.0The 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 Judiciary

BILL: SB 1388

INTRODUCER: Senator Wright

SUBJECT: Immunity of Motor Vehicle Dealer Leasing and Rental Affiliates

DATE: April 3, 2023 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Vickers	TR	**Favorable**
2.	Bond	Cibula	JU	**Favorable**
3.			RC	

I. Summary:

SB 1388 defines the terms "control" and "motor vehicle dealer's leasing or rental affiliate" for purposes of provisions relating to immunity from vicarious liability of a motor vehicle dealer, or of a motor vehicle dealer's leasing or rental affiliate, who provides a temporary replacement vehicle to a service customer. The effect of these changes is to limit the scope of the statutory exemption related to motor vehicle dealer loaner cars.

The fiscal impact is indeterminate. However, definitional specificity may serve to curtail litigation.

The bill takes effect July 1, 2023.

II. Present Situation:

The Dangerous Instrumentality Doctrine

The court-created dangerous instrumentality doctrine holds an owner strictly liable for injuries caused by another person's negligent use of the owner's property. Specifically, when the owner entrusts a dangerous instrumentality to another person, the owner is responsible for damages caused by the other person. Whether the owner was negligent or at fault is irrelevant. The rationale for holding an innocent person responsible for such damages is that the owner of an instrumentality capable of causing death or destruction should be liable for damages caused by anyone operating it with the owner's consent.[1]

The dangerous instrumentality doctrine originated in English common law and was adopted by the Florida Supreme Court in 1920 in *Southern Cotton Oil Company v. Anderson*, 86 So. 629

[1] *Roman v. Bogle*, 113 So. 3d 1011, 1016 (Fla. 5th DCA 2013).

(1920).[2] The Court acknowledged the doctrine was originally limited to fire, water, and poisons, but had expanded over time:

> It is true that, in the early development of this very salutary doctrine, the dangerous agencies consisted largely of fire, flood, water, and poisons. In Dixon v. Bell . . . Lord Ellenborough extended the doctrine to include loaded firearms. With the discovery of high explosives, they were put in the same class. As conditions changed it was extended to include other objects that common knowledge and common experience proved to be as potent sources of danger as those embraced in the earlier classifications. The underlying principle was not changed, but other agencies were included in the classification. Among them are locomotives, push cars, street cars, etc., and it is now well settled that these come within the class of dangerous agencies, and the liability of the master is determined by the rule applicable to them. The reasons for putting these agencies in the class of dangerous instrumentalities apply with equal, if not greater, force to automobiles.[3]

In a 1990 Florida Supreme Court case, a man leased a car from a lessor and then loaned the leased car to a friend. The friend caused a motor vehicle crash in the leased car, killing another person. The victim's estate sued the lessor of the car directly. The Court held that the lessor was liable for the death of the victim under the dangerous instrumentality doctrine, even though the lessor did not cause the accident. The Court acknowledged that the dangerous instrumentality doctrine was "unique to Florida" but justified the doctrine as necessary "to provide greater financial responsibility to pay for the carnage on our roads."[4]

Once a court decides that an item is a dangerous instrumentality, an owner of such instrumentality is liable for damages the instrumentality causes, even if the owner was not in control of the instrumentality at the time. Whether an item is a dangerous instrumentality is a question of law depending on several factors, none of which alone is dispositive, including:
- Whether the instrumentality is a motor vehicle.[5]
- Whether the instrumentality is frequently operated near the public, regardless of whether the incident at issue occurred on public property.

[2] *Id.* at 1014.
[3] *S. Cotton Oil Company v. Anderson*, 86 So. 629, 631 (Fla. 1920).
[4] *Kraemer v. General Motors Acceptance Corp.*, 572 So. 2d 1363, 1365 (Fla. 1990). The Second District Court of Appeal has acknowledged that the dangerous instrumentality doctrine creates "real and perceived inequities" and "has drawn its fair share of criticism." *Fischer v. Alessandrini*, 907 So. 2d 569, 570 (Fla. 2d DCA 2005).
[5] A motor vehicle is a "wheeled conveyance that does not run on rails and is self-propelled, especially one powered by an internal combustion engine, a battery or fuel-cell, or a combination of these." *Newton v. Caterpillar Financial Servs. Corp.*, 253 So. 3d 1054, 1056 (Fla. 2018) (quoting Black's Law Dictionary (10th ed. 2014)). For purposes of Chapter 324, F.S., Florida's financial responsibility law, "motor vehicle" means every self-propelled vehicle that is designed and required to be licensed for use upon a highway, including trailers and semitrailers designed for use with such vehicles, except traction engines, road rollers, farm tractors, power shovels, and well drillers, and every vehicle that is propelled by electric power obtained from overhead wires but not operated upon rails, but not including any personal delivery device, mobile carrier, bicycle, electric bicycle, or moped. Section 324.021(1), F.S.

- The instrumentality's peculiar dangers relative to other objects that courts have found to be dangerous instrumentalities.
- The extent to which the Legislature has regulated the instrumentality.[6]

If the court decides an item is a dangerous instrumentality, the owner is liable regardless of the facts of the particular case. Over time, Florida courts have expanded the applicability of the doctrine to include automobiles,[7] trucks, buses,[8] tow-motors,[9] golf carts, and other motorized vehicles.[10]

The dangerous instrumentality doctrine has been limited in Florida law with respect to a motor vehicle dealer or a motor vehicle dealer's leasing or rental affiliate that provides a temporary replacement vehicle to a motor vehicle dealer's service customer.[11]

Legislation enacted in 2020[12] provides that a motor vehicle dealer, or a motor vehicle dealer's leasing or rental affiliate, that provides a temporary replacement vehicle at no charge or at a reasonable daily charge to a service customer whose vehicle is being held for repair, service, or adjustment by the motor vehicle dealer is immune from any cause of action. The dealer is also not liable, vicariously or directly, under general law solely by reason of being the owner of the temporary replacement vehicle for harm to persons or property that arises out of the use or operation of the temporary replacement vehicle by any person during the period the temporary replacement vehicle has been entrusted to the motor vehicle dealer's service customer. However, this only applies if there is no negligence or criminal wrongdoing on the part of the motor vehicle owner, or its leasing or rental affiliate.[13]

The enacted legislation also provides that a motor vehicle dealer, or a motor vehicle dealer's leasing or rental affiliate, that gives possession, control, or use of a temporary replacement vehicle to a motor vehicle dealer's service customer may not be adjudged liable in a civil proceeding absent negligence or criminal wrongdoing on the part of the motor vehicle dealer. This only applies if the motor vehicle dealer or the motor vehicle dealer's leasing or rental affiliate executes a written rental or use agreement and obtains from the person receiving the temporary replacement vehicle a copy of the person's driver license and insurance information reflecting at least the minimum motor vehicle insurance coverage required in this state.[14]

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[6] *Newton*, 253 So. 3d at 1056.
[7] *S. Cotton Oil*, 86 So. at 629.
[8] *Meister v. Fisher*, 462 So. 2d 1071, 1072 (Fla. 1984).
[9] *Eagle Stevedores, Inc. v. Thomas*, 145 So. 2d 551 (Fla. 3d DCA 1962) (where plaintiff was struck in a dock area by a "tow-motor," a small motor-operated vehicle, dangerous instrumentality doctrine applied).
[10] *Meister*, 462 So. 2d at 1072.
[11] The term "service customer" does not include an agent or a principal of a motor vehicle dealer or a motor vehicle dealer's leasing or rental affiliate, and does not include an employee of a motor vehicle dealer or a motor vehicle dealer's leasing or rental affiliate unless the employee was provided a temporary replacement vehicle: While the employee's personal vehicle was being held for repair, service, or adjustment by the motor vehicle dealer; in the same manner as other customers who are provided a temporary replacement vehicle while the customer's vehicle is being held for repair, service, or adjustment; and the employee was not acting within the course and scope of his or her employment. Section 324.021(9)(c)3.a., F.S.
[12] Chapter 2020-108, Laws of Fla.
[13] Section 324.021(9)(c)3.a., F.S.
[14] Section 324.021(9)(c)3.b., F.S.

The 2020 legislation did not, however, define the term "motor vehicle dealer's leasing or rental affiliate."

The Graves Amendment

In 2005, Congress passed 49 U.S.C. § 30106, commonly known as the Graves Amendment, to prohibit states from imposing vicarious liability on car rental companies.[15] Vicarious liability is "liability that a supervisory party (such as an employer) bears for the actionable conduct of a subordinate (such as an employee) based on the relationship between the two parties."[16] To benefit from the Graves Amendment, the "owner" must be "engaged in the business of renting or leasing motor vehicles." A vehicle "owner" may be the titleholder, lessee, or bailee[17] of the vehicle.[18]

The Graves Amendment, however, does not protect a rental company from its own negligence or criminal wrongdoing. If an injury is caused by a rental company's negligent or criminal act, the rental company could still be directly liable for its actions or inactions, even if an accident occurs while a renter is driving the vehicle.[19] Federal law supersedes Florida's dangerous instrumentality doctrine when a rental car company rents a car to a driver who negligently injures another person.[20]

In 2011, the Florida Supreme Court held that as it relates to rental car companies the Graves Amendment specifically preempts Florida law[21] and relieves rental car companies, while engaged in the trade or business of renting or leasing motor vehicles, from vicarious liability for harm caused by the driver.[22]

In 2019, the Fourth District Court of Appeal, relying on the Supreme Court's analysis in *Vargas*, held that the Graves Amendment applies to a motor vehicle dealer that provides a customer with a temporary replacement vehicle.[23]

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[15] Auto Rental News, The Graves Amendment: Challenges, Interpretations, Answers, https://www.autorentalnews.com/156611/the-graves-amendment-challenges-interpretations-and-answers (last visited February 7, 2020).
[16] Black's Law Dictionary 427 (3rd pocket ed. 2006).
[17] According to legaldictionary.net, the elements of a bailment include delivery, acceptance, and consideration. The property must be delivered by the bailor to the actual care and/or control of the bailee. The bailee must knowingly accept possession and/or control of the property (because a bailment is a type of contract, knowledge and acceptance of the bailment terms are essential). However, unlike a typical contract in which both parties receive something of value, only one party need receive something of value in a bailment. So, *e.g.,* when one party loans the use of his car to another, a bailment is created, even though the bailor receives nothing of value. *See* legaldictionary.net, Bailment - Definition, Examples, Cases, Processes (legaldictionary.net) (last visited March 21, 2023).
[18] Auto Rental News, *supra* note 15.
[19] *Id.*
[20] 49 U.S.C. § 30106.
[21] Section 324.021(9)(b)2., F.S.
[22] *Vargas v. Enterprise Leasing Co.*, 60 So. 3d 1037 (Fla. 2011).
[23] *Collins v. Auto Partners V, LLC*, 276 So. 3d 817 (Fla. 4th DCA 2019).

III. Effect of Proposed Changes:

The bill amends s. 324.021(9)(c), F.S., to clarify the legislation enacted in 2020 by defining the terms "motor vehicle dealer's leasing or rental affiliate" and "control."

The bill defines "motor vehicle dealer's leasing or rental affiliate" to mean a "person"[24] that directly or indirectly controls, is controlled by, or is under common control with the motor vehicle dealer.

"Control" is defined as the power to direct the management and policies of a person whether through ownership of voting securities[25] or otherwise.

If a person does not directly or indirectly control the motor vehicle dealer (by virtue of the person having the power to direct the management and policies of the dealer), is not controlled by the motor vehicle dealer (by virtue of the dealer having the power to direct the management and policies of the person), or is not under common control with the motor vehicle dealer (by virtue of another entity having the power to direct the management and policies of the person *and* the motor vehicle dealer), that person is not the motor vehicle dealer's leasing or rental affiliate.

The bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

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[24] The word "person" includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations. Section 1.01(3), F.S.

[25] An owner of stock in a company owns either voting securities or non-voting securities. Most "common" stock ownership gives the owner one vote for each share of stock owned. Companies can also divide common stock into different classes; *e.g.,* one class might confer more than one vote per share or no voting rights at all. "Preferred" stock provides the owner with ownership in the company, and a fixed dividend, but usually no voting rights. If a company does pay dividends (which it doesn't have to pay if it lacks the ability to do so), owners of preferred stock are paid before owners of common stock. *See* finance.zacks.com, What Is an Owner of Voting Securities? (zacks.com) (last visited March 21, 2023).

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate. However, by clarifying the definition of "motor vehicle dealer's leasing or rental affiliate," the bill may result in reduced litigation.

C. Government Sector Impact:

Indeterminate. However, by clarifying the definition of "motor vehicle dealer's leasing or rental affiliate," the bill may result in reduced litigation.

VI. Technical Deficiencies:

None.

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.

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