

STORAGE NAME: h1691b.cjcl

DATE: April 21, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CIVIL JUSTICE & CLAIMS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1691

RELATING TO: Negligence

SPONSOR(S): Representative Flanagan and others

STATUTE(S) AFFECTED: s. 768.32, F.S.

COMPANION BILL(S): HB 1778 by Senator Burt (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CIVIL JUSTICE & CLAIMS YEAS 5 NAYS 4
- (2) TRANSPORTATION
- (3)
- (4)
- (5)

I. SUMMARY:

HB 1691 would create s. 768.32, F.S. The bill would provide an exemption from liability for persons engaged in the business of renting or leasing motor vehicles. Under certain circumstances, HB 1691 would insulate the owner/lessor from liability for the tortious acts of the vehicle operator. It would restrict Florida's dangerous instrumentality doctrine, which imposes strict, vicarious liability upon the owners of motor vehicles for injuries resulting from the negligent operation of such vehicles.

HB 1691 would not have a significant fiscal impact on state or local governments.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

1. **Dangerous Instrumentality Doctrine** - Florida's dangerous instrumentality doctrine originated in the case of *Southern Cotton Oil Co. v. Anderson*, 86 So. 629, 638 (Fla. 1920). The dangerous instrumentality doctrine "imposes strict, vicarious responsibility upon the owner . . . of a motor vehicle who voluntarily entrusts it to another for any subsequent negligent operation which injures a member of the traveling public." *Hertz Corp. v. Jackson*, 617 So.2d 1051, 1052 (Fla. 1993). The dangerous instrumentality doctrine "is premised upon the theory that the one who originates the danger by entrusting the automobile to another is in the best position to make certain that there will be adequate resources with which to pay the damages caused by its negligent operation." *Kraemer v. General Motors Acceptance Corp.*, 572 So.2d 1363, 1365 (Fla. 1990).

a. **Application to Third-Party Operators** - If the lessee gives express or implied permission to a third party to operate the motor vehicle, the lessor/owner can be held liable for the negligence of the operator. The motor vehicle rental company could also be liable for an unauthorized driver's negligent acts. *Id.*

b. **Application to Lessors** - Presently, individuals can rent a car, negligently injure themselves, and successfully sue rental car companies for damages.

c. **Exception for Long-Term Leases** - In 1986, the Legislature enacted s. 324.021(9)(b), F.S., which relieves long term (one year or greater) motor vehicle lessors of liability for damages arising from operation of a motor vehicle where the lessee maintains minimum statutory insurance coverage. It sets out a limited exception from the dangerous instrumentality doctrine. Section 324.021(9)(b), F.S., provides:

(b) Owner/lessor.--Notwithstanding any other provision of the Florida Statutes or existing case law, the lessor, under an agreement to lease a motor vehicle for 1 year or longer which requires the lessee to obtain insurance acceptable to the lessor which contains limits not less than \$100,000/\$300,000 bodily injury liability and \$50,000 property damage liability or not less than \$500,000 combined property damage liability and bodily injury liability, shall not be deemed the owner of said motor vehicle for the purpose of determining financial responsibility for the operation of said motor vehicle of for the acts of the operator in connection therewith; further, this paragraph shall be applicable so long as the insurance meeting these requirements is in effect. The insurance meeting such requirements may be obtained by the lessor or the lessee, provided, if such insurance is obtained by the lessor, the combined coverage for bodily injury liability and property damage liability shall contain limits of not less than \$1 million and may be provided by a lessor's blanket policy.

In *Abdala v. World Omni Leasing*, 583 So.2d 330 (Fla. 1991), the Florida Supreme Court upheld the constitutionality of this statute. However, the court has subsequently construed this statute in a very strict manner, narrowing the potential scope of the exception. See *Ady v. American Honda Finance Corp.*, 675 So.2d 577 (Fla. 1996)(strictly construing insurance requirements under s. 324.021(9)(b) F.S.).

2. **Insurance** - In *Allstate Insurance Co. v. Fowler*, 480 So.2d 1287 (Fla. 1985) and *Maryland Casualty Co. v. Reliance Insurance Co.*, 478 So.2d 1068 (Fla. 1985), the Florida Supreme Court held that the insurer of the owner/lessor of a motor vehicle is liable for the amount of insurance the owner/lessor is required to maintain under Florida's financial responsibility laws. See also *Allstate Insurance Co. v. Executive Car and Truck Leasing, Inc.*, 494 So.2d 487 (Fla. 1986)(layering various insurance policies which protected the lessor and the lessee).
3. **Financial Responsibility Laws** - Sections 324.151(1)(a) and 324.021(7), F.S., require vehicle operators to maintain certain levels of insurance coverage.

B. EFFECT OF PROPOSED CHANGES:

HB 1691 would abolish Florida's dangerous instrumentality doctrine as it applies to leased vehicles. It would insulate the lessor/owner of a motor vehicle from civil liability for the acts of the operator of a leased vehicle, unless an injured plaintiff could demonstrate negligence or intentional misconduct by the lessor. However, the bill would only limit vicarious liability for motor vehicle rental businesses. Private owners would still be vicariously liable.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

- (1) any authority to make rules or adjudicate disputes?

This bill would eliminate the dangerous instrumentalities doctrine as it applies to businesses engaged in leasing motor vehicles. It would restrict causes of action brought against lessors, unless the plaintiff alleges that the lessor was negligent or engaged in intentional misconduct.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

HB 1691 would place greater responsibility, for obtaining adequate insurance, on person leasing motor vehicles.

- (3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

NA.

(2) what is the cost of such responsibility at the new level/agency?

NA.

(3) how is the new agency accountable to the people governed?

NA.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

NA.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. The bill increases the contractual options available to lessors and lessees of motor vehicles.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. Under certain circumstances, it would prohibit injured parties from instituting civil actions against vehicle rental companies.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

NA.

(2) Who makes the decisions?

NA.

(3) Are private alternatives permitted?

NA.

(4) Are families required to participate in a program?

NA.

(5) Are families penalized for not participating in a program?

NA.

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

NA.

- (2) service providers?

NA.

- (3) government employees/agencies?

NA.

D. SECTION-BY-SECTION RESEARCH:

Section 1: Creates s. 768.32, F.S.; limits the liability of persons engaged in the business of leasing or renting motor vehicles; requires a showing of negligence or intentional misconduct before allowing recovery.

Section 2: Provides an effective date.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

HB 1691 would limit the ability of some injured parties to recover damages.

2. Direct Private Sector Benefits:

HB 1691 would allow vehicle rental companies to avoid liability under certain circumstances. This could reduce their insurance rates and could eventually lead to lower car rental rates.

3. Effects on Competition, Private Enterprise and Employment Markets:

HB 1691 could aid some Florida vehicle rental companies, as well as in-state offices of foreign vehicle rental companies.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill would not reduce the percentage of a state tax shared with counties or municipalities. Therefore, it would not contravene the requirements of Article VII, Section 18, of the state constitution.

V. COMMENTS:

1. **Key Issues** - This subsection employs a question format to stimulate debate about the bill under review.

a. **Question Presented** - *Should Florida abolish or restrict the dangerous instrumentality doctrine as it relates to persons engaged in the business of leasing motor vehicles?*

b. **Other Policy Considerations:**

(1) Should lessors of motor vehicles be held strictly responsible for damages caused by those who lease motor vehicles? Are the lessors of motor vehicles too far removed along the causal chain?

(2) Does the law impose strict liability upon similar industries under analogous circumstances?

(3) Should the primary responsibility for obtaining insurance rest with the rental companies or with motorists seeking to rent a motor vehicle?

(4) Should HB 1691 abolish the dangerous instrumentality doctrine, as it applies to car rental businesses, while allowing the continuation of the doctrine, as it applies to private owners of motor vehicles? Are private owners better able to control access to their personal vehicles?

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Civil Justice and Claims, at its April 10, 1997, meeting, adopted five amendments to HB 1691. At the sponsor's request, HB 1691 was not made into a committee substitute.

1. **Amendment #1** - The first amendment was a strike everything, incorporating some language from the committee substitute to the senate companion to HB 1691. The strike everything amendment only eliminates vicarious liability for motor vehicle rental companies for injuries or damages sustained by adult occupants of a motor vehicle

rented or leased from the company. It also sets liability limits for injuries and damages to other persons and property.

- a. **Definitions** - The strike everything amendment provides several definitions. A "motor vehicle rental business" is defined as a person or entity that rents or leases motor vehicles. A "rental vehicle" is defined as a motor vehicle rented or leased from a motor vehicle rental business. "Authorized driver" is defined as any person contractually authorized to operate the rental vehicle by the motor vehicle rental business.
 - b. **Age Limit** - The amendment eliminates liability to occupants 16 years of age or older who are injured by the actions of a person operating the rental vehicle unless there is a showing of negligence or intentional misconduct by the motor vehicle rental business. Persons under 16 would still be able to recover damages from vehicle rental companies.
 - c. **Non-occupants** - The amendment limits liability to non-occupants of the rental vehicle such as pedestrians, other motorists, and other passengers not in the rental car. It would impose caps of \$100,000 per person, and \$300,000 per incident for bodily injury, and \$50,000 for property damage, without a showing of negligence or intentional misconduct by the company or its employees.
 - d. **Unauthorized Operators** - The amendment eliminates liability for the actions of unauthorized operators unless there is a showing of negligence or intentional misconduct on the part of the motor vehicle rental business or its employees.
2. **Amendment #2** - Amendment #2 is an amendment to amendment #1.
 - a. **Modification to Age Limit** - Amendment #2 reinstates liability with respect to persons between 16 and 21 years of age.
 - b. **Insurance Requirements** - Amendment #2 imposes liability on vehicle rental companies when the vehicle operator fails to maintain insurance at specified levels. However, the vehicle rental company would only be liable for up to \$100,000 per person and \$300,000 per incident for non-economic damages, and \$50,000 for property damage, unless the vehicle rental company is shown to have been negligent or to have engaged in intentional misconduct.
 - c. **Unauthorized Operators** - Amendment #2, like amendment #1, prohibits suits by persons injured by an unauthorized driver, unless the vehicle rental company is shown to have been negligent or to have engaged in intentional misconduct.
 3. **Amendment #3** - Amendment #3 is an amendment to amendment #1. In cases where the lessee's insurance coverage is primary, it would require the vehicle rental company to include certain language in the lease.
 4. **Amendment #4** - Amendment #4 is an amendment to amendment #1. It requires lessees from foreign countries to maintain insurance coverage at specified levels.

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5. **Amendment #5** - Amendment #5 is an amendment to amendment #1. It provides a severability clause.

VII. SIGNATURES:

COMMITTEE ON CIVIL JUSTICE & CLAIMS:

Prepared by:

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