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 Banking and Insurance

BILL:	SB 976
INTRODUCER:	Senator Flores
SUBJECT:	Motor Vehicle Liability Insurance
DATE:	April 6, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Knudson	BI	**Pre-meeting**
2.			ATD	
3.			AP	

I. Summary:

SB 976 establishes a motor vehicle financial responsibility requirement that applies when a lessor rents or leases a motor vehicle for less than 1 year to a nonresident. The bill is intended to address the federal "Graves Amendment," which preempts any state law that would hold companies that rent or lease vehicles vicariously liable for harm to persons or property that results from the use, operation, or possession of the rented leased vehicle. The Graves Amendment, however, does not supersede state motor vehicle financial responsibility laws.

Under the bill, the lessor must require the nonresident lessee to have bodily injury liability coverage (BI) with limits of at least $100,000 per person and $300,000 per accident, and property damage coverage (PD) of at least $50,000. The lessor may provide the required coverage to the nonresident lessee and may charge the lessee for the coverage if the amount of the charge is separately detailed in the rental agreement. If use of the motor vehicle gives rise to liability and the motor vehicle is uninsured or fails to meet the requirements for nonresident lessees, the lessor is liable for up to $100,000 per person and $300,000 per incident for bodily injury damages, up to $50,000 for property damages, and up to an additional $500,000 in economic damages arising out of the use of the motor vehicle.

II. Present Situation:

Florida's Financial Responsibility Law

Florida's financial responsibility law requires proof of ability to pay monetary damages for bodily injury and property damage liability arising out of a motor vehicle accident or serious traffic violation.[1] The owner and operator of a motor vehicle need not demonstrate financial responsibility, i.e., obtain BI and PD coverages, until *after the accident*.[2] At that time, a driver's

[1] See Chapter 324, F.S.
[2] Section 324.011, F.S.

financial responsibility is proved by the furnishing of an active motor vehicle liability policy. The minimum amounts of liability coverages required are $10,000 in the event of bodily injury to, or death of, one person, $20,000 in the event of injury to, or death of, two or more persons, and $10,000 in the event of damage to property of others, or $30,000 combined BI/PD policy.[3] The driver's license and registration driver who fails to comply with the security requirement to maintain PIP and PD insurance coverage is subject to suspension.[4] A driver's license and registration may be reinstated by obtaining a liability policy and by paying a fee to the Department of Highway Safety and Motor Vehicles.[5]

Financial responsibility requirements are common. All states have financial responsibility laws which require persons involved in auto accidents (or serious traffic infractions) to furnish proof of BI and PD liability insurance. The minimum coverage amounts vary among the states.

Pre 1999 –Vicarious Liability for Dangerous Instrumentalities

Vicarious liability is a court-created doctrine that imposes indirect legal responsibility based upon the nature of the relationship between two parties. The party of authority can be held liable for the negligent acts of the other, even though the party of authority was not negligent itself. The doctrine has been described as typically reflecting a policy decision to allocate risks associated with a business enterprise.

In 1920, the Florida Supreme Court applied vicarious liability to the owners of motor vehicles in its decision of *Southern Cotton Oil Co. v. Anderson*.[6] 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. The decision first noted that automobiles are dangerous agencies, basing its determination on the large number of automobile accidents and government regulation of their use.[7] Given that the automobile is a dangerous instrumentality, the Court reasoned that vicarious liability should attach to the owner of an automobile just as the doctrine applies to other dangerous instrumentalities.[8]

In 1959, the Florida Supreme Court decided *Susco Car Rental System v. Leonard*, which extended the dangerous instrumentality doctrine to lessors, thereby making them vicariously liable for the lessee's negligent operation of the automobile.[9] The Florida Supreme Court held that when control of a rental automobile is voluntarily relinquished, the owner is vicariously liable for damages caused by an automobile accident unless theft or conversion of the automobile occurred.[10]

[3] Section 324.022, F.S.
[4] Section 324.0221(2), F.S.
[5] Section 324.0221(3), F.S.
[6] 86 So. 629 (Fla. 1920).
[7] 86 So. 629 at 634 (Fla. 1920).
[8] 86 So. 629 at 636 (Fla. 1920).
[9] 112 So.2d 832 (Fla. 1959).
[10] 112 So.2d 832 at 835, 836 (Fla. 1959).

1999 – Florida Limits Vicarious Liability

In August 1997, the Senate President appointed an 11-member Select Senate Committee on Litigation Reform to conduct hearings to assess the effects of the civil litigation environment on economic development and job-creation efforts in the state. The select committee was charged with ascertaining what civil litigation reforms, if any, would enhance the economic development climate of the state while continuing to preserve the rights of citizens to seek redress through the judicial system. The select committee conducted a series of public meetings from September 1997 through early 1998. Testimony was solicited on key litigation topics from a variety of civil legal practitioners, representatives of interests in the area of civil litigation, and representatives of a judicial task force created by the Supreme Court to monitor the Legislature's efforts on litigation reform. The select committee developed and discussed specific issues within each topic. In February 1998, the select committee issued its report and recommendations on litigation reform to the Senate President, which included corresponding draft legislation. Among the principal topics explored by the committee was vicarious liability.

In 1999 the Legislature limited the amount of damages that may be awarded under Florida's common law dangerous instrumentality doctrine.[11] The limit on the vicarious liability of rental companies[12] is in s. 324.021(9)(b)2., F.S. The statute applies when a motor vehicle owner rents or leases a motor vehicle for a period less than 1 year. The vicarious liability of the owner to a third party for injury or damage to a third party due to the operation of the vehicle by an operator or lessee is limited to $100,000 per person and $300,000 per occurrence for bodily injury and $50,000 for property damage. Vicarious liability is not limited by the statute if there is a showing of negligence or intentional misconduct on the part of the owner. If the lessee or operator of the motor vehicle has less than $500,000 combined property and bodily injury liability insurance, then the lessor is liable for an additional cap of $500,000 in economic damages which shall be reduced by any amount actually recovered from the lessee, the operator or insurer of the lessee or operator. A subsequent subparagraph[13] applies the same vicarious liability limitations to owners who are natural persons and who lend their vehicles to permissive users, including relatives who live in their household.

2006 – Federal Graves Amendment Preempts Vicarious Liability

Federal law, through the "Graves Amendment"[14] preempts any state law that would hold companies that rent or lease vehicles vicariously liable for harm to persons or property that results from the use, operation, or possession of the rented leased vehicle. The Graves Amendment does not apply if the owner or its affiliate is negligent or engages in criminal wrongdoing. The amendment also does not supersede state motor vehicle financial responsibility laws.

[11] Chapter 99-225, Laws of Florida (1999).
[12] A "rental company" is defined by s. 324.021(9)(c), F.S., as an entity engaged in the business of renting or leasing motor vehicles to the general public or leases a majority of its motor vehicles to persons with not direct or indirect affiliation with the rental company. The term includes a motor vehicle dealer that provides temporary replacement vehicles to its customers for up to 10 days.
[13] Section 324.021(9)(b)3., F.S.
[14] 49 U.S.C. 30106

2011 - Vargas v. Enterprise Leasing Company

In *Vargas v. Enterprise Leasing Company*, the Florida Supreme Court[15] held that the federal Graves Amendment preempts s. 324.021(9)(b)2., F.S. The Florida Supreme Court determined that s. 324.021(9)(b)2., F.S., is not a financial responsibility law but rather is a law that limits the vicarious liability of short-term motor vehicle lessors.[16] Accordingly, the state statute is not exempted from the Graves Amendment and is preempted. As a result, short term motor vehicle lessors, such as rental car companies, may not be held vicariously liable for damages caused by the motor vehicles they rent.[17]

III. Effect of Proposed Changes:

Section 1 amends s. 324.021, F.S., establishing a motor vehicle financial responsibility requirement that applies when a lessor rents or leases for less than 1 year a motor vehicle to a nonresident. The lessor must require the nonresident lessee to have bodily injury liability coverage with limits of at least $100,000 per person and $300,000 per accident, and property damage coverage of at least $50,000. The lessor may provide the required coverage to the nonresident lessee and may charge the lessee for the coverage if the amount of the charge is separately detailed in the rental agreement.

If use of the motor vehicle gives rise to liability and the motor vehicle is uninsured or fails to meet the requirements for nonresident lessees, the lessor is liable for up to $100,000 per person and $300,000 per incident for bodily injury damages, up to $50,000 for property damages, and up to an additional $500,000 in economic damages arising out of the use of the motor vehicle.

Section 2 of the bill states that the amendments made by this act are intended to clarify that Florida law imposes financial responsibility, as that term is used in 49 U.S.C. s. 30106(b), for lessors and nonresident lessees of a motor vehicle. This section specifies that the Graves Amendment will not apply to accidents giving rise to liability when a car is rented to a nonresident lessee.

Section 3 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[15] 60 So.3d 1037 (2011).
[16] 60 So.3d 1037 at 1042, 1043 (2011).
[17] Rental car companies remain liable for their own negligence or criminal wrongdoing that cause damages, as liability for such conduct is not eliminated by the Graves Amendment.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Application of an additional, higher motor vehicle financial responsibility to nonresident short term lessees may implicate the Privileges and Immunities Clause of the United States Constitution. The clause that the "Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." *See* Art. IV, s. 2, U.S. Const. The clause has been interpreted as a limitation on a state's ability to treat residents and non-residents differently in some situations. A court must consider whether the challenged statute burdens one of the privileges and immunities protected by the constitution.[18] Even if the statute does burden one of the privileges and immunities, it may be upheld if the state has a "substantial reason" for the difference in treatment of residents and non-residents.[19] Privileges protected by the clause must be fundamental.[20] The court has most often considered the clause in cases involving employment restrictions[21] and has upheld differing treatment in cases unrelated to employment.[22] If this bill were challenged as a violation of the privileges and immunities clause, the court would have to determine whether the imposition of different insurance requirements on residents and non-residents burdens a privilege protected by the clause. If the court finds that it does, it must determine whether there is a substantial reason for differing treatment.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill requires nonresidents who rent or lease for less than 1 year a motor vehicle to have bodily injury liability coverage of at least $100,000/$300,000 and property damage liability coverage of at least $50,000. This will require nonresidents who cannot provide proof of insurance in these amounts to purchase coverage from rental car companies.

The bill holds the lessor of a motor vehicle liable for damages caused by a vehicle rented or leased for less than 1 year to a nonresident if the nonresident is uninsured or underinsured. The liability attached to the lessor is up to $100,000 per person and $300,000 per incident for bodily injury, up to $50,000 in property damage, and an

[18] *See United Bldg. and Const. Trades Council of Camden County v. City of Camden*, 465 US 208, 218 (1984).
[19] *Id.* at 222.
[20] *See McBurney v. Young*, 133 S. Ct. 1709 (2013).
[21] *Id*. at 1715 (discussing employment cases where the Privileges and Immunities clauses was at issue).
[22] *Id*.; *See Baldwin v. Fish and Game Commission of Montana*, 436 US 371 (1978) (upholding statute imposing different fees for elk hunting on state residents and non-residents).

additional $500,000 in economic damages that arise out of the use of the motor vehicle rented or leased by the nonresident.

Persons injured by a motor vehicle rented or leased for less than 1 year by a nonresident will have a greater ability to effectively recover damages for bodily injury and property damage.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The proposed amendatory language on lines 102 through 108 appears duplicative of the amendatory language on lines 89-96.

The bill creates a financial responsibility requirement for leases and auto rentals that last less than 60 days. Auto rental companies may be unable to sell coverage that lasts longer than 60 days because under s. 626.321(1)(d)2., F.S., the limited license for motor vehicle rental insurance prohibits the sale of a policy with a term in excess of 60 days. Additionally, such a policy may only be renewed once.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 324.021 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.