

STORAGE NAME: h1691.cjcl

DATE: April 21, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CIVIL JUSTICE & CLAIMS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1691

RELATING TO: Negligence

SPONSOR(S): Representative Flanagan and others

STATUTE(S) AFFECTED: s. 768.32, F.S.

COMPANION BILL(S): HB 1778 by Senator Burt (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CIVIL JUSTICE & CLAIMS
- (2) TRANSPORTATION
- (3)
- (4)
- (5)

I. SUMMARY:

HB 1691 would create s. 768.32, F.S. The bill would provide an exemption from liability for persons engaged in the business of renting or leasing motor vehicles. Under certain circumstances, HB 1691 would insulate the owner/lessor from liability for the tortious acts of the vehicle operator. It would restrict Florida's dangerous instrumentality doctrine, which imposes strict liability upon the owners of motor vehicles for injuries resulting from the negligent operation of such vehicles.

HB 1691 would not have a significant fiscal impact on state or local governments.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

1. **Dangerous Instrumentality Doctrine** - Florida's dangerous instrumentality doctrine originated in the case of *Southern Cotton Oil Co. v. Anderson*, 86 So. 629, 638 (Fla. 1920). The dangerous instrumentality doctrine "imposes strict, vicarious responsibility upon the owner . . . of a motor vehicle who voluntarily entrusts it to another for any subsequent negligent operation which injures a member of the traveling public." *Hertz Corp. v. Jackson*, 617 So.2d 1051, 1052 (Fla. 1993). The dangerous instrumentality doctrine "is premised upon the theory that the one who originates the danger by entrusting the automobile to another is in the best position to make certain that there will be adequate resources with which to pay the damages caused by its negligent operation." *Kraemer v. General Motors Acceptance Corp.*, 572 So.2d 1363, 1365 (Fla. 1990). The "dangerous instrumentality" concept includes vessels (see s. 327.32, F.S.) and automobiles.

a. **Application to Third-Party Operators** - If the lessee gives express or implied permission to a third party to operate the motor vehicle, the lessor/owner can be held liable for the negligence of the operator. *Id.* The motor vehicle rental company could also be liable for an unauthorized driver's negligent acts.

b. **Application to Lessors** - Presently, an individual can rent a car, negligently injure themselves, and successfully sue the rental car company for damages.

c. **Exception for Long-Term Leases** - In 1986, the Legislature enacted section 324.021(9)(b), F.S., which relieves long term (one year or greater) motor vehicle lessors of liability for damages arising from operation of a motor vehicle where the lessee maintains minimum statutory insurance coverage. It sets out a limited exception from the dangerous instrumentality doctrine. Section 324.021(9)(b), F.S., provides:

(b) Owner/lessor.--Notwithstanding any other provision of the Florida Statutes or existing case law, the lessor, under an agreement to lease a motor vehicle for 1 year or longer which requires the lessee to obtain insurance acceptable to the lessor which contains limits not less than \$100,000/\$300,000 bodily injury liability and \$50,000 property damage liability or not less than \$500,000 combined property damage liability and bodily injury liability, shall not be deemed the owner of said motor vehicle for the purpose of determining financial responsibility for the operation of said motor vehicle or for the acts of the operator in connection therewith; further, this paragraph shall be applicable so long as the insurance meeting these requirements is in effect. The insurance meeting such requirements may be obtained by the lessor or the lessee, provided, if such insurance is obtained by the lessor, the combined coverage for bodily injury liability and property damage liability shall contain limits of not less than \$1 million and may be provided by a lessor's blanket policy.

In *Abdala v. World Omni Leasing*, 583 So.2d 330 (Fla. 1991), the Florida Supreme Court upheld the constitutionality of this statute. However, the court has subsequently construed this statute in a very strict manner, narrowing the potential scope of the exception. See *Ady v. American Honda Finance Corp.*, 675 So.2d 577 (Fla. 1996)(strictly construing insurance requirements under s. 324.021(9)(b) F.S.).

2. **Insurance** - In *Allstate Insurance Co. v. Fowler*, 480 So.2d 1287 (Fla. 1985) and *Maryland Casualty Co. v. Reliance Insurance Co.*, 478 So.2d 1068 (Fla. 1985), the Florida Supreme Court held that the insurer of the owner/lessor of a motor vehicle is liable for the amount of insurance the owner/lessor is required to maintain under Florida's financial responsibility laws. See also *Allstate Insurance Co. v. Executive Car and Truck Leasing, Inc.*, 494 So.2d 487 (Fla. 1986)(layering various insurance policies which protected the lessor and the lessee).
3. **Financial Responsibility Laws** - Sections 324.151(1)(a) and 324.021(7), F.S., require vehicle operators to maintain certain levels of insurance coverage.

B. EFFECT OF PROPOSED CHANGES:

HB 1691 would abolish Florida's dangerous instrumentality doctrine as it applies to leased vehicles. It would insulate the lessor of a motor vehicle from civil liability for the acts of the operator of a leased vehicle, unless an injured plaintiff could demonstrate negligence or intentional misconduct by the lessor.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

- (1) any authority to make rules or adjudicate disputes?

This bill would eliminate the dangerous instrumentalities doctrine as it applies to businesses engaged in leasing motor vehicles. It would restrict causes of action brought against lessors, unless the plaintiff alleges that the lessor was negligent or engaged in intentional misconduct.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

HB 1691 would place greater responsibility, for obtaining adequate insurance, on person leasing motor vehicles.

- (3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

NA.

(2) what is the cost of such responsibility at the new level/agency?

NA.

(3) how is the new agency accountable to the people governed?

NA.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

NA.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. The bill increases the contractual options available to lessors and lessees of motor vehicles.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. Under certain circumstances, it would prohibit injured parties from instituting civil actions against vehicle rental companies.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

NA.

- (2) Who makes the decisions?

NA.

- (3) Are private alternatives permitted?

NA.

- (4) Are families required to participate in a program?

NA.

- (5) Are families penalized for not participating in a program?

NA.

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

NA.

- (2) service providers?

NA.

- (3) government employees/agencies?

NA.

D. SECTION-BY-SECTION RESEARCH:

Section 1: Creates s. 768.32, F.S.; limits the liability of persons engaged in the business of leasing or renting motor vehicles; requires a showing of negligence or intentional misconduct before allowing recovery.

Section 2: Provides an effective date.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

HB 1691 would limit the ability of some injured parties to recover damages.

2. Direct Private Sector Benefits:

HB 1691 would allow vehicle rental companies to avoid liability under certain circumstances. This could reduce their insurance rates and could eventually lead to lower car rental rates.

3. Effects on Competition, Private Enterprise and Employment Markets:

HB 1691 could aid some Florida vehicle rental companies, as well as in-state offices of foreign vehicle rental companies.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill would not reduce the percentage of a state tax shared with counties or municipalities. Therefore, it would not contravene the requirements of Article VII, Section 18, of the state constitution.

V. COMMENTS:

1. **Key Issues** - This subsection employs a question format to stimulate debate about the bill under review.

a. **Question Presented** - *Should Florida abolish or restrict the dangerous instrumentality doctrine as it relates to persons engaged in the business of leasing motor vehicles?*

b. **Other Policy Considerations:**

(1) Should lessors of motor vehicles be held strictly responsible for damages caused by those who lease motor vehicles? Are the lessors of motor vehicles too far removed along the causal chain?

(2) Does the law impose strict liability upon similar industries under analogous circumstances?

(3) Should the primary responsibility for obtaining insurance rest with the rental companies or with motorists seeking to rent a motor vehicle?

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON CIVIL JUSTICE & CLAIMS:

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