

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SB 642

INTRODUCER: Judiciary Committee and Senator Diaz de la Portilla

SUBJECT: Drones

DATE: November 18, 2015      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Fav/CS
2.			CM	
3.			RC	

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 642 expands the circumstances under which a person may be held vicariously liable for the negligence of another person. Specifically, the bill imposes joint and several liability on the owner of a drone for damages caused by the negligence of the operator of a drone. The application of joint and several liability was generally abolished by the Legislature in 2006. Under the current comparative fault statute, a person's liability for negligence is generally limited to his or her percentage of fault for an injury or damage.

**II. Present Situation:**

**Drones**

A drone is defined in the Freedom from Unwarranted Surveillance Act<sup>1</sup> as a powered, aerial vehicle that:

- Does not carry a human operator;
- Uses aerodynamic forces to provide vehicle lift;
- Can fly autonomously or be piloted remotely;
- Can be expendable or recoverable; and
- Can carry a lethal or nonlethal payload.

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<sup>1</sup> Section 934.50, F.S.

Drones come in a variety of sizes, from as small as insects to as large as commercial planes. They can be equipped with a variety of options which include high-power cameras, license plate readers, moving target indicators, thermal scanners, and facial recognition software. Some drones are used for crop dusting, mapping, environmental protection, tracking wildlife, search and rescue missions, delivering packages, and many other purposes.<sup>2</sup>

### *History*

Since 1990 the Federal Aviation Administration, (FAA), has authorized limited use of drones for public missions that include firefighting, law enforcement, search and rescue, disaster relief, border patrol, scientific research, and testing.<sup>3</sup> As technology has advanced and drones have become more affordable, members of the public have begun purchasing them for commercial and recreational uses. According to the FAA, flying model aircraft and unmanned aircraft systems as a hobby or for a recreational purpose does not require approval by the FAA. Non-recreational drone operations are prohibited unless authorized by the FAA on a case-by-case basis.<sup>4</sup>

### *Close Encounters*

As an increasing number of drones fly about in American airspace, several rogue drone incidents have been reported. Between 2012 and 2014, the FAA notes that pilots have reported 15 incidents of close calls involving small drones near airports. In May 2014, a commercial airline pilot descending to LaGuardia Airport reported seeing a black drone with a 10 to 15 foot wing span flying above Manhattan. On the same day, two planes approaching Los Angeles International Airport reported seeing a drone or remotely controlled aircraft as large as a trash can flying in the vicinity. In May 2014, a pilot descending into Atlanta reported a small drone in close proximity to his plane. On March 22, 2014, a U.S. Airways pilot reported a near-collision with a drone or remotely controlled aircraft over Tallahassee.<sup>5</sup>

Incidents of wayward drones and injuries have also been reported at the U.S. Open, a parade in Seattle, and a restaurant in New York City. A quadcopter drone crashed on the White House lawn in January of this year, but no injuries were reported. An errant drone collided with Seattle's giant Ferris wheel this week. As drone-related accidents occur, the field of drone liability is emerging as a new practice area for personal injury lawyers<sup>6</sup> who are already setting up websites for potential clients.<sup>7</sup>

Civilian drones operated with permission of the FAA and under its watch have reported crashes. Registered users that include law enforcement agencies, universities, and other organizations have reported 23 accidents and 236 unsafe incidents between November 2009 and 2014. FAA

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<sup>2</sup> Taly Matiteyahu, *Drone Regulations and Fourth Amendment Rights: The Interaction of State Drone Statutes and the Reasonable Expectation of Privacy*, 48 COLUM. J. L. & SOC. PROBS., 265, 1 (2015).

<sup>3</sup> Federal Aviation Administration, *Fact Sheet – Unmanned Aircraft Systems (UAS)* (Feb. 15, 2015), [http://www.faa.gov/news/fact\\_sheets/news\\_story.cfm?newsid=18297](http://www.faa.gov/news/fact_sheets/news_story.cfm?newsid=18297).

<sup>4</sup> *Id.* For additional information see Federal Aviation Administration, *Civil Operations (Non-Governmental)*, [http://www.faa.gov/uas/civil\\_operations/](http://www.faa.gov/uas/civil_operations/) (Page last modified Mar. 4, 2015).

<sup>5</sup> Craig Whitlock, *Close Encounters on Rise as Small Drones Gain in Popularity*, The Washington Post, June 23, 2014,

<sup>6</sup> *Seattle's Ferris Wheel Hit by Drone*, BBC News Nov. 12, 2015 available at <http://www.bbc.com/news/technology-34797182>.

<sup>7</sup> See *Drone Injury Lawyer Blog*, <http://www.droneinjurieslawyer.com/drone-injury-lawyer> (last visited Nov. 11, 2015).

accident investigation reports reveal that 47 military drones have crashed in the United States during the period between 2001 and 2013.<sup>8</sup>

### ***Registry Process***

In October the U.S. Department of Transportation announced the creation of a task force that will develop recommendations for a registry process for Unmanned Aircraft Systems. The report is expected to be completed by November 20.<sup>9</sup> The registry should be operational by mid-December, in advance of the holiday season in which nearly 1 million recreational drones are projected to be purchased.<sup>10</sup>

### **Causes of Action for a Drone Injury**

It appears that, under current law, a person might be liable for damages caused by a drone under the theories of:

- General negligence;
- Vicarious liability, including an employer being liable for the negligence of an employee, agency as it relates to respondeat superior, and dangerous instrumentality; and
- Products liability.

### **Negligence**

#### ***Definition***

Negligence, in tort law, is the failure to use reasonable care, or the care that a reasonably careful person would use under like circumstances. Negligence means doing something, under like circumstances, that a reasonably careful person would not do, or failing to do something that a reasonably careful person would do.<sup>11</sup>

#### ***Elements***

For a claimant to successfully recover damages for an injury, he or she must prove four essential elements in the cause of action:

- Duty - The defendant owed the claimant a duty of care;
- Breach of that duty - The duty of care was breached by the defendant's failure to conform to the required standard;
- Causation - A proximate cause or a reasonably close causal connection exists between the defendant's alleged wrong and the claimant's resulting injury; and
- Damages - The claimant suffered actual damages or loss.<sup>12</sup>

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<sup>8</sup> *Supra* at 5.

<sup>9</sup> United States Department of Transportation, *U.S. Transportation Secretary Anthony Foxx Announces Unmanned Aircraft Registration Requirement: New Task Force to Develop Recommendations by November 20*, <https://www.transportation.gov/briefing-room/us-transportation-secretary-anthony-foxx-announces-unmanned-aircraft-registration>.

<sup>10</sup> Allison Grande, *Drone Registry Lands Hobbyists Within Reach of Regulators*, Law 360, available at <http://www.law360.com/articles/719552/drone-registry-lands-hobbyists-within-reach-of-regulators>.

<sup>11</sup> Florida Standard Jury Instructions, s. 401.4 Negligence.

<sup>12</sup> Thomas D. Sawaya, *FLORIDA PERSONAL INJURY LAW AND PRACTICE WITH WRONGFUL DEATH ACTIONS*, s. 3:1 (2015-2016 edition).

### **Comparative Negligence**

Before 1973, a plaintiff who was partially at fault for an accident was barred from recovering damages under the doctrine of contributory negligence. In 1973, however, the Florida Supreme Court determined that the doctrine of contributory negligence was too harsh on partially-at-fault plaintiffs and replaced it with the comparative negligence doctrine.<sup>13</sup> Under the doctrine of comparative negligence, when a plaintiff and defendant are both at fault, a plaintiff may recover damages proportionate with the negligence of a defendant. This doctrine is now codified in s. 768.81(2), F.S.

### **Joint and Several Liability**

The courts have often struggled with the complexities of having multiple defendants and determining the degree of liability of each and properly apportioning damages among them. In an effort to resolve these complex issues at common law, courts developed the doctrine of joint and several liability. Joint and several liability provides that when multiple tortfeasors act together to cause the plaintiff's damages, all tortfeasors are jointly and severally liable. The plaintiff may join all of the tortfeasors in one lawsuit and look to any of them to satisfy the full judgment award, regardless of the proportion each defendant contributed to the claimant's injuries or damages. Later, the courts limited this rule to lawsuits where the tortfeasors acted with a common purpose and mutual assistance in carrying out the tort.<sup>14</sup>

Florida courts adopted the doctrine of joint and several liability but expanded it to cover many additional situations. As the doctrine of comparative negligence developed, the courts found it increasingly difficult to mesh the two concepts. The Legislature intervened and through the passage of the Tort Reform Acts of 1986, 1988, and 1999 substantially modified joint and several liability and abolished it in 2006.

### **Vicarious Liability or Imputed Negligence**

Although general tort law is based upon the premise of "actual fault" such that someone who engages in wrongful conduct that results in injury to someone else is held legally accountable for his or her own acts, there are exceptions to this general premise.<sup>15</sup> Vicarious liability, or imputed negligence, is the liability that a supervisory party, often an employer, bears for the negligence of a subordinate, often an employee or associate, because of the relationship between the two.<sup>16</sup> Accordingly, under the theory of vicarious liability, a person may be liable for an injury to a third party, even though he or she did not cause the injury.

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<sup>13</sup> *Hoffman v. Jones*, 280 So. 2d 431 (Fla. 1973).

<sup>14</sup> *Sawaya*, *supra* note 12 at s. 7:2.

<sup>15</sup> *Sawaya*, *supra* note 12 at s. 15:15.

<sup>16</sup> BLACK'S LAW DICTIONARY 927 (7th ed. 1999).

### ***Respondeat Superior***

The doctrine of respondeat superior, or “let the superior make answer” is also called the master-servant rule. Under this concept, an employer or principal may be liable for an employee’s or agent’s wrongful acts that are committed within the scope of employment or agency.<sup>17</sup>

### ***Agency Relationship***

“Agency” is the relationship that exists between one person, generally called the principal, who authorizes another person, generally referred to as the agent, to act on his or her behalf with discretionary power when dealing with a third person.<sup>18</sup> Although the principal does exercise some degree of control over the agent, it is often not to the same extent that an employer exercises control over an employee. For a principal to be held liable for the torts of an agent, a plaintiff must prove that an agency relationship exists between the two and that the agent acted within the scope of real or apparent authority.<sup>19</sup>

### ***Dangerous Instrumentality***

The dangerous instrumentality doctrine imposes strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts the vehicle to another person who then operates the vehicle negligently and injures a third person.<sup>20</sup> This doctrine has been expanded by the courts to cover airplanes, buses, trucks, golf carts, tow-motors, farm tractors, and construction hoists and cranes.<sup>21</sup> Although drones have some similarities to recognized dangerous instrumentalities, staff is not aware of any court opinion that has considered whether a drone is a dangerous instrumentality.

### **Products Liability Law**

Products liability is the area of negligence law in which manufacturers or sellers who provide products to the public are held legally responsible for damages or injuries caused by those products.<sup>22</sup> The legal theories under which an injured person may recover are negligence, strict liability, and breach of warranty.<sup>23</sup> To recover damages, the plaintiff must prove that the product contained a defect, that the defect caused the injuries, and that the defect existed when the manufacturer, supplier, or retailer gave up possession of the product.<sup>24</sup>

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

This bill expands the circumstances under which a person may be held vicariously liable for the negligence of another person. Specifically, the bill imposes joint and several liability on the owner of a drone for the negligence of the operator of a drone. The Legislature generally abolished joint and several liability in 2006. Because joint and several liability was broadly

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<sup>17</sup> BLACK’S LAW DICTIONARY 1313 (7th ed. 1999).

<sup>18</sup> Sawaya, *supra* note 12 at s. 4:4.

<sup>19</sup> *Id.*

<sup>20</sup> Sawaya, *supra* note 12 at s. 4:10.

<sup>21</sup> *Id.*

<sup>22</sup> BLACK’S LAW DICTIONARY 1225 (7th ed. 1999).

<sup>23</sup> Sawaya, *supra* note 12 at s. 13:1.

<sup>24</sup> Sawaya, *supra* note 12 at s. 13:3.

abolished, a person's liability is generally limited to his or her percentage of fault for an injury or damage and no more. By specifying that the owner and operator may be held jointly liable, even though each was hypothetically equally at fault, either party may be held 100 percent liable for the damages caused by the other. Under the current comparative fault statute, s. 768.81, F.S., the liability of owner and operator is based on the percentage of fault attributed to them.

The bill takes effect on July 1, 2016.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Vicarious liability increases the pool of potential defendants to a lawsuit and increases the sources available to pay damages to a plaintiff. As a result, the bill may increase the potential for an injured plaintiff to be made whole.

C. Government Sector Impact:

The bill may reduce dependency on government aid to the extent that a person is able to recover damages for injuries caused by a drone from other sources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 768.38 of the Florida Statutes.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Judiciary on November 17, 2015:**

The committee substitute narrows the scope of the bill by removing the portion of the bill which would have made the owner and operator of a drone liable for damages caused by a manufacturing or design defect. The committee substitute moves this provision from chapter 934, F.S., which deals with the security of communications and surveillance, and places it in chapter 768, F.S., which relates to negligence.

- B. **Amendments:**

None.