



TEXANS FOR LAWSUIT REFORM

*87<sup>th</sup> Legislative Session*

## **The Truth About HB 19**

**HB 19 is critical legislation that ensures juries have the relevant facts to make sound decisions, and that commercial vehicle lawsuits are tried fairly, consistently and uniformly across the state.**

Commercial vehicles of all types and sizes are essential to our economy and our communities. That is true every day, but trucks and vans are absolutely *essential* to disaster preparedness, response and relief.

Unfortunately, abusive lawsuits are threatening businesses, especially small businesses, that need those vehicles to deliver goods and services.

The Texas Trial Lawyers Association claims HB 19 will shut the courthouse doors to people injured in trucking accidents.

This is the same “the sky is falling” rhetoric used to oppose *every* tort reform bill that has been proposed over the past quarter century.

But those claims have proven false—*every time*.

In fact, TLR has made civil justice proposals that have become law in *each* of the past 14 legislative sessions.

Yet, the Texas Legislature has never repealed or meaningfully amended the common-sense reforms that have been enacted.

**The courthouse doors in Texas are still wide open, harmed parties are being compensated, and plaintiff lawyers are prospering.**

TTLA recently delivered a handout that attacked HB 19, without any factual support.

We hope you will read the attached memorandum, informing you of the facts.

***For 26 years, TLR has advocated for sensible fixes to real abuses. Our solutions have worked, keeping the courthouse doors open to any injured person with a legitimate claim to receive compensation from the party causing the injury. HB 19 is no exception.***



TEXANS FOR LAWSUIT REFORM

*87<sup>th</sup> Legislative Session*

***TTLA Claim:*** “In 2019, Texas had more than 39,000 commercial vehicle crashes and 613 deaths. Texas leads the nation in large truck crashes and the trend keeps continuing upward. Now is not the time to make Texas roads less safe.”

**Fact:** Every loss of life is a tragedy. Let’s put TTLA’s claim in context. In 2008, almost 30,000 collisions involving a commercial vehicle in Texas resulted in 522 fatalities.<sup>i</sup> Thus, from 2008 to 2019, the number of collisions increased about 30% and the number of fatalities increased 17.4%. **Meanwhile, the number of collision lawsuits generated by personal injury lawyers increased 118%.**<sup>ii</sup> The Federal Motor Carrier Safety Administration has reported to Congress that a majority of collisions involving a truck are the fault of the passenger vehicle’s driver, not the truck driver.<sup>iii</sup> **Texas is experiencing a lawsuit explosion driven by lawyers, not by accidents, injuries or fatalities.**

**Fact:** HB 19 has nothing to do with road safety. Instead, HB 19 provides the “rules of the road” for lawsuits to ensure they are tried fairly, uniformly and consistently across the state. If passed, a company whose employee’s negligence caused a collision will owe the full measure of damages to the injured person or that person’s family. Plaintiffs will be able to recover lost earnings (past and future) and medical expenses, along with damages for disfigurement, mental anguish and pain and suffering. The plaintiff will also be able to recover punitive damages under the same standards that exist for all cases today.

***TTLA Claim:*** “The bill excuses company liability in all but the most extreme circumstances. How does it make sense to give a company a ‘get out of jail free’ card when the company admits the driver is an employee furthering its business at the time of the crash? It absolves companies from any independent compliance with federal or state safety regulations such as for training and maintenance on their vehicles.”

**Fact:** Nothing in HB 19 absolves companies from compliance with safety regulations. Trucking companies are highly regulated by both the state and federal governments, and many companies have extensive internal safety programs that go beyond government regulations. The industry regularly cooperates on best practices with regulators and law enforcement agencies. In Texas, the industry has worked with the Legislature to support increased fines to help ensure industry-wide compliance with safety regulations.

Under HB 19, trucking companies will continue to have every incentive to follow safety protocols. On a human level, a serious accident takes an enormous mental and emotional toll on truck drivers. On a business level, violating safety regulations can result in criminal penalties, substantial fines and increased insurance premiums, and collisions take drivers and equipment off the roads and reduce productivity.

**Fact:** Under HB 19, if a company acknowledges its employee was acting in the scope of employment at the time of the collision, the company will continue to be responsible for the full amount of damages—economic, noneconomic and punitive—assessed against the driver for the driver’s negligence.



TEXANS FOR LAWSUIT REFORM

*87<sup>th</sup> Legislative Session*

***TTLA Claim:*** “The bill severely limits an injured victim’s access to crucial discovery to only 24 months of a company’s prior bad conduct. This includes evidence that the company ignored falsified driver’s log books, failed to maintain their vehicles, and did not provide adequate training, among other things. It also restricts the Texas Rules of Evidence and ties the hands of the judge in allowing the jury to see a bad company’s prior history of safety violations.”

**Fact:** HB 19 addresses plaintiff lawyer trial strategies to prejudice and mislead jurors with accusations about safety violations that have nothing to do with the accident. Their goal is to try to persuade the jury that the defendant is “a threat to society” and must be “taught a lesson.”

The role of a jury is to be a fact finder, based on relevant evidence, about the cause of an injury and the amount of damages needed to compensate the injured party. HB 19 specifically allows jurors to hear about safety violations that caused the injury or death that is the subject of the lawsuit. HB 19 does not allow extraneous evidence about log books, maintenance records, and other things that are not related to the accident.

HB 19 ensures the jury receives evidence relevant to the specific case about violations that caused the specific accident, not evidence intended merely to smear the driver or company. Texas law requires that evidence be relevant and prohibits evidence of prior bad acts. But some Texas courts ignore these rules to benefit plaintiffs. **HB 19 merely requires all courts to apply longstanding rules uniformly and consistently to ensure fairness for all parties in the case.**

**Fact:** If the company’s negligence in its employment practices exposed the motoring public to undue risk, then the company should be punished. But personal injury lawyers always assert the defendant company failed to adequately train and supervise its employees. Again, the plaintiff’s lawyer’s goal is not to give the jury relevant evidence on the cause of the accident, but rather, to smear the company in front of the jury, claiming the defendant’s employment practices put society at risk. If the defendant company agrees the employee was working in the scope of his/her employment at the time of the collision, then the plaintiff is entitled to recover all damages allowed by law from the company. And HB 19 also allows plaintiffs to pursue punitive damages for any legitimate negligent employment claims.

**Fact:** It’s not unusual for the Legislature to codify what’s already in the common law or Supreme Court decisions to provide more uniform and consistent application. HB 19 codifies rules of evidence to ensure they are applied fairly, consistently and uniformly across the state.

***TTLA Claim:*** “The bill expands the terms used in commercial vehicle crashes and encompasses much more than tractor trailers or other traditional commercial vehicles. Under this bill, the only excluded vehicles are ones used primarily for household, family and personal use.”



TEXANS FOR LAWSUIT REFORM

*87<sup>th</sup> Legislative Session*

**Fact:** As the personal injury trial lawyers' own billboards and TV ads show, any company operating a commercial vehicle in Texas is a target for a company-crushing lawsuit. A company operating a pickup truck or a couple of minivans is as much at risk of litigation as a company operating 18-wheelers. Companies operating commercial vehicles in Texas are seeing large, and sometimes crippling, yearly increases in insurance premiums as a result of this lawsuit abuse. Addressing only 18-wheeler collisions would be a half measure, leaving countless Texas small businesses vulnerable to abusive lawsuit tactics.

***TTLA Claim:*** *“The bill creates one-sided procedural barriers to commercial vehicle crash cases by limiting damaging evidence against the company and allowing delay tactics via mid-lawsuit appeals.”*

**Facts:** Under HB 19, a plaintiff can present evidence that a company failed to follow safety regulations or standards if that failure was an element in causing the injury or death that is the subject of the lawsuit. Texas law already requires that evidence presented at trial be relevant, and evidence that has no causal connection to the collision is not relevant. HB 19 simply codifies existing Texas law to ensure it is applied fairly, consistently and uniformly across the state.

Consistent with established case law, HB 19 does not allow plaintiffs to go on fishing expeditions in the pretrial discovery process. Again, HB 19 simply codifies this Texas case law. The plaintiff must ask the trial court for permission to seek discovery of safety violations. If a plaintiff lawyer can show the search is more than a fishing expedition, the judge will allow discovery of the requested information from the defendant.

If the trial court allows discovery the defendant believes is too intrusive, the defendant can ask for appellate review through a petition for writ of mandamus. Trial court proceedings will continue while the appellate court considers the petition. The mandamus process is typically very quick, already exists in Texas law, and is used often. It is not a “mid-lawsuit appeal,” and there is no delay.

**These rules already exist, but some Texas courts ignore them to benefit plaintiffs. HB 19 merely requires all courts to apply longstanding rules fairly, uniformly and consistently to ensure fairness for all parties in the case.**

***TTLA Claim:*** *“It allows a company to slowly dole out compensation to victims and creates a perverse profit incentive for the victim’s death.”*

**Fact:** HB 19 requires a defendant to guarantee payment of future medical damages. Since 2003, Texas law has allowed defendants in healthcare liability cases to pay future damages through periodic payments made in the future. Under the 2003 law, the defendant is required to purchase an annuity or otherwise take steps to fully fund the judgment. **Thus, the Texas Legislature has already deemed this to be an appropriate mechanism for paying future damages. HB 19 merely applies to commercial vehicle collision cases an already existing mechanism for paying a judgment.**



TEXANS FOR LAWSUIT REFORM

*87<sup>th</sup> Legislative Session*

<sup>i</sup> In 2008, 29,772 collisions involving a commercial vehicle in Texas resulted in 522 fatalities (1.75% of the collisions resulted in a fatality). *Commercial Motor Vehicle (CMV) Involved Crashes and Injuries by County 2008*, TEX. DEP'T TRANSP., at 6, [https://ftp.txdot.gov/pub/txdot-info/trf/crash\\_statistics/2008/30\\_2008.pdf](https://ftp.txdot.gov/pub/txdot-info/trf/crash_statistics/2008/30_2008.pdf) (last updated May 27, 2013).

<sup>ii</sup> See OFF. CT. ADMIN., ANNUAL STATISTICAL REPORT FOR THE TEXAS JUDICIARY, FISCAL YEAR 2019, at Statewide 5, <https://www.txcourts.gov/media/1445760/fy-19-annual-statistical-report.pdf> (last visited Feb. 22, 2021).

<sup>iii</sup> U.S. DEP'T OF TRANSP., FED. MOTOR SAFETY ADMIN., REPORT TO CONGRESS ON LARGE TRUCK CRASH CAUSATION STUDY (March 2006) at 16, available at <https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/ltrccs-2006.pdf> (last visited March 3, 2021) (“In two-vehicle crashes involving a large truck and a passenger vehicle, the passenger vehicle was assigned the critical reason in 56 percent of the crashes and the large truck in 44 percent.”).