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LEGISLATIVE ACTION

Senate

House

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Floor: WD/3R

03/13/2020 10:18 AM

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Senator Lee moved the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. The Legislature finds that, absent negligence or  
criminal conduct by a motor vehicle dealer, or its leasing or  
rental affiliates, subjecting motor vehicle dealers and their  
leasing and rental affiliates to vicarious liability under the  
dangerous instrumentality doctrine when a temporary replacement  
vehicle is provided to a consumer is both unfair and  
economically disadvantageous in that it causes dealers and their



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12 affiliates to suffer higher insurance costs, which are then  
13 passed on to consumers. Additionally, application of the  
14 vicarious liability doctrine in such cases often serves to  
15 relieve the actual tortfeasor from liability.

16 Section 2. Paragraph (c) of subsection (9) of section  
17 324.021, Florida Statutes, is amended to read:

18 324.021 Definitions; minimum insurance required.—The  
19 following words and phrases when used in this chapter shall, for  
20 the purpose of this chapter, have the meanings respectively  
21 ascribed to them in this section, except in those instances  
22 where the context clearly indicates a different meaning:

23 (9) OWNER; OWNER/LESSOR.—

24 (c) *Application*.—

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

37 a. A related rental or leasing company that is a subsidiary  
38 of the same parent company as that of the renting or leasing  
39 company that rented or leased the vehicle.

40 b. The holder of a motor vehicle title or an equity



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41 interest in a motor vehicle title if the title or equity  
42 interest is held pursuant to or to facilitate an asset-backed  
43 securitization of a fleet of motor vehicles used solely in the  
44 business of renting or leasing motor vehicles to the general  
45 public and under the dominion and control of a rental company,  
46 as described in this subparagraph, in the operation of such  
47 rental company's business.

48 2. Furthermore, with respect to commercial motor vehicles  
49 as defined in s. 627.732, the limits on liability in  
50 subparagraphs (b)2. and 3. do not apply if, at the time of the  
51 incident, the commercial motor vehicle is being used in the  
52 transportation of materials found to be hazardous for the  
53 purposes of the Hazardous Materials Transportation Authorization  
54 Act of 1994, as amended, 49 U.S.C. ss. 5101 et seq., and that is  
55 required pursuant to such act to carry placards warning others  
56 of the hazardous cargo, unless at the time of lease or rental  
57 either:

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

62 b. The lessee or other operator of the commercial motor  
63 vehicle has in effect insurance with limits of at least  
64 \$5,000,000 combined property damage and bodily injury liability.

65 3.a. A motor vehicle dealer, or a motor vehicle dealer's  
66 leasing or rental affiliate, that provides a temporary  
67 replacement vehicle at no charge or at a reasonable daily charge  
68 to a service customer whose vehicle is being held for repair,  
69 service, or adjustment by the motor vehicle dealer is immune



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70 from any cause of action and is not liable, vicariously or  
71 directly, under general law solely by reason of being the owner  
72 of the temporary replacement vehicle for harm to persons or  
73 property that arises out of the use, or operation, of the  
74 temporary replacement vehicle by any person during the period  
75 the temporary replacement vehicle has been entrusted to the  
76 motor vehicle dealer's service customer if there is no  
77 negligence or criminal wrongdoing on the part of the motor  
78 vehicle owner, or its leasing or rental affiliate.

79 b. For purposes of this section, and notwithstanding any  
80 other provision of general law, a motor vehicle dealer, or a  
81 motor vehicle dealer's leasing or rental affiliate, that gives  
82 possession, control, or use of a temporary replacement vehicle  
83 to a motor vehicle dealer's service customer may not be adjudged  
84 liable in a civil proceeding absent negligence or criminal  
85 wrongdoing on the part of the motor vehicle dealer, or the motor  
86 vehicle dealer's leasing or rental affiliate, if the motor  
87 vehicle dealer or the motor vehicle dealer's leasing or rental  
88 affiliate executes a written rental or use agreement and obtains  
89 from the person receiving the temporary replacement vehicle a  
90 copy of the person's driver license and insurance information  
91 reflecting at least the minimum motor vehicle insurance coverage  
92 required in the state. Any subsequent determination that the  
93 driver license or insurance information provided to the motor  
94 vehicle dealer, or the motor vehicle dealer's leasing or rental  
95 affiliate, was in any way false, fraudulent, misleading,  
96 nonexistent, canceled, not in effect, or invalid does not alter  
97 or diminish the protections provided by this section, unless the  
98 motor vehicle dealer, or the motor vehicle dealer's leasing or



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99 rental affiliate, had actual knowledge thereof at the time  
100 possession of the temporary replacement vehicle was provided.

101 c. The limits on liability in this subparagraph do not  
102 apply if there is a replacement vehicle mechanical failure or  
103 defect that is a proximate cause of harm to persons or property  
104 which arises out of the use or operation of the temporary  
105 replacement vehicle.

106 d. For purposes of this subparagraph, the term "service  
107 customer" does not include an employee, an agent, or a principal  
108 of a motor vehicle dealer or a motor vehicle dealer's leasing or  
109 rental affiliate.

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

111  
112 ===== T I T L E A M E N D M E N T =====

113 And the title is amended as follows:

114 Delete everything before the enacting clause  
115 and insert:

116 A bill to be entitled  
117 An act relating to motor vehicle dealers; providing  
118 legislative findings; amending s. 324.021, F.S.;  
119 revising the definition of the term "rental company"  
120 to exclude certain motor vehicle dealers, for the  
121 purpose of determining minimum insurance coverage  
122 requirements; providing that specified motor vehicle  
123 dealers and their affiliates are immune to causes of  
124 action and not vicariously or directly liable for harm  
125 to persons or property under certain circumstances;  
126 providing that specified motor vehicle dealers and  
127 their affiliates are not adjudged liable in civil



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proceedings under certain circumstances; providing  
applicability; providing an effective date.