

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB CJS 23-01 Duty of Care Regarding Commercial Motor Vehicles

SPONSOR(S): Civil Justice Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee	13 Y, 4 N	Jones	Jones

SUMMARY ANALYSIS

The Florida Uniform Traffic Control law found in chapter 316, F.S., provides definitions for different types of vehicles and other traffic terms. A “commercial motor vehicle” is defined there generally as a self-propelled or towed vehicle used on the public highways in commerce to transport passengers or cargo, if such vehicle:

- Has a gross vehicle weight rating of 10,000 pounds or more;
- Is designed to transport more than 15 passengers, including the driver; or
- Is used in the transportation of materials found to be hazardous for the purposes of the federal Hazardous Materials Transportation Act.

The National Highway Traffic Safety Administration (NHTSA) within the United States Department of Transportation is a federal agency that regulates the safety of motor vehicles and related equipment. The NHTSA issues Federal Motor Vehicle Safety Standards (FMVSS) to specify design, construction, performance, and durability requirements for motor vehicles and related equipment.

PCB CJS 23-01 creates s. 768.0429, F.S., to limit the civil liability of a person who owns or operates, or leases or rents to another person, a commercial motor vehicle that is involved in an accident. The PCB provides that in such civil action:

- The owner or operator, or person who leases or rents the commercial motor vehicle to another person, has no obligation or duty to retrofit the vehicle with component parts or equipment, or to select such parts or equipment to be included on the vehicle, if such parts or equipment were not required by the Federal Motor Vehicle Safety Standards applicable at the time the vehicle was manufactured or sold.
- The introduction of any evidence related to the alleged obligation or duty to retrofit is inadmissible in any phase of trial.

The PCB is unlikely to have any fiscal impact on state or local governments.

The PCB provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Tort Law

One of the goals of the civil justice system is to redress tortious conduct, or actions known as “torts.” A tort is a civil wrong for which the law provides a remedy. Torts are generally divided into two categories, as follows:

- An intentional tort, examples of which include an assault, a battery, or a false imprisonment.
- Negligence, which is a tort that is unintentionally committed. To prevail in a negligence lawsuit, the party seeking the remedy, the “plaintiff,” must demonstrate that the:
 - Defendant had a legal duty of care requiring the defendant to conform to a certain standard of conduct for the protection of others, including the plaintiff, against unreasonable risks;
 - Defendant breached his or her duty of care by failing to conform to the required standard;
 - Defendant’s breach caused the plaintiff to suffer an injury; and
 - Plaintiff suffered actual damages or losses resulting from such injury.¹

Negligence

Duty of Care

The first of the four elements a plaintiff must show to prevail in a negligence action is that the defendant owed the plaintiff a “duty of care” to do something or refrain from doing something. The existence of a legal duty is a threshold requirement that, if satisfied, “merely opens the courthouse doors.”² Whether a duty sufficient to support a negligence claim exists is a matter of law³ determined by the court.⁴ A duty may arise from various sources, including:

- Legislative enactments or administrative regulations;
- Judicial interpretations of such enactments or regulations;
- Other judicial precedent; and
- The general facts of the case.⁵

In determining whether a duty arises from the general facts of the case, courts look to whether the defendant’s conduct foreseeably created a “zone of risk” that posed a general threat of harm to others—that is, whether there was a likelihood that the defendant’s conduct would result in the type of injury suffered by the plaintiff.⁶ Such zone of risk defines the scope of the defendant’s legal duty, which is typically to either lessen the risk or ensure that sufficient precautions are taken to protect others from the harm the risk poses.⁷ However, it is not enough that a risk merely exists or that a particular risk is foreseeable; rather, the defendant’s conduct must create or control the risk before liability may be imposed.⁸

¹ 6 *Florida Practice Series* s. 1.1; see *Barnett v. Dept. of Fin. Serv.*, 303 So. 3d 508 (Fla. 2020).

² *Kohl v. Kohl*, 149 So. 3d 127 (Fla. 4th DCA 2014).

³ A matter of law is a matter determined by the court, unlike a matter of fact, which must be determined by the jury. Matters of law include issues regarding a law’s application or interpretation, issues regarding what the relevant law is, and issues of fact reserved for judges to resolve. Legal Information Institute, *Question of Law*, https://www.law.cornell.edu/wex/question_of_law (last visited Apr. 1, 2023); Legal Information Institute, *Question of Fact*, https://www.law.cornell.edu/wex/Question_of_fact (last visited Apr. 1, 2023).

⁴ *Kohl*, 149 So. 3d at 135; *Goldberg v. Fla. Power & Light Co.*, 899 So. 2d 1110.

⁵ *Goldberg*, 899 So. 2d at 1105 (citing *Clay Elec. Co-op., Inc. v. Johnson*, 873 So. 2d 1182 (Fla. 2003)).

⁶ *Kohl*, 149 So. 3d at 135 (citing *McCain v. Fla. Power Corp.*, 593 So. 2d 500 (Fla. 1992); *Whitt v. Silverman*, 788 So. 2d 210 (Fla. 2001)).

⁷ *Kohl*, 149 So. 3d at 135; *Whitt*, 788 So. 2d at 217.

⁸ *Bongiorno v. Americorp, Inc.*, 159 So. 3d 1027 (Fla. 5th DCA 2015) (citing *Demelus v. King Motor Co. of Fort Lauderdale*, 24 So. 3d 759 (Fla. 4th DCA 2009)).

Breach of the Duty of Care

The second element a plaintiff must prove is that the defendant "breached," or failed to discharge, the duty of care. Whether a breach occurred is generally a matter of fact for the jury to determine.⁹

Causation

The third element a plaintiff must prove is that the defendant's breach of the duty of care "proximately caused" the plaintiff's injury. Whether or not proximate causation exists is generally a matter of fact for the jury to determine.¹⁰ Florida follows the "more likely than not" standard in proving causation; thus, the inquiry for the factfinder is whether the defendant's negligence probably caused the plaintiff's injury.¹¹ In making such a determination, the factfinder must analyze whether the injury was a foreseeable consequence of the danger created by the defendant's negligent act or omission.¹² It is not required that the defendant's conduct must be the exclusive cause, or even the primary cause, of the plaintiff's injury suffered; instead, the plaintiff must only show that the defendant's conduct substantially caused the injury.¹³

Damages

The final element a plaintiff must show to prevail in a negligence action is that the plaintiff suffered some harm, or "damages." Actual damages, also called compensatory damages, are damages the plaintiff actually suffered as the result of the injury.¹⁴ Juries award compensatory damages to compensate an injured person for a defendant's negligent acts.¹⁵ Compensatory damages consist of both:

- "Economic damages," which typically consist of financial losses that can be easily quantified, such as lost wages, the cost to replace damaged property, or the cost of medical treatment; and
- "Non-economic damages," which typically consist of nonfinancial losses that cannot be easily quantified, such as pain and suffering, inconvenience, physical impairment, mental anguish, disfigurement, and loss of the capacity to enjoy life.¹⁶

In certain limited situations, a court may also award "punitive damages," the purpose of which is to punish a defendant for bad behavior and deter future bad conduct, rather than to compensate the plaintiff for a loss.¹⁷

Substance and Procedure

Various provisions within Florida law, including the Florida Evidence Code, specify what types of evidence and testimony are admissible in court.¹⁸ Generally, Florida's separation of powers principle teaches that the legislature may enact substantive law, and the judiciary may enact procedural rules.¹⁹ The Florida Evidence Code, for example, contains both procedural and substantive law. Statutes that contain procedural elements, such as those amending the Evidence Code, must generally be approved by Supreme Court.²⁰

⁹ *Wallace v. Dean*, 3 So. 3d 1035 (Fla. 2009).

¹⁰ *Sanders v. ERP Operating Ltd. P'ship*, 157 So. 3d 273 (Fla. 2015).

¹¹ *Ruiz v. Tenent Hialeah Healthsystem, Inc.*, 260 So. 3d 977 (Fla. 2018).

¹² *Id.* at 981-982.

¹³ *Id.* at 982.

¹⁴ *Birdsall v. Coolidge*, 93 U.S. 64 (1876).

¹⁵ *St. Regis Paper Co. v. Watson*, 428 So. 2d 243 (Fla. 1983).

¹⁶ *Cf.* s. 766.202(8), F.S.

¹⁷ *See* ss. 768.72, 768.725, and 768.73, F.S. (providing standards and requirements for awarding punitive damages).

¹⁸ Ch. 90, F.S.

¹⁹ *See* art. II, s. 3, Fla. Const.; art. V, s. 2(a), Fla. Const.; *DeLisle v. Crane Co.*, 258 So. 3d 1219, 1228 (Fla. 2018).

²⁰ *See, e.g., In re Florida Evidence Code*, 372 So. 2d 1369 (Fla. 1979); *In re Amendments to Florida Evidence Code*, 278 So. 3d 551 (Fla. 2014); *Leapai v. Milton*, 595 So. 2d 12, 14 (Fla. 1992) ("The judiciary and the legislature must work to solve these types of separation-of-powers problems without encroaching upon each other's functions and recognizing each other's constitutional functions and duties").

Commercial Motor Vehicles

The Florida Uniform Traffic Control law found in chapter 316, F.S., provides definitions for different types of vehicles and other traffic terms. The term “commercial motor vehicle” is defined there²¹ as any self-propelled or towed vehicle used on the public highways in commerce to transport passengers or cargo, if such vehicle:

- Has a gross vehicle weight rating of 10,000 pounds or more;
- Is designed to transport more than 15 passengers, including the driver; or
- Is used in the transportation of materials found to be hazardous for the purposes of the federal Hazardous Materials Transportation Act.²²

However, the term excludes a vehicle that occasionally transports personal property to and from a closed-course motorsport facility if it is not used for profit and corporate sponsorship is not involved.²³

Federal Motor Vehicle Safety Standards

The National Highway Traffic Safety Administration (NHTSA) within the United States Department of Transportation is a federal agency that regulates the safety of motor vehicles and related equipment.²⁴ The NHTSA issues Federal Motor Vehicle Safety Standards (FMVSS), which are federal regulations to implement laws from Congress and prevent and reduce vehicle crashes.²⁵ These regulations specify design, construction, performance, and durability requirements for motor vehicles and related equipment. Such regulations may be periodically updated.

A manufacturer of motor vehicles or covered motor vehicle equipment must certify that the vehicle or equipment complies with the minimum requirements established in the FMVSS.²⁶ Manufacturers may be liable for recalls and civil penalties if their vehicles or equipment do not meet the FMVSS.²⁷

Effect of Proposed Changes

PCB CJS 23-01 creates s. 768.0429, F.S., to limit the civil liability of a person who owns or operates, or leases or rents to another person, a commercial motor vehicle that is involved in an accident. Specifically, the PCB provides that in such civil action, the owner, lessor, operator, or person who rents the commercial motor vehicle to another person has no obligation or duty of care to retrofit the commercial vehicle with component parts or equipment, or to select such parts or equipment to be included on the vehicle, if such parts or equipment were not required by the Federal Motor Vehicle Safety Standards applicable at the time the vehicle was manufactured or sold. The PCB also prohibits, in any phase of trial, the introduction of any evidence related to the alleged obligation or duty to retrofit.

The PCB provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

Section 1: Creates s. 768.0429, F.S., relating to duty of care and admissibility of evidence in certain motor vehicle accidents.

Section 2: Provides an effective date.

²¹ The term “commercial motor vehicle” is defined differently for purposes of other laws. See ss. 207.002(1), 320.01(25), and 627.732(3), F.S.

²² S. 316.003(14), F.S.

²³ *Id.*

²⁴ See NHTSA, Laws and Regulations, [Federal Motor Vehicle Safety Standards | FMVSS | NHTSA](#) (last visited Apr. 1, 2023).

²⁵ *Id.*; 49 C.F.R. part 571; 49 U.S.C. s. 30115.

²⁶ See NHTSA, New Manufacturers Handbook at 4 (updated Sept. 20, 2022), [Outline for New Manufacturer Information \(dot.gov\)](#) (last visited Apr. 1, 2023).

²⁷ See *id.* at 5, 25.

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.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The PCB reduces the likelihood that an owner or operator of a commercial motor vehicle, or a person who leases or rents such vehicles to others, would be liable for damages in a civil lawsuit.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The PCB does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

To ensure the separation of powers, the Legislature has the authority to enact substantive laws and the judiciary has the authority to create procedural rules. To the extent the PCB touches on any procedural subjects, the Florida Supreme Court may decide to adopt such provisions.²⁸

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

²⁸ See *In re Florida Evidence Code*, 372 So. 2d 1369 (1979).

