

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 977 Motor Vehicle Dealers

**SPONSOR(S):** State Affairs Committee, Transportation & Infrastructure Subcommittee, Rommel and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1738

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	11 Y, 0 N, As CS	Roth	Vickers
2) Judiciary Committee	16 Y, 0 N	Jones	Luczynski
3) State Affairs Committee	23 Y, 0 N, As CS	Roth	Williamson

### SUMMARY ANALYSIS

The 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. In 2005, Congress passed what is commonly known as the Graves Amendment to prohibit states from imposing vicarious liability on car rental companies. In 2011, the Florida Supreme Court held that as it relates to rental car companies, the Graves Amendment specifically preempts Florida's dangerous instrumentality law 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. In 2019, the Fourth District Court of Appeal, relying on the Supreme Court's analysis, held that the Graves Amendment also limits the liability of a motor vehicle dealer that provides a customer with a temporary replacement vehicle.

The bill states 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 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 held for repair, service, or adjustment by the dealer is immune from vicarious liability in a civil or criminal proceeding. This immunity applies as long as there is no negligent or criminal wrongdoing by the dealer or affiliate. The bill provides that a motor vehicle dealer or affiliate must obtain a copy of the vehicle operator's driver license and insurance information to qualify for the immunity granted in the bill.

The bill will likely have no fiscal impact on state or local government.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current 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.<sup>1</sup>

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).<sup>2</sup> 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.<sup>3</sup>

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."<sup>4</sup>

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."<sup>5</sup> 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.

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<sup>1</sup> *Roman v. Bogle*, 113 So. 3d 1011, 1016 (Fla. 5th DCA 2013).

<sup>2</sup> *Id.* at 1014.

<sup>3</sup> *S. Cotton Oil Company v. Anderson*, 86 So. 629, 631 (Fla. 1920).

<sup>4</sup> *Kraemer v. General Motors Acceptance Corp.*, 572 So. 2d 1363, 1365 (Fla. 1990).

<sup>5</sup> *Fischer v. Alessandrini*, 907 So. 2d 569, 570 (Fla. 2d DCA 2005).

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.<sup>6</sup>
- Whether the instrumentality is frequently operated near the public, regardless of whether the incident at issue occurred on public property.
- 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.<sup>7</sup>

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,<sup>8</sup> trucks, buses,<sup>9</sup> tow-motors,<sup>10</sup> golf carts, and other motorized vehicles.<sup>11</sup>

The Florida Legislature has limited the dangerous instrumentality doctrine by providing that a rental car company, or a motor vehicle dealer that provides a temporary replacement vehicle to a customer for up to 10 days, is liable for damages only up to \$100,000 per person and \$300,000 per incident for bodily injury and up to \$50,000 for property damage.<sup>12</sup> 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.<sup>13</sup>

In 2005, Congress passed what is commonly known as the Graves Amendment to prohibit states from imposing vicarious liability on car rental companies.<sup>14</sup> 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.”<sup>15</sup> 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.<sup>16</sup> The Graves Amendment, however, does not protect a rental company from its own active negligence or criminal wrongdoing. If an injury is caused by a rental company’s negligent or criminal act, the rental company can still be directly liable for its actions or inactions, even if an accident occurs while a renter is driving the vehicle.<sup>17</sup> Federal law supersedes Florida’s dangerous instrumentality doctrine when a rental car company rents a car to a driver who negligently injures another person.<sup>18</sup>

In 2011, the Florida Supreme Court held that as it relates to rental car companies, the Graves Amendment specifically preempts s. 324.021(9)(b)2., F.S., 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.<sup>19</sup>

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<sup>6</sup> 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)).

<sup>7</sup> *Newton*, 253 So. 3d at 1056.

<sup>8</sup> *S. Cotton Oil*, 86 So. at 629, *supra* at FN 3.

<sup>9</sup> *Meister v. Fisher*, 462 So. 2d 1071, 1072 (Fla. 1984).

<sup>10</sup> *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).

<sup>11</sup> *Meister*, 462 So. 2d at 1072.

<sup>12</sup> Section 324.021(9)(b)2. and (c)1., F.S.

<sup>13</sup> *Id.*

<sup>14</sup> 49 U.S.C. § 30106; Auto Rental News, *The Graves Amendment: Challenges, Interpretations, Answers*, <https://www.autorentalnews.com/156611/the-graves-amendment-challenges-interpretations-and-answers> (last visited Apr. 30, 2019).

<sup>15</sup> Black’s Law Dictionary 427 (3rd pocket ed. 2006).

<sup>16</sup> Auto Rental News, *supra* at FN 14.

<sup>17</sup> *Id.*

<sup>18</sup> 49 U.S.C. § 30106.

<sup>19</sup> *Vargas v. Enterprise Leasing Co.*, 60 So.3d 1037 (Fla. 2011).

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.<sup>20</sup>

### **Effect of Proposed Changes**

The bill provides the following legislative findings:

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 violates the federal Graves Amendment and is both unfair and economically disadvantageous in that it causes dealers and their affiliates to suffer higher insurance costs, which are then passed on to consumers. Additionally, application of the vicarious liability doctrine in such cases often serves to relieve the actual tortfeasor from liability.

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 service customer whose vehicle is being held for repair, service, or adjustment by the dealer is immune from civil and criminal liability if:

- The vehicle is provided at no charge or at a reasonable daily rate;
- There is no negligent or criminal wrongdoing by the dealer or affiliate; and
- The dealer or affiliate obtained a copy of the vehicle operator's driver license and insurance information reflecting at least the minimum required motor vehicle insurance coverage.

If the driver license or insurance information provided to the dealer or affiliate is fraudulent or otherwise invalid, that fact does not diminish the dealer's or affiliate's immunity unless the dealer or affiliate had actual knowledge of such fact.

Lastly, the bill specifies that the term "service customer" does not include an employee, an agent, or a principal of a motor vehicle dealer or a motor vehicle dealer's leasing or rental affiliate unless the employee has been provided a temporary replacement vehicle while his or her vehicle is being held for repair, service, or adjustment by the motor vehicle dealer.

#### **B. SECTION DIRECTORY:**

**Section 1:** Provides legislative findings.

**Section 2:** Amends s. 324.021, F.S., relating to definitions; minimum insurance required.

**Section 3:** Provides an effective date of July 1, 2020.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

The bill will likely have no fiscal impact on state government revenues.

##### **2. Expenditures:**

The bill will likely have no fiscal impact on state government expenditures.

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<sup>20</sup> *Collins v. Auto Partners V, LLC*, 276 So.3d 817 (Fla. 4th DCA 2019).

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill will likely have no fiscal impact on local government revenues.

2. Expenditures:

The bill will likely have no fiscal impact on local government expenditures.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Motor vehicle dealers may experience a reduction in insurance premiums and the cost of litigation. These savings may be passed onto consumers.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not provide a grant of rulemaking authority, nor does it require rulemaking.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 4, 2020, the Transportation & Infrastructure Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Revised the legislative findings; and
- Provided certain requirements for motor vehicle dealer eligibility for immunity from vicarious liability.

On February 27, 2020, the State Affairs Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment specified that the term “service customer” does not include an employee, an agent, or a principal of a motor vehicle dealer or a motor vehicle dealer’s leasing or rental affiliate except under certain circumstances.

This analysis is drafted to the committee substitute as approved by the State Affairs Committee.