

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 131 Unattended Persons and Animals in Motor Vehicles

SPONSOR(S): Civil Justice Subcommittee; Young; Moskowitz and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 308

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Robinson	Bond
2) Judiciary Committee		Robinson	Havlicak

SUMMARY ANALYSIS

Since 2010, 16 children and 17 senior citizens have died from vehicular heatstroke in Florida after being left unattended in a motor vehicle. Nationally, Florida ranks second only behind Texas for the number of child vehicular stroke fatalities in the United States.

A “good samaritan” that enters a motor vehicle in such emergency situations for the purpose of removing a vulnerable person or domestic animal is immune from civil liability for damages arising out of any care or treatment rendered. However, under current law, the good samaritan may be civilly liable for entering or damaging the motor vehicle.

The bill provides immunity from civil liability for property damage resulting from the entry, by force or otherwise, of a motor vehicle by a good samaritan to remove a vulnerable person or domestic animal under certain circumstances. The bill defines a “vulnerable person” as a minor, disabled adult, or elderly person.

The bill does not appear to have a fiscal impact on state or local government.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Vehicular Heatstroke

Since 1998, more than 660 children have died from vehicular heatstroke¹ in the United States.² Seventy-two of those deaths, including 4 in 2015, occurred in Florida.³ Florida ranks second only behind Texas for the number of child vehicular stroke fatalities in the United States.⁴ Further, it is estimated that annually hundreds of children experience varying degrees of vehicle related heat illness throughout the state. These tragic incidents are often caused when children are left unattended in a hot motor vehicle by a caregiver - intentionally or unintentionally - or become trapped while playing in an unlocked vehicle.

Although outside temperatures may be mild or relatively cool, the interior temperatures of a motor vehicle can rise significantly and rapidly as shown in **Figure 1**.

Figure 1: Estimated Vehicle Interior Air Temperature v. Elapsed Time

Elapsed time	Outside Air Temperature (F)					
	70	75	80	85	90	95
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 due to the ability of a child's body temperature to heat up three to five times faster than that of an adult.⁵

In addition to fatalities involving children, 17 senior citizens have also died of vehicular heatstroke in Florida since 2010.⁶ 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 unable to open car doors, to express discomfort verbally (or audibly, inside a closed car), or may suffer from existing health issues.

Current law empowers only law enforcement officers to "use whatever means are reasonably necessary to protect [a] minor child and to remove [an unattended] child from [a] vehicle" in such

¹ 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 heatstroke are commonly known forms of hyperthermia. NATIONAL INSTITUTES OF HEALTH, *Hyperthermia: too hot for your health*, <http://www.nih.gov/news/health/jun2012/nia-27.htm> (last visited October 15, 2015).

² Jan Null, *Heatstroke Deaths of Children in Vehicles*, DEPARTMENT OF METEOROLOGY & CLIMATE SCIENCE, SAN JOSE STATE UNIVERSITY, <http://noheatstroke.org/> (last visited October 15, 2015).

³ Id.

⁴ Id.

⁵ Trisha Corinth, *Children left in cars can die of heatstroke in minutes*, AMERICAN ACADEMY OF PEDIATRICS <http://aapnews.aappublications.org/content/36/8/33.4.full> (last visited October 15, 2015).

⁶ Dan Sweeney, *Bill Shielding good samaritans passes committee*, SUN SENTINEL, October 20, 2015, <http://www.sun-sentinel.com/news/florida/fl-breaking-into-hot-cars-bill-20151020-story.html>.

cases.⁷ However, a great number of tragic incidents involving children, the elderly, disabled adults, and domestic animals trapped in hot cars have been avoided by the forcible entry into such vehicles by good samaritans.⁸ Good samaritans who forcibly enter motor vehicles for the purpose of rescuing a vulnerable person or domestic animal do so at the risk of being held civilly liable for entering and damaging the vehicle. The motor vehicle owner may pursue a cause of action for trespass to personal property⁹ or conversion¹⁰ against the good samaritan unless the good samaritan's actions are protected under the "Good Samaritan Act" or common law.

Good Samaritan Act

The "Good Samaritan Act" (GSA), 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.¹¹
- Participates in emergency response activities of a community emergency response team if that person acts reasonably prudent and within the scope of his or her training.¹²
- 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.¹³

The GSA does not specifically address immunity from liability for property damage related to the rendering of emergency care or treatment, such as the forcible entry of a motor vehicle to rescue an vulnerable person or domestic animal.

Common Law Defense

It is generally recognized that a person is privileged to enter and remain on the property of another if that entry is, or reasonably appears to be, necessary to prevent harm to a person or property.¹⁴ Substantially the same rules apply with respect to trespass to chattels.¹⁵ The extent of the privilege depends upon whether such entry and interference constitutes a "public" or "private" necessity. The defense of "necessity" acts as complete immunity for trespass and any resulting damage if the good samaritan reasonably believes it is necessary to avert an imminent public disaster.¹⁶ "Public necessity" cases tend to involve danger on a wide scale and affecting many people, such as a conflagration or pestilence.¹⁷ If no public interest is involved and a good samaritan acts merely to protect a private

⁷ s. 316.6135(5), F.S.

⁸ See, e.g., *Hero Who Saved Toddler From Hot Car: I Was Just Doing the Right Thing*, FOX NEWS INSIDER <http://insider.foxnews.com/2015/07/21/video-woman-smashes-window-save-toddler-locked-hot-car> (last visited October 15, 2015); Rachelle Blidner, *Georgia Army Veteran Arrested For Smashing Window To Save Dog From Hot Car*, NEW YORK DAILY NEWS (May 12, 2015), <http://www.nydailynews.com/news/national/ga-man-charged-smashing-window-save-dog-hot-car-article-1.2219041>; and *3-year-old Toddler Saves Elderly Man Locked In Hot Car*, THE WEATHER CHANNEL (July 16, 2014), <http://www.weather.com/safety/heat/news/3-year-old-toddler-saves-elderly-man-locked-hot-car-20140716>.

⁹ 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).

¹⁰ 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 12 Fla. Jur. 2d *Conversion and Replevin* § 1 (2015).

¹¹ s. 768.13(2)(a), F.S.

¹² s. 768.13(2)(d), F.S.

¹³ s. 768.13(3), F.S.

¹⁴ 75 Am. Jur. 2d, *Trespass*, § 69

¹⁵ *Id.*

¹⁶ PROSSER & KEETON ON TORTS, pg. 146-47. § 24 (5th ed. 1984).

¹⁷ The number of persons who must be endangered in order to create a public necessity has not been determined by the courts but the defense was used as a complete bar to recovery in cases where a good samaritan dynamited a house to

interest, the affirmative defense of “necessity” is limited.¹⁸ There is no liability for the technical tort of trespass, but the good samaritan is subject to liability for any actual harm done in the exercise of the privilege.¹⁹

The rescue of a single vulnerable person or domestic animal from a motor vehicle may not rise to the level of a “public necessity” and thereby shield a good samaritan from liability for entering and damaging the vehicle. Additionally, even if justified as an act of “private necessity,” the good samaritan may receive immunity for entering the vehicle, but remain liable for any actual damage caused by the rescue.

Effect of Proposed Changes

The bill creates s. 768.139, F.S. to provide immunity from civil liability for property damage resulting from the entry, by force or otherwise, of a motor vehicle²⁰ by a good samaritan to remove a vulnerable person or a domestic animal if the good samaritan:

- Determines that the vehicle is locked or there is no other reasonable method for the person or animal to exit the vehicle.
- Has a good faith and reasonable belief that forcible entry is necessary because the person or animal is in imminent danger of suffering harm.
- Ensures that law enforcement is notified prior to entering the motor vehicle or immediately thereafter.
- Uses no more force than necessary to enter the vehicle and remove the person or animal.
- Remains with the person or animal in a safe location, in reasonable proximity to the motor vehicle, until law enforcement or other first responder arrives.

The bill defines the term:

- “Vulnerable person” as a minor,²¹ a disabled adult,²² or elderly person.²³
- “Domestic animal” as a dog, cat, or other animal that is domesticated and kept as a household pet with the exception of livestock or other farm animals. This definition may confer immunity for the rescue of household pets such as birds, fish, hamsters, ferrets, rabbits, snakes, or other exotic animals kept as pets.

The bill does not expand or limit any immunity provided under the GSA for care or treatment rendered to the vulnerable person or domestic animal.

B. SECTION DIRECTORY:

Section 1 creates s. 768.139, F.S., relating to rescue of vulnerable person or domestic animal from a motor vehicle; immunity from civil liability.

Section 2 provides that the bill is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

stop the spread of a conflagration that threatened a town, shot a mad dog in the street, burned clothing infected with smallpox, and destroyed property which should not be allowed to fall into the hands of the enemy during a time of war. PROSSER & KEETON ON TORTS , pg. 146-47. § 24 (5th ed. 1984).

¹⁸ Id.

¹⁹ 75 AM. JUR. 2D, *Trespass*, § 69.

²⁰ Includes automobiles, motorcycles, trucks, trailers, semitrailers, truck tractor and semitrailer combinations, and recreational vehicles. s. 320.01(1), F.S.

²¹ Any person who has not reached the age of 18 years. s. 1.01(13), F.S.

²² A person 18 years of age or older who suffers from a condition of physical or mental incapacity due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the ability to perform the activities of daily living.

²³ A person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental or emotional dysfunction that impairs the ability to care for oneself.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill has an indeterminate²⁴ financial impact on motor vehicle owners and insurance companies. Generally, “other than collision”²⁵ 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.²⁶ The remaining cost is paid by the insurance company pursuant 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 subrogee²⁷ to all of the insured’s rights to recovery, may recover their respective costs from the party which caused the damage. The immunity provided by this bill will prevent the motor vehicle owner and the insurance company from recovering such costs.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

²⁴The extent and cost of the damage caused by a good samaritan with immunity 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 October 13, 2015).

²⁵Coverage which is available under a personal automobile policy that 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, <https://www.irmi.com/online/insurance-glossary/terms/o/other-than-collision-coverage.aspx> (last visited October 13, 2015).

²⁶If 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. s. 627.7288, F.S.

²⁷BLACK’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.”

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Good samaritans that force entry into a motor vehicle to rescue a vulnerable person or domestic 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.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On October 20, 2015, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Revised the circumstances under which a good samaritan may act with immunity.
- Provided that immunity extends only to damage to the motor vehicle and does not affect any other immunity for care or treatment of the vulnerable person or domestic animal.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.