

By: Leach, Ashby, Meyer, et al.

H.B. No. 19

A BILL TO BE ENTITLED

AN ACT

relating to civil liability of a commercial motor vehicle owner or operator, including the effect that changes to that liability have on commercial automobile insurance.

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 Subchapter A, and a heading is added to that subchapter to read as follows:

SUBCHAPTER A. LIABILITY TO GUEST

SECTION 3. Sections 72.001, 72.002, 72.003, and 72.004, Civil Practice and Remedies Code, are transferred to Subchapter A, Chapter 72, Civil Practice and Remedies Code, as added by this Act.

SECTION 4. Sections 72.002 and 72.003, Civil Practice and Remedies Code, are amended to read as follows:

Sec. 72.002. LIMITATION NOT APPLICABLE. There is no limitation under this subchapter [~~chapter~~] on the liability of an owner or operator who is not related to the guest within the second degree by consanguinity or affinity.

Sec. 72.003. EFFECT ON OTHER LIABILITY. (a) This subchapter [~~chapter~~] does not affect judicially developed or developing rules under which a person is or is not totally or

1 partially immune from tort liability by virtue of family  
2 relationship.

3 (b) This subchapter [~~chapter~~] does not relieve the owner or  
4 operator of a motor vehicle being demonstrated to a prospective  
5 purchaser or relieve a public carrier of responsibility for  
6 injuries sustained by a passenger being transported.

7 SECTION 5. Chapter 72, Civil Practice and Remedies Code, is  
8 amended by adding Subchapter B to read as follows:

9 SUBCHAPTER B. ACTIONS REGARDING COMMERCIAL MOTOR VEHICLES

10 Sec. 72.051. DEFINITIONS. In this subchapter:

11 (1) "Accident" means an event in which operating a  
12 commercial motor vehicle causes bodily injury or death.

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

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

16 (B) a defendant:

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

19 (ii) owned, leased, or otherwise held or  
20 exercised legal control over a commercial motor vehicle or operator  
21 of a commercial motor vehicle involved in the accident.

22 (3) "Claimant" means a person, including a decedent's  
23 estate, seeking or who has sought recovery of damages in a civil  
24 action. The term includes a plaintiff, counterclaimant,  
25 cross-claimant, third-party plaintiff, and an intervenor. The term  
26 does not include a passenger in a commercial motor vehicle unless  
27 the person is an employee of the owner, lessor, lessee, or operator

1 of the vehicle.

2 (4) "Commercial motor vehicle" means a motor vehicle  
3 being used for commercial purposes in interstate or intrastate  
4 commerce to transport property or passengers, deliver or transport  
5 goods, or provide services. The term does not include a motor  
6 vehicle being used at the time of the accident for personal, family,  
7 or household purposes.

8 (5) "Compensatory damages" has the meaning assigned by  
9 Section 41.001.

10 (6) "Employee" means a person who works for another  
11 person for compensation. The term includes a person considered to  
12 be an employee under state or federal law and any other agent or  
13 person for whom an employer may be liable under respondeat  
14 superior.

15 (7) "Exemplary damages" has the meaning assigned by  
16 Section 41.001.

17 (8) "Motor vehicle" means a self-propelled device in  
18 which a person or property can be transported on a public highway.  
19 The term includes a trailer when in use with a self-propelled device  
20 described by this subdivision. The term does not include a device  
21 used exclusively upon stationary rails or tracks.

22 (9) "Operated," "operating," and "operation," when  
23 used with respect to a commercial motor vehicle, means to cause the  
24 vehicle to move or function in any respect, including driving,  
25 stopping, or parking the vehicle or otherwise putting the vehicle  
26 into use or operation. These terms include a commercial motor  
27 vehicle that has become disabled.

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

5           Sec. 72.052. BIFURCATED TRIAL IN CERTAIN COMMERCIAL MOTOR  
6 VEHICLE ACCIDENT ACTIONS. (a) In a civil action under this  
7 subchapter, on motion by a defendant, the court shall provide for a  
8 bifurcated trial under this section.

9           (b) A motion under this section shall be made on or before  
10 the later of:

11           (1) the 120th day after the date the defendant  
12 bringing the motion files the defendant's original answer; or

13           (2) the 30th day after the date a claimant files a  
14 pleading adding a claim or cause of action against the defendant  
15 bringing the motion.

16           (c) The trier of fact shall determine liability for and the  
17 amount of compensatory damages in the first phase of a bifurcated  
18 trial under this section.

19           (d) The trier of fact shall determine liability for and the  
20 amount of exemplary damages in the second phase of a bifurcated  
21 trial under this section.

22           (e) For purposes of this section, a finding by the trier of  
23 fact in the first phase of a bifurcated trial that an employee  
24 defendant was negligent in operating an employer defendant's  
25 commercial motor vehicle may serve as a basis for the claimant to  
26 proceed in the second phase of the trial on a claim against the  
27 employer defendant, such as negligent entrustment, that requires a

1 finding by the trier of fact that the employee was negligent in  
2 operating the vehicle as a prerequisite to the employer defendant  
3 being found negligent in relation to the employee defendant's  
4 operation of the vehicle.

5 Sec. 72.053. FAILURE TO COMPLY WITH REGULATIONS OR  
6 STANDARDS. (a) In this section, "regulation or standard" includes  
7 a statute, regulation, rule, or order regulating equipment or  
8 conduct adopted or promulgated by the federal government, a state  
9 government, a local government, or a governmental agency or  
10 authority.

11 (b) In a civil action under this subchapter, evidence of a  
12 defendant's failure to comply with a regulation or standard is  
13 admissible in the first phase of a trial bifurcated under Section  
14 72.052 only if, in addition to complying with other requirements of  
15 law:

16 (1) the evidence tends to prove that failure to comply  
17 with the regulation or standard was a proximate cause of the bodily  
18 injury or death for which damages are sought in the action; and

19 (2) the regulation or standard is specific and  
20 governs, or is an element of a duty of care applicable to, the  
21 defendant, the defendant's employee, or the defendant's property or  
22 equipment when any of those is at issue in the action.

23 (c) Nothing in this section prevents a claimant from  
24 pursuing a claim for exemplary damages under Chapter 41 relating to  
25 the defendant's failure to comply with other applicable regulations  
26 or standards, or from presenting evidence on that claim in the  
27 second phase of a bifurcated trial.

1       Sec. 72.054. LIABILITY FOR EMPLOYEE NEGLIGENCE IN OPERATING  
2 COMMERCIAL MOTOR VEHICLE. (a) Except as provided by Subsection  
3 (d), in a civil action under this subchapter, an employer  
4 defendant's liability for damages caused by the ordinary negligence  
5 of a person operating the defendant's commercial motor vehicle  
6 shall be based only on respondeat superior if the defendant  
7 stipulates that, at the time of the accident, the person operating  
8 the vehicle was:

9               (1) the defendant's employee; and

10              (2) acting within the scope of employment.

11       (b) Except as provided by Subsection (c), if an employer  
12 defendant stipulates in accordance with Subsection (a) and the  
13 trial is bifurcated under Section 72.052, a claimant may not, in the  
14 first phase of the trial, present evidence on an ordinary  
15 negligence claim against the employer defendant, such as negligent  
16 entrustment, that requires a finding by the trier of fact that the  
17 employer defendant's employee was negligent in operating a vehicle  
18 as a prerequisite to the employer defendant being found negligent  
19 in relation to the employee defendant's operation of the vehicle.  
20 This subsection does not prevent a claimant from presenting  
21 evidence allowed by Section 72.053.

22       (c) In regard to an employer defendant who is regulated by  
23 the Motor Carrier Safety Improvement Act of 1999 (Pub. L. No.  
24 106-159) or Chapter 644, Transportation Code, and the defendant's  
25 employee, a party may present any of the following evidence in the  
26 first phase of a trial that is bifurcated under Section 72.052 if  
27 the evidence is applicable to the defendant:

1           (1) whether the employee who was operating the  
2 employer defendant's commercial motor vehicle at the time of the  
3 accident that is the subject of the civil action:

4                   (A) was licensed to drive the vehicle;

5                   (B) was disqualified from driving the vehicle  
6 under 49 C.F.R. Section 391.15 or the corresponding law of this  
7 state;

8                   (C) should not have been allowed by the employer  
9 defendant to operate the vehicle under 49 C.F.R. Section 382.701(d)  
10 or the corresponding law of this state;

11                   (D) was medically certified as physically  
12 qualified to operate the vehicle under 49 C.F.R. Section 391.41 or a  
13 corresponding law of this state; or

14                   (E) was operating the vehicle when prohibited  
15 from doing so under 49 C.F.R. Section 382.201, 382.205, 382.207, or  
16 382.215 or the corresponding law of this state;

17           (2) whether the employer defendant had complied with  
18 49 C.F.R. Section 382.301 or a corresponding law of this state in  
19 regard to controlled-substance testing of the employee who was  
20 operating the employer's commercial motor vehicle at the time of  
21 the accident that is the subject of the civil action if the employee  
22 was impaired because of the use of a controlled substance at the  
23 time of the accident;

24           (3) whether the employer defendant failed to comply  
25 with 49 C.F.R. Section 382.201, 382.205, 382.207, 382.215,  
26 382.701(d), 390.13, 391.15, 391.21, 391.23(a), 391.25, 391.31,  
27 391.33, 391.41, or 383.51 or the corresponding law of this state;

1 and

2 (4) whether the employer defendant failed to comply  
3 with 49 C.F.R. Section 395.3 or 395.5 or a corresponding law of this  
4 state if the employer defendant had knowledge of the failure to  
5 comply at the time of the accident that is the subject of the civil  
6 action.

7 (d) If a civil action is bifurcated under Section 72.052,  
8 evidence admissible under Subsection (c) is:

9 (1) admissible in the first phase of the trial only to  
10 prove ordinary negligent entrustment by the employer defendant to  
11 the employee who was driving the employer defendant's commercial  
12 motor vehicle at the time of the accident that is the subject of the  
13 civil action; and

14 (2) the only evidence that may be presented by the  
15 claimant in the first phase of the trial on the negligent  
16 entrustment claim.

17 (e) Nothing in this section may be construed to create a new  
18 rule or regulation or subject a person to a rule or regulation not  
19 applicable to the person without regard to this section.

20 (f) Nothing in this section prevents a claimant from  
21 pursuing:

22 (1) an ordinary negligence claim against an employer  
23 defendant for a claim, such as negligent maintenance, that does not  
24 require a finding of negligence by an employee as a prerequisite to  
25 an employer defendant being found negligent for its conduct or  
26 omission, or from presenting evidence on that claim in the first  
27 phase of a bifurcated trial; or



1           (2) a claim for exemplary damages under Chapter 41 for  
2 an employer defendant's conduct or omissions in relation to the  
3 accident that is the subject of the action, or from presenting  
4 evidence on that claim in the second phase of a bifurcated trial.

5           Sec. 72.055. ADMISSIBILITY OF VISUAL DEPICTIONS OF  
6 ACCIDENT. (a) In a civil action under this subchapter, a court may  
7 not require expert testimony for admission into evidence of a  
8 photograph or video of a vehicle or object involved in an accident  
9 that is the subject of the action.

10           (b) If properly authenticated under the Texas Rules of  
11 Evidence, a photograph or video of a vehicle or object involved in  
12 an accident that is the subject of a civil action under this  
13 subchapter is presumed admissible, even if the photograph or video  
14 tends to support or refute an assertion regarding the severity of  
15 damages or injury to an object or person involved in the accident.

16           SECTION 6. Subchapter A, Chapter 38, Insurance Code, is  
17 amended by adding Section 38.005 to read as follows:

18           Sec. 38.005. COMMERCIAL AUTOMOBILE INSURANCE REPORT. (a)  
19 The department shall conduct a study each biennium on the effect,  
20 for each year of the biennium, on premiums, deductibles, coverage,  
21 and availability of coverage for commercial automobile insurance of  
22 H.B. 19, 87th Legislature, Regular Session, 2021.

23           (b) Not later than December 1 of each even-numbered year,  
24 the department shall submit a written report of the results of the  
25 study conducted under Subsection (a) for the preceding biennium to  
26 the legislature.

27           (c) This section expires December 31, 2026.

1           SECTION 7. The changes in law made by this Act apply only to  
2 an action commenced on or after the effective date of this Act. An  
3 action commenced before the effective date of this Act is governed  
4 by the law applicable to the action immediately before the  
5 effective date of this Act, and that law is continued in effect for  
6 that purpose.

7           SECTION 8. This Act takes effect September 1, 2021.