 | of Sunrise, and

63 |       WHEREAS, the Broward County detective who led the crash  
64 | investigation entered inaccurate data into a computerized  
65 | accident reconstruction program which skewed the speed that  
66 | Deputy Thieman was driving, but, nevertheless, determined that  
67 | he was still traveling well over the speed limit, and

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

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

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

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

91 WHEREAS, in order to investigate the seat-belt defense,  
92 experts for Eric Brody recreated the accident using an exact  
93 car-to-car crash test that was conducted by a nationally  
94 recognized crash test facility. The crash test involved vehicles  
95 identical to the Brody and Thieman vehicles, a fully  
96 instrumented hybrid III dummy, and high-speed action cameras,  
97 and

98 WHEREAS, the crash test proved that Eric Brody was wearing  
99 his restraint system during the crash because the seat-belted  
100 test dummy struck its head on the passenger door within inches  
101 of where Eric Brody's head actually struck the passenger door,  
102 and

103 WHEREAS, when Eric Brody's head struck the passenger door  
104 of his vehicle, the door was crushing inward from the force of  
105 the impact with the police cruiser while at the same time his  
106 upper torso was moving toward the point of impact and the  
107 passenger door. The impact resulted in skull fractures and  
108 massive brain sheering, bleeding, bruising, and swelling, and

109 WHEREAS, Eric Brody was airlifted by helicopter to Broward  
110 General Hospital where he was placed on a ventilator and  
111 underwent an emergency craniotomy and neurosurgery. He began to

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112 recover from a deep coma more than 7 months after his injury and  
113 underwent extensive rehabilitation, having to relearn how to  
114 walk, talk, feed himself, and perform other basic functions, and

115 WHEREAS, Eric Brody, who is now 31 years old, has been left  
116 profoundly brain-injured, lives with his parents, and is mostly  
117 isolated from his former friends and other young people his age.  
118 His speech is barely intelligible and he has significant  
119 cognitive dysfunction, judgment impairment, memory loss, and  
120 neuro-visual disabilities. Eric Brody also has impaired fine and  
121 gross motor skills and very poor balance. Although Eric is able  
122 to use a walker for short distances, he mostly uses a wheelchair  
123 to get around. The entire left side of his body is partially  
124 paralyzed and spastic, and he needs help with many of his daily  
125 functions. Eric Brody is permanently and totally disabled;  
126 however, he has a normal life expectancy, and

127 WHEREAS, the cost of Eric Brody's life care plan is nearly  
128 \$10 million, and he has been left totally dependent on public  
129 health programs and taxpayer assistance since 1998, and

130 WHEREAS, the Broward County Sheriff's Office was insured  
131 for this claim through Ranger Insurance Company and paid more  
132 than \$400,000 for liability coverage that has a policy limit of  
133 \$3 million, and

134 WHEREAS, Ranger Insurance Company ignored seven demand  
135 letters and other attempts by the Brody's to settle the case for  
136 the policy limit, and instead chose to wait for more than 7  
137 years following the date of the accident until the day the trial  
138 judge specially set the case for trial before offering to pay  
139 the policy limit. By that time nearly \$750,000 had been spent

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140 preparing the case for trial, and Eric Brody had past due bills  
141 and liens of approximately \$1.5 million for health and  
142 rehabilitative care services. Because so much money had been  
143 spent preparing the case for trial, the exorbitant costs of Eric  
144 Brody's medical bills and liens, and the costs of future care  
145 continued to escalate, settlement for the policy limit was no  
146 longer feasible, and

147 WHEREAS, on December 1, 2005, after a 2-month trial, a  
148 Broward County jury consisting of three men and three women  
149 found that that Deputy Thieman and the Broward County Sheriff's  
150 Office were 100 percent negligent, and Eric Brody was not  
151 comparatively negligent, and

152 WHEREAS, the jury found Eric Brody's damages to be  
153 \$30,609,298, including a determination that his past and future  
154 care and other economic damages were \$11,326,216, and

155 WHEREAS, final judgment was entered for \$30,609,298, and  
156 the court entered a cost judgment for \$270,372.30, for a total  
157 of \$30,879,670.30, and

158 WHEREAS, the court denied the Broward County Sheriff's  
159 Office post-trial motions for judgment notwithstanding the  
160 verdict, new trial, or remittitur, and

161 WHEREAS, the insurer of the Broward County Sheriff's Office  
162 retained appellate counsel and elected to appeal the final  
163 judgment but not the cost judgment, and

164 WHEREAS, the Fourth District Court of Appeal upheld the  
165 verdict in the fall of 2007, and

166 WHEREAS, the insurer of the Broward County Sheriff's Office  
167 subsequently petitioned the Florida Supreme Court to seek

168 another appeal, but the petition was denied in April of 2008,  
 169 and

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

172 WHEREAS, upon the passage of a claim bill for any amount in  
 173 excess of the insurance policy limit of \$3 million, the Broward  
 174 County Sheriff's Office may have a cause of action pursuant to  
 175 state law against its insurer for bad-faith-claims practices,  
 176 breach of fiduciary duty, breach of contract, and other possible  
 177 legal remedies which may result in a recovery from the insurer  
 178 to pay all outstanding sums owed to the guardianship of Eric  
 179 Brody, and

180 WHEREAS, the Broward County Sheriff's Office has paid  
 181 \$200,000 pursuant to s. 768.28, Florida Statutes, and the final  
 182 judgment and cost judgment remainder is sought through the  
 183 submission of a claim bill to the Legislature, and

184 WHEREAS, Eric Brody is willing to accept an assignment of  
 185 all claims the Broward County Sheriff's Office may have against  
 186 its insurer in lieu of the sheriff's office making any payment  
 187 on this claim, and

188 WHEREAS, if the Broward County Sheriff's Office assigns all  
 189 of its claims against its insurer to Eric Brody, the guardians  
 190 of Eric Brody have offered to not hold the Broward County  
 191 Sheriff's Office responsible for any payment, NOW, THEREFORE,

192

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

194

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

197           Section 2. The Sheriff of Broward County is authorized and  
 198 directed to appropriate from funds of the Broward County  
 199 Sheriff's Office not otherwise appropriated and to draw a  
 200 warrant payable to Eric Brody in the sum of \$7,500,000. In lieu  
 201 of payment, the Sheriff of Broward County may assign to Eric  
 202 Brody and his legal guardians all rights it may have against its  
 203 liability insurance carrier for breach of contract, breach of  
 204 fiduciary duty, bad faith, and any similar or related claims  
 205 that may exist pursuant to state law. If the Sheriff of Broward  
 206 County makes an assignment to the claimant as provided for in  
 207 this section, the Broward County Sheriff's Office is not  
 208 responsible for any further payment to the claimant.

209           Section 3. If the Sheriff of Broward County makes the  
 210 assignment permitted under section 2 of this act, the protection  
 211 given to the Broward County Sheriff's Office does not impair in  
 212 any respect the ability or right of the assignees to pursue the  
 213 final judgment and cost judgment against the insurer of the  
 214 Broward County Sheriff's Office, less the \$200,000 already paid,  
 215 pursuant to state law.

216           Section 4. The amount paid by the Broward County Sheriff's  
 217 Office pursuant to s. 768.28, Florida Statutes, and the amount  
 218 awarded under this act are intended to provide the sole  
 219 compensation for all claims against the Broward County Sheriff's  
 220 Office arising out of the facts described in this act which  
 221 resulted in the injuries to Eric Brody. The total amount of  
 222 attorney's fees, lobbying fees, costs, and other similar



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223 expenses relating to the claim against the Broward County  
224 Sheriff's Office may not exceed 25 percent of the total amount  
225 awarded under section 2 of this act. Any attorney's fees, costs,  
226 and related expenses awarded by a court or earned pursuant to  
227 the prosecution of an assigned claim are not limited by this  
228 section and shall be earned in accordance with state law.

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