

CIVIL PRACTICE AND REMEDIES CODE

TITLE 4. LIABILITY IN TORT

CHAPTER 72. LIABILITY OF MOTOR VEHICLE OWNER OR OPERATOR

SUBCHAPTER A. LIABILITY TO GUEST

Sec. 72.001. LIMITED LIABILITY. A person who is related to the owner or operator of a motor vehicle within the second degree by consanguinity or affinity, as determined under Chapter 573, Government Code, and who is being transported in the motor vehicle over a public highway of this state as a guest without payment for the transportation has a cause of action against the owner or operator of the motor vehicle for injury, death, or loss in a collision only if the collision was intentional on the part of the owner or operator or was caused by the owner's or operator's heedlessness or reckless disregard of the rights of others.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., ch. 561, Sec. 7, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 709 (H.B. 2190), Sec. 114, eff. September 1, 2023.

Sec. 72.002. LIMITATION NOT APPLICABLE. There is no limitation under this subchapter on the liability of an owner or operator who is not related to the guest within the second degree by consanguinity or affinity.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 785 (H.B. 19), Sec. 3, eff. September 1, 2021.

Sec. 72.003. EFFECT ON OTHER LIABILITY. (a) This subchapter 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 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.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 785 (H.B. 19), Sec. 3, eff. September 1, 2021.

Sec. 72.004. OFFSET FOR MEDICAL EXPENSES PAID. (a) The owner or operator or his liability insurance carrier is entitled to an offset against any award made to the guest on a liability claim in an amount equal to the amount paid by the owner, operator, or insurance carrier for medical expenses of the guest.

(b) This section does not authorize a direct action against a liability insurance carrier.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

SUBCHAPTER B. ACTIONS REGARDING COMMERCIAL MOTOR VEHICLES

Sec. 72.051. DEFINITIONS. In this subchapter:

(1) Repealed by Acts 2023, 88th Leg., R.S., Ch. 709 (H.B. 2190), Sec. 141, eff. September 1, 2023.

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

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

(B) a defendant:

(i) operated a commercial motor vehicle involved in the collision; 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 collision.

(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.

(3-a) "Collision" means an event in which operating a commercial motor vehicle causes bodily injury or death.

(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 collision 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 deemed 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.

Added by Acts 2021, 87th Leg., R.S., Ch. 785 (H.B. [19](#)), Sec. 4, eff. September 1, 2021.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 709 (H.B. [2190](#)), Sec. 115,

eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 709 (H.B. 2190), Sec. 141, eff. September 1, 2023.

Sec. 72.052. BIFURCATED TRIAL IN CERTAIN COMMERCIAL MOTOR VEHICLE COLLISION 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. This subsection does not apply to a claimant who has pursued a claim described by this subsection in the first phase of a trial that is bifurcated under this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 785 (H.B. 19), Sec. 4, eff. September 1, 2021.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 709 (H.B. 2190), Sec. 116,

eff. September 1, 2023.

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.

Added by Acts 2021, 87th Leg., R.S., Ch. 785 (H.B. 19), Sec. 4, eff. September 1, 2021.

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, within the time provided by Section 72.052 for filing a motion to bifurcate, that, at the time of the collision, 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(b).

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

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

(A) was licensed to drive the vehicle at the time of the collision;

(B) was disqualified from driving the vehicle under 49 C.F.R. Section 383.51, 383.52, or 391.15 at the time of the collision;

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

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

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

(F) had been medically certified as physically

qualified to operate the vehicle under 49 C.F.R. Section 391.41;

(G) was operating the vehicle when prohibited from doing so under 49 C.F.R. Section 382.201, 382.205, 382.207, 382.215, 395.3, or 395.5 or 37 T.A.C. Section 4.12, as applicable, on the day of the collision;

(H) was texting or using a handheld mobile telephone while driving the vehicle in violation of 49 C.F.R. Section 392.80 or 392.82 at the time of the collision;

(I) provided the employer defendant with an application for employment as required by 49 C.F.R. Section 391.21(a) if the collision occurred on or before the first anniversary of the date the employee began employment with the employer defendant; and

(J) refused to submit to a controlled substance test as required by 49 C.F.R. Section 382.303, 382.305, 382.307, 382.309, or 382.311 during the two years preceding the date of the collision; and

(2) whether the employer defendant:

(A) allowed the employee to operate the employer's commercial motor vehicle on the day of the collision in violation of 49 C.F.R. Section 382.201, 382.205, 382.207, 382.215, 382.701(d), 395.3, or 395.5 or 37 T.A.C. Section 4.12, as applicable;

(B) had complied with 49 C.F.R. Section 382.301 in regard to controlled-substance testing of the employee driver if:

(i) the employee driver was impaired because of the use of a controlled substance at the time of the collision; and

(ii) the collision occurred on or before the 180th day after the date the employee driver began employment with the employer defendant;

(C) had made the investigations and inquiries as provided by 49 C.F.R. Section 391.23(a) in regard to the employee driver if the collision occurred on or before the first anniversary of the date the employee driver began employment with the employer defendant; and

(D) was subject to an out-of-service order, as defined by 49 C.F.R. Section 390.5, at the time of the collision.

(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 collision that is the subject of the 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) The provisions of Subsection (c) may not 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 collision that is the subject of the action, or from presenting evidence on that claim in the second phase of a bifurcated trial.

Added by Acts 2021, 87th Leg., R.S., Ch. 785 (H.B. 19), Sec. 4, eff. September 1, 2021.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 709 (H.B. 2190), Sec. 117, eff. September 1, 2023.

Sec. 72.055. ADMISSIBILITY OF VISUAL DEPICTIONS OF COLLISION. (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 a collision that is the subject of the action except as necessary to authenticate the photograph or video.

(b) If properly authenticated under the Texas Rules of Evidence, a photograph or video of a vehicle or object involved in a collision 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 collision.

Added by Acts 2021, 87th Leg., R.S., Ch. 785 (H.B. 19), Sec. 4, eff. September 1, 2021.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 709 (H.B. 2190), Sec. 118, eff. September 1, 2023.