

1 A bill to be entitled
 2 An act relating to the dangerous instrumentality
 3 doctrine; creating s. 768.092, F.S.; providing
 4 definitions; specifying factors to be considered by a
 5 court in determining, as a matter of law, whether an
 6 instrumentality is a dangerous instrumentality;
 7 providing that special mobile equipment for which a
 8 lessee maintains specified insurance is not a
 9 dangerous instrumentality; providing that a lessor may
 10 be liable for damages in specified circumstances;
 11 providing an effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Section 768.092, Florida Statutes, is created
 16 to read:

17 768.092 Dangerous instrumentality doctrine.—

18 (1) As used in this section, the term:

19 (a) "Lease agreement" means a written agreement for the
 20 rental or lease of special mobile equipment, regardless of
 21 whether the lease is for a fixed term or with an option to
 22 purchase. Unless the context clearly indicates otherwise, the
 23 term includes a sublease agreement.

24 (b) "Lessee" means a person who, pursuant to a lease
 25 agreement, acquires the right to possession and use of special

26 mobile equipment from a lessor pursuant to a lease agreement.
 27 Unless the context clearly indicates otherwise, the term
 28 includes a sublessee.

29 (c) "Lessor" means a person who, pursuant to a lease
 30 agreement, transfers the right to possession and use of special
 31 mobile equipment to a lessee. Unless the context clearly
 32 indicates otherwise, the term includes a sublessor.

33 (d) "Public property" has the same meaning as in s.
 34 705.101. The term also includes privately owned property where
 35 members of the public at large are welcomed as business
 36 invitees.

37 (e) "Special mobile equipment" has the same meaning as in
 38 s. 316.003.

39 (2) Whether an instrumentality is a dangerous
 40 instrumentality for purposes of imposing vicarious liability
 41 upon the owner shall be decided by the court as a matter of law.
 42 To determine whether an instrumentality is a dangerous
 43 instrumentality, the court shall consider the following factors,
 44 and no single factor shall be dispositive:

45 (a) Whether the instrumentality is a motor vehicle.

46 (b) Whether the instrumentality is frequently operated
 47 within or upon public property.

48 (c) Whether the injury, death, or damage caused in the
 49 particular case occurred within or upon public property.

50 (d) Whether the instrumentality poses extraordinary

51 dangers not posed by instrumentalities not otherwise determined
52 to be dangerous instrumentalities.

53 (e) To what extent the Legislature has regulated the
54 instrumentality.

55 (f) Whether the instrumentality poses a significant risk
56 of death or destruction when used improperly.

57 (3) Notwithstanding subsection (2), any special mobile
58 equipment that causes injury, death, or damage while leased
59 under a written lease agreement with documented proof of
60 insurance coverage that contains limits of not less than
61 \$100,000 per person and up to \$300,000 per incident for bodily
62 injury liability and up to \$50,000 for property damage liability
63 or not less than \$500,000 for combined property damage liability
64 and bodily injury liability is not liable for acts of the lessee
65 or the lessee's agent or employee in connection with the rental
66 or lease, including any bodily injury, death, or damage
67 resulting from operation, maintenance, or use of the special
68 mobile equipment. The failure of the lessee to obtain or
69 maintain insurance coverage required by the lease agreement does
70 not impose liability on the lessor. However, the lessor of
71 special mobile equipment may be liable for damages that:

72 (a) Occurred while the lessor's employee or contractor was
73 operating, maintaining, or using the equipment; or

74 (b) Resulted from the lessor's gross negligence or
75 criminal wrongdoing.

76 | Section 2. This act shall take effect July 1, 2019. |