Understanding HB 19

A Guide to Texas' Landmark New Trucking Law

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Introduction

On September 1, 2021, Texas House Bill 19 went into effect. The new law provides significant procedural changes to trucking-related lawsuits filed on or after that date. In a nutshell, the new law allows motor carriers to request a two-part trial under certain circumstances. In the first phase, the jury would determine the amount of compensatory damages (i.e. the amount necessary to make a plaintiff whole, including medical expenses and lost wages). In the second phase, the jury would determine the amount of exemplary damages, if any (i.e. "punitive" damages meant to punish the defendant for egregious conduct or send a message to other motor carriers).

HB 19 is now codified as Section 72.051 et seq. of the Texas Civil Practice and Remedies Code. Although the bill has now been in effect for over five months, there is still confusion and misinformation about the law and its impact. On the one hand, there have been many alarmist warnings from the plaintiffs' bar that dangerous trucking will now go unpunished for major accidents. On the other hand, there is relief from a trucking industry that has seen a sharp increase in litigation that has resulted in higher premiums.

State Rep. Jeff Leach, R-Plano, who authored the bill, said it would protect commercial vehicle operators from "unjust and excessive lawsuits." Leach said in the bill analysis that in the past decade, the number of lawsuits stemming from motor vehicle crashes in Texas has increased by 118%, while the number of crashes involving severe injury or death have decreased or only slightly increased.

"This bill installs a legal and procedural framework that will protect Texas businesses of all sizes from abuses in our justice system, from abuse of lawsuits that are threatening the very existence of many of our small businesses," Leach said.

It will be some time until we know the bill's full impact (the bill provides for a six-year study on how it will have impacted insurance rates). In the meantime, its changes will make a big difference in the way trucking lawsuits are litigated, tried, and settled. This article addresses the key components of HB 19 and illustrates the law's mechanics by discussing a recent $90 million verdict against a trucking company and how HB 19 might have changed that outcome. The article concludes with a checklist for parties to follow while navigating HB 19.

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Who is Covered?

The new law covers accidents involving "commercial motor vehicles." With certain exceptions discussed further below, this definition is written more broadly than federally licensed motor carriers and could arguably include any commercial vehicle operating in intrastate commerce, such as a company pick-up truck:

> (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.

Section 72.051(4). As noted further below, however, some aspects of the new law appear to only apply to certain licensed motor carriers, specifically regarding evidence admissible to prove negligent entrustment under certain circumstances in the first phase of the trial.

The law is further limited by its definition of "defendant(s)" who "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"

This would likely exclude companies that hired independent contractors for commercial transportation purposes (e.g., ride-share companies like Uber or Lyft).

What does HB 19 do?

In tort litigation involving personal injuries, an injured party may seek both compensatory and punitive damages. Compensatory damages seek to make the plaintiff whole and include items like medical expenses, lost wages, disfigurement, and pain and suffering. Punitive damages are meant to "send a message" to a company that has engaged in egregious conduct involving extreme risk. The amount of punitive damages often focuses on factors like the company's net worth and does not necessarily relate to the amount of damages a particular plaintiff has sustained.

For trucking lawsuits in Texas, plaintiffs often assert two types of theories against a motor carrier: vicarious and direct liability. For claims based on vicarious liability, an employer will step into the shoes of a negligent employee, and a plaintiff need only prove that the driver was in the course and scope of their employment (e.g. "on the clock") and engaged in a negligent act that caused the collision (e.g. speeding, improper lane change, etc.). Plaintiffs often also assert direct negligence claims like negligent hiring, training, or maintenance. Those direct negligence claims focus on the acts or omissions of the transportation company itself rather than the responsible driver. For example, if there is evidence that a driver was off the clock and running personal errands in a company vehicle when an accident occurred, it may be difficult to establish vicarious liability, but a plaintiff could possibly still maintain a claim against the company for negligent hiring or entrustment.

HB 19 essentially separates a trial based on these differences and only applies if two requirements are met: (1) a plaintiff alleges vicarious liability claims against a company for a driver's negligence; and (2) the plaintiff alleges punitive damages against the company. Thus, the law would not come into play for a minor collision in which a plaintiff

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was only seeking, for example, only $10,000 in past medical bills and an allowance for pain and suffering.

If these factors exist, a company can move for a two-part trial within specified time frames discussed further below in the "Checklist" Section (generally within 120 days that the defendant files its answer). In theory, the first trial phase would just focus on the acts or omissions of the driver, with the jury deciding whether the driver was negligent. In the first phase, the jury would typically not consider company-wide evidence such as past USDOT violations, past accidents/lawsuits, net worth, etc. This evidence would be relevant to the punitive damages issue in the second phase. HB 19 provides an exception for claims like negligent maintenance of the vehicle, which does not first require a finding that the employee was negligent to impose liability on the company. If there is evidence of negligent maintenance, that claim could be heard in the first phase.

To take advantage of HB 19 bifurcation, an employer defendant can first stipulate that the driver was in the course and scope of employment at the time of the accident. If the employer so stipulates, the first phase of the trial would only be limited to whether the driver was negligent (i.e., to support possible vicarious liability against the employer company). If the jury finds the driver liable, the trial proceeds to the second phase, in which a jury could consider a broader array of evidence and other theories like negligent hiring, supervision, or entrustment, as well as whether the company is liable for punitive damages.

If an employer does not stipulate that the driver was in the course and scope of employment, the law appears to permit claims of direct negligence in the first phase, expressly referencing "negligent entrustment." Defendants can expect for plaintiffs to allege these types of claims to introduce some evidence related to the defendant company in the first phase. However, if a plaintiff manages to pursue direct negligence in the first phase (such as if a defendant declines to stipulate), the law then limits the type of evidence that can be introduced to prove negligent entrustment.[1] The evidence (in the first phase) is limited to several delineated violations, including whether a driver was unlicensed, disqualified, refused a drug screen, etc. For a full list of admissible violations and to ensure that you are in compliance, you can review the full list at Section 72.054(c).

Finally, HB 19 provides that evidence of a defendant's failure to comply with a regulation or standard is only admissible in the first phase of the bifurcated trials if: (1) the evidence tends to prove the alleged failure to comply was a proximate cause of the bodily injury; and (2) the regulation or standard is (i) specific and governs or (ii) is an element of a duty of care applicable to the defendant, applicable to the defendant's employee, or when the defendant's property or equipment are at issue. Although this language may seem vague, the intention appears to be to limit the evidence to those violations that have some reasonable connection to the accident at issue. As we discuss further below regarding the $90 million Werner verdict, plaintiffs' attorneys often muddy an otherwise simple accident with evidence of unrelated company-wide violations spanning years before the accident. This provision of HB 19 attempts to restrict that practice.

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1 Importantly, this provision only applies to employers regulated under the Motor Carrier Safety Improvement Act of 1999 (Pub. L. No. 106-159) or Chapter 644, Transportation Code (these are either federally licensed motor carriers or certain state-licensed vehicles used for commercial purposes with a minimum weight).

It is important to note that bifurcation is not new under Texas law. Under Section 41.009 of the Texas Civil Practice and Remedies Code, a defendant may already file a motion to bifurcate. Under this Section, the first phase is to determine liability for compensatory and exemplary damages and the amount of compensatory damages only. If liability for exemplary damages is found in the first phase, the jury will determine the amount of exemplary damages in the second phase. The key distinction between traditional bifurcation and the new trucking law is that the first phase would arguably still allow for broad company-wide evidence to establish whether a claimant is entitled to exemplary damages in the first phase. The new trucking law, in contrast, is more specific as to the moving violations that can be discussed in the first phase and would limit company-wide evidence to the second phase.

HB 19 in Practice

To illustrate how HB 19 could work in practice, we will discuss a recent $90 million verdict against Werner Transportation and its driver. The verdict arose out of a December 30, 2014 accident in which a passenger vehicle lost control of its vehicle on an icy road, crossed the median, and collided into a tractor-trailer driven by Shiraz Ali. There was evidence by both experts and law enforcement that Ali was driving under the speed limit, promptly hit his brakes to slow the vehicle, and could not have done anything to avoid the collision. He was not cited for this collision.

Although there was no evidence that Ali did anything to cause the Blakes' vehicle to lose control and flip the median, Blakes' attorneys argued that he should not have been on the road due to icy conditions, and that if he had been properly trained not to drive during these conditions, he would not have been on the road to collide with the Blakes' vehicle.

A primary reason for the huge verdict was likely the trial court allowing plaintiffs to introduce company-wide evidence on practices spanning over a decade, including the company's high turnover rate and extensive hiring of new and inexperienced drivers. If HB 19 had been in effect, the jury would likely not have heard this evidence during the first trial phase. Instead, the jury would have been limited to the issue of whether the driver was negligent by failing to pull over considering the icy conditions. Limited to that issue, it is reasonable to assume that most lay jurors would have found no fault with the driver. HB 19 would have also limited evidence of the types of violations (if any) by Ali. This could have made an impact because the court allowed evidence of purported violations not just by Ali but by other employees, including a dispatcher for allegedly not providing real-time weather updates to Ali and not instructing him to pull over.

Although the plaintiffs could have still pursued punitive damages in the second phase, they may have been more open to settle before trial even started because of the risk that a jury would not have found Ali liable under the circumstances.

Does HB 19 Make Roadways More Dangerous?

This has been a consistent claim by plaintiff's attorneys and journalists across Texas. It is important to remember that the law does not prevent a jury from awarding punitive damages

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against a company (or limit the amount in any way), provided that the jury first finds that the driver's negligence proximately caused the accident at issue. Additionally, motor carriers can still be held fully accountable for failure to maintain or repair their vehicles, claims that can be introduced in the first phase.

In short, HB 19 may produce a few hurdles to plaintiffs' attorneys but would not prevent legitimate claims from moving forward. The law was meant to address claims like Werner in which the evidence supporting the $90 million verdict had very little to do with the facts of the case involving an unfortunate accident and no fault of the commercial driver.

HB 19 Checklist

If your company is a motor carrier being sued in a personal-injury action, we provide the following checklist to help you navigate the new law:

- ☐ **Check the Petition.** Review the plaintiff's written petition to see what theories they have asserted. If their petition includes claims for vicarious liability (or respondeat superior) for acts of the driver and a claim for exemplary damages against the employer of the driver, HB 19 would likely apply.
- ☐ **Timely File Motion to Bifurcate.** A motor carrier must file a motion for bifurcation 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. 75.052(b). Thus, if a plaintiff's original petition contains the requisite vicarious liability and exemplary damages pleadings, a defendant company must file its motion on or before 120 days after it files its written answer to the petition.
- ☐ **Stipulate.** This decision will have to be made on a case-by-case basis. Generally, if a driver was on the clock and in the course of a job like a delivery, stipulating to course and scope would streamline the lawsuit and allow the company to benefit from bifurcation. This must be done within the deadlines specified above. A distinction must also be made between stipulating to vicarious liability and simply stipulating to course and scope. Sometimes, if a driver's negligence undeniably caused an accident (e.g. running a red light), it may make sense to stipulate to liability. Whatever you decide, make sure whatever stipulations you agree to specify what is being stipulated.
- ☐ **File Partial Summary Judgment.** Although summary judgments appear to be increasingly rare in Texas, companies may consider trying to at least defeat claims for exemplary damages and direct negligence (e.g. negligent hiring or training). If there is evidence that a company hired a licensed commercial driver, performed a background check that did not reveal any red flags, and trained the driver, any negligence by the driver should only support a theory of vicarious liability, especially if the accident was caused by a normal traffic violation like speeding. If you can successfully dispose of all claims other than vicarious liability, there is no need for a second trial phase, and a jury should not get to consider company-wide evidence unrelated to the specific accident at issue.
- ☐ **Try to Settle After the First Phase.** Trials in Texas are increasingly rare, and when they do occur it is because there were significant disagreements that the parties were not

able to resolve through negotiations or mediation. If the first trial phase concludes, the parties will have significantly more information about the judge, jury, and presentation of evidence. Thus, this time period may present one final opportunity for the parties to reach a settlement before there is any risk of a punitive damages award.

Conclusion

There will undoubtedly be litigation about the new law as newly filed claims begin approaching trial. We look forward to keeping you advised of these developments and welcome you to call a member of our team if you have any questions.

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