**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 Infrastructure and Security

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| BILL: | SB 1738 |
| INTRODUCER: | Senator Brandes |
| SUBJECT: | Motor Vehicle Dealers |
| DATE: | February 7, 2020 |
| REVISED: | |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Proctor | Miller | IS | **Pre-meeting** |
| 2. | | | BI | |
| 3. | | | RC | |

## I. Summary:

SB 1738 provides legislative findings that subjecting motor vehicle dealers and their leasing and rental affiliates to vicarious liability under the dangerous instrumentality doctrine is both unfair and economically disadvantageous to motor vehicle dealers, their leasing and rental affiliates, and state consumers in that it causes dealers and their affiliates to suffer higher insurance costs, which are then passed on to consumers.

Additionally, the bill provides that a motor vehicle dealer, or a motor vehicle dealer's leasing or rental affiliate, that provides a temporary replacement vehicle to a customer whose vehicle is being repaired, serviced, or adjusted by the dealer is immune from vicarious liability in a civil or criminal proceeding. The motor vehicle dealer or affiliate is granted immunity as long as there is no negligent or criminal wrongdoing on the part of the dealer or affiliate. The bill further provides that notwithstanding any other provision of general law or case law, a motor vehicle dealer or affiliate providing a temporary replacement vehicle is not liable in any civil or criminal proceeding if a copy of the vehicle operator's driver license and insurance information is obtained.

The bill has an effective date of July 1, 2020.

## II. Present Situation:

The court-created dangerous instrumentality doctrine holds an owner strictly liable for injuries caused by another person's negligent use of the owner's property. Specifically, when the owner entrusts a dangerous instrumentality to another person, the owner is responsible for damages caused by the other person. Whether the owner was negligent or at fault is irrelevant. The rationale for holding an innocent person responsible for such damages is that the owner of an

instrumentality capable of causing death or destruction should be liable for damages caused by anyone operating it with the owner's consent.[1]

The dangerous instrumentality doctrine originated in English common law and was adopted by the Florida Supreme Court in 1920 in *Southern Cotton Oil Company v. Anderson*, 86 So. 629 (1920).[2] The Court acknowledged the doctrine was originally limited to fire, water, and poisons, but had expanded over time:

It is true that, in the early development of this very salutary doctrine, the dangerous agencies consisted largely of fire, flood, water, and poisons. In Dixon v. Bell . . . Lord Ellenborough extended the doctrine to include loaded firearms. With the discovery of high explosives, they were put in the same class. As conditions changed it was extended to include other objects that common knowledge and common experience proved to be as potent sources of danger as those embraced in the earlier classifications. The underlying principle was not changed, but other agencies were included in the classification. Among them are locomotives, push cars, street cars, etc., and it is now well settled that these come within the class of dangerous agencies, and the liability of the master is determined by the rule applicable to them. The reasons for putting these agencies in the class of dangerous instrumentalities apply with equal, if not greater, force to automobiles.[3]

In a 1990 Florida Supreme Court case, a man leased a car from a lessor and then loaned the leased car to a friend. The friend caused a motor vehicle crash in the leased car, killing another person. The victim's estate sued the lessor of the car directly. The Court held that the lessor was liable for the death of the victim under the dangerous instrumentality doctrine, even though the lessor did not cause the accident. The Court acknowledged that the dangerous instrumentality doctrine was "unique to Florida" but justified the doctrine as necessary "to provide greater financial responsibility to pay for the carnage on our roads."[4]

The Second District Court of Appeal has acknowledged that the dangerous instrumentality doctrine creates "real and perceived inequities" and "has drawn its fair share of criticism."[5] Once a court decides that an item is a dangerous instrumentality, an owner of such instrumentality is liable for damages the instrumentality causes, even if the owner was not in control of the instrumentality at the time.

Whether an item is a dangerous instrumentality is a question of law depending on several factors, none of which alone is dispositive, including:

- Whether the instrumentality is a motor vehicle.[6]
- Whether the instrumentality is frequently operated near the public, regardless of whether the incident at issue occurred on public property.

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[1] *Roman v. Bogle*, 113 So. 3d 1011, 1016 (Fla. 5th DCA 2013).
[2] *Id.* at 1014.
[3] *S. Cotton Oil Company v. Anderson*, 86 So. 629, 631 (Fla. 1920).
[4] *Kraemer v. General Motors Acceptance Corp.*, 572 So. 2d 1363, 1365 (Fla. 1990).
[5] *Fischer v. Alessandrini*, 907 So. 2d 569, 570 (Fla. 2d DCA 2005).
[6] A motor vehicle is a "wheeled conveyance that does not run on rails and is self-propelled, especially one powered by an internal combustion engine, a battery or fuel-cell, or a combination of these." *Newton v. Caterpillar Financial Servs. Corp.*, 253 So. 3d 1054, 1056 (Fla. 2018) (quoting Black's Law Dictionary (10th ed. 2014)).

- The instrumentality's peculiar dangers relative to other objects that courts have found to be dangerous instrumentalities.
- The extent to which the Legislature has regulated the instrumentality.[7]

If the court decides an item is a dangerous instrumentality, the owner is liable regardless of the facts of the particular case. Over time, Florida courts have expanded the applicability of the doctrine to include automobiles,[8] trucks, buses,[9] tow-motors,[10] golf carts, and other motorized vehicles.[11]

The Florida Legislature has limited the dangerous instrumentality doctrine by providing that a motor vehicle dealer or rental car company that provides a temporary replacement vehicle to a customer for up to 10 days acts as the operator of the vehicle and is liable for damages up to $100,000 per person and $300,000 per incident for bodily injury and up to $50,000 for property damage.[12] If the driver of the vehicle is uninsured or has insurance limits of less than $500,000 combined property damage and bodily injury liability, the motor vehicle dealer or car rental company is liable for up to an additional $500,000 in economic damages arising out of the use of the vehicle.[13]

In 2005, Congress passed 49 U.S.C. § 30106, commonly known as the Graves Amendment, to prohibit states from imposing vicarious liability on car rental companies.[14] Vicarious liability is "liability that a supervisory party (such as an employer) bears for the actionable conduct of a subordinate (such as an employee) based on the relationship between the two parties."[15] To benefit from the Graves Amendment, the "owner" must be "engaged in the business of renting or leasing motor vehicles." A vehicle "owner" may be the titleholder, lessee, or bailee of the vehicle.[16]

The Graves Amendment, however, does not protect a rental company from its own negligence or criminal wrongdoing. If an injury is caused by a rental company's negligent or criminal act, the rental company could still be directly liable for its actions or inactions, even if an accident occurs while a renter is driving the vehicle.[17] Federal law supersedes Florida's dangerous instrumentality doctrine when a rental car company rents a car to a driver who negligently injures another person.[18]

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[7] *Newton*, 253 So. 3d at 1056.
[8] *S. Cotton Oil*, 86 So. at 629, supra at FN 3.
[9] *Meister v. Fisher*, 462 So. 2d 1071, 1072 (Fla. 1984).
[10] *Eagle Stevedores, Inc. v. Thomas*, 145 So. 2d 551 (Fla. 3d DCA 1962) (where plaintiff was struck in a dock area by a "tow-motor," a small motor-operated vehicle, dangerous instrumentality doctrine applied).
[11] *Meister*, 462 So. 2d at 1072.
[12] Section 324.021(9)(b)2. & (c)1., F.S.
[13] *Id*
[14] Auto Rental News, The Graves Amendment: Challenges, Interpretations, Answers, https://www.autorentalnews.com/156611/the-graves-amendment-challenges-interpretations-and-answers (last visited February 7, 2020).
[15] Black's Law Dictionary 427 (3rd pocket ed. 2006).
[16] Auto Rental News, *supra* at FN 14.
[17] *Id*.
[18] 49 U.S.C. § 30106.

In 2011, the Florida Supreme Court held that as it relates to rental car companies the Graves Amendment specifically preempts Florida law[19] and relieves rental car companies, while engaged in the trade or business of renting or leasing motor vehicles, from vicarious liability for harm caused by the driver.[20]

In 2019, the Fourth District Court of Appeal, relying on the Supreme Court's analysis in *Vargas*, held that the Graves Amendment applies to a motor vehicle dealer that provides a customer with a temporary replacement vehicle.[21]

## III. Effect of Proposed Changes:

The bill provides the following legislative findings:

> The Legislature finds that although the federal Graves Amendment, 49 U.S.C. s. 30106, has eliminated vicarious liability claims against motor vehicle rental and leasing companies for damages or injuries caused by customers during a rental or lease, motor vehicle dealers and their leasing and rental affiliates in the state are still subjected to suits for damages or injuries caused by customers during the customers' operation of temporary replacement vehicles owned, but not being operated, by the motor vehicle dealers and their leasing and rental affiliates. Absent negligence or criminal conduct by a motor vehicle dealer or its leasing or rental affiliates, the Legislature finds that subjecting motor vehicle dealers and their leasing and rental affiliates to this vicarious liability under the dangerous instrumentality doctrine is both unfair and economically disadvantageous to motor vehicle dealers, their leasing and rental affiliates, and state consumers in that it causes dealers and their affiliates to suffer higher insurance costs, which are then passed on to consumers. Vicarious liability in such cases often serves to relieve the actual tortfeasor from liability.

The bill eliminates the "up to 10 day" provision applicable to limited liability for temporary replacement vehicles. Additionally, the bill provides that a motor vehicle dealer, or a motor vehicle dealer's leasing or rental affiliate, that provides a temporary replacement vehicle to a customer whose vehicle is being repaired, serviced, or adjusted by the dealer is immune from vicarious liability in a civil or criminal proceeding. The motor vehicle dealer or affiliate is granted immunity as long as there is no negligent or criminal wrongdoing on the part of the dealer or affiliate.

The bill further provides that notwithstanding any other provision of general law or existing case law, a motor vehicle dealer or affiliate providing a temporary replacement vehicle is not liable in any civil or criminal proceeding if a copy of the vehicle operator's driver license and insurance information is obtained. Any subsequent determination that the driver license or insurance information provided was in any way false, fraudulent, misleading, nonexistent, canceled, not in effect, or invalid would not alter or diminish the protections provided by the bill, unless the motor vehicle dealer, or the motor vehicle dealer's leasing or rental affiliate, had actual

[19] Section 324.021(9)(b)2., F.S.
[20] *Vargas v. Enterprise Leasing Co.*, 60 So.3d 1037 (Fla. 2011).
[21] *Collins v. Auto Partners V, LLC*, 276 So.3d 817 (Fla. 4th DCA 2019).

knowledge at the time possession of the temporary replacement vehicle was provided to the customer.

The bill provides an effective date of July 1, 2020.

## IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

## V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Motor vehicle dealers may likely see a reduction in insurance premiums and the cost of potential litigation.

C. Government Sector Impact:

None.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Statutes Affected:

This bill substantially amends the following section of the Florida Statutes: 324.021

## IX. Additional Information:

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

None.

B. Amendments:

None.