

1-1 By: Leach, et al. (Senate Sponsor - Taylor) H.B. No. 19
 1-2 (In the Senate - Received from the House May 3, 2021;
 1-3 May 6, 2021, read first time and referred to Committee on
 1-4 Transportation; May 13, 2021, reported adversely, with favorable
 1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
 1-6 May 13, 2021, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR H.B. No. 19 By: Seliger

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to civil liability of a commercial motor vehicle owner or
 1-22 operator, including the effect that changes to that liability have
 1-23 on commercial automobile insurance.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. The heading to Chapter 72, Civil Practice and
 1-26 Remedies Code, is amended to read as follows:

1-27 CHAPTER 72. LIABILITY OF MOTOR VEHICLE OWNER OR OPERATOR [~~TO GUEST~~]

1-28 SECTION 2. Chapter 72, Civil Practice and Remedies Code, is
 1-29 amended by designating Sections 72.001, 72.002, 72.003, and 72.004
 1-30 as Subchapter A and adding a subchapter heading to read as follows:

1-31 SUBCHAPTER A. LIABILITY TO GUEST

1-32 SECTION 3. Sections 72.002 and 72.003, Civil Practice and
 1-33 Remedies Code, are amended to read as follows:

1-34 Sec. 72.002. LIMITATION NOT APPLICABLE. There is no
 1-35 limitation under this subchapter [~~chapter~~] on the liability of an
 1-36 owner or operator who is not related to the guest within the second
 1-37 degree by consanguinity or affinity.

1-38 Sec. 72.003. EFFECT ON OTHER LIABILITY. (a) This
 1-39 subchapter [~~chapter~~] does not affect judicially developed or
 1-40 developing rules under which a person is or is not totally or
 1-41 partially immune from tort liability by virtue of family
 1-42 relationship.

1-43 (b) This subchapter [~~chapter~~] does not relieve the owner or
 1-44 operator of a motor vehicle being demonstrated to a prospective
 1-45 purchaser or relieve a public carrier of responsibility for
 1-46 injuries sustained by a passenger being transported.

1-47 SECTION 4. Chapter 72, Civil Practice and Remedies Code, is
 1-48 amended by adding Subchapter B to read as follows:

1-49 SUBCHAPTER B. ACTIONS REGARDING COMMERCIAL MOTOR VEHICLES

1-50 Sec. 72.051. DEFINITIONS. In this subchapter:

1-51 (1) "Accident" means an event in which operating a
 1-52 commercial motor vehicle causes bodily injury or death.

1-53 (2) "Civil action" means an action in which:

1-54 (A) a claimant seeks recovery of damages for
 1-55 bodily injury or death caused in an accident; and

1-56 (B) a defendant:

1-57 (i) operated a commercial motor vehicle
 1-58 involved in the accident; or

1-59 (ii) owned, leased, or otherwise held or
 1-60 exercised legal control over a commercial motor vehicle or operator

2-1 of a commercial motor vehicle involved in the accident.

2-2 (3) "Claimant" means a person, including a decedent's
2-3 estate, seeking or who has sought recovery of damages in a civil
2-4 action. The term includes a plaintiff, counterclaimant,
2-5 cross-claimant, third-party plaintiff, and an intervenor. The term
2-6 does not include a passenger in a commercial motor vehicle unless
2-7 the person is an employee of the owner, lessor, lessee, or operator
2-8 of the vehicle.

2-9 (4) "Commercial motor vehicle" means a motor vehicle
2-10 being used for commercial purposes in interstate or intrastate
2-11 commerce to transport property or passengers, deliver or transport
2-12 goods, or provide services. The term does not include a motor
2-13 vehicle being used at the time of the accident for personal, family,
2-14 or household purposes.

2-15 (5) "Compensatory damages" has the meaning assigned by
2-16 Section 41.001.

2-17 (6) "Employee" means a person who works for another
2-18 person for compensation. The term includes a person deemed an
2-19 employee under state or federal law and any other agent or person
2-20 for whom an employer may be liable under respondeat superior.

2-21 (7) "Exemplary damages" has the meaning assigned by
2-22 Section 41.001.

2-23 (8) "Motor vehicle" means a self-propelled device in
2-24 which a person or property can be transported on a public highway.
2-25 The term includes a trailer when in use with a self-propelled device
2-26 described by this subdivision. The term does not include a device
2-27 used exclusively upon stationary rails or tracks.

2-28 (9) "Operated," "operating," and "operation," when
2-29 used with respect to a commercial motor vehicle, means to cause the
2-30 vehicle to move or function in any respect, including driving,
2-31 stopping, or parking the vehicle or otherwise putting the vehicle
2-32 into use or operation. These terms include a commercial motor
2-33 vehicle that has become disabled.

2-34 (10) "Video" means an electronic representation of a
2-35 sequence of images, with or without accompanying audio, depicting
2-36 either stationary or moving scenes, regardless of the manner in
2-37 which the sequence of images is captured, recorded, or stored.

2-38 Sec. 72.052. BIFURCATED TRIAL IN CERTAIN COMMERCIAL MOTOR
2-39 VEHICLE ACCIDENT ACTIONS. (a) In a civil action under this
2-40 subchapter, on motion by a defendant, the court shall provide for a
2-41 bifurcated trial under this section.

2-42 (b) A motion under this section shall be made on or before
2-43 the later of:

2-44 (1) the 120th day after the date the defendant
2-45 bringing the motion files the defendant's original answer; or

2-46 (2) the 30th day after the date a claimant files a
2-47 pleading adding a claim or cause of action against the defendant
2-48 bringing the motion.

2-49 (c) The trier of fact shall determine liability for and the
2-50 amount of compensatory damages in the first phase of a bifurcated
2-51 trial under this section.

2-52 (d) The trier of fact shall determine liability for and the
2-53 amount of exemplary damages in the second phase of a bifurcated
2-54 trial under this section.

2-55 (e) For purposes of this section, a finding by the trier of
2-56 fact in the first phase of a bifurcated trial that an employee
2-57 defendant was negligent in operating an employer defendant's
2-58 commercial motor vehicle may serve as a basis for the claimant to
2-59 proceed in the second phase of the trial on a claim against the
2-60 employer defendant, such as negligent entrustment, that requires a
2-61 finding by the trier of fact that the employee was negligent in
2-62 operating the vehicle as a prerequisite to the employer defendant
2-63 being found negligent in relation to the employee defendant's
2-64 operation of the vehicle. This subsection does not apply to a
2-65 claimant who has pursued a claim described by this subsection in the
2-66 first phase of a trial that is bifurcated under this section.

2-67 Sec. 72.053. FAILURE TO COMPLY WITH REGULATIONS OR
2-68 STANDARDS. (a) In this section, "regulation or standard" includes
2-69 a statute, regulation, rule, or order regulating equipment or

3-1 conduct adopted or promulgated by the federal government, a state
 3-2 government, a local government, or a governmental agency or
 3-3 authority.

3-4 (b) In a civil action under this subchapter, evidence of a
 3-5 defendant's failure to comply with a regulation or standard is
 3-6 admissible in the first phase of a trial bifurcated under Section
 3-7 72.052 only if, in addition to complying with other requirements of
 3-8 law:

3-9 (1) the evidence tends to prove that failure to comply
 3-10 with the regulation or standard was a proximate cause of the bodily
 3-11 injury or death for which damages are sought in the action; and

3-12 (2) the regulation or standard is specific and
 3-13 governs, or is an element of a duty of care applicable to, the
 3-14 defendant, the defendant's employee, or the defendant's property or
 3-15 equipment when any of those is at issue in the action.

3-16 (c) Nothing in this section prevents a claimant from
 3-17 pursuing a claim for exemplary damages under Chapter 41 relating to
 3-18 the defendant's failure to comply with other applicable regulations
 3-19 or standards, or from presenting evidence on that claim in the
 3-20 second phase of a bifurcated trial.

3-21 Sec. 72.054. LIABILITY FOR EMPLOYEE NEGLIGENCE IN OPERATING
 3-22 COMMERCIAL MOTOR VEHICLE. (a) In a civil action under this
 3-23 subchapter, an employer defendant's liability for damages caused by
 3-24 the ordinary negligence of a person operating the defendant's
 3-25 commercial motor vehicle shall be based only on respondeat superior
 3-26 if the defendant stipulates, within the time provided by Section
 3-27 72.052 for filing a motion to bifurcate, that, at the time of the
 3-28 accident, the person operating the vehicle was:

3-29 (1) the defendant's employee; and

3-30 (2) acting within the scope of employment.

3-31 (b) If an employer defendant stipulates in accordance with
 3-32 Subsection (a) and the trial is bifurcated under Section 72.052, a
 3-33 claimant may not, in the first phase of the trial, present evidence
 3-34 on an ordinary negligence claim against the employer defendant,
 3-35 such as negligent entrustment, that requires a finding by the trier
 3-36 of fact that the employer defendant's employee was negligent in
 3-37 operating a vehicle as a prerequisite to the employer defendant
 3-38 being found negligent in relation to the employee defendant's
 3-39 operation of the vehicle. This subsection does not prevent a
 3-40 claimant from presenting evidence allowed by Subsection (c) or
 3-41 Section 72.053(b).

3-42 (c) In a civil action under this subchapter in which an
 3-43 employer defendant is regulated by the Motor Carrier Safety
 3-44 Improvement Act of 1999 (Pub. L. No. 106-159) or Chapter 644,
 3-45 Transportation Code, a party may present any of the following
 3-46 evidence in the first phase of a trial that is bifurcated under
 3-47 Section 72.052 if applicable to a defendant in the action:

3-48 (1) whether the employee who was operating the
 3-49 employer defendant's commercial motor vehicle at the time of the
 3-50 accident that is the subject of the civil action:

3-51 (A) was licensed to drive the vehicle at the time
 3-52 of the accident;

3-53 (B) was disqualified from driving the vehicle
 3-54 under 49 C.F.R. Section 383.51, 383.52, or 391.15 at the time of the
 3-55 accident;

3-56 (C) was subject to an out-of-service order, as
 3-57 defined by 49 C.F.R. Section 390.5, at the time of the accident;

3-58 (D) was driving the vehicle in violation of a
 3-59 license restriction imposed under 49 C.F.R. Section 383.95 or
 3-60 Section 522.043, Transportation Code, at the time of the accident;

3-61 (E) had received a certificate of driver's road
 3-62 test from the employer defendant as required by 49 C.F.R. Section
 3-63 391.31 or had an equivalent certificate or license as provided by 49
 3-64 C.F.R. Section 391.33;

3-65 (F) had been medically certified as physically
 3-66 qualified to operate the vehicle under 49 C.F.R. Section 391.41;

3-67 (G) was operating the vehicle when prohibited
 3-68 from doing so under 49 C.F.R. Section 382.201, 382.205, 382.207,
 3-69 382.215, 395.3, or 395.5 or 37 T.A.C. Section 4.12, as applicable,

4-1 on the day of the accident;
4-2 (H) was texting or using a handheld mobile
4-3 telephone while driving the vehicle in violation of 49 C.F.R.
4-4 Section 392.80 or 392.82 at the time of the accident;
4-5 (I) provided the employer defendant with an
4-6 application for employment as required by 49 C.F.R. Section
4-7 391.21(a) if the accident occurred on or before the 180th day after
4-8 the date the employee began employment with the employer defendant;
4-9 and
4-10 (J) refused to submit to a controlled substance
4-11 test as required by 49 C.F.R. Section 382.303, 382.305, 382.307,
4-12 382.309, or 382.311 during the 90 days preceding the date of the
4-13 accident; and
4-14 (2) whether the employer defendant:
4-15 (A) allowed the employee to operate the
4-16 employer's commercial motor vehicle on the day of the accident in
4-17 violation of 49 C.F.R. Section 382.201, 382.205, 382.207, 382.215,
4-18 382.701(d), 395.3, or 395.5 or 37 T.A.C. Section 4.12, as
4-19 applicable;
4-20 (B) had complied with 49 C.F.R. Section 382.301
4-21 in regard to controlled-substance testing of the employee driver
4-22 if:
4-23 (i) the employee driver was impaired
4-24 because of the use of a controlled substance at the time of the
4-25 accident; and
4-26 (ii) the accident occurred on or before the
4-27 180th day after the date the employee driver began employment with
4-28 the employer defendant;
4-29 (C) had made the investigations and inquiries as
4-30 provided by 49 C.F.R. Section 391.23(a) in regard to the employee
4-31 driver if the accident occurred on or before the 180th day after the
4-32 date the employee driver began employment with the employer
4-33 defendant; and
4-34 (D) was subject to an out-of-service order, as
4-35 defined by 49 C.F.R. Section 390.5, at the time of the accident.
4-36 (d) If a civil action is bifurcated under Section 72.052,
4-37 evidence admissible under Subsection (c) is:
4-38 (1) admissible in the first phase of the trial only to
4-39 prove ordinary negligent entrustment by the employer defendant to
4-40 the employee who was driving the employer defendant's commercial
4-41 motor vehicle at the time of the accident that is the subject of the
4-42 action; and
4-43 (2) the only evidence that may be presented by the
4-44 claimant in the first phase of the trial on the negligent
4-45 entrustment claim.
4-46 (e) The provisions of Subsection (c) may not be construed to
4-47 create a new rule or regulation or subject a person to a rule or
4-48 regulation not applicable to the person without regard to this
4-49 section.
4-50 (f) Nothing in this section prevents a claimant from
4-51 pursuing:
4-52 (1) an ordinary negligence claim against an employer
4-53 defendant for a claim, such as negligent maintenance, that does not
4-54 require a finding of negligence by an employee as a prerequisite to
4-55 an employer defendant being found negligent for its conduct or
4-56 omission, or from presenting evidence on that claim in the first
4-57 phase of a bifurcated trial; or
4-58 (2) a claim for exemplary damages under Chapter 41 for
4-59 an employer defendant's conduct or omissions in relation to the
4-60 accident that is the subject of the action, or from presenting
4-61 evidence on that claim in the second phase of a bifurcated trial.
4-62 Sec. 72.055. ADMISSIBILITY OF VISUAL DEPICTIONS OF
4-63 ACCIDENT. (a) In a civil action under this subchapter, a court may
4-64 not require expert testimony for admission into evidence of a
4-65 photograph or video of a vehicle or object involved in an accident
4-66 that is the subject of the action except as necessary to
4-67 authenticate the photograph or video.
4-68 (b) If properly authenticated under the Texas Rules of
4-69 Evidence, a photograph or video of a vehicle or object involved in

5-1 an accident that is the subject of a civil action under this
5-2 subchapter is presumed admissible, even if the photograph or video
5-3 tends to support or refute an assertion regarding the severity of
5-4 damages or injury to an object or person involved in the accident.

5-5 SECTION 5. Subchapter A, Chapter 38, Insurance Code, is
5-6 amended by adding Section 38.005 to read as follows:

5-7 Sec. 38.005. COMMERCIAL AUTOMOBILE INSURANCE REPORT. (a)
5-8 The department shall conduct a study each biennium on the effect,
5-9 for each year of the biennium, on premiums, deductibles, coverage,
5-10 and availability of coverage for commercial automobile insurance of
5-11 H.B. 19, 87th Legislature, Regular Session, 2021.

5-12 (b) Not later than December 1 of each even-numbered year,
5-13 the department shall submit a written report of the results of the
5-14 study conducted under Subsection (a) for the preceding biennium to
5-15 the legislature.

5-16 (c) This section expires December 31, 2026.

5-17 SECTION 6. The changes in law made by this Act apply only to
5-18 an action commenced on or after the effective date of this Act. An
5-19 action commenced before the effective date of this Act is governed
5-20 by the law applicable to the action immediately before the
5-21 effective date of this Act, and that law is continued in effect for
5-22 that purpose.

5-23 SECTION 7. This Act takes effect September 1, 2021.

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