

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill provides limitations on vicarious liability for certain rental car companies.

B. EFFECT OF PROPOSED CHANGES:

Vicarious Liability

Vicarious liability is a long-standing, common law doctrine imposing indirect legal responsibility on nontortfeasors. The nature of the relationship, whether it is employer-employee, principal-agent, or motor vehicle owner-operator, makes one party liable for the negligent acts of the other. The doctrine reflects a policy decision that a business should bear the cost of risks associated with its business activities.

An example of the application of vicarious liability is found in the Florida Supreme Court's 1920 decision of *Southern Cotton Oil Co. v. Anderson*, 80 Fla. 441, 86 So.629, (Fla. 1920). In that case, the Florida Supreme Court held that an automobile is a dangerous instrumentality and an automobile owner may be held liable for injuries caused by the negligence of someone entrusted to use the automobile. In *Susco Car Rental System v. Leonard*, 112 So.2d 832, (Fla. 1959), the Florida Supreme Court extended the dangerous instrumentality doctrine to lessors, thereby making them vicariously liable for the lessee's negligent operation of the automobile. The doctrine does not apply when the owner's vehicle has been stolen or the owner's vehicle is the subject of a bailment. *Susco*; See *Enterprise Leasing v. Alman*, 559 So.2d 214, (Fla. 1990).

The Legislature in 1999 passed a tort reform package in ch. 99-225, L.O.F., which, among numerous other provisions, provided limits of liability to owners of motor vehicles who lend his or her car to a person, and also provided limits of liability for rental car companies. The limits of liability were codified in s. 324.021, F.S.

Chapter 324, F.S., sets out, among many other topics, the financial responsibility of operators of motor vehicles in the state. This chapter includes definitions of certain terms including "motor vehicle," "proof of financial responsibility," "motor vehicle liability policy," and "owner/lessor." This section also provides the definition of a "rental company" as:

an entity that is engaged in the business of renting or leasing motor vehicles to the general public and that rents or leases a majority of its motor vehicles to persons with no direct or indirect affiliation with the rental company. The term also includes a motor vehicle dealer that provides temporary replacement vehicles to its customers for up to 10 days.¹

Under s. 324.021, F.S., the limits of liability for an owner/lessor (rental company) are described as:

The lessor, under an agreement to rent or lease a motor vehicle for a period of less than 1 year, shall be deemed the owner of the motor vehicle for the purpose of determining liability for the operation of the vehicle or the acts of the operator in connection therewith only up to \$100,000 per person and up to \$300,000 per incident for bodily injury and up to \$50,000 for property damage. If the lessee or the operator of the motor vehicle is uninsured or has any insurance with limits less than \$500,000 combined property

¹ Section 324.021(9)(c), F.S. (2004).

damage and bodily injury liability, the lessor shall be liable for up to an additional \$500,000 in economic damages only arising out of the use of the motor vehicle. The additional specified liability of the lessor for economic damages shall be reduced by amounts actually recovered from the lessee, from the operator, and from any insurance or self-insurance covering the lessee or operator. Nothing in this subparagraph shall be construed to affect the liability of the lessor for its own negligence.²

Florida courts have upheld the vicarious liability limitations or caps set forth in s.324.021(9)(b)2, F.S., because the courts have found that this statute does not deny a plaintiff the right of access to courts provided for under Article 1, Section 21 of the Florida Constitution.³

This bill expands the definition of the term “rental company” to include a holder of a motor vehicle title or an equity interest in a motor vehicle title if the title or equity interest is held pursuant to an asset-backed securitization of a fleet of motor vehicles used solely in the business of renting or leasing motor vehicles to the general public and under the dominion and control of a rental company in the operation of such rental company’s business. This change will allow a holder of title to qualify for the limitations on vicarious liability for rental companies in s. 324.021(9)(b), F.S.

The business model for rental companies is such that rental car companies control the motor vehicles in day-to-day business operations, but the title to the rental car fleet is held by a separate company pursuant to an asset backed securitization agreement. Hertz, Avis and Budget rental car companies have this type of arrangement. The bill will protect companies that hold title to, and thus actually own, the fleets of rental vehicles from liability under the same law that protects the rental companies, extending such liability protection to companies that do not actually rent vehicles on a day-to-day basis.

Proponents of the bill representing Avis state that there are three pending court cases in Florida where the title owner or the equity interest owner of rental vehicles is being sued in court based upon vicarious liability.⁴ All three cases are still in the discovery stages.⁵ According to proponents of the bill, because the companies that hold title to the fleets of rental vehicles are not rental companies as defined in s. 324.021(9)(c), F.S. and thus are not afforded the limits of liability provided in s. 324.021, F.S., if the titleholder of the fleet of rental vehicles has to pay damages due to litigation, then the rental car companies indemnify the titleholder of the fleet of rental vehicles.

C. SECTION DIRECTORY:

Section 1. Amends s. 324.021(9)(c), F.S., to provide that the term “rental company” includes a holder of a motor vehicle title or an equity interest in a motor vehicle title if the title or equity interest is held pursuant to an asset-backed securitization of a fleet of motor vehicles used solely in the business of renting or leasing motor vehicles to the general public and under the dominion and control of a rental company in the operation of such rental company’s business.

Section 2. Provides that the bill will be effective July 1, 2005.

² Section 324.021(9)(b)2., F.S. (2004).

³ *Sontay v. Avis Rent-A-Car Systems, Inc.*, 872 So.2d 316, 319 (Fla. 4th DCA 2004); *Budget Rent-A-Car Systems, Inc., v. Bennett*, 847 So.2d 579, 581 (Fla. 3rd DCA 2003)(citing the court’s holdings in *Enterprise Leasing Co. South Central, Inc., v. Hughes*, 833 So.2d 832, 838 (Fla. 1st DCA 2002).

⁴ Personal communication from representative of Avis on March 29, 2005 on file with the Insurance Committee and telephone conversation with a representative of Avis on April 5, 2005.

According to a representative of Hertz, Hertz does not have any similar suits pending in Florida.

⁵ Telephone conversation with a representative of Avis on April 5, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Office of Insurance Regulation reported that this bill will have no regulatory or fiscal impact on the office.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A company that is a holder of a motor vehicle title or equity interest in a motor vehicle title for a rental company may face fewer or less costly lawsuits because of the limits of liability that the holder will qualify for under the terms of this bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, nor does it reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor does it reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Florida courts have upheld the vicarious liability limitations in s. 324.021(9)(b)2., F.S., because the courts have found that this statute does not deny a plaintiff access to the courts.⁶

B. RULE-MAKING AUTHORITY:

N/A.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

⁶ *Sontay v. Avis Rent-A-Car Systems, Inc.*, 872 So. 2d 316, 319 (Fla. 4th DCA 2004); *Budget Rent-A-Car Systems, Inc. v. Bennett*, 847 So. 2d 579, 581 (Fla. 3rd DCA 2003)(citing the court's holdings in *Enterprise Leasing Co. South Central, Inc. v. Hughes*, 833 So. 2d 832, 838 (Fla. 1st DCA 2002).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 16, 2005, the Civil Justice Committee considered the bill and adopted one amendment. The amendment provides that the vicarious liability protections extended by the bill only applies if the fleets of motor vehicles are used solely in the business of renting or leasing motor vehicles to the general public. The bill, as amended, was reported favorably as a committee substitute.