

By Senator Fasano

11-00200A-10

201068

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; authorizing the Sheriff of  
7           Broward County to execute an assignment to the legal  
8           guardians of Eric Brody of all claims that the Broward  
9           County Sheriff's Office has against its insurer  
10          arising out of its handling of the claim against the  
11          sheriff's office; providing that the Broward County  
12          Sheriff's Office has a complete and absolute covenant  
13          on the part of Eric Brody and his legal guardians to  
14          never enforce the act, any award pursuant to the act,  
15          or the Brody's final judgment and cost judgment  
16          against the Broward County Sheriff's Office under  
17          certain circumstances; requiring the legal guardians  
18          to execute a satisfaction and release under certain  
19          conditions; providing legislative intent to permit the  
20          prosecution of a bad faith claim; providing a  
21          limitation on the payment of fees and costs and an  
22          exception to that limitation; providing an effective  
23          date.

24  
25          WHEREAS, on the evening of March 3, 1998, 18-year-old Eric  
26          Brody, a college-bound high school senior, was returning home  
27          from his part-time job at the Sawgrass Mills Sports Authority.  
28          Eric was driving his 1982 AMC Concord eastbound on Oakland Park  
29          Boulevard in Sunrise, Florida, and

11-00200A-10

201068\_\_

30 WHEREAS, that same evening, Broward County Sheriff's Deputy  
31 Christopher Thieman, who had just left his girlfriend's house,  
32 was driving his Broward Sheriff's Office cruiser westbound on  
33 Oakland Park Boulevard on his way to roll call and to begin his  
34 shift at the Weston Station. At the time he had left the home of  
35 his girlfriend, he had less than 15 minutes to travel 11 miles  
36 in order to make roll call on time, which was mandatory pursuant  
37 to sheriff's office policy and procedure. The speed limit on  
38 Oakland Park Boulevard was 45 miles per hour, and

39 WHEREAS, at approximately 10:36 p.m., Eric Brody began to  
40 make a left-hand turn into his neighborhood at the intersection  
41 of NW 117th Avenue and Oakland Park Boulevard. Deputy Thieman,  
42 travelling in the opposite direction, was not within the  
43 intersection, and was more than 430 feet away from Eric Brody's  
44 car when Brody began the turn. Eric's car cleared two of the  
45 three westbound lanes on Oakland Park Boulevard, and

46 WHEREAS, Deputy Thieman, who had been traveling in the  
47 inside westbound lane closest to the median, suddenly and  
48 inexplicably steered his vehicle to the right, across the center  
49 lane and into the outside lane, where the front end of his car  
50 struck the passenger side of Eric's car, just behind the right  
51 front wheel and near the passenger door, and

52 WHEREAS, Deputy Thieman testified at trial that although he  
53 knew the posted speed limit was 45 miles per hour, he had no  
54 idea how fast he was traveling before the crash. His employer,  
55 the Broward Sheriff's Office, conducted the official traffic  
56 accident investigation and reported no witnesses. However,  
57 accident reconstruction experts for the claimant and the  
58 defendant testified that Deputy Thieman was driving between 60

11-00200A-10

201068

59 and 70 miles per hour when he struck the passenger side of Eric  
60 Brody's car, and

61 WHEREAS, Eric Brody was found unconscious 6 minutes later  
62 by paramedics, his head and upper torso leaning upright and  
63 toward the passenger-side door. Although he was out of his  
64 shoulder harness and seat belt by the time paramedics arrived,  
65 photographs taken at the scene by sheriff's office investigators  
66 show the belt to be fully spooled out, because the retractor was  
67 jammed, and the belt dangling outside the vehicle from the  
68 driver-side door, providing proof of belt use during the crash,  
69 and

70 WHEREAS, the interior of the right passenger door of Eric  
71 Brody's car had a dent and blood above the arm rest and below  
72 the window due to the right side of Eric Brody's head striking  
73 the passenger-side door during the crash. At the time his head  
74 hit the passenger door, the door was crushing inward from the  
75 force of the impact with the police cruiser. The impact resulted  
76 in skull fractures and massive brain sheering, bleeding,  
77 bruising, and swelling, and

78 WHEREAS, Eric Brody was airlifted by helicopter to Broward  
79 General Hospital where he was placed on a ventilator and  
80 underwent an emergency craniotomy. He was in a coma for 6 months  
81 and underwent extensive rehabilitation, having to relearn how to  
82 walk and talk, and

83 WHEREAS, Eric Brody, who is now 28 years old, has been left  
84 profoundly brain-injured, lives with his parents, and is  
85 isolated from his former friends and other young people his age.  
86 His speech is barely intelligible and he has significant  
87 cognitive dysfunction, judgment impairment, memory loss, and

11-00200A-10

201068

88 neuro-visual disabilities. Eric also has impaired fine and gross  
89 motor skills and very poor balance. Although Eric is able to use  
90 a walker for short distances, he must mostly use a wheelchair to  
91 get around. The entire left side of his body is partially  
92 paralyzed and spastic, and he needs help with many of his daily  
93 functions. Eric is permanently and totally disabled. However,  
94 Eric has a normal life expectancy, and

95 WHEREAS, among other counts, the Brodys alleged in their  
96 lawsuit against the Broward County Sheriff's Office that the  
97 sheriff's office, by and through its employee Deputy Thieman,  
98 was negligent due to Deputy Thieman driving his vehicle well in  
99 excess of the posted speed limit and suddenly and negligently  
100 steering his vehicle into the path of Eric Brody's vehicle,  
101 causing the cruiser to hit the far side of Eric Brody's vehicle,  
102 and

103 WHEREAS, the Broward County Sheriff's Office alleged that  
104 Eric failed to yield the right-of-way and use his seat belt.  
105 However, the accident reconstruction and human factor experts  
106 called by both the plaintiff and the defendant testified that  
107 Thieman's excessive speed caused Brody to misjudge the time and  
108 distance he had to clear the intersection, and that the fact  
109 that Eric Brody's restraint belt was spooled out and the  
110 retractor jammed was prima fascia evidence of seat belt usage  
111 during a high-speed, far-side impact. Had Deputy Thieman been  
112 driving the speed limit, the experts agreed that Eric Brody  
113 would have easily completed his turn. The experts also agreed  
114 that even at his excessive speed, had Deputy Thieman simply  
115 remained within his lane of travel, there would have been no  
116 collision, and

11-00200A-10

201068\_\_

117           WHEREAS, in order to investigate the seat belt defense, the  
118 Brody's experts re-created the accident by conducting an exact  
119 car-to-car crash test, which was conducted by a nationally  
120 recognized crash test facility. The crash test used vehicles  
121 identical to the Brody and Thieman vehicles, a fully  
122 instrumented hybrid III dummy, and high-speed action cameras.  
123 The test demonstrated that because of the severity of the forces  
124 of the crash, combined with the significant intrusion and  
125 reduced occupant compartment where Eric Brody was seated,  
126 Brody's head would have made contact with some portion of the  
127 interior of the vehicle regardless of whether he wore his  
128 restraint system and that restraint system use could not have  
129 prevented his injuries. Moreover, the crash test proved that  
130 Eric Brody was, in fact, wearing his restraint system during the  
131 crash because the test dummy, which was wearing its restraint  
132 belts, struck its head on the passenger door within inches of  
133 where Eric Brody's head actually struck the passenger door,  
134 providing further proof that Eric Brody was wearing his  
135 restraint system at the instant the impact occurred, and

136           WHEREAS, on December 1, 2005, a Broward County jury made up  
137 of three men and three women found that Deputy Thieman and the  
138 Broward County Sheriff's Office were 100 percent negligent and  
139 Eric Brody was not comparatively negligent, and rendered a  
140 \$30,690,000 verdict in favor of the then 25-year-old Eric Brody,  
141 which included \$11,326,216 for past and future care and other  
142 economic damages. The trial lasted almost 2 months, including a  
143 2-week break due to Hurricane Wilma, and

144           WHEREAS, judgment was entered shortly after the jury  
145 verdict for the full amount of \$30,690,000, and the court

11-00200A-10

201068

146 entered a cost judgment for \$270,372.30, for a total judgment of  
147 \$30,960,372.30. The trial court denied the Broward County  
148 Sheriff's Office posttrial motions for judgment notwithstanding  
149 the verdict, new trial, or remittitur. The Broward County  
150 Sheriff's Office appealed the final judgment but not the cost  
151 judgment. The Fourth District Court of Appeal upheld the verdict  
152 in the fall of 2007. The Broward County Sheriff's Office  
153 subsequently petitioned the Florida Supreme Court, which denied  
154 the petition in April of 2008. Therefore, all legal remedies  
155 have been exhausted and this case is ripe for a claim bill, and  
156       WHEREAS, before the lawsuit was filed, the Brodys made a  
157 demand for \$3 million, which was the limit of the insurance  
158 policy of the Broward County Sheriff's Office, reiterated that  
159 demand at mediation, and gave the carrier additional time after  
160 mediation to pay the policy limit before the Brody's attorneys  
161 began the expense of preparing the case for trial. The insurance  
162 carrier also ignored multiple demand letters and attempts by the  
163 Brodys to settle the case for the policy limit and instead chose  
164 to wait for more than 7 years, from the date of the accident  
165 until the very day the trial judge specially set the case for  
166 trial, before offering to pay the policy limit. By that time  
167 nearly \$750,000 had been spent preparing the case for trial and  
168 Eric Brody had past bills and liens of nearly \$1.5 million for  
169 his health care costs. Because so much money had been spent  
170 preparing the case for trial and Eric Brody's medical bills,  
171 liens, and Medicaid obligations continued to escalate,  
172 settlement for the policy limit was no longer economically  
173 feasible. By the time the trial was completed and appeals  
174 resolved in favor of Eric Brody, another \$350,000 had been spent

11-00200A-10

201068

175 by the Brody's lawyer, and

176 WHEREAS, the Sheriff of Broward County may have a valid  
177 legal claim against his liability insurance carrier for bad  
178 faith based in part on the multiple opportunities that the  
179 insurance company had to settle the case within its policy  
180 limits and protect its insured but instead unreasonably chose to  
181 expose the Broward County Sheriff's Office to an obligation to  
182 pay in excess of its policy limit, and

183 WHEREAS, upon the passage of a claim bill for any amount in  
184 excess of \$3 million, the Broward County Sheriff's Office may  
185 have the right to initiate an action against its insurer for  
186 bad-faith-claims practices and other remedies in order to  
187 recover the entire amount of the claim bill, and

188 WHEREAS, the Broward County Sheriff's Office has paid the  
189 \$200,000 allowed under s. 768.28, Florida Statutes, and the  
190 final judgment and cost judgment remainder in the amount of  
191 \$30,760,372.30 is sought through the submission of a claim bill  
192 to the Legislature, NOW, THEREFORE,

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

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

198 Section 2. Except as provided in section 3 of this act, the  
199 Sheriff of Broward County is authorized and directed to  
200 appropriate from funds of the Broward County Sheriff's Office  
201 not otherwise appropriated and to draw a warrant payable to Eric  
202 Brody in the sum of \$30,760,372.30 as compensation for the  
203 claimant's injuries and damages sustained.

11-00200A-10

201068

204       Section 3. Within 30 days after the enactment of this act,  
205 and before paying the sum specified in section 2 of this act,  
206 the Sheriff of Broward County may execute an assignment to the  
207 legal guardians of Eric Brody of all claims the Broward County  
208 Sheriff's Office has against its insurer arising out of its  
209 handling of Eric Brody's claim against the Broward County  
210 Sheriff's Office, including its claim for policy benefits, bad  
211 faith, breach of fiduciary duty, and breach of contract and any  
212 other similar claim that may result in recovery from the insurer  
213 of all sums that remain unpaid in accordance with the final  
214 judgment and cost judgment after the payment of the statutory  
215 limit of \$200,000 under s. 768.28, Florida Statutes, made by or  
216 on behalf of the Broward County Sheriff's Office. If the Sheriff  
217 of Broward County elects to make an assignment of all claims  
218 against its insurer to the legal guardians of Eric Brody, upon  
219 making the assignment the Broward County Sheriff's Office shall  
220 have a complete and absolute covenant on the part of Eric Brody  
221 and his legal guardians never to enforce this act, any award  
222 pursuant to this act, or the Brody's final judgment and cost  
223 judgment directly against the Broward County Sheriff's Office  
224 regardless of whether Eric Brody and his legal guardians accept  
225 or refuse the assignment and regardless of whether they file  
226 suit pursuant to the assignment. At the conclusion of any claims  
227 brought pursuant to that assignment, the legal guardians of Eric  
228 Brody shall execute a complete satisfaction and release of their  
229 final judgment and cost judgment against the Broward County  
230 Sheriff's Office. If the Sheriff of Broward County makes the  
231 assignment permitted under this act, the protection given to the  
232 Broward County Sheriff's Office pursuant to this act or



11-00200A-10

201068

233 otherwise shall not impair in any respect the ability or right  
234 of the assignees to pursue and recover Eric Brody's final  
235 judgment and cost judgment less \$200,000 paid by or on behalf of  
236 the insurers of the Broward County Sheriff's Office. It is the  
237 intent of the Legislature to permit the prosecution of a bad  
238 faith claim and any other related claim against the insurer for  
239 the full amount remaining unpaid at the time of the assignment.

240       Section 4. The amount paid by the Broward County Sheriff's  
241 Office pursuant to s. 768.28, Florida Statutes, and the amount  
242 awarded under this act are intended to provide the sole  
243 compensation for all claims against the Broward County Sheriff's  
244 Office arising out of the facts described in this act which  
245 resulted in the injuries to Eric Brody. The total amount of  
246 attorney's fees, lobbying fees, costs, and other similar  
247 expenses relating to this claim shall be paid only to the  
248 claimant's currently retained attorneys and lobbyists and may  
249 not exceed 25 percent of the total amount awarded under sections  
250 2 and 3 of this act. Any attorney's fees, costs, and related  
251 expenses awarded by a court or earned pursuant to the  
252 prosecution of an assigned claim are not limited by this  
253 section.

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