

STORAGE NAME: h1691s1.tr

DATE: February 16, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
TRANSPORTATION
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 1691

RELATING TO: Negligence/Motor Vehicles

SPONSOR(S): Committee on Transportation and Representative Flanagan and others.

STATUTE(S) AFFECTED: s. 627.7263, F.S.

COMPANION BILL(S): PCB CJCL 98-04

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

- (1) CIVIL JUSTICE & CLAIMS YEAS 5 NAYS 4
- (2) TRANSPORTATION YEAS 7 NAYS 1
- (3)
- (4)
- (5)

I. SUMMARY:

CS/HB 1691 creates s. 768.092, F.S. The bill limits the liability of motor vehicle owners and persons engaged in the business of renting or leasing motor vehicles for the tortious acts of the vehicle operator when there is no showing of fault by the vehicle owner or rental business. It would modify Florida's dangerous instrumentality doctrine, which currently imposes strict, vicarious liability upon the owners of motor vehicles for damages resulting from the negligent operation of such vehicles.

CS/HB 1691 primarily benefits vehicle owners and vehicle rental businesses, and has no 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 or 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).

Section 627.7263, F.S., provides that the insurance of the lessor of a vehicle which is rented or leased is primary unless the agreement between the lessor and the lessee provides otherwise. This section provides that if the lessee's insurance is to be primary, then the agreement must contain the following statement in at least 10 point type:

"The valid and collectible liability insurance and personal injury protection insurance of any authorized rental or leasing driver is primary for the limits of liability and personal injury protection coverage required by ss. 324.021(7) and 627.736, Florida Statutes."

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:

CS/HB 1691 modifies Florida's dangerous instrumentality doctrine as it applies to ownership of motor vehicles. Owners of motor vehicles and businesses which rent or lease motor vehicles would continue to be liable for damages resulting from operation of the vehicle when an injured plaintiff can show that the vehicle owner or lessor is at fault. However, when an injured plaintiff cannot demonstrate negligence or intentional misconduct by the owner or lessor of a car the bill has the following effects:

- Eliminates non-economic damages payable by the owner or lessor of a motor vehicle
- Limits economic damages payable by the vehicle owner or lessor at \$100,000 per person, \$300,000 per accident for bodily injury and \$50,000 for property damage.
- Requires all collateral sources to pay for damages first, before the vehicle owner or lessor would have to pay. Collateral sources would include:
 - Health or disability insurance; automobile insurance that provides health benefits or disability coverage; and any other similar insurance benefits, except life insurance benefits.
 - Any contract or agreement of any entity to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services.

- Any contractual or voluntary wage continuation plan provided by employers or by any other system intended to provide wages during a period of disability.
- Provides that rental car businesses must require renters with drivers' licenses from foreign countries to purchase insurance coverage from the rental car business. The limits of the coverage are \$200,000 per person, \$500,000 per accident for bodily injury and \$50,000 for property damage.

In addition, the bill provides that where the lessee's insurance coverage is to be primary, the rental or lease agreement must contain language notifying the person renting the vehicle that:

- The driver's insurance is primary;
- The vehicle rental business is not obligated to defend or indemnify the driver; and,
- The driver may be liable to the vehicle rental business for damages paid because of any accident caused by the driver.

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 limit the liability of a vehicle owner or a business engaged in leasing motor vehicles for damages resulting from accidents involving the vehicle. It would restrict causes of action brought against vehicle owners and lessors, unless the plaintiff alleges that the owner or lessor was negligent or engaged in intentional misconduct.

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

Under CS/HB 1691 rental vehicle businesses are responsible for requiring renters with drivers' licenses from foreign countries to purchase insurance coverage from the rental car business.

(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?

N/A.

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

N/A.

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

N/A.

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?

No.

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 regarding liability for damages available to lessors 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 owners and vehicle rental businesses. The bill also has the effect of preventing vehicle rental businesses from renting vehicles to drivers holding a foreign license unless certain insurance coverage is purchased.

5. Family Empowerment:

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

- (1) Who evaluates the family's needs?

N/A.

- (2) Who makes the decisions?

N/A.

- (3) Are private alternatives permitted?

N/A.

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

N/A.

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

N/A.

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?

N/A.

(2) service providers?

N/A.

(3) government employees/agencies?

N/A.

D. SECTION-BY-SECTION RESEARCH:

Section 1: Creates s. 768.092, F.S.; limits the liability of vehicle owners and persons engaged in the business of leasing or renting motor vehicles; requires all collateral sources to pay for damages first, before the vehicle owner or lessor would have to pay; and provides that rental car businesses shall require renters with drivers' licenses from foreign countries to purchase certain insurance coverage.

Section 2: Amends s. 627.7263, F.S.; provides that where the lessee's insurance coverage is to be primary, the rental or lease agreement must contain language notifying the person renting the vehicle that: the driver's insurance is primary; the vehicle rental business is not obligated to defend or indemnify the driver; and the driver may be liable to the vehicle rental business for damages paid because of any accident caused by the driver.

Section 3: Provides a severability clause.

Section 4: Provides that the act becomes effective upon becoming a law.

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:

CS/HB 1691 would limit the ability of some injured parties to recover certain damages from vehicle owners and vehicle rental businesses.

Persons having a foreign drivers' license would have to pay for insurance coverage prior to renting a motor vehicle.

2. Direct Private Sector Benefits:

CS/HB 1691 would allow vehicle owners and vehicle rental businesses to avoid liability and associated costs under certain circumstances. This could eventually lead to lower rental rates or higher profits for vehicle rental businesses.

Vehicle rental businesses could gain additional revenue from the sale of insurance coverage to drivers' licensed in a foreign countries.

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

None.

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:

Subsequent to consideration of this bill by the Committee on Transportation, it was noted that there appears to be a discrepancy between the "catchline" for s. 627.7263, F.S., and the text of the statute. The catchline of the section reads: "**627.7263 Rental and leasing driver's insurance to be primary; exception.**"; and the text of the section provides that the lessor's insurance is primary except when the agreement between the lessor and the lessee provides otherwise. This discrepancy could cause confusion as to the intent of the Legislature in amending this statute and be misleading to the public.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

- A. 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 accident 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 accident 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. It amends s. 627.7263, F.S., to provide that in cases where the lessee's insurance coverage is primary, the vehicle rental company is required 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.
 5. **Amendment #5** - Amendment #5 is an amendment to amendment #1. It provides a severability clause.
- B. The Committee on Transportation considered HB 1691 on February 3, 1998, and adopted a "strike everything" amendment which rewrote the bill as follows:
1. Eliminates non-economic damage liability for the owner of a motor vehicle or for vehicle rental businesses without a showing of fault on the part of the vehicle owner, or on the part of the rental business or its employees.
 2. Limits economic damages payable by the vehicle owner or rental business at \$100,000 per person, \$300,000 per accident for bodily injury and \$50,000 for property damage, without a showing of fault.
 3. Requires all collateral sources (such as other forms of insurance) to pay first, before the vehicle owner or rental business would have to pay any damages when there is no showing of fault.
 4. Provides that vehicle rental businesses must require renters with drivers' licenses from foreign countries to purchase certain insurance coverage from the rental business.
 5. Provides that where the lessee's insurance coverage is to be primary, the rental or lease agreement must contain certain notice language.
 6. Provides a severability clause.

The bill, as amended by the strike everything amendment, was reported favorably as a committee substitute.

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VII. SIGNATURES:

COMMITTEE ON CIVIL JUSTICE & CLAIMS:

Prepared by:

Legislative Research Director:

Charles R. Boning

AS REVISED BY THE COMMITTEE ON TRANSPORTATION:

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