

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 the lessor of special mobile equipment
 8 for which a lessee maintains specified insurance is
 9 not liable for acts by lessee or lessee's agents or
 10 employees; providing an effective date.

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

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

16 768.092 Dangerous instrumentality doctrine.—

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

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

23 (b) "Lessee" means a person who, pursuant to a lease
 24 agreement, acquires the right to possession and use of special
 25 mobile equipment from a lessor pursuant to a lease agreement.

26 Unless the context clearly indicates otherwise, the term
 27 includes a sublessee.

28 (c) "Lessor" means a person who, pursuant to a lease
 29 agreement, transfers the right to possession and use of special
 30 mobile equipment to a lessee. Unless the context clearly
 31 indicates otherwise, the term includes a sublessor.

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 invitees.

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

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

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

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

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

48 (d) Whether the instrumentality poses extraordinary
 49 dangers not posed by instrumentalities not otherwise determined
 50 to be dangerous instrumentalities.

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

53 (f) Whether the instrumentality poses a significant risk
54 of death or destruction when used improperly.

55 (3) Notwithstanding subsection (2), the lessor of any
56 special mobile equipment that causes injury, death, or damage
57 while leased under a written lease agreement with documented
58 proof of insurance coverage that contains limits of not less
59 than \$100,000 per person and up to \$300,000 per incident for
60 bodily injury liability and up to \$50,000 for property damage
61 liability or not less than \$500,000 for combined property damage
62 liability and bodily injury liability is not liable for acts of
63 the lessee or the lessee's agent or employee in connection with
64 the rental or lease, including any bodily injury, death, or
65 damage resulting from the operation, maintenance, or use of the
66 special mobile equipment by the lessee or the lessee's agent or
67 employee. The failure of the lessee to maintain insurance
68 coverage required by the lease agreement does not impose
69 liability on the lessor.

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