

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

1 estate, seeking or who has sought recovery of damages in a civil
2 action.

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

10 (5) "Compensatory damages" and "exemplary damages"
11 have the meanings assigned by Section [41.001](#).

12 (6) "Future damages" and "future loss of earnings"
13 have the meanings assigned by Section [74.501](#).

14 (7) "Gross negligence" has the meaning assigned by
15 Section [41.001](#).

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

22 (9) "Periodic payments" has the meaning assigned by
23 Section [74.501](#).

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

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

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

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

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

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

20 (2) either:

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

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

27 (3) in the first phase of the bifurcated trial, the

1 trier of fact awarded compensatory damages on the claim supporting
2 exemplary damages.

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

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

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

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

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

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

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

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

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

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

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

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

26 Sec. 72.007. LIABILITY FOR EMPLOYEE NEGLIGENCE AND EMPLOYER
27 GROSS NEGLIGENCE. (a) In a civil action involving a commercial

1 motor vehicle, if a defendant in the action complies with
2 Subsection (b), the defendant's liability for damages caused by an
3 employee's negligence shall be based on respondeat superior and not
4 on a direct action against the defendant for its conduct or
5 omissions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 22 (1) the recipient of the future payments;
23 (2) the dollar amount of each future payment; and
24 (3) the date on which each future payment shall be
25 made.

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

- 27 (1) an annuity contract issued by a company authorized

1 to engage in business as an insurance company, including an
2 assignment within the meaning of Section 130, Internal Revenue Code
3 of 1986, as amended;

4 (2) an obligation of the United States;

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

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

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

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

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

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

27 (2) standing alone or when viewed with another

1 photograph or video, may provide evidence of:

2 (A) the cause of the accident;

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

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

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

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

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