

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 an effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Section 768.092, Florida Statutes, is created
16 to read:

17 768.092 Dangerous instrumentality doctrine.—

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

19 (a) "Lease agreement" means a written agreement for the
20 rental or lease of special mobile equipment, regardless of
21 whether the lease is for a fixed term or with an option to
22 purchase.

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

25 (c) "Lessor" means a person who, pursuant to a lease

26 agreement, offers or arranges for the rental or lease of special
27 mobile equipment by the lessee.

28 (d) "Public property" has the same meaning as in s.
29 705.101. The term also includes privately owned property where
30 members of the public at large are welcomed as business
31 invitees.

32 (e) "Special mobile equipment" has the same meaning as in
33 s. 316.003.

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

40 (a) Whether the instrumentality is a motor vehicle.

41 (b) Whether the instrumentality is frequently operated
42 within or upon public property.

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

45 (d) Whether the instrumentality poses extraordinary
46 dangers not posed by an ordinary instrumentality.

47 (e) To what extent the Legislature has regulated the
48 instrumentality.

49 (f) Whether the instrumentality frequently causes death or
50 destruction.

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

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

62 (b) Resulted from the lessor's gross negligence or
63 criminal wrongdoing.

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