

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 308

INTRODUCER: Senator Benacquisto

SUBJECT: Persons or Domestic Animals Unattended in Motor Vehicles

DATE: November 16, 2015 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Cellon | Cannon | CJ | Pre-meeting |
| 2. | | | JU | |
| 3. | | | RC | |

I. Summary:

SB 308 creates immunity from civil liability for property damage that may occur when a good samaritan is attempting to rescue a minor, elderly or disabled adult, or domesticated animal from a locked vehicle.

In order to qualify for such immunity, the good samaritan must:

- Determine that the vehicle is locked or there is no other reasonable method for the minor, elderly or disabled person, or animal to get out of the vehicle;
- Have a good faith belief that it is necessary to forcibly enter the vehicle because the minor, elderly or disabled person, or animal is in imminent danger of suffering harm if not immediately removed from the vehicle and, based upon the known circumstances, the belief is reasonable;
- Contact law enforcement, the fire department or 911 operator before forcibly entering the vehicle;
- Stay with the person or animal in a safe location until a law enforcement officer, firefighter, or other first responder arrives; and
- Use no more force than necessary under the circumstances to make forcible entry into the vehicle.

The bill amends the Good Samaritan Act found in s. 768.13, F.S., and is effective upon becoming a law.

II. Present Situation:

Current Law: The Good Samaritan Act

The "Good Samaritan Act" (GSA), codified in s. 768.13, F.S., provides immunity from civil liability for damages to any person who:

- Gratuitously and in good faith renders emergency care or treatment either in direct response to declared state emergencies or at the scene of an emergency situation, without objection of the injured victim, if that person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.¹
- Participates in emergency response activities of a community emergency response team if that person acts prudently and within the scope of his or her training.²
- Gratuitously and in good faith renders emergency care or treatment to an injured animal at the scene of an emergency if that person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.³

The GSA does not specifically address immunity from liability for property damage related to the forcible entry of a motor vehicle to rescue an endangered person or animal.

Children and Others Left Unattended in Vehicles

In situations where a child is left unattended in a vehicle, current law empowers only law enforcement officers to use whatever means are reasonably necessary to protect the minor child and to remove the child from the vehicle.⁴ However, a great number of tragic incidents involving children, the elderly, disabled adults, and animals trapped in hot cars have been avoided by the forcible entry into such vehicles by good samaritans.⁵

Good samaritans who forcibly enter motor vehicles for the purpose of rescuing an endangered person or animal do so at the risk of being held civilly liable for damages caused to the vehicle. Additionally, the motor vehicle owner may pursue a civil cause of action for trespass to personal property⁶ or conversion⁷ against the good samaritan unless the good samaritan's actions are protected under the "Good Samaritan Act."

¹ Section 768.13(2)(a), F.S.

² Section 768.13(2)(d), F.S.

³ Section 768.13(3), F.S.

⁴ 316.6135 Leaving children unattended or unsupervised in motor vehicles; penalty; authority of law enforcement officer.—

(1) A parent, legal guardian, or other person responsible for a child younger than 6 years of age may not leave the child unattended or unsupervised in a motor vehicle:

(a) For a period in excess of 15 minutes;

(b) For any period of time if the motor of the vehicle is running, the health of the child is in danger, or the child appears to be in distress. ...

(5) Any law enforcement officer who observes a child left unattended or unsupervised in a motor vehicle in violation of subsection (1) may use whatever means are reasonably necessary to protect the minor child and to remove the child from the vehicle.

⁵ See, e.g., *Hero Who Saved Toddler From Hot Car: I Was Just Doing the Right Thing*, FOX NEWS INSIDER

<http://insider.foxnews.com/2015/07/21/video-woman-smashes-window-save-toddler-locked-hot-car> (last visited October 15, 2015); Rachel Blidner, *Georgia Army Veteran Arrested For Smashing Window To Save Dog From Hot Car*, NEW YORK DAILY NEWS (May 12, 2015), <http://www.nydailynews.com/news/national/ga-man-charged-smashing-window-save-dog-hot-car-article-1.2219041>; and *3-year-old Toddler Saves Elderly Man Locked In Hot Car*, THE WEATHER CHANNEL (July 16, 2014), <http://www.weather.com/safety/heat/news/3-year-old-toddler-saves-elderly-man-locked-hot-car-20140716>.

⁶ Trespass to personal property, also known as trespass to chattels, is the intentional use of, or interference with, personal property which is in the possession of another without justification. The measure of damages is the value of the property at the time and place of the wrongful taking or removal. *Coddington v. Staab*, 716 So. 2d 850, 851(Fla. 4th DCA 1998).

⁷ Conversion is an unauthorized act that deprives another of his or her property permanently or for an indefinite time. A defendant may be found liable for conversion if he or she deprived the plaintiff of his or her property by means of such an unauthorized act. The essence of conversion is the exercise of wrongful dominion or control over property to the detriment of

The good samaritan who makes entry into another’s vehicle without permission could be charged with a criminal law violation such as trespass.⁸

Vehicular Heatstroke

Since 1998, more than 660 children have died from vehicular heatstroke⁹ in the United States.¹⁰ Seventy two of those deaths, including 4 in 2015, occurred in Florida.¹¹ Florida ranks second only behind Texas for the number of child vehicular stroke fatalities in the United States.¹² These tragic incidents are often caused when children are left unattended in a motor vehicle by a caregiver - intentionally or unintentionally - or become trapped while playing in an unlocked vehicle.¹³

Although outside temperatures may be mild or relatively cool, the interior temperatures of a motor vehicle can rise significantly and rapidly as the chart below shows.

| Estimated Vehicle Interior Air Temperature v. Elapsed Time | | | | | | |
|---|------------------------------------|-----------|-----------|-----------|-----------|-----------|
| Elapsed time | Outside Air Temperature (F) | | | | | |
| | 70 | 75 | 80 | 85 | 90 | 95 |
| 0 minutes | 70 | 75 | 80 | 85 | 90 | 95 |
| 10 minutes | 89 | 94 | 99 | 104 | 109 | 114 |
| 20 minutes | 99 | 104 | 109 | 114 | 119 | 124 |
| 30 minutes | 104 | 109 | 114 | 119 | 124 | 129 |
| 40 minutes | 108 | 113 | 118 | 123 | 128 | 133 |
| 50 minutes | 111 | 116 | 121 | 126 | 131 | 136 |
| 60 minutes | 113 | 118 | 123 | 128 | 133 | 138 |
| > 1 hour | 115 | 120 | 125 | 130 | 135 | 140 |

Courtesy Jan Null, CCM: Department of Geosciences, San Francisco State University

The effect of such rapid and extreme temperature rise on infants and small children is often deadly because a child’s body temperature heats up three to five times faster than that of an adult.¹⁴

the rights of the actual owner. It is interference with the legal rights that is incident to ownership, such as the right to possession. *See* 12 Fla. Jur. 2d *Conversion and Replevin* § 1 (2015).

⁸ See tampering or interfering with a motor vehicle under s. 860.17, F.S., or trespass in a conveyance under s. 810.08, F.S.

⁹ Hyperthermia is the condition of having an abnormally high body temperature caused by a failure of the thermoregulation mechanisms of the body to dissipate more heat than it absorbs from the environment. Heat fatigue, heat syncope (sudden dizziness after prolonged exposure to the heat), heat cramps, heat exhaustion, and heat stroke are commonly known forms of hyperthermia. NATIONAL INSTITUTES OF HEALTH, *Hyperthermia: too hot for your health*, <http://www.nih.gov/news/health/jun2012/nia-27.htm> (last visited November 5, 2015).

¹⁰ Jan Null, *Heatstroke Deaths of Children in Vehicles*, Department of Meteorology & Climate Science, San Jose State University, <http://noheatstroke.org/> (last visited November 5, 2015).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* In the period of 1998 through 2014, a total of 636 infants and children died of heatstroke inside hot motor vehicles. Just over half (338, 53%) of these were accidentally forgotten by a parent or other caregiver with 98 being the mother and 115 the father. See also *Sentences Vary When Kids Die in Hot Cars*, Allen G. Breed, copyright 2007, Associated Press.

¹⁴ Trisha Corinth, *Children left in cars can die of heatstroke in minutes*, AMERICAN ACADEMY OF PEDIATRICS <http://aapnews.aappublications.org/content/36/8/33.4.full> (last visited November 5, 2015).

In addition to fatalities involving children, seventeen seniors have died of vehicular heatstroke in Florida since 2010.¹⁵ Elderly adults, disabled individuals, and pets left alone in a motor vehicle are at particular risk of succumbing to vehicular heatstroke, as these groups of individuals may be unable to open car doors, to express discomfort verbally (or audibly, inside a closed car), or may suffer from existing health issues.¹⁶

III. Effect of Proposed Changes:

The bill adds a provision to the existing Good Samaritan Act, s. 768.13, F.S., to protect persons who are acting as good samaritans from civil liability for any damage resulting from their forcible entry into a motor vehicle to remove a minor, elderly or disabled person, or domesticated companion animal.

To act with immunity from civil liability, the person must:

- Determine that the vehicle is locked or there is no other reasonable method for the minor, elderly or disabled person, or animal to get out of the vehicle;
- Have a good faith belief that it is necessary to forcibly enter the vehicle because the minor, elderly or disabled person, or animal is in imminent danger of suffering harm if not immediately removed from the vehicle and, based upon the known circumstances, the belief is reasonable;
- Contact law enforcement, the fire department or 911 operator before forcibly entering the vehicle;
- Stay with the person or animal in a safe location until a law enforcement officer, firefighter, or other first responder arrives; and
- Use no more force than necessary under the circumstances to make forcible entry into the vehicle.

Elderly person and disabled person are defined for purposes of the bill by reference to the definitions in s. 825.101, F.S.:

- “Elderly person” means a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning, to the extent that the ability of the person to provide adequately for the person’s own care or protection is impaired.
- “Disabled adult” means a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person’s ability to perform the normal activities of daily living.¹⁷

Although not specified in the bill, the term “minor” is generally defined as any person who has not attained the age of 18 years.¹⁸

¹⁵ Dan Sweeney, *Bill shielding good samaritans passes committee*, SUN SENTINEL, October 20, 2015, <http://www.sun-sentinel.com/news/florida/fl-breaking-into-hot-cars-bill-20151020-story.html>.

¹⁶ See also <http://www.weather.com/safety/heat/news/police-dog-deaths-hot-car> and <http://www.weather.com/pets/news/dog-heat-stroke-20120420>.

¹⁷ Section 825.101(3) and (4), F.S.

¹⁸ Section 101(13), F.S.

“Domestic animal” is defined in the bill as a dog, cat, or other animal that is domesticated and kept as a household pet, but does not include livestock or other farm animals.

Good samaritans that force entry into a motor vehicle to rescue an endangered person or animal may be subject to criminal penalty for tampering or interfering with a motor vehicle under s. 860.17, F.S., or trespass in a conveyance under s. 810.08, F.S. The immunity provided by the bill does not appear to absolve a good samaritan of any potential criminal liability in such cases.

The bill is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill has an indeterminate¹⁹ financial impact on motor vehicle owners and insurance companies. Generally, “other than collision”²⁰ automobile insurance, also known as “comprehensive coverage” covers intentional damage to a motor vehicle by a third party. If insured, the motor vehicle owner is responsible for the cost of repair up to the amount

¹⁹The extent and cost of the damage caused by a good samaritan with immunity under the bill will depend upon the specific circumstances of the event as well as the age, make, and model of the motor vehicle. However, one of the most common methods of forcible entry into a motor vehicle in such cases, breaking a car window, typically involves damages of several hundred dollars. See SAFELITE AUTOGLASS, *Quick Quote*, <https://www.safelite.com/auto-glass-repair-replacement-cost/> (last visited November 6, 2015).

²⁰Coverage which is available under a personal automobile policy that provides a form of “all risks” protection for damage to a covered auto from perils other than collision. Losses include but are not limited to fire, theft or larceny, explosion or earthquake, windstorm, hail, water, flood, malicious mischief, vandalism, riot, contact with an animal, and glass breakage. This protection is sometimes referred to as “comprehensive coverage.” INSURANCE RISK MANAGEMENT INSTITUTE, <https://www.irmi.com/online/insurance-glossary/terms/o/other-than-collision-coverage.aspx> (last visited October 13, 2015).

of the policy deductible.²¹ The remaining cost is paid by the insurance company pursuant to the terms of the policy. If uninsured, the motor vehicle owner must pay the entire cost to repair any damage.

Under current law, a motor vehicle owner and an insurance company, as a subrogee²² to all of the insured's rights to recovery, may recover their respective costs from the party which caused the damage. The immunity provided by this bill will prevent the motor vehicle owner and the insurance company from recovering such costs.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 768.13 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

²¹ If the damage occurs to the windshield of the motor vehicle, the motor vehicle owner is not required to pay the deductible in order to obtain the benefits of comprehensive coverage. s. 627.7288, F.S.

²² Black's Law Dictionary (10th ed. 2014) defines subrogation as "the principle under which an insurer [the subrogee] that has paid a loss under an insurance policy is entitled to all the rights and remedies belonging to the insured [the subrogor] with respect to any loss covered by the policy."