

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.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/CS/SB 862

INTRODUCER: Rules Committee; Judiciary Committee; Banking and Insurance Committee; and Senator Stargel

SUBJECT: Lessor Liability Under Special Mobile Equipment Leases

DATE: April 18, 2019 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Tulloch</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u>Knudson</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 862 provides that the lessor of special mobile equipment that causes injury, death, or damage while leased under a lease agreement is not liable for the acts of the lessee or lessee's agent or employee if the lease agreement requires documented proof of insurance coverage with limits of at least \$250,000/\$500,000 for bodily injury liability and \$100,000 for property damage liability, or at least \$750,000 for combined property damage liability and bodily injury liability. The bill provides that the failure of the lessee to maintain insurance coverage required by the lease agreement does not impose liability on the lessor.

Special mobile equipment are vehicles not designed or used primarily to transport persons or property and that are only incidentally operated or moved over a highway. Examples include ditchdigging apparatus, well-boring apparatus, and road construction and maintenance machinery, draglines, self-propelled cranes and earthmoving equipment.

The bill responds to the Florida Supreme Court's decision in *Newton v. Caterpillar Financial Services Corporation*, which found that a loader is a dangerous instrumentality and thus subject to Florida's dangerous instrumentality doctrine.¹ The dangerous instrumentality doctrine imposes

¹ 253 So. 3d 1054 (Fla. 2018).

“strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another.”²

II. Present Situation:

Dangerous Instrumentality Doctrine

Florida’s dangerous instrumentality doctrine imposes “strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another.”³ Liability is applied because a motor vehicle is a potent source of danger that is dangerous in its operation.⁴ “Vicarious liability is a form of indirect liability in which a party, who may not have been negligent, can be held liable for the acts of another party.”⁵ Courts apply the doctrine not only to motor vehicles primarily designed to be used on the roads and highways of the state, but also to certain dangerous vehicles that are frequently operated near the public, such as farm tractors and tow motors.⁶

The Legislature has prohibited application of the dangerous instrumentality doctrine to lessors of motor vehicles designed and required to be licensed to be used on the highways of this state if the lease agreement requires the lessee to obtain bodily injury liability insurance coverage with limits of at least \$100,000 per person injured and \$300,000 per accident.⁷ State law also prohibits application of the doctrine to owners of vessels (boats) unless the owner is the operator or present in the vessel,⁸ and powered shopping carts provided gratis for use on the premises of the owner.⁹ Federal law preempts application of the dangerous instrumentality doctrine to rental car companies that rent or lease a motor vehicle in compliance with state financial responsibility laws.¹⁰ Federal preemption only applies to motor vehicles that are manufactured primarily for use on public streets, roads, and highways.¹¹

Newton v. Caterpillar Financial Services Corporation

In *Newton v. Caterpillar Financial Services Corporation*, the Florida Supreme Court held that loaders are dangerous instrumentalities.¹² A loader is a mobile, motorized piece of equipment with a large shovel that is used to transfer material to different areas of a job site.

According to the Florida Supreme Court’s recitation of the facts in this case, Caterpillar Financial Services Corporation (Caterpillar) leased a loader to Charles Cram, an agent of C & J Bobcat and Hauling, LLC., tasked with clearing debris from a private lot in a residential area.¹³

² *Aurback v. Gallina*, 753 So. 2d 60, 62 (Fla. 2000).

³ *Aurback*, 753 So. 2d at 62.

⁴ *Rippy v. Shepard*, 80 So. 3d 305, 306-307 (Fla 2012) (quoting *Southern Cotton Oil Co. v. Anderson*, 86 So. 629, 631 (Fla. 1920)).

⁵ *Pembroke Lakes Mall Ltd. V. McGruder*, 137 So. 3d 418, 431 (Fla. 4th DCA 2014).

⁶ See *Rippy*, 80 So. 3d at 307-08.

⁷ Section 324.021(9), F.S.

⁸ Section 327.32, F.S.

⁹ Section 768.093, F.S.

¹⁰ 49 USC s. 30106.

¹¹ 49 USC s. 30102(a)(7).

¹² *Newton v. Caterpillar Financial Services Corp.*, 253 So. 3d 1054 (Fla. 2018).

¹³ *Newton*, 253 So. 3d at 1055.

Anthony Newton, the plaintiff in the lawsuit, is an independent contractor hired by C&J Bobcat and Hauling, LLC, to assist its agent, Charles Cram in accomplishing the job. The loader was used to dump debris into a box trailer for disposal.¹⁴ At the direction of Mr. Cram, Mr. Newton stepped into the disposal box trailer to pack down the debris, but a tree stump was released from the loader Mr. Cram was operating into the disposal trailer and severed Mr. Newton's middle finger.¹⁵ Anthony Newton sued Caterpillar, alleging Caterpillar is liable for the injuries he sustained due to Cram's negligent operation of the loader because the loader was a dangerous instrumentality.¹⁶ The trial court found the loader was not a dangerous instrumentality and thus granted summary judgment for Caterpillar.¹⁷ The Second District Court of Appeals (2nd DCA) affirmed the trial court decision.¹⁸ Mr. Newton sought review of the Second District's decision, and the Supreme Court accepted jurisdiction and reversed the lower courts.¹⁹

The court stated that in applying the dangerous instrumentality doctrine, Florida courts consider the following factors:

- Whether the instrumentality is a motor vehicle;
- Whether the instrumentality is frequently operated near the public, through the injury need not occur on public property;
- The instrumentality's peculiar dangers relative to other objects found to be dangerous instrumentalities; and
- How extensively the Legislature has regulated the instrumentality.²⁰

The Florida Supreme Court first determined that a loader is a motor vehicle by finding that they meet the definition of a motor vehicle set forth in Black's Law Dictionary, and by analogizing loaders to farm tractors and forklifts.²¹ The court then determined loaders are frequently operated near the public, finding that they are often used in construction settings and on public rights of way.²² The court found that loaders are similar to farm tractors, another dangerous instrumentality under Florida law, and that loaders are machines that, due to their size and speed, can be dangerous to others.²³ Based on the foregoing, the court determined that a loader is a dangerous instrumentality as a matter of law, quashed the lower court's decision, and directed that summary judgment be granted in favor of Anthony Newton.²⁴ Three justices dissented on the basis that the Florida Supreme Court did not have jurisdiction because the 2nd DCA, in determining a loader is not a dangerous instrumentality, had not issued a decision that conflicted with a decision of another DCA or the Florida Supreme Court.²⁵

¹⁴ *Id.*

¹⁵ *Newton*, 253 So. 3d at 1056.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Newton v. Caterpillar Financial Services Corp.*, 209 So. 3d 612 (Fla. 2nd DCA 2016).

¹⁹ *Newton*, 253 So. 3d at 1057.

²⁰ *Newton*, 253 So. 3d at 1056 (citing *Rippy*, 80 So. 3d at 308-309; *Meister v. Fisher*, 462 So. 2d 1071, 1072-73 (Fla. 1984)).

²¹ *Newton*, 253 So. 3d at 1056-57.

²² *Id.* at 1057.

²³ *Id.*

²⁴ *Id.* at 1058.

²⁵ *Id.* at 1058-64.

III. Effect of Proposed Changes:

Section 1 creates s. 627.749, F.S., which provides that the lessor of special mobile equipment that causes injury, death, or damage while leased under a lease agreement is not liable for the acts of the lessee or lessee's agent if the lease agreement requires documented proof of insurance coverage with limits of at least \$250,000 per person and \$500,000 per incident for bodily injury liability and \$100,000 for property damage liability, or at least \$750,000 for combined property damage liability and bodily injury liability. The bill provides that the failure of the lessee to maintain insurance coverage required by the lease agreement does not impose liability on the lessor.

The bill defines the terms "lease agreement," "lessee," "lessor," and "special mobile equipment." "Special mobile equipment" has the same meaning as provided in s. 316.003(75), F.S., which is:

Any vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including, but not limited to, ditchdigging apparatus, well-boring apparatus, and road construction and maintenance machinery, such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earthmoving carryalls and scrapers, power shovels and draglines, and self-propelled cranes and earthmoving equipment. The term does not include house trailers, dump trucks, truck-mounted transit mixers, cranes or shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

The bill responds to the Florida Supreme Court's decision in *Newton v. Caterpillar Financial Services Corporation*, which found that a loader is a dangerous instrumentality and thus subject to Florida's dangerous instrumentality doctrine.²⁶ The dangerous instrumentality doctrine imposes "strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another."²⁷

Section 2 provides that the bill is effective July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

²⁶ 253 So. 3d 1054 (Fla. 2018).

²⁷ *Aurback*, 753 So. 2d at 62.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under the bill, if the lessee maintains insurance, the insurer of the lessee of special mobile equipment will bear the risk of losses or injuries or damages caused by the negligent operation of special mobile equipment. To the extent that damages exceed the lessee's insurance coverage, those losses will likely be borne by the lessee or other person who negligently operates the equipment. Lessors who require a lessee to provide proof of insurance will not be responsible for the negligence of others.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 627.749 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/CS/CS by Rules on April 17, 2019:

The CS increases the proof of insurance coverage that the lessor of special mobile equipment must obtain to not be liable for the acts of the lessee or lessee's agent or employee in connection with the rental or lease of special mobile equipment. The coverage must contain limits of at least \$250,000/\$500,000 for bodily injury liability and \$100,000 for property damage liability, or at least \$750,000 for combined property damage liability and bodily injury liability. Previously the bill required proof of coverage with limits of at least \$100,000/\$300,000 for bodily injury and \$50,000 for property damage, or at least \$500,000 for combined bodily injury and property damage liability.

CS/CS by Judiciary on April 8, 2019:

The CS removes reference to obtaining insurance, now providing that a lessee's failure to maintain insurance during the lease will not impose liability on the lessor.

CS by Banking and Insurance on March 19, 2019:

The CS removes provisions of the bill stating the lessor is only liable if the lessor is grossly negligent, committed criminal wrongdoing, or the injury occurred while the lessor's employee or contractor was operating, maintaining, or using the special mobile equipment.

B. Amendments:

None.