

1                                   A bill to be entitled  
 2           An act relating to the dangerous instrumentality  
 3           doctrine; creating s. 768.092, F.S.; providing  
 4           definitions; specifying factors to be considered by a  
 5           court in determining, as a matter of law, whether an  
 6           instrumentality is a dangerous instrumentality;  
 7           providing that special mobile equipment for which a  
 8           lessee maintains specified insurance is not a  
 9           dangerous instrumentality; providing that a lessor may  
 10          be liable for damages in specified circumstances;  
 11          providing that a person is not liable for any injury,  
 12          death, or damage caused by a dangerous instrumentality  
 13          unless the person had direct custody and control over  
 14          the instrumentality when the injury, death, or damage  
 15          occurred; providing an effective date.

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 17 Be It Enacted by the Legislature of the State of Florida:

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 19           Section 1. Section 768.092, Florida Statutes, is created  
 20 to read:

21           768.092 Dangerous instrumentality doctrine.—

22           (1) As used in this section, the term:

23           (a) "Lease agreement" means a written agreement for the  
 24 rental or lease of special mobile equipment, regardless of  
 25 whether the lease is for a fixed term or with an option to

26 | purchase.

27 |       (b) "Lessee" means a person who rents or leases special  
 28 | mobile equipment from the lessor pursuant to a lease agreement.

29 |       (c) "Lessor" means a person who, pursuant to a lease  
 30 | agreement, offers or arranges for the rental or lease of special  
 31 | mobile equipment by the lessee.

32 |       (d) "Public property" has the same meaning as in s.  
 33 | 705.101. The term also includes privately owned property where  
 34 | members of the public at large are welcomed as business  
 35 | invitees.

36 |       (e) "Special mobile equipment" has the same meaning as in  
 37 | s. 316.003.

38 |       (2) Whether an instrumentality is a dangerous  
 39 | instrumentality for purposes of imposing vicarious liability  
 40 | upon the owner shall be decided by the court as a matter of law.  
 41 | To determine whether an instrumentality is a dangerous  
 42 | instrumentality, the court shall consider the following factors,  
 43 | and no single factor shall be dispositive:

44 |           (a) Whether the instrumentality is a motor vehicle.

45 |           (b) Whether the instrumentality is frequently operated  
 46 | within or upon public property.

47 |           (c) Whether the injury, death, or damage caused in the  
 48 | particular case occurred within or upon public property.

49 |           (d) Whether the instrumentality poses extraordinary  
 50 | dangers not posed by an ordinary instrumentality.

51 (e) To what extent the Legislature has regulated the  
52 instrumentality.

53 (f) Whether the instrumentality frequently causes death or  
54 destruction.

55 (3) Notwithstanding subsection (2), any special mobile  
56 equipment that causes injury, death, or damage while leased  
57 under a written lease agreement that requires the lessee to  
58 maintain insurance coverage that contains limits not less than  
59 \$100,000/\$300,000 bodily injury liability and \$50,000 property  
60 damage liability or not less than \$500,000 combined property  
61 damage liability and bodily injury liability is not a dangerous  
62 instrumentality. However, the lessor of special mobile equipment  
63 may be liable for damages that:

64 (a) Occurred while the lessor's employee or contractor was  
65 operating, maintaining, or using the equipment; or

66 (b) Resulted from the lessor's gross negligence or  
67 criminal wrongdoing.

68 (4) Notwithstanding subsection (2), a person may not be  
69 held liable for any injury, death, or damage caused by a  
70 dangerous instrumentality unless the person had direct custody  
71 and control over the instrumentality at the time of the injury,  
72 death, or damage.

73 Section 2. This act shall take effect July 1, 2019.