STORAGE NAME: h0345.jo.doc
DATE: January 14, 2002

HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS

BILL #: HB 345

RELATING TO: Powered Shopping Carts / Negligence

SPONSOR(S): Representative Kottkamp & Others

TIED BILL(S): none

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

(1) JUDICIAL OVERSIGHT
(2) AGRICULTURE & CONSUMER AFFAIRS
(3) COUNCIL FOR SMARTER GOVERNMENT
(4)
(5)

I. SUMMARY:

General tort law provides that the operator of any instrumentality is liable in tort for the negligent operation of that instrumentality. The dangerous instrumentality doctrine is a tort law concept which provides that the owner of "dangerous instrumentality" is also liable in tort for all injuries caused by the negligent operation of that instrumentality. In practice, reference to the doctrine is unnecessary when the owner of the instrumentality is also the negligent operator of the instrumentality. The doctrine thus is primarily applicable to loaned or rented property. For example, a rental car company is liable in Florida for the negligent operation of its rental cars by its customers.

Increasing, retail stores have been providing powered shopping carts for use by disabled patrons. This bill defines "powered shopping cart", and provides that where a powered shopping cart is provided to a person gratuitously for use solely on the premises of the owner of such powered shopping cart, the dangerous instrumentality doctrine is not applicable.

This bill does not appear to have a fiscal impact on state or local government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No []	N/A [x]
2.	Lower Taxes	Yes []	No []	N/A [x]
3.	Individual Freedom	Yes []	No []	N/A [x]
4.	Personal Responsibility	Yes [x]	No []	N/A []
5.	Family Empowerment	Yes []	No []	N/A [x]

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

General tort law provides that the operator of any instrumentality is liable in tort for the negligent operation of that instrumentality. The dangerous instrumentality doctrine is a tort law concept which provides that the owner of "dangerous instrumentality" is also liable in tort for all injuries caused by the negligent operation of that instrumentality. In practice, reference to the doctrine is unnecessary when the owner of the instrumentality is also the negligent operator of the instrumentality. The doctrine thus is primarily applicable to loaned or rented property. For example, a rental car company is liable in Florida for the negligent operation of its rental cars by its customers.

At the dawn of the automobile era, when cars were still a luxury owned by few, the Florida Supreme Court held that an automobile was a dangerous instrumentality. See *Southern Cotton Oil Co. v. Anderson*, 80 Fla. 441, 86 So. 629 (Fla.1920). This holding, apparently unique to Florida, created then needed protection for the victims of automobile accidents in an era predating concepts of financial responsibility. See *Aurbach v. Gallina*, 753 So.2d 60, 62 (Fla. 2000). See also, *Allstate Indemnity Co. v. Wise*, 2001 WL 574907 (Fla. 2nd DCA 2001).

The dangerous instrumentality doctrine was first described by the Florida Supreme Court in *Southern Cotton Oil Co. v. Anderson*, 80 Fla. 441, 86 So. 629 (Fla.1920), as follows:

> The owners of automobiles in this state are bound to observe statutory regulations of their use, and assume liability commensurate with the dangers to which the owners or their agents subject others in using the automobiles on the public highway. The principles of the common law do not permit the owner of an instrumentality that is not dangerous per se, but is peculiarly dangerous in its operation, to authorize another to use such instrumentality on the public highways without imposing upon such owner liability for negligent use. The liability grows out of the obligation of the owner to have the vehicle, that is not inherently dangerous per se, but peculiarly dangerous in its use, properly operated when it is by his authority on the public highway.

In 2000, the Supreme Court affirmed the dangerous instrumentality doctrine in *Aurbach v. Gallina*, 753 So.2d 60 (Fla. 2000), stating:

> Adopted in 1920, Florida's 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. See *Southern Cotton Oil Co. v. Anderson*, 80 Fla. 441, 468, 86 So. 629, 637 (1920). As expressed in Southern Cotton Oil:

> [O]ne who authorizes and permits an instrumentality that is peculiarly dangerous in its operation to be used by another on the public highway is liable in damages for injuries to third persons caused by the negligent operation of such instrumentality on the highway by one so authorized by the owner.

Id. at 638. Under the dangerous instrumentality doctrine, an owner who gives authority to another to operate the owner's vehicle, by either express or implied consent, has a nondelegable obligation to ensure that the vehicle is operated safely. See *Hertz Corp. v. Jackson*, 617 So.2d 1051, 1053 (Fla.1993).

Seventy years after this Court issued its opinion in *Southern Cotton Oil*, Justice Grimes, writing for the Court, reaffirmed the viability of the dangerous instrumentality doctrine and the important policies that led to its adoption in Florida:

> 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. If Florida's traffic problems were sufficient to prompt its adoption in 1920, there is all the more reason for its application to today's high-speed travel upon crowded highways. The dangerous instrumentality doctrine is unique to Florida and has been applied with very few exceptions. *Kraemer v. General Motors Acceptance Corp.*, 572 So.2d 1363, 1365 (Fla.1990) (footnote omitted).

Thereafter, the Court extended vicarious liability to the owner of a vehicle acting as a lessor or bailor for the negligent operation of the vehicle by the lessee or bailee. See *Susco Car Rental System v. Leonard*, 112 So.2d 832, 835-36 (Fla.1959); *Lynch v. Walker*, 159 Fla. 188, 31 So.2d 268, 271 (1947), *overruled in part on other grounds* by *Meister v. Fisher*, 462 So.2d 1071 (Fla.1984). In *Lynch*, the Court held that when owners authorize other individuals to use their vehicles, they are liable for the damages that the other authorized drivers negligently cause to third parties. 31 So.2d at 271. Likewise, in *Susco Car Rental*, the Court extended the owner-lessor's vicarious liability further to situations where the vehicle was operated by one other than the authorized lessee in violation of the terms of the lease. 112 So.2d at 835-36; see also *Kraemer*, 572 So.2d at 1364-67 (owner of vehicle under long-term lease liable under the dangerous instrumentality doctrine for the negligence of driver of vehicle).

In addition to holding owners vicariously liable, the Court has also recognized the vicarious liability of lessees and bailees of motor vehicles who authorize other individuals to operate the motor vehicles. See *Frankel*, 69 So.2d at 888. However, whether an entity or individual is vicariously responsible as a bailee for the negligent operation of a motor vehicle may be a fact-based inquiry. See *Brown v. Goldberg, Rubenstein & Buckley, P.A.*, 455 So.2d 487, 488 (Fla. 2d DCA 1984). Thus, this

> Court's prior cases have recognized a variety of identifiable property interests that might give rise to vicarious liability under the dangerous instrumentality doctrine.

The dangerous instrumentality doctrine has been extended to a number of things other than just automobiles. A "dangerous instrumentality is anything that unless carefully guarded and carefully used is dangerous to others". *Crenshaw Brothers Produce Co. v. Harper*, 142 Fla. 27, 53, 194 So. 353, 363 (1940). Section 371.52, F.S., provides that vessels (boats) are a dangerous instrumentality. Other things that the courts have declared to be a dangerous instrumentality in Florida include:

- Automobiles. *Southern Cotton Oil Co. v. Anderson*, 80 Fla. 441, 86 So. 629 (Fla. 1920).
- Explosives and firearms. *Southern Cotton Oil Co. v. Anderson*, 80 Fla. 441, 86 So. 629 (Fla. 1920).
- Construction Equipment. *Harding v. Allen-Laux, Inc.*, 559 So.2d 107 (Fla. 2nd DCA 1990).
- Aircraft. *Fort Myers Airways, Inc. v. American States Ins. Co.*, 411 So.2d 883 (Fla. 2nd DCA 1982).
- Motorcycles. *Western Union Telegraph Co. v. Michel*, 120 Fla. 511, 163 So. 86 (Fla. 1935).
- Crocodiles. *Clements v. Wildlife Conservation Society*, 750 So.2d 715 (Fla. 5th DCA 2000).
- A pool of hot water. *Ed Ricke & Sons, Inc. v. Green*, 609 So.2d 504 (Fla. 1992).
- Golf carts. *Meister v. Fisher*, 462 So.2d 1071 (Fla. 1984).

Things that have been found not to be a dangerous instrumentality include:

- Bicycles. *Southern American Fire Insurance Co. v. Maxwell*, 274 So.2d 579 (Fla. 3rd DCA 1973).
- An "ox cart, horse and buggy, bicycle, or wheelbarrow". *Engleman v. Traeger*, 136 So. 527 (Fla. 1931).
- A lounge chair. *Matthews v. Lawnlite Co.*, 88 So.2d 299 (Fla. 1956).
- The "trailer portion of a tractor-trailer rig". *Pullman, Inc. v. Johnson*, 543 So.2d 231 (Fla. 4th DCA 1987).

Increasing, retail stores have been providing powered shopping carts for use by disabled patrons. A leading manufacturer of such carts estimates that 400,000 shoppers use such powered shopping carts every day.[1]

It is reported that disabled persons driving such powered shopping carts have negligently operated such carts, causing injury to other store patrons. Some of those injured patrons have sued the retail establishment that supplied the cart, alleging that the retail establishment is liable under the

[1] The Assembled Products Corporation of Rogers, Arkansas, manufactures that MartCart electric shopping cart. They claim to have their carts in "over 70% of the country's top 100 supermarket chains". From http://www.longtermcareprovider.com/storefronts/assembled.html.

dangerous instrumentality doctrine. Those injured patrons argue that finding a powered shopping cart to be a dangerous instrumentality is analogous to the finding that a golf cart is a dangerous instrumentality, citing to *Meister v. Fisher*, 462 So.2d 1071 (Fla. 1984).

C. EFFECT OF PROPOSED CHANGES:

This bill creates s. 768.093, F.S. This new section defines "powered shopping cart" to mean "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 1/2 miles per hour." This new section further provides that a powered shopping cart which is provided to a person gratuitously for use solely on the premises of the owner of such powered shopping cart is not a dangerous instrumentality.

The effective date is upon becoming a law.

This bill removes the dangerous instrumentality doctrine from use in lawsuits against the owner of a powered shopping cart. The owner of the powered shopping cart may still be liable under ordinary theories of negligence,[2] and the patron/operator of the cart may still be liable for patron's negligent operation of the cart.

D. SECTION-BY-SECTION ANALYSIS:

See "Present Situation" and "Effect of Proposed Changes".

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may perhaps lead to slightly lower liability insurance premiums to retail establishments.

[2] For example, in *Kolosky v. Winn Dixie Stores, Inc.*, 472 So.2d 891 (Fla. 4th DCA 1985), a grocery store was found partially liable for injuries caused when children who had been running through the grocery store pushing a standard shopping cart struck a store patron with the cart. The court found that the store's negligent act was failure to act against the children, who had been pushing the cart dangerously through the store for 30-45 minutes, running past numerous employees who did not attempt to restrain the children.

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 does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by: Staff Director:

Nathan L. Bond, J.D. Nathan L. Bond, J.D.