

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 partially immune from tort liability by virtue of family relationship.

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

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

SUBCHAPTER B. ACTIONS REGARDING COMMERCIAL MOTOR VEHICLES

Sec. 72.051. DEFINITIONS. In this subchapter:

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

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

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

(B) a defendant:

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

(ii) owned, leased, or otherwise held or exercised legal control over a commercial motor vehicle or operator of a commercial 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. The term includes a plaintiff, counterclaimant, cross-claimant, third-party plaintiff, and an intervenor. The term does not include a passenger in a commercial motor vehicle unless the person is an employee of the owner, lessor, lessee, or operator of the vehicle.

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

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

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

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

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

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

.(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. 72.052. BIFURCATED TRIAL IN CERTAIN COMMERCIAL MOTOR VEHICLE ACCIDENT ACTIONS. (a) In a civil action under this subchapter, 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 on or before the later of:

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

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

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

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

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

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

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

(1) the evidence tends to prove 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; and

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

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

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

(1) the defendant's employee; and

(2) acting within the scope of employment.

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

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

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

(A) was licensed to drive the vehicle;

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

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

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

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

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

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

(4) whether the employer defendant failed to comply

with 49 C.F.R. Section 395.3 or 395.5 or a corresponding law of this state if the employer defendant had knowledge of the failure to comply at the time of the accident that is the subject of the civil action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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