87R10917 TYPED

By:  Leach H.B. No. 19

A BILL TO BE ENTITLED

AN ACT

relating to procedure, evidence, and remedies in civil actions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  The heading to Chapter 72, Civil Practice and Remedies Code, is amended to read as follows:

CHAPTER 72. [~~LIABILITY OF~~] MOTOR VEHICLE [~~OWNER OR OPERATOR TO GUEST~~]

SECTION 2.  Chapter 72, Civil Practice and Remedies Code, is amended by adding Sections 72.0001 and 72.005 through 72.009 to read as follows:

Sec. 72.0001.  DEFINITIONS. In this chapter:

(1)  "Accident" means an event in which a motor vehicle comes into contact with a person or object, including another motor vehicle, causing bodily injury or death.

(2)  "Civil action" means an action in which:

(A)  a person seeks recovery of damages for bodily injury or death caused in an accident; and

(B)  a defendant or responsible third party is a person who:

(i)  operated a motor vehicle involved in the accident; or

(ii)  owned, leased, or otherwise exercised legal control over a motor vehicle involved in the accident.

(3)  "Claimant" means a person, including a decedent's estate, seeking or who has sought recovery of damages in a civil action.

(4)  "Commercial motor vehicle" means a motor vehicle being used in interstate or intrastate commerce for the transportation of property or passengers for commercial purposes, for the delivery or transport of goods for commercial purposes, or for the providing of services for commercial purposes. A motor vehicle that is being used primarily for personal, family, or household use is not a commercial motor vehicle.

(5)  "Compensatory damages" and "exemplary damages" have the meanings assigned by Section 41.001.

(6)  "Future damages" and "future loss of earnings" have the meanings assigned by Section 74.501.

(7)  "Gross negligence" has the meaning assigned by Section 41.001.

(8)  "Motor vehicle" means a self-propelled or towed device in which a person or property can be transported on a public highway. The term includes a trailer designed for use with a self-propelled device described by this subsection. The term does not include a device used exclusively upon stationary rails or tracks.

(9)  "Periodic payments" has the meaning assigned by Section 74.501.

(10)  "Video" means an electronic representation of a sequence of images, with or without accompanying audio, depicting either stationary or moving scenes, regardless of the manner in which the sequence of images is captured, recorded, or stored.

Sec. 72.005.  BIFURCATED TRIAL IN CERTAIN COMMERCIAL MOTOR VEHICLE ACCIDENT ACTIONS. (a) In a civil action involving a commercial motor vehicle, on motion by a defendant, the court shall provide for a bifurcated trial under this section.

(b)  A motion under this section shall be made prior to the beginning of voir dire examination of the jury or at a time specified by a pretrial court order issued under Rule 166, Texas Rules of Civil Procedure.

(c)  In the first phase of a bifurcated trial under this section, the trier of fact shall determine liability for and the amount of compensatory damages, unless the defendant has stipulated to liability. If the defendant has stipulated to liability, the trier of fact shall determine in the first phase only the amount of compensatory damages.

(d)  In the second phase of a bifurcated trial under this section, the trier of fact shall determine liability for and the amount of exemplary damages to be awarded if:

(1)  the claimant's pleading states a claim for recovery of exemplary damages;

(2)  either:

(A)  the trier of fact found during the first phase of the bifurcated trial that the defendant is liable to the claimant for compensatory damages on a claim that supports exemplary damages; or

(B)  the defendant stipulated to liability on a claim that supports exemplary damages; and

(3)  in the first phase of the bifurcated trial, the trier of fact awarded compensatory damages on the claim supporting exemplary damages.

(e)  For purposes of this section, a finding by the trier of fact in the first phase of a bifurcated trial that can support a judgment against the defendant under respondeat superior for an employee's negligence shall be regarded as a finding supporting exemplary damages under Subsection (d) in a direct action against the defendant for enabling that employee's negligence.

Sec. 72.006.  COMPLIANCE WITH REGULATIONS OR STANDARDS. (a) In a civil action involving a commercial motor vehicle, a defendant's failure to comply with a regulation or standard is not admissible into evidence and will not support a judgment for liability or damages against a defendant in that action unless:

(1)  the regulation or standard governs a specific aspect of the defendant's or defendant's employee's conduct or omission that is at issue in the action, or a specific aspect of the use or condition of the defendant's property or equipment that is at issue in the action; and

(2)  a reasonable jury could find that failure to comply with the regulation or standard was a proximate cause of the bodily injury or death for which damages are sought in the action.

(b)  If a defendant's failure to comply with a regulation or standard is admissible into evidence under Subsection (a), then other instances of the defendant's failure to comply with the regulation or standard within the two-year period preceding the date of the accident also may be admitted into evidence if otherwise admissible under the Texas Rules of Evidence.

(c)  Unless the parties agree to the discovery, a claimant seeking to use pretrial discovery to obtain evidence of a defendant's failure to comply with a regulation or standard must obtain a court order allowing the discovery. If a trial court authorizes the discovery, the court's order must limit the discovery to:

(1)  a reasonable period of time, which may not exceed the period beginning two years before the date of the accident and ending on the date of the accident; and

(2)  the least burdensome method available to obtain the evidence.

(d)  An order allowing discovery under this section may be reviewed in an original proceeding for an abuse of discretion in which the inadequacy of a remedy at law shall be presumed. When reviewing an order authorizing or denying discovery under this section, the reviewing court may consider only the evidence submitted by the parties to the trial court in support of or in opposition to the motion.

(e)  For purposes of this section, a "regulation or standard" includes:

(1)  a statute, regulation, rule, or order regulating equipment or conduct adopted or promulgated by a federal, state, or local government, agency, or authority; and

(2)  the defendant's policies, procedures, or statements.

Sec. 72.007.  LIABILITY FOR EMPLOYEE NEGLIGENCE AND EMPLOYER GROSS NEGLIGENCE. (a) In a civil action involving a commercial motor vehicle, if a defendant in the action complies with Subsection (b), the defendant's liability for damages caused by an employee's negligence shall be based on respondeat superior and not on a direct action against the defendant for its conduct or omissions.

(b)  On motion of a defendant, a trial court shall dismiss a direct action against a defendant if the defendant stipulates that at the time of the event that caused the bodily injury or death for which damages are sought in the action:

(1)  a person whose conduct is alleged to have caused the bodily injury or death was the defendant's employee; and

(2)  the employee was acting within the scope of employment with the defendant.

(c)  A defendant may be adjudged to be directly liable for exemplary damages only if:

(1)  the defendant's employee's negligence is found to have caused or contributed to causing the bodily injury or death that is the subject of the action;

(2)  damages in excess of nominal damages are awarded to the claimant for the defendant's employee's negligence; and

(3)  the defendant is found to have been grossly negligent for its conduct or omissions.

(d)  Pretrial discovery related to an allegation that a defendant was grossly negligent in its conduct or omissions must be limited to a reasonable period of time, which may not exceed the period beginning two years before the date of the accident and ending on the date of the accident.

(e)  Before calling the action for trial on the merits, a court must rule on a timely filed motion to dismiss under Subsection (b) or motion for summary judgment addressed to an allegation that a defendant was grossly negligent in its conduct or omissions.

(f)  For purposes of this section, "employee" includes an agent or other person for whom the employer may be liable under respondeat superior.

Sec. 72.008.  PERIODIC PAYMENT OF FUTURE DAMAGES FOR COMMERCIAL MOTOR VEHICLE ACCIDENTS. (a) This section applies only to a civil action involving a commercial motor vehicle in which the present value of the award of future damages, as determined by the court, is at least $100,000.

(b)  At the request of a party, the court shall order that future damages awarded in the action be paid in periodic payments and not as a lump-sum payment.

(c)  The number and amounts of future payments shall correspond to the evidence regarding future damages presented by the claimant.

(d)  The court shall make a specific finding of the dollar amount of periodic payments that will compensate the claimant for the future damages and state in the judgment:

(1)  the recipient of the future payments;

(2)  the dollar amount of each future payment; and

(3)  the date on which each future payment shall be made.

(e)  The judgment shall provide for payments to be funded by:

(1)  an annuity contract issued by a company authorized to engage in business as an insurance company, including an assignment within the meaning of Section 130, Internal Revenue Code of 1986, as amended;

(2)  an obligation of the United States;

(3)  applicable and collectible liability insurance from one or more qualified insurers; or

(4)  any other satisfactory form of funding suggested by the defendant making the payments and approved by the court.

(f)  On the death of the recipient of payments of future damages, money damages awarded for future loss of earnings continue to be paid to the estate of the recipient, without reduction. Periodic payments, other than future loss of earnings, terminate on the death of the recipient.

(g)  Following the satisfaction or termination of any obligations specified in the judgment for periodic payments of future damages, any obligation of the defendant to make further payments ends and any funds held for the payment of future damages or security posted by the defendant or on the defendant's behalf revert to the defendant.

Sec. 72.009.  ADMISSIBILITY OF VISUAL DEPICTIONS OF ACCIDENT. (a) In a civil action involving a motor vehicle, a court shall not exclude from evidence a photograph or video of a vehicle or object involved in the accident that was taken at or near the time of the accident if the photograph or video:

(1)  is an accurate depiction of the vehicle or object being depicted; and

(2)  standing alone or when viewed with another photograph or video, may provide evidence of:

(A)  the cause of the accident;

(B)  the events occurring before, during, or after the accident that are related to the accident; and

(C)  the extent of damage caused to a vehicle or object involved in the accident.

(b)  The fact that a photograph or video tends to support or refute an assertion regarding the severity of damages or injury to an object or person arising from the accident is not a basis for excluding admission of the photograph or video.

SECTION 3.  The changes in law made by this Act apply only to a cause of action commenced on or after the effective date of this Act. A cause of action commenced before the effective date of this Act is governed by the law applicable to the cause of action immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 4.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2021.