

By the Committee on Infrastructure and Security; and Senator Brandes

596-03411-20

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1 A bill to be entitled
2 An act relating to motor vehicle dealers; providing
3 legislative findings; amending s. 324.021, F.S.;
4 providing that certain motor vehicle dealers and their
5 leasing or rental affiliates are immune from causes of
6 action and are not liable for harm to persons or
7 property under certain circumstances; defining the
8 term "service customer"; providing exceptions to the
9 limits on liability; providing an effective date.

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11 Be It Enacted by the Legislature of the State of Florida:

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13 Section 1. The Legislature finds that absent negligence or
14 criminal conduct by a motor vehicle dealer, or its leasing or
15 rental affiliates, subjecting motor vehicle dealers and their
16 leasing and rental affiliates to vicarious liability under the
17 dangerous instrumentality doctrine when a temporary replacement
18 vehicle is provided to a consumer is both unfair and
19 economically disadvantageous in that it causes dealers and their
20 leasing or rental affiliates to suffer higher insurance costs,
21 which are then passed on to consumers. Additionally, application
22 of the vicarious liability doctrine in such cases often serves
23 to relieve the actual tortfeasor from liability.

24 Section 2. Paragraph (c) of subsection (9) of section
25 324.021, Florida Statutes, is amended to read:

26 324.021 Definitions; minimum insurance required.—The
27 following words and phrases when used in this chapter shall, for
28 the purpose of this chapter, have the meanings respectively
29 ascribed to them in this section, except in those instances

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30 where the context clearly indicates a different meaning:

31 (9) OWNER; OWNER/LESSOR.—

32 (c) *Application*.—

33 1. The limits on liability in subparagraphs (b)2. and 3. do
34 not apply to an owner of motor vehicles that are used for
35 commercial activity in the owner's ordinary course of business,
36 other than a rental company that rents or leases motor vehicles.
37 For purposes of this paragraph, the term "rental company"
38 includes only an entity that is engaged in the business of
39 renting or leasing motor vehicles to the general public and that
40 rents or leases a majority of its motor vehicles to persons with
41 no direct or indirect affiliation with the rental company. The
42 term also includes a motor vehicle dealer that provides
43 temporary replacement vehicles to its customers for up to 10
44 days. The term "rental company" also includes:

45 a. A related rental or leasing company that is a subsidiary
46 of the same parent company as that of the renting or leasing
47 company that rented or leased the vehicle.

48 b. The holder of a motor vehicle title or an equity
49 interest in a motor vehicle title if the title or equity
50 interest is held pursuant to or to facilitate an asset-backed
51 securitization of a fleet of motor vehicles used solely in the
52 business of renting or leasing motor vehicles to the general
53 public and under the dominion and control of a rental company,
54 as described in this subparagraph, in the operation of such
55 rental company's business.

56 2. Furthermore, with respect to commercial motor vehicles
57 as defined in s. 627.732, the limits on liability in
58 subparagraphs (b)2. and 3. do not apply if, at the time of the

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59 incident, the commercial motor vehicle is being used in the
60 transportation of materials found to be hazardous for the
61 purposes of the Hazardous Materials Transportation Authorization
62 Act of 1994, as amended, 49 U.S.C. ss. 5101 et seq., and that is
63 required pursuant to such act to carry placards warning others
64 of the hazardous cargo, unless at the time of lease or rental
65 either:

66 a. The lessee indicates in writing that the vehicle will
67 not be used to transport materials found to be hazardous for the
68 purposes of the Hazardous Materials Transportation Authorization
69 Act of 1994, as amended, 49 U.S.C. ss. 5101 et seq.; or

70 b. The lessee or other operator of the commercial motor
71 vehicle has in effect insurance with limits of at least
72 \$5,000,000 combined property damage and bodily injury liability.

73 3.a. A motor vehicle dealer or a motor vehicle dealer's
74 leasing or rental affiliate that provides a temporary
75 replacement vehicle at no charge or at a reasonable daily charge
76 to a service customer whose vehicle is being held for repair,
77 service, or adjustment by the motor vehicle dealer is immune
78 from any cause of action and is not liable, vicariously or
79 directly, under general law by reason of being the owner of the
80 temporary replacement vehicle for harm to persons or property
81 which arises out of the use or operation of the temporary
82 replacement vehicle by any person named in the rental or use
83 agreement during the period the temporary replacement vehicle
84 has been entrusted to the motor vehicle dealer's service
85 customer if there is no negligence or criminal wrongdoing on the
86 part of the motor vehicle owner or its leasing or rental
87 affiliate.

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88 b. For purposes of this subparagraph, the term "service
89 customer" does not include an employee, an agent, or a principal
90 of a motor vehicle dealer or a motor vehicle dealer's leasing or
91 rental affiliate.

92 c. The limits on liability in this subparagraph do not
93 apply if there is a replacement vehicle mechanical failure or
94 defect that is a proximate cause of harm to persons or property
95 which arises out of the use or operation of the temporary
96 replacement vehicle.

97 d. The limits on liability in this subparagraph do not
98 apply unless there is a written rental or use agreement that
99 names the drivers who will be given possession, control, or use
100 of the temporary replacement vehicle; the rental or use
101 agreement prohibits any person not listed in the agreement from
102 using the temporary replacement vehicle; and the motor vehicle
103 dealer or the motor vehicle dealer's leasing or rental affiliate
104 obtains from the person receiving the temporary replacement
105 vehicle a copy of the person's driver license and insurance
106 information reflecting at least the minimum motor vehicle
107 insurance coverage required in this state.

108 Section 3. This act shall take effect July 1, 2020.