

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1832
 SPONSOR: Senator Peaden
 SUBJECT: Negligence
 DATE: February 25, 2002 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------------|----------------|-----------|------------------|
| 1. | <u>Cibula</u> | <u>Maclure</u> | <u>CM</u> | <u>Favorable</u> |
| 2. | <u>Forgas</u> | <u>Johnson</u> | <u>JU</u> | <u>Favorable</u> |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

The bill provides that a “powered shopping cart” of the type generally used in a retail establishment by customers to transport the customer and his or her goods is not a dangerous instrumentality. As a result, courts will be prohibited from finding that powered shopping cart owners have vicarious liability for damages caused by the negligence of customers using the carts. Powered shopping cart owners will remain liable for damages caused by their own negligence.

This bill creates section 768.093, Florida Statutes.

II. Present Situation:

Dangerous Instrumentalities Doctrine

The common law dangerous instrumentalities doctrine is applicable in Florida. *See, e.g., Southern Cotton Oil Co. v. Anderson*, 86 So. 629 (Fla. 1920). A dangerous instrumentality is a motor vehicle that is not inherently dangerous in and of itself, but rather is dangerous only in its use and operation. *Zeitz v. Zac Smith & Co.*, 500 So. 2d. 706 (Fla. 1st DCA 1987). Under the dangerous instrumentality doctrine, the owner of a motor vehicle who gives authority to another to operate the motor vehicle has a nondelegable obligation to ensure its safe operation. *Aurbach v. Gallina*, 753 So. 2d 60, 62 (Fla. 2000). Accordingly, the dangerous instrumentality doctrine imposes strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another. *Id.*

The dangerous instrumentality doctrine seeks to provide greater financial responsibility to pay for the carnage on our roads. It 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, 1366 (Fla. 1990).

There are no Florida statutes or appellate level Florida case law determining whether powered shopping carts constitute dangerous instrumentalities. Further, a review has not found any statutes or case law from other jurisdictions finding whether a powered shopping cart is a dangerous instrumentality. However, Florida is one of the few jurisdictions upholding the dangerous instrumentality doctrine, requiring a higher standard of care not required in most other states. *Hoffman v. Ouellette*, 798 So. 2d 42, 45 (Fla. 4th DCA 2001).

In Florida, recognized dangerous instrumentalities include:

- motor vehicles in operation;¹
- an airplane in operation;²
- a 16,000-pound forklift with tractor tires in operation on a public highway;³
- a crane in operation;⁴
- a tow motor in operation on a public street near a harbor dock area;⁵
- a golf cart on a golf course;⁶ and
- vessels in operation.⁷

Florida courts have found that the following are not dangerous instrumentalities:

- a semi-trailer towed behind a truck;⁸
- an automobile towed behind a truck;⁹ and
- a road grader in operation at an airport.¹⁰

Exceptions to the dangerous instrumentality doctrine include:

- a conversion or theft of a motor vehicle prior to its negligent operation;¹¹
- a motor vehicle under the control of a repair shop or valet-parking service;¹² and

¹ See e.g., *Southern Cotton Oil Co. v. Anderson*, 86 So. 629 (Fla. 1920); *Reid v. Associated Engineering of Osceola, Inc.*, 295 So. 2d 125 (Fla. 4th DCA 1974).

² *Watts v. National Insurance Underwriters*, 540 F. Supp. 488, 489 (S.D. Fla. 1982).

³ *Harding v. Allen-Laux, Inc.*, 559 So. 2d 107 (Fla. 2nd DCA 1990).

⁴ *Halifax Paving, Inc., v. Scott & Jobalia Construction Co., Inc.*, 565 So. 2d 1346 (Fla. 1990).

⁵ *Eagle Stevedores, Inc., v. Thomas*, 145 So. 2d 551 (Fla. 3rd DCA 1962).

⁶ *Meister v. Fisher*, 462 So. 2d 1071 (Fla. 1984).

⁷ Section 327.32, F.S.

⁸ *Edwards v. ABC Transportation Co.*, 616 So. 2d 142 (Fla. 5th DCA 1993).

⁹ *Cheung v. Ryder Truck Rental, Inc.*, 595 So. 2d 82 (Fla. 5th DCA 1992).

¹⁰ *Canull v. Hodges*, 584 So. 2d 1095 (Fla. 1st DCA 1991).

¹¹ *Dockery v. Enterprise Rent-A-Car Co.*, 796 So. 2d 593, 599 (Fla. 4th DCA 2001).

¹² *Baptista v. Enterprise Leasing Co.*, 707 So. 2d 397 (Fla. 3rd DCA 1998).

- a motor vehicle that is subject to a long-term lease agreement in which certain insurance coverage is maintained.¹³

Legislative Authority

The Legislature has the authority to limit the application of the common law, including the dangerous instrumentality doctrine. *See, e.g., Major League Baseball v. Morsani*, 790 So. 2d 1071, 1077-1078 (Fla. 2001).

[Any] statutory exemption from liability under the dangerous instrumentality doctrine [will] be strictly construed because it is in derogation of the common law.

A court will presume that such a statute was not intended to alter the common law other than by what was clearly and plainly specified in the statute. Moreover, any party seeking to receive the benefits of a statute in derogation of the common law must demonstrate strict compliance with the statute's provisions.

Dearing v. General Motors Acceptance Corp., 758 So. 2d 1236, 1239 (Fla. 5th DCA 2000) (citations omitted).

Americans with Disabilities Act

Retail establishments constitute public accommodations according to section 301 of the Americans with Disabilities Act of 1990 (42 U.S.C. s. 1281). Individuals may not be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations in any place of public accommodation by the operator of a public accommodation. Section 302, Americans with Disabilities Act of 1990 (42 U.S.C. s. 12182). Despite clear mandates to make places of public accommodation accessible to the disabled, there is no explicit requirement within the Americans with Disabilities Act for places of public accommodation to provide customers with a powered shopping cart. However, in some cases the Americans with Disabilities Act may require a public accommodation to permit a customer to utilize a motor vehicle that has been held to be a dangerous instrumentality on its premises. *See PGA Tour, Inc., v. Martin*, 121 S. Ct. 1879 (2001) (requiring the PGA Tour to permit Casey Martin, a disabled professional golfer, to use a golf cart during a golf tournament); *Meister v. Fisher*, 462 So. 2d 1071 (Fla. 1984) (holding that a golf cart operating on a golf course is a dangerous instrumentality).

III. Effect of Proposed Changes:

The bill creates s. 768.093, F.S. Subsection (1) defines a "powered shopping cart" as an electrically powered assistive technology device which is generally used in a retail establishment by a customer, designed for the simultaneous transport of a person and of goods of any kind, and capable of speeds no greater than 2.5 miles per hour. Subsection (2) provides that a powered shopping cart, provided to a person gratuitously for use solely on the premises of the owner of

¹³ Section 324.021(9)(b), F.S.

the cart, shall not be considered a dangerous instrumentality. As a result, courts will be prohibited from finding that powered shopping cart owners have vicarious liability for damages caused by the negligence of customers using the carts. Powered shopping cart owners will remain liable for damages caused by their own negligence.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Powered shopping cart owners will not be held to have vicarious liability for damages caused by the negligence of customers using the carts. Powered shopping cart owners will remain liable for their own negligence.

Persons damaged solely by the negligence of customers operating powered shopping carts will be limited to seeking redress for their damages from the person operating the cart. However, such persons will not be prevented from seeking redress for their damages caused by the negligence of powered shopping cart owners.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
