

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Banking and Insurance Committee

BILL: SB 1030

SPONSOR: Senator Campbell

SUBJECT: Vehicles/Financial Responsibility

DATE: March 25, 2005

REVISED: 3/29/2005

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Meyer</u>	<u>TR</u>	Favorable
2.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	Fav/1 amendment
3.	<u></u>	<u></u>	<u>JU</u>	<u></u>
4.	<u></u>	<u></u>	<u></u>	<u></u>
5.	<u></u>	<u></u>	<u></u>	<u></u>
6.	<u></u>	<u></u>	<u></u>	<u></u>

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

Under current law, a rental company is vicariously liable for damages and injuries involving the operation of the rental vehicle by the operator or lessee. However, there are statutory limits or caps on damages that rental companies are subject to which are up to \$100,000 per person and up to \$300,000 per incident for bodily injury, and up to \$50,000 for property damage.

Senate Bill 1030 expands the scope of the definition of the term "rental company" to include the holder of a motor vehicle title or an equity interest in a motor vehicle title if the title or equity interest is held under an asset-backed securitization of a fleet of motor vehicles under the dominion and control of a rental company in the operation of such rental company's business. This provision would thus allow the holder of a title to a rental vehicle to qualify for the same vicarious liability protections which are currently afforded rental companies. Several of the larger rental car companies have established this type of business arrangement with finance companies which are the holders of the motor vehicle titles of the rental cars, and those companies are seeking protection from liability.

This bill substantially amends section 324.024 of the Florida Statutes.

II. Present Situation:

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 nature of the relationship can involve employer-employee, principal-agent, or motor vehicle owner-operator situations. 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 So.2d 214, (Fla. 1990).

In 1999, the Legislature passed a tort reform package, which, among numerous other provisions, limited the vicarious liability of a rental company that rents or leases motor vehicles.¹ Specifically, s. 324.021(9)(b)2., F.S., provides that a lessor (rental company), under an agreement to rent or lease a motor vehicle for a period of less than 1 year, is deemed the owner of the motor vehicle for the purpose of determining liability for the operation of the vehicle or the acts of the operator in connection therewith only up to \$100,000 per person and up to \$300,000 per incident for bodily injury and up to \$50,000 for property damage.

The provision further states that if the lessee or the operator of the motor vehicle is uninsured or has any insurance with limits less than \$500,000 combined property damage and bodily injury liability, the lessor shall be liable for up to an additional \$500,000 in economic damages only arising out of the use of the motor vehicle. The additional specified liability of the lessor for economic damages shall be reduced by amounts actually recovered from the lessee, from the operator, and from any insurance or self-insurance covering the lessee or operator. Nothing in this provision is to be construed to affect the liability of the lessor for its own negligence.

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 that rents or leases a majority of its vehicles to persons with no direct or indirect affiliation with the rental company. The term also includes a motor vehicle dealer that provides temporary replacement vehicles to its customers for up to 10 days.²

¹ Chapter 99-225, L.O.F. (Section 324.021, F.S.).

² Section 324.021(9)(c), F.S.

Florida courts have upheld the vicarious liability limitations or caps set forth in s.324.021(9)(b)2, F.S., because the courts have found that this statute does not deny a plaintiff the right of access to courts provided for under Article 1, Section 21 of the Florida Constitution.³

III. Effect of Proposed Changes:

Section 1. Amends s. 324.021(9)(c), F.S., to expand the definition of the term “rental company” to include a holder of a motor vehicle title or an equity interest in a motor vehicle title if the title or equity interest is held pursuant to an asset-backed securitization of a fleet of motor vehicles under the dominion and control of a rental company in the operation of such rental company’s business. This change will have the effect of reducing the amount of damages that could be awarded under Florida’s common law dangerous instrumentality doctrine against a holder of a title or an equity interest in a vehicle in this circumstance.

Section 2. Provides that the act shall take effect July 1, 2005.

According to the proponents of the bill, since passage of the tort reform package in 1999, the business model for rental companies has evolved from direct ownership of the rental cars by the rental company to a situation where the rental company controls the motor vehicles in day-to-day business operations but the title and security interest in the rental car fleet is held by a separate finance company under an asset backed securitization agreement. Hertz, Avis and Budget rental car companies have this type of arrangement. The finance companies that hold title to the fleets of rental vehicles are seeking to be protected from liability under the same law that protects the rental companies. However, this bill would extend liability protection to companies that do not actually rent vehicles on a day-to-day basis. The proponents state that there are three pending court cases in Florida where the title owner or the equity interest owner of rental vehicles is being sued in court based upon vicarious liability with potential exposure of \$10 million.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

³ *Sontay v. Avis Rent-A-Car Systems, Inc.*, 872 So.2d 316, 319 (Fla. 4th DCA 2004); *Budget Rent-A-Car Systems, Inc., v. Bennett*, 847 So.2d 579, 581 (Fla. 3rd DCA 2003)(citing the court’s holdings in *Enterprise Leasing Co. South Central, Inc., v. Hughes*, 833 So.2d 832, 838 (Fla. 1st DCA 2002).

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

A company that is a holder of a motor vehicle title or equity interest in a vehicle title for a rental company may face fewer or less costly lawsuits because of the limits of liability the holder will qualify for under the terms of this bill.

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.

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

VIII. Summary of Amendments:

Barcode 491816 by Banking and Insurance:

This amendment expands the scope of the definition of “rental company” to include a related rental or licensing company that is a subsidiary of the same parent company that rented or leased the vehicle. This provision would allow a related subsidiary rental or licensing company to qualify for the same vicarious liability protections that are currently afforded rental companies.

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