

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 236

SPONSOR: Judiciary Committee and Senator Latvala

SUBJECT: Insurance/Leased Motor Vehicles

DATE: February 18, 1999                      REVISED: 03/05/99                      \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Forgas</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>RC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

This bill is based on a portion of the 1998 conference committee report of the Conference Committee on Litigation Reform which reviewed the impact of the civil litigation system on Florida's business climate. The bill makes modifications and additions to the law regarding the vicarious liability of a motor vehicle owner. The major provisions:

- Limit the vicarious liability of certain motor vehicle owners or rental companies for damages due to the operation of the vehicle by an operator or lessee to \$100,000 per person and \$300,000 per occurrence for bodily injury and \$50,000 for property damage, but allow an additional cap of \$500,000 in economic damages when the operator or lessee is uninsured or has insurance with any limits less than \$500,000 combined property damage and bodily injury liability; and
- Create an 18 year statute of repose for products liability cases with the period commencing from the date of delivery of the completed product to its original purchaser and provide a grandfather clause to allow certain actions to be filed until July 1, 2003.

This bill substantially amends section 95.031 and 324.021 of the Florida Statutes.

## II. Present Situation:

### Background

#### *Select Senate Committee on Litigation Reform*

In August 1997, the Senate President appointed an 11-member Select Senate Committee on Litigation Reform to conduct hearings to assess the manner and extent to which the current civil litigation environment is affecting economic development and job-creation efforts in the state. The select committee was additionally charged with ascertaining what civil litigation reforms, if any, would enhance the economic development climate of the state while continuing to preserve the rights of citizens to seek redress through the judicial system.

The select committee conducted a series of public meetings from September 1997 through early 1998. Testimony was solicited on key litigation topics from a variety of civil legal practitioners, representatives of interests in the area of civil litigation, and representatives of a judicial task force created by the Supreme Court to monitor the Legislature's efforts on litigation reform. The select committee developed and discussed specific issues within each topic. In February 1998, the select committee issued its report and recommendations on litigation reform to the Senate President, which included corresponding draft legislation.

Among the principal topics explored by the committee was vicarious liability.

### Current Statutory and Common Law

#### *Vicarious Liability*

Vicarious liability is a long-standing, court-created doctrine that imposes indirect legal responsibility based upon the nature of the relationship between two parties. The party of authority can be held liable for the negligent acts of the other, even though the party of authority was not negligent itself. The doctrine has been described as typically reflecting a policy decision to allocate risks associated with a business enterprise.

An example of the application of vicarious liability is found in the Florida Supreme Court's 1920 decision of *Southern Cotton Oil Co. v. Anderson*, 80 Fla. 441, 86 So. 629 (1920). In that case, the Florida Supreme Court held that an automobile is a dangerous instrumentality and an automobile owner may be held liable for injuries caused by the negligence of someone entrusted to use the automobile. In *Susco Car Rental System v. Leonard*, 112 So. 2d 832 (Fla. 1959), the Florida Supreme Court extended the dangerous instrumentality doctrine to lessors, thereby making them vicariously liable for the lessee's negligent operation of the automobile. The doctrine does not apply when the owner's vehicle has been stolen or the owner's vehicle is the subject of a bailment. *Susco*; See *Enterprise Leasing v. Alman*, 559 So2d 214, (Fla. 1990).

An exception to the dangerous instrumentality doctrine is currently codified in s. 324.021 (9)(b), F.S. Basically, it provides that a lessor who leases a motor vehicle for 1 year or longer will not be deemed the owner of the vehicle for the purpose of determining financial responsibility for the

operation of the vehicle as long as the lessee obtains insurance which contains limits not less than \$100,000 per person and \$300,000 per occurrence for bodily injury liability and \$50,000 for property damage liability.

### *Statutes of Limitation and Statutes of Repose*

Statutes of limitation and statutes of repose impose time limits in which parties must institute actions. Statutes of limitation are generally shorter than statutes of repose and have less finality because they do not operate as a limitation upon the underlying substantive right of action. Statutes of limitation may be asserted as an affirmative defense against a claim to bar an action but if the defense is not affirmatively pled, the defense is waived and the plaintiff may proceed with the claim. Statutes of limitations are predicated on public policy to encourage plaintiffs to assert their cause of action with reasonable diligence and to shield defendants against stale claims. Chapter 95, F.S., sets forth different time frames for various categories of civil causes of action. Specifically, s. 95.11, F.S., provides a 4-year statute of limitation for product liability actions, negligence actions, certain personal injury actions, actions to recover personal property, and other types of actions to be measured from the time the cause of action accrues.

Statutes of repose are generally longer and involve a greater degree of finality than statutes of limitation. Courts construe a cause of action as rescinded by a statute of repose as if the right to sue never existed in the first place. In *Bauld v. J.A. Jones Constr. Co.*, 357 So.2d 401 (Fla. 1978), the Court stated that statutes of repose cut off the right of action after a specified time measured from the delivery of a product or completion of work, regardless of the accrual of the cause of action or notice of the invasion of a legal right. The courts have strictly construed the constitutionality of certain statutes of repose based upon the right of access to courts for redress of injuries as guaranteed under Art. I, s. 21, State Constitution. Currently, there is no statute of repose provision that restricts suits for injuries caused by defective products.

### **III. Effect of Proposed Changes:**

This bill reflects the consensus legislation relating to vicarious liability submitted as part of the final report of the Conference Committee on Litigation Reform.

#### *Vicarious Liability*

This bill limits the vicarious liability of a motor vehicle owner or a rental company that rents or leases motor vehicles. Subsection (9)(b)2 is added to provide that, unless there is a showing of negligence on the part of a lessor that leases motor vehicles for a period less than 1 year, the vicarious liability of the lessor to a third party for injury or damage to a third party due to the operation of the vehicle by an operator or lessee is limited to \$100,000 per person and \$300,000 per occurrence for bodily injury and \$50,000 for property damage. If the lessee or operator of the motor vehicle is uninsured, or has less than \$500,000 combined property and bodily injury liability insurance, then the lessor is liable for an additional cap of \$500,000 in economic damages which shall be reduced by the amount actually recovered from the lessee, the operator or insurance coverage of the lessee or operator.

Subsection (9)(b)3 is added to apply the same vicarious liability limitations to owners who are natural persons who lend their motor vehicles to permissive users other than relatives residing in the same household. Subsection (9)(c) is added to exclude owners of motor vehicles that are used for commercial activity, other than rental companies that rent or lease motor vehicles, from the limits on vicarious liability in subsections (9)(b)2 and (9)(b)3. The term “rental company” is defined to include an entity that is engaged in the business of renting or leasing motor vehicles to the general public and rents or leases a majority of its vehicles to persons with no direct or indirect affiliation with the rental company. The term “rental company” is also defined as a motor vehicle dealer that provides temporary replacement vehicles to its customers for up to 10 days. Finally, the limitations on liability in subsections (9)(b)2 and (9)(b)3 do not apply to motor vehicles weighing more than 26,000 pounds.

This section has the effect of limiting the amount of damages that may be awarded under Florida’s common law dangerous instrumentality doctrine, which currently allows a motor vehicle owner to be held liable for injuries caused by the negligence of someone entrusted to use the motor vehicle.

### *Statute of Repose*

The bill amends s. 95.031, F.S., to create an 18-year statute of repose applicable to product liability actions, regardless of the product. The new statute of repose requires that an action based on products liability be brought within 18 years from the date of delivery of the completed product to the original purchaser or lessee, regardless of the date on which the defect in the product was or should have been discovered. Otherwise, the action is forever barred. This provision would operate in conjunction with s. 95.11(3), F.S., relating to the 4-year statute of limitations, to bar product liability actions. The 18-year statute of repose would not apply if the manufacturer knew of a defect and concealed or attempted to conceal the defect. The 18-year statute of repose also would not apply in those product liability actions where the injury occurred prior to the expiration of the 18 years but the injury did not manifest itself until after the 18-year period has expired.

This bill creates a grandfather clause to allow products liability actions that would not have otherwise been barred, but for the new statute of repose provisions, to be brought before July 1, 2003, or otherwise be subject to the new 18-year statute of repose limitation.

The act shall take effect July 1, 1999, and there is a severability clause.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill expands limited exceptions to the dangerous instrumentality doctrine as applied to motor vehicles. Rental car companies that lease motor vehicles for less than one year, as well as motor vehicle dealers that provide replacement vehicles for less than 10 days, will have their liability capped if certain insurance requirements are met. This should have an impact on their ability to lease vehicles to the public at cheaper rates. The bill's similar liability limitations for natural persons could also lower individual automobile insurance rates.

However, an issue arises when a renter does not carry the requisite \$500,000 limits on personal auto policies. This could create a situation where rental companies engage in pressure sales of a product which provides short term coverage. (i.e. length of the rental contract). According to the Department of Insurance, the cost of this product, unlike standard auto rates, would not be regulated by the State to establish a reasonable relationship between the cost of the product and the benefits provided. The precise impact of this bill on the private and business sector is indeterminate.

Regarding the statute of repose, it is contended that it will encourage manufacturers to innovate and develop newer, safer products as manufacturers will not have to worry the innovations will be used against them in a lawsuit more than 18 years later. The bill also could impact retailers and distributors as it would limit their liability as well. The overall effects could be safer products and lower prices for consumers.

However, it is also contended that product liability insurance currently only results in minimal costs to the consumer so that the bill's impact on the price of products will be extremely minimal. It is also urged that many products have useful service lives well beyond 18 years so that users who are injured beyond that time would be left with no remedy. The overall effect could be that manufacturers will have less incentive to remove dangerous products from the market, thereby leaving dangerous products on the market for longer periods of time. The precise impact of this bill on the private and business sector is indeterminate.

C. Government Sector Impact:

The bill could potentially decrease the number of lawsuits filed which could have a minimal, but undeterminable, impact on the court system.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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