HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1143 Immunity of Motor Vehicle Dealer Leasing and Rental Affiliates
SPONSOR(S): Smith
TIED BILLS: **IDEN./SIM. BILLS:** SB 1388

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	15 Y, 0 N	Mawn	Jones
2) Regulatory Reform & Economic Development Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The common law dangerous instrumentality doctrine holds an owner strictly liable for injuries caused by another person's negligent use of the owner's property where such property is deemed a dangerous instrumentality. Though the doctrine was originally limited in application to fire, water, and poisons, the Florida Supreme Court has expanded its application over time to other instrumentalities, including motor vehicles.

In 2005, Congress enacted the "Graves Amendment," which specifies that a motor vehicle owner that rents or leases the vehicle to another is not liable under the law of any State or political subdivision thereof, by reason of being the vehicle's owner, for harm to persons or property that results or arises out of the vehicle's use, operation, or possession during the period of the rental or lease, if:

- The owner is engaged in the trade or business of renting or leasing motor vehicles; and
- There is no negligence or criminal wrongdoing on the part of the owner.

Further, in 2020, the Florida Legislature enacted s. 324.021, F.S., which provides that a motor vehicle dealer, or a "motor vehicle dealer's leasing or rental affiliate," that provides a temporary loaner vehicle to a customer whose vehicle is being held for service, repairs, or adjustment by the dealer is immune from liability for harm to persons or property that arises out of the use or operation of such vehicle by any person during the period the vehicle has been entrusted to the service customer if:

- There is no negligence or criminal wrongdoing on the part of the dealer or its affiliate; and
- The dealership or its affiliate executed a written rental or use agreement and obtains from the customer receiving the loaner vehicle a copy of the customer's driver's license and insurance information reflecting that such customer holds at least the minimum motor vehicle insurance required by Florida law.

Recently, however, questions have arisen over the meaning of the phrase "motor vehicle dealer's leasing or rental affiliate," as this term is undefined in current law, and some plaintiffs have argued that the term includes a rental car company that, at the request of a dealership, rents or otherwise loans a vehicle to a customer who takes his or her car in to the dealership for service or repairs. However, rental car companies do not typically obtain copies of the driver's license and motor vehicle insurance information of the persons to whom they rent or otherwise loan vehicles.

HB 1143 defines "motor vehicle dealer's leasing or rental affiliate" to mean a person that directly or indirectly controls, is controlled by, or is under common control with the motor vehicle dealer. The bill defines "control," in turn, as the power to direct the management policies of a person whether through ownership of voting securities or otherwise.

The bill does not appear to have a fiscal impact on state or local governments. The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Dangerous Instrumentality Doctrine

The common law dangerous instrumentality doctrine holds an owner strictly liable for injuries caused by another person's negligent use of the owner's property where such property is deemed a dangerous instrumentality. Specifically, under this doctrine, when the owner entrusts a dangerous instrumentality to another person, the owner is held responsible for damages caused by the other person while using the instrumentality, regardless of whether the owner was himself or herself negligent or otherwise at fault for the damages.[1]

The dangerous instrumentality doctrine originated in English common law and was adopted by the Florida Supreme Court (Court) in 1920 in *Southern Cotton Oil Company v. Anderson*.[2] The Court acknowledged that the doctrine was originally limited to fire, water, and poisons, but had expanded over time to include other instrumentalities, including motor vehicles

> 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]

The doctrine's application to motor vehicles was exemplified in *Kraemer v. General Motors Acceptance Corporation*.[4] In that case, a man leased a vehicle from a motor vehicle dealership for a four-year term, and then later loaned such vehicle to a friend during the term of the lease, which friend caused an accident that resulted in the death of a third person. The victim's estate sued the dealership directly, arguing that it was liable under the dangerous instrumentality doctrine as the owner of the vehicle, even though the dealership had no control over the vehicle at the time of the accident. The Court ultimately held that the dealership was liable for the victim's death under the dangerous instrumentality doctrine, acknowledging that the doctrine was "unique to Florida" but justified "to provide greater financial responsibility to pay for the carnage on our roads."[5]

[1] *Roman v. Bogle*, 113 So. 3d 1011, 1016 (Fla. 5th DCA 2013).
[2] 86 So. 629 (1920).
[3] *Id.* at 631.
[4] 572 So. 2d 1363 (Fla. 1990).
[5] *Id. at* 1365.

Immunity for Rental Car Companies

In 2005, Congress enacted 49 U.S. Code § 30106, known as the "Graves Amendment." This provision specifies that a motor vehicle owner that rents or leases the vehicle to another is not liable under the law of any State or political subdivision thereof, by reason of being the vehicle's owner, for harm to persons or property that results or arises out of the vehicle's use, operation, or possession during the period of the rental or lease, if:

- The owner is engaged in the trade or business of renting or leasing motor vehicles; and
- There is no negligence or criminal wrongdoing on the part of the owner.

Practically speaking, the Graves Amendment provided immunity to rental car companies for accidents caused by customers renting vehicles from such companies where the rental car company's negligence or criminal acts did not cause or contribute to the accident. Negligence which might give rise to a liability claim against a rental car company includes failing to inspect the driver's license of the person renting a vehicle from the company and ensuring that such license is valid and unexpired as required by Florida law.[6] The rental car company must also record the vehicle renter's driver's license number and the place where the license was issued, which record must be open to inspection by any police officer.[7] However, Florida law does not require a rental car company to determine whether or not a person renting a vehicle from the company carries a valid motor vehicle insurance policy, as Florida law does not require such a person to carry such a policy.[8]

Immunity for Motor Vehicle Dealer Leasing and Rental Associates

Motor vehicle dealers sometimes offer complimentary "loaner" vehicles to customers who take their motor vehicles to the dealership for service or repairs, leaving the customer without alternative forms of transportation until their own vehicles are returned to them. However, because this arrangement was not covered by the Graves Amendment, questions arose over the application of the dangerous instrumentality doctrine to a situation in which a customer operating a loaner vehicle causes an accident.[9] To provide certainty in this area, in 2020, the Florida Legislature enacted s. 324.021, F.S., which provides that a motor vehicle dealer, or a "motor vehicle dealer's leasing or rental affiliate," that provides a temporary loaner vehicle to a service customer whose vehicle is being held for service, repairs, or adjustment by the dealer is immune from liability for harm to persons or property that arises out of the use or operation of such vehicle by any person during the period the vehicle has been entrusted to the service customer if:

- There is no negligence or criminal wrongdoing on the part of the dealer or its leasing or rental affiliate; and
- The dealership or its leasing or rental affiliate executed a written rental or use agreement and obtains from the customer receiving the loaner vehicle a copy of the customer's driver's license and insurance information reflecting that such customer holds at least the minimum motor vehicle insurance required by Florida law.[10]

Recently, however, questions have arisen over the meaning of the phrase "motor vehicle dealer's leasing or rental affiliate," as this term is undefined in current law. The questions arose specifically in situations in which a motor vehicle dealership accepts a customer's vehicle for services or repairs, but instead of providing a loaner vehicle directly, puts the customer in contact with a rental car company, which company then rents or otherwise loans the customer a vehicle to use until the services or repairs

[6] S. 322.38, F.S.
[7] *Id.*
[8] However, some rental car companies may require proof of insurance under the terms of their own rental contracts. Florida law also requires a rental car company to carry a motor vehicle insurance policy on each of its vehicles, which policy must meet the minimum coverage amounts required under Florida law.
[9] *See, e.g.*, *Romero v. Fields Motorcars of Fla., Inc.*, 333 So. 3d 746 (Fla. 5th DCA 2022) (holding that "a transaction involving the provision of a complimentary loaner vehicle is not a rental or lease transaction under the Graves Amendment where no money or other consideration is identified by the parties at the time of the transaction; where the purported lessee was not made aware he was entering into a lease; and where there is no indicia of a lease agreement").
[10] Ch. 20-108, Laws of Fla.

are complete.[11] Some plaintiffs injured in accidents involving vehicles rented or otherwise loaned in this way have argued that the rental car company acted as the motor vehicle dealer's leasing or rental affiliate, and, thus, must comply with s. 324.021, F.S., to avail itself of an immunity provision.[12] However, this provision requires that motor vehicle dealers and their leasing or rental affiliates obtain copies of the customer's driver's license and motor vehicle insurance information, while Florida law and the Graves Amendment contain no similar requirement for rental car companies; thus, obtaining such copies is not a practice Florida rental car companies typically employ.

Effect of Proposed Changes

HB 1143 defines "motor vehicle dealer's leasing or rental affiliate" to mean a person that directly or indirectly controls, is controlled by, or is under common control with the motor vehicle dealer. In turn, the bill defines "control" to mean the power to direct the management and policies of a person whether through ownership of voting securities or otherwise. Practically speaking, this would exempt rental car companies existing independently from motor vehicle dealers from the definition of "motor vehicle dealer's leasing or rental affiliate," even where such companies rent or otherwise loan vehicles to customers taking their vehicles to a dealership for service or repairs:

- At the request of a dealership; or
- Without exchanging money or other consideration with the customer.

Thus, the Graves Amendment would provide any source of immunity the rental car company may have in such circumstances, and such a company would, therefore, not be required to maintain a copy of the customer's driver's license and motor vehicle insurance information to avail itself of the immunity provision.

B. SECTION DIRECTORY:

Section 1: Amends s. 324.021, F.S., relating to definitions; minimum insurance required.
Section 2: Provides an effective date of July 1, 2023.

II. 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.

[11] *See, e.g.*, *Rivera v. Martinez*, Amended Complaint and Demand for Jury Trial (Filed June 2, 2022, in the Circuit Court for the 15th Judicial Circuit in and for Palm Beach County, Florida).
[12] *Id.*

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive economic impact on a rental car company that rents or otherwise loans vehicles to customers who take their personal vehicles to a dealership for services or repairs by clarifying the immunity provision that may shield the company should such a customer cause an accident while operating the rented or loaned vehicle.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES