

**NHTSA Oversight: An Examination of the Highway Safety Provisions
of SAFETEA-LU
Statement of IRA H. LEESFIELD**

In Florida, District of Columbia, and fourteen other states, including New York and California, vicarious liability has been part of legal jurisprudence, dating back for almost 90 years. As enunciated by the Florida Supreme Court in *Southern Cotton Oil Co. V. Anderson*, 80 Fla. 44, 86 So. 629 (1920), the owner of an automobile “. . . may not deliver it over to anyone he pleases and not be responsible,” *Southern Cotton*. Vicarious liability, as recognized in 1920, was extended to automobile lessors by the Florida Supreme Court in 1947. *Lynch v. Walker*, 31 So. 2d 268 (Fla. 1947), and again in *Susco Car Rental System v. Leonard*, 112 So. 2d 832 (Fla. 1959).

Fifteen of the similarly situated states developed, either by statute or common law, a mechanism for protecting its citizens and visitors from the life changing negligence of those behind the wheel of a vehicle entrusted to them. ¹

Not surprisingly, the importance of vicarious liability to the modern proliferation of the rental car industry coincided with a huge number of U.S. and foreign visitors coming into jurisdictions, doing harm and leaving. For instance, the Florida Chamber of Commerce recently reported over 82 million people visit Florida every year, and the numbers for California and New York are similar.

Necessarily, these jurisdictions shifted to vehicle owners, including for profit rental companies, accountability for the destruction of mayhem left behind when rental vehicles caused

¹List of States - attached

life changing injuries and deaths within their borders.

In 2004, “out of the blue” or more understandably, out of Missouri, the home of Enterprise Rental Cars, came the notion that the rental car industry should be granted full immunity from any damage caused by a driver who they entrusted their vehicle to for profit. In other words, no matter what the driving record or availability of insurance of the rental car driver, the rental car industry was to be completely immune and shielded from damages to innocent bystanders. This would, and did, wipe out any notion of rental car responsibility.

Rental car companies tried to repeal vicarious liability statutes, state by state, particularly, New York. They were not successful inasmuch as the law-making bodies of these states felt it was necessary to incentivize safety by making profitable companies, who rent to negligent drivers, responsible for the life changing injuries to innocent parties. The industry then changed their focus from state legislature to Congress. In 2004, during the debate of the highway reauthorization bill, SAFETEA-LU, Representative Graves (R-MO) introduced an amendment specifically and completely abolishing rental vicarious liability under any state law. There was never any committee hearing on the issue. Nevertheless, the amendment failed in the committee. In late 2004, Representative Graves brought the amendment up during the House floor debate, and the amendment failed by a voice vote. He then introduced the amendment again in January 2005, and asked for a recorded vote, at which time the amendment narrowly passed with bipartisan support and opposition. The amendment was never introduced in the Senate. Despite the objections of numerous groups, including the National Conference of State Legislatures, the amendment became

part of the final bill language and is now codified in the U.S. Code.²

In the five years since the passage of the Graves' Amendment (as contrasted with the long history of state vicarious liability laws), Federal, state, county and local governments have been picking up the tabs and subsidizing the rental car industry by paying for enormous medical expenses and social services provided to those injured, maimed or killed by rental car customers. Annually, in Florida, there are thousands of examples, where visitors from overseas, or throughout the United States fly to Orlando, rent a car, and for a variety of reasons, cause egregious injuries to a Florida family or even another family visiting from out-of-state.³ At the point of rental, there is no requirement to produce insurance, a valid driver's license, check a driving record, or even familiarize the renter/user with the rules of the road. It is a free for all! The rental car industry only requires verification of the credit card to protect themselves, often leaving the innocent state resident without any recourse to injury or death.

The net effect and history of the law in Florida and other states has been unnecessarily tragic. For instance, the Florida legislature in 1999, as part of a sweeping state tort reform statute, modified, but did not eliminate, vicarious liability for rental car companies. A Florida House and Senate controlled by Republicans and a Florida Republican Governor Jeb Bush, determined, as a matter of state's rights, that at least the economic interest of the innocent and injured Floridian would be recognized. In 1999, Florida passed §324.021(9)(b)(2), which modified vicarious liability allowing the injured party to recover \$500,000 in special damages, which would pay only for medical expenses and lost wages and an additional \$100,000 for pain, disfigurement and loss of quality of

² 49 U.S.C. §30106 (2005).

³ Some of the more telling cases include visitors from other jurisdictions with completely different driving customs, driving on the wrong side of the road and killing innocent pedestrians.

life. This carefully crafted language is what the Florida legislature determined was best for the people and the State of Florida.

Inadequate as that recovery may seem, that was the law of Florida until the rental car industry opted for complete abolition on the Federal law. The 1999 Florida law, before Graves, really served as a conduit allowing Federal, State, county and local hospitals and healthcare providers to be paid by the rental car malfeasant. Part of the burden remained with the rental car industry as a matter of public policy and financial responsibility. The most severely injured or killed citizen could get, even for a lifetime of pain and suffering , only \$100,000 from the rental car company. Now, under the present Graves' Amendment, there is no recourse whatsoever. The rental car industry obtained government subsidy for damage caused by their vehicles. All the while, insurance coverage to the rental car industry has been available.

The price is paid by innocent residents of states with large visiting populations, and ultimately, paid for by taxpayers and medical facilities. The rental car customer, whether from Sweden or Seattle, returns the car, leaving the carnage on the road and drives off, scot-free. Under the Graves' Amendment, a rental car company that rents to these damaging drivers, without checking for insurance, has complete immunity. Innocent victims and their governments are left holding the bag. That bag is paid for by Medicare, Medicaid, Social Security, and/or state and local healthcare providers.

The Graves' Amendment should be repealed under our system of federalism and state legislatures should be permitted to govern legislation uniquely evaluated by state legislatures.

Respectfully submitted,

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