

**The 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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 308

INTRODUCER: Judiciary Committee; Criminal Justice Committee; and Senator Benacquisto

SUBJECT: Unattended Persons and Animals in Motor Vehicles

DATE: January 13, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Maida</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u>Cellon</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 308 creates immunity from civil liability for property damage that may occur when an individual attempts to rescue a minor, elderly or disabled adult, or domestic animal from a motor vehicle.

In order to qualify for such immunity, the individual must:

- Determine that the vehicle is locked or there is no other reasonable method for the minor, elderly or disabled person, or animal to get out of the vehicle without help;
- Have a good faith and reasonable belief, based upon the known circumstances, that it is necessary to enter the vehicle because the minor, vulnerable adult, or animal is in imminent danger of suffering harm;
- Contact a law enforcement agency or 911 before entering the vehicle or immediately thereafter;
- Use no more force than necessary to make entry into the vehicle and remove the person or animal; and
- Stay with the person or animal in a safe location, in reasonable proximity to the vehicle, until a law enforcement officer or other first responder arrives.

## II. Present Situation:

### Current Law: The Good Samaritan Act

The “Good Samaritan Act,” codified in s. 768.13, F.S., provides immunity from civil liability for damages to any person who:

- Gratuitously and in good faith renders emergency care or treatment either in direct response to declared state emergencies or at the scene of an emergency situation, without objection of the injured victim, if that person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.<sup>1</sup>
- Participates in emergency response activities of a community emergency response team if that person acts prudently and within the scope of his or her training.<sup>2</sup>
- Gratuitously and in good faith renders emergency care or treatment to an injured animal at the scene of an emergency if that person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.<sup>3</sup>

The Good Samaritan Act, however, does not specifically address immunity from liability for property damage related to the forcible entry of a motor vehicle to rescue an endangered person or animal.

### Legal Risks to Good Samaritans

Under current law, only law enforcement officers may use all reasonable means to protect minors and remove them from vehicles.<sup>4</sup> Ordinary citizens lack this authority. In fact, individuals who forcibly enter motor vehicles for the purpose of rescuing an endangered person or animal do so at the risk of being held civilly liable for damages caused to the vehicle. Additionally, the motor vehicle owner may pursue a civil cause of action for trespass to personal property<sup>5</sup> or conversion<sup>6</sup> against the good Samaritan unless the good Samaritan’s actions are protected under the “Good Samaritan Act.” Further, the good Samaritan who enters another’s vehicle without permission could be charged with a criminal law violation such as trespass.<sup>7</sup>

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<sup>1</sup> Section 768.13(2)(a), F.S.

<sup>2</sup> Section 768.13(2)(d), F.S.

<sup>3</sup> Section 768.13(3), F.S.

<sup>4</sup> See s. 316.6135, F.S.

<sup>5</sup> Trespass to personal property, also known as trespass to chattels, is the intentional use of, or interference with, personal property which is in the possession of another without justification. The measure of damages is the value of the property at the time and place of the wrongful taking or removal. *Coddington v. Staab*, 716 So. 2d 850, 851 (Fla. 4th DCA 1998).

<sup>6</sup> Conversion is an unauthorized act that deprives another of his or her property permanently or for an indefinite time. A defendant may be found liable for conversion if he or she deprived the plaintiff of his or her property by means of such an unauthorized act. The essence of conversion is the exercise of wrongful dominion or control over property to the detriment of the rights of the actual owner. It is interference with the legal rights that is incident to ownership, such as the right to possession. See *Fogade v. ENB Revocable Trust*, 263 F.3d 1274 (11th Cir. 2001); *Compania de Elaborados de Café v. Cardinal Capital Management, Inc.*, 401 F. Supp. 2d 1270 (S.D. Fla. 2003); *U.S. v. Bailey*, 288 F. Supp. 2d 1261 (M.D. Fla. 2003), *aff’d*, 419 F.3d 1208 (11th Cir. 2005).

<sup>7</sup> See tampering or interfering with a motor vehicle under s. 860.17, F.S., or trespass in a conveyance under s. 810.08, F.S.

**Vehicular Heatstroke**

Since 1998, more than 660 children have died from vehicular heatstroke<sup>8</sup> in the United States.<sup>9</sup> Seventy two of those deaths, including 4 in 2015, occurred in Florida.<sup>10</sup> Florida ranks second only behind Texas for the number of child vehicular stroke fatalities in the United States.<sup>11</sup> These tragic incidents are often caused when children are left unattended in a motor vehicle by a caregiver - intentionally or unintentionally - or become trapped while playing in an unlocked vehicle.<sup>12</sup>

Although outside temperatures may be mild or relatively cool, the interior temperatures of a motor vehicle can rise significantly and rapidly as the chart below shows.

<b>Estimated Vehicle Interior Air Temperature v. Elapsed Time</b>						
<b>Elapsed time</b>	<b>Outside Air Temperature (F)</b>					
	<b>70</b>	<b>75</b>	<b>80</b>	<b>85</b>	<b>90</b>	<b>95</b>
0 minutes	70	75	80	85	90	95
10 minutes	89	94	99	104	109	114
20 minutes	99	104	109	114	119	124
30 minutes	104	109	114	119	124	129
40 minutes	108	113	118	123	128	133
50 minutes	111	116	121	126	131	136
60 minutes	113	118	123	128	133	138
> 1 hour	115	120	125	130	135	140

Courtesy Jan Null, CCM: Department of Geosciences, San Francisco State University

The effect of such rapid and extreme temperature rise on infants and small children is often deadly because a child’s body temperature heats up three to five times faster than that of an adult.<sup>13</sup>

In addition to fatalities involving children, 17 seniors have died of vehicular heatstroke in Florida since 2010.<sup>14</sup> Elderly adults, disabled individuals, and pets left alone in a motor vehicle are at particular risk of succumbing to vehicular heatstroke, as these groups of individuals may be

<sup>8</sup> Hyperthermia is the condition of having an abnormally high body temperature caused by a failure of the thermoregulation mechanisms of the body to dissipate more heat than it absorbs from the environment. Heat fatigue, heat syncope (sudden dizziness after prolonged exposure to the heat), heat cramps, heat exhaustion, and heat stroke are commonly known forms of hyperthermia. NATIONAL INSTITUTES OF HEALTH, *Hyperthermia: too hot for your health* (June 27, 2012), <http://www.nih.gov/news/health/jun2012/nia-27.htm>.

<sup>9</sup> Jan Null, *Heatstroke Deaths of Children in Vehicles*, Department of Meteorology & Climate Science, San Jose State University, <http://noheatstroke.org> (last visited November 5, 2015).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* From 1998 through 2014, a total of 636 infants and children died of heatstroke inside motor vehicles. 338, or 53%, of these were forgotten by a parent or other caregiver. Of these 338, 98 were linked to the mother and 115 to the father. *See also* Alan G. Breed, *Sentences Vary When Kids Die in Hot Cars*, THE WASHINGTON POST, July 29, 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/07/28/AR2007072800644.html>.

<sup>13</sup> Trisha Corinth, *Children left in cars can die of heatstroke in minutes*, AMERICAN ACADEMY OF PEDIATRICS (July 27, 2015), available at: <http://aapnews.aapublications.org/content/36/8/33.4.full>.

<sup>14</sup> Dan Sweeney, *Bill shielding good Samaritans passes committee*, SUN SENTINEL, Oct. 20, 2015, <http://www.sun-sentinel.com/news/florida/fl-breaking-into-hot-cars-bill-20151020-story.html>.

unable to open car doors or express discomfort verbally (or audibly, inside a closed car). They also may suffer from existing health issues.<sup>15</sup>

### III. Effect of Proposed Changes:

The bill creates s. 768.139, F.S., to protect persons who are acting as good Samaritans from civil liability for any damage resulting from their entry into a motor vehicle to remove a minor, elderly or disabled person, or domestic animal.

To act with immunity from civil liability, the person must:

- Determine that the vehicle is locked or there is no other reasonable method for the minor, elderly or disabled person, or animal to get out of the vehicle without help;
- Have a good faith and reasonable belief, based upon the known circumstances, that it is necessary to enter the vehicle because the minor, vulnerable adult, or animal is in imminent danger of suffering harm;
- Contact a law enforcement agency before entering the vehicle or immediately thereafter;
- Use no more force than necessary to make entry into the vehicle and remove the person or animal; and
- Stay with the person or animal in a safe location, in reasonable proximity to the vehicle, until a law enforcement officer or other first responder arrives.

The bill provides definitions for the following terms used in the bill:

- “Domestic animal” is a dog, cat, or other animal that is domesticated and may be kept as a household pet, but not livestock or other farm animals.
- “Vulnerable person” means:
  - A vulnerable adult.<sup>16</sup>
  - A minor.

Although not specified in the bill, the term “minor” is generally defined as any person who has not attained the age of 18 years.<sup>17</sup> “Motor vehicle” is defined by reference to s. 320.01, F.S.<sup>18</sup>

<sup>15</sup> See also Weather.com, What the Heat Can Mean to Your Dog – Heat Stroke Can Be Fatal. Findout! (Jan. 25, 2015), <http://www.weather.com/safety/heat/news/police-dog-deaths-hot-car> and Weather.com, 11 Police Dogs Have Died of Heat Exhaustion This Summer; 9 We Left in Hot Patrol Cars (Aug. 17, 2015), <http://www.weather.com/pets/news/dog-heat-stroke-20120420>.

<sup>16</sup> Section 415.102, F.S., defines the term “vulnerable adult” as:  
a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.

<sup>17</sup> Section 101(13), F.S.

<sup>18</sup> Section 320.01(1), F.S., defines the term “motor vehicle” as:

(a) An automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated on the roads of this state, used to transport persons or property, and propelled by power other than muscular power, but the term does not include traction engines, road rollers, special mobile equipment as defined in s. 316.003(48), vehicles that run only upon a track, bicycles, swamp buggies, or mopeds.

(b) A recreational vehicle-type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle.

Good Samaritans who enter a motor vehicle to rescue an endangered person or animal may be subject to criminal penalty for tampering or interfering with a motor vehicle under s. 860.17, F.S., or trespass in a conveyance under s. 810.08, F.S. The immunity provided by the bill does not appear to absolve a good Samaritan of any potential criminal liability in such cases.

The bill is effective upon becoming a law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

This bill has an indeterminate<sup>19</sup> financial impact on motor vehicle owners and insurance companies. Generally, “other than collision”<sup>20</sup> automobile insurance, also known as “comprehensive coverage,” covers intentional damage to a motor vehicle by a third party. If insured, the motor vehicle owner is responsible for the cost of repair up to the amount of the policy deductible.<sup>21</sup> The remaining cost is paid by the insurance company pursuant

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<sup>19</sup>The extent and cost of the damage caused by a good Samaritan who is immune under the bill will depend upon the specific circumstances of the event as well as the age, make, and model of the motor vehicle. However, one of the most common methods of forcible entry into a motor vehicle in such cases, breaking a car window, typically involves damages of several hundred dollars. See Safelite AutoGlass, Quick Quote, <https://www.safelite.com/auto-glass-repair-replacement-cost/> (last visited November 6, 2015).

<sup>20</sup> This form of coverage, available under a personal automobile policy, provides a form of “all risks” protection for damage to a covered auto from perils other than collision. Losses include, but are not limited to, fire, theft or larceny, explosion or earthquake, windstorm, hail, water, flood, malicious mischief, vandalism, riot, contact with an animal, and glass breakage. This protection is sometimes referred to as “comprehensive coverage.” Insurance Risk Management Institute, other-than-collision coverable <https://www.irmi.com/online/insurance-glossary/terms/o/other-than-collision-coverage.aspx> (last visited October 13, 2015).

<sup>21</sup> If the damage occurs to the windshield of the motor vehicle, the motor vehicle owner is not required to pay the deductible in order to obtain the benefits of comprehensive coverage. Section 627.7288, F.S.

to the terms of the policy. If uninsured, the motor vehicle owner must pay the entire cost to repair any damage.

Under current law, a motor vehicle owner and an insurance company, as a subrogee<sup>22</sup> to all of the insured's rights to recovery, may recover his or her respective costs from the party that caused the damage. The immunity provided by this bill prevents the motor vehicle owner and the insurance company from recovering such costs.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill lists five criteria that determine whether a person is entitled to immunity from civil liability for damages to a motor vehicle caused during the attempted rescue of a domestic animal or vulnerable adult. The specific wording of the bill implies but does not directly state that the person must satisfy all five criteria to be immune. If the Legislature intends to require a person to satisfy all five criteria, it may wish to revise the bill to more clearly reflect that intent.

However, a rescuer who is not familiar with the five criteria set forth in the bill may be at risk for damages for actions taken in good faith to rescue a vulnerable person or domestic animal. As such, the Legislature may wish to consider revising the bill to state that the immunity granted by the bill applies to a person who substantially complies with the five criteria or otherwise acts in good faith and reasonably under the circumstances.

**VIII. Statutes Affected:**

This bill creates section 768.139 of the Florida Statutes.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS by Judiciary on December 1, 2015:**

Revises the definition of “Vulnerable person” to the definition contained in s. 435.02, F.S. Additionally, the committee substitute extends to a good Samaritan the option of calling 911 in lieu of contacting law enforcement in order to preserve his or her immunity.

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<sup>22</sup> Black's Law Dictionary (10th ed. 2014) defines subrogation as “the principle under which an insurer [the subrogee] that has paid a loss under an insurance policy is entitled to all the rights and remedies belonging to the insured [the subrogor] with respect to any loss covered by the policy.”

**CS by Criminal Justice on November 17, 2015:**

Reorganizes the substance of the bill and places it in a new section of the Florida Statutes.

**B. Amendments:**

None.

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

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