

TEXAS WATCH

March 12, 2021

Via electronic submission

Texas House of Representatives
Attn: House Committee on Judiciary and Civil Jurisprudence (E2.120)
P.O. Box 2910
Austin, Texas 78768-2910

Re: Written comments on HB 19, safety measures

Dear Chairman Leach and Members of the Committee:

First, I would like to thank you for the opportunity to take further comment from us and other stakeholders on [HB 19](#). You created a very open process during this week's hearing, and I was grateful that all of the committee members could **hear from families**, many of whom we helped to connect with the process.

We are deeply concerned about the dangers present on Texas roads and believe the approach currently embodied in HB 19 will only heighten those dangers for all of us by removing incentives for safe corporate conduct. I cited a [litany of statistics](#) to you during my spoken testimony about how our state leads in all of the wrong ways when it comes to large truck crashes. The most shocking figure that emerged from the research was [NHTSA data](#) showing a **105% increase in trucking fatalities in Texas** from 2009 to 2019 (rising from 318 to 652 fatalities in that short period of time per the Fatality Analysis Reporting System; Texas's [population](#) rose 18% in the same period). The numbers show us we have a disproportionate -- and rising -- problem with trucks killing Texans.

Our families are paying the price because of these **preventable crashes**, and good trucking companies are also paying the price when their insurance premiums rise due to the wrongful and reckless acts of their competitors. **We want to solve the safety problem** in our great state, and our comments today are delivered in that spirit.

I touched on a number of legal issues in the bill when I was before the committee, and I will not belabor those points here because I anticipate you will be hearing quite a bit on that front given the invited testimony you received. I will say, though, that **all incentives must be aligned with safety**, and all wrongdoing must be exposed so it may be held to account. This is how the rules of the road truly mean something for all of our families. This is how safe conduct is encouraged and dangerous conduct is discouraged.

Juries – our smallest and most representative government – serve as the most meaningful enforcement mechanism available. They act as guardians of our communities, and they send clear messages about what will not be tolerated in the name of profit. They work hard to get to the truth, and in the rare instances when they or our trial judges get something wrong, there are many mechanisms available within our judiciary to correct any errors. [The framers](#) built a brilliant system of co-equal branches of government, which is well-developed at this point in our history. We should trust it. We should not substitute our judgment for that of the thoughtful men and women who actually hear the testimony, weigh its credibility, find the facts, and apply them to the law.

Before a matter reaches a jury, it is important to keep sight of the fact that Texas defendants have **multiple opportunities to dismiss any suits** that are unfounded or lacking, including Motions to Dismiss under [TEX. R. CIV. P. 91a](#) and different forms of [Motions for Summary Judgment](#). If a trucking company is confronted with a baseless lawsuit, their lawyers can end the case very quickly. But what you heard from the testimony is these cases are very serious. When 80,000 pounds of kinetic energy is transmitted into your passenger vehicle at speed, the consequences are often catastrophic.

The last thing that I will say on the legal front is our **proportionate responsibility statute** is very clear and has been carefully considered through the years. Texas law is clear that there can be more than one cause of a crash, and it requires the evaluation of **everyone's** fault so that juries and judges can apportion it accordingly. TEX. CIV. PRAC. & REM. CODE [§ 33.003](#) requires the jury to determine the percentage of fault for each claimant and, importantly for this legislation, **each defendant**. It does not say that we should just look at one particular defendant for this purpose while ignoring the misconduct of another defendant, who may have caused even greater harm.

Drivers have independent duties owed to their fellow passengers. Trucking companies have additional independent duties owed to the public with their trucking operation. When those duties are breached, Chapter 33 requires that juries have the **complete picture** -- a clear picture -- and apportion responsibility in accordance with the totality of relevant and admissible facts. That is fair. That is just. That is right.

Innocent families would effectively be **penalized by HB 19** for no good public policy reason because it shifts accountability away from corporate negligence, primarily focusing instead on the conduct of the driver. To help illustrate this point, allow me to provide the following examples of terrible injuries that would be caused – and in fact were caused, as these are **real-world examples** – predominantly by corporate misconduct and would, therefore, go unaddressed and/or un(der)compensated under HB 19:

- Dual rear wheels came off of an 18-wheeler trailer while in transit at highway speed, crossing the roadway, striking and killing a 21-year-old college student

who was standing next to her car at a roadside rest area. The trailer wheels came off due to the lack of corporate supervision and enforcement of its own policies and the federal regulations, which allowed an **inexperienced mechanic**, who was untrained and unsupervised, to botch a wheel repair ten days prior to killing the young woman. It is also discovered that this trucking company has had at least six other similar incidents of wheels coming off their trailers during transit on public roadways, killing and maiming at least two other people. Under HB 19, this trucking company would get away with their misconduct and could not be held accountable for the young woman's death.

- An opioid addicted truck driver lies repeatedly on his application about his previous employment experience, knowing that if the company he is applying with contacts his previous employer(s), they will discover his misrepresentations, including that he “resigned under pressure” for suspicious drug-related activity, and would never hire him as a driver. The trucking company that he is applying with **does not contact his previous employer** in violation of the federal regulations and hires the applicant driver. Driver later strikes two sisters changing a flat tire on the side of the road while he is under the influence of heroin. One sister is killed. The other sister survives but suffers terrible injuries, including permanent brain damage. The three young children of these sisters were in the back seat witnessing their mothers being struck. After the crash, the GPS data shows that the driver went to buy drugs from his drug dealer, in the company truck, 53 times in the seven weeks prior to the crash. Under this bill, the corporate negligence in not vetting this driver, who never should have been hired, or in not supervising him in their vehicle would likely never be discovered and almost certainly not be presented to a jury, allowing the corporation to get away with its part in killing and maiming these two mothers.
- A truck driver is initially told he has too many moving violation convictions on his driving record to be hired and is told to re-apply once some of those convictions “fall off” the three-year lookback window on his Motor Vehicle Record (MVR). The driver does as he's told and is later hired. After he is hired, he has ten different incidents while driving for this trucking company in their trucks, including multiple speeding convictions, falsified logs, and at-fault accidents. If corporate policy had been followed, he should have been fired after the first three of these incidents. Driver was not fired and later was driving too fast in heavy traffic, rear-ended a vehicle stopped in traffic, seriously and permanently injuring the mother and daughter in the vehicle that he hit. Under HB 19, the jury would likely never hear any of the evidence relating to the **company's decision to keep giving this driver the keys**, despite all of the warning signs that he was a reckless and unsafe driver. Once again, the trucking company would get away with its misconduct.

This is contrasted by the fact that the trucking company would, however, be allowed to put on all the evidence it can find supporting its claim that the driver he hit in front of him is at-fault for slowing down too rapidly in traffic. The **jury gets**

to hear all of one side's evidence, yet the people who are seriously injured or killed are not allowed to have the jury hear most of the evidence that caused their lives to be altered forever. This violates the basic concept of fairness.

It is important to note, none of the real-life case examples above involve small “mom and pop” companies. They all involve large trucking companies with thousands of drivers on our roads across the country, Texas included. None of these large trucking companies are based in Texas. If HB 19 were enacted, it would **shield these out-of-state large trucking companies from any accountability** for their conduct when they maim or kill Texans on our highways. Texas juries would never even hear about their misconduct, yet juries in other states do. This result would not make our roads safer and would be an injustice to the people of this great state.

By allowing commercial vehicle corporations to essentially escape responsibility for their negligent acts, we distort the process of apportioning responsibility in ways that will undoubtedly work an injustice, **stranding costs wrongfully on the shoulders of families.** When this happens, we, the **taxpayers, often end up also paying the cost** through charity care provided at our county hospitals and through Medicare/Medicaid, not to mention unemployment caused by having to provide home healthcare by family members, the physical and emotional toll this places on those caregivers, and a whole host of ripple effects.

This creates an **impermissible subsidization of risk** that is diametrically opposed to our market-based economy and our moral society. As Milton Friedman said, “People should be **responsible for harm** that they do.” See his interview [here](#) at 14:39. Adam Smith, the father of the free market, wrote in his *Lectures on Jurisprudence*: “The first and chief design of all civil governments is, as I observed, to **preserve justice** amongst the members of the state and prevent all encroachments on the individuals in it, from others in the same society. ... Justice is violated whenever one is deprived of what he had a right to and could justly demand of others, or rather, **when we do him any injury or hurt without a cause.**”

We can save lives, reduce insurance costs, and reduce the number of families forced to seek justice by focusing on safety. We can do all of this by addressing the root cause of the issue.

To solve the problem, we respectfully request the adoption of the following **proven safety measures** for intrastate trucking in the State of Texas:

Conspicuity

Because so many crashes occur at night or due to poor visibility, improving the conspicuity of large trucks is vitally important. Therefore, our state should:

- Require lights along the entire side of each tanker and tractor trailer, enabling motorists to clearly see these vehicles at night;
- Require these vehicles and trailers to be painted in light colors; and
- Provide for regular inspections of working side lights and clean retro reflective tape, performed at regular intervals, such as at weigh stations and during vehicle registrations.

If these measures had been in place, [Leslie and Sophie Rosenberg](#) may have been [spared death](#) on our roads.

Underride

Truck underride crashes occur when a passenger vehicle travels under the body of a truck — such as a semi-trailer or single-unit truck — due to the height difference between the vehicles. Motorcyclists, bicyclists, and pedestrians are also adversely affected by underride crashes.

Protective devices (guards) can be built into or affixed to the rear and sides of semi-trailers and single-unit trucks to prevent or mitigate these types of crashes that can result in passenger compartment intrusion, severe head and neck trauma, and death.

Given the demonstrated threat posed to motorists, please:

- Require rear guards at the back of all trucks hauling intrastate loads in Texas, and further require all such guards meet the [IIHS's TOUGHGUARD](#) standard;
- Require all trucks owned by the State of Texas, or contracting with our state, to have side underride guards; and
- Provide a specific data field on police accident reports to capture underride data, and educate law enforcement about including “underride” in the narrative section until a field is added so that the federal crash database can capture the occurrence of an underride crash.

These measures would have prevented [Martin Mata's](#) tragic wreck where he was pinned under an 18-wheeler and dragged over 700 feet.

Speed Limiters & Driver Pay

Large trucks have been equipped with [speed limiter technology](#) since the 1990s. This life-saving feature allows them to limit their maximum operating speeds. Slower speeds save lives by [reducing the severity of crashes](#) and they help improve a large truck's fuel efficiency.

This technology can make drastic gains in terms of safety. We request that you:

- Require all [heavy-duty trucks](#) to have speed limiters limiting their speed to no more than 60 mph; and
- Pay drivers by the hour instead of by the mile, incentivizing safe driving. Current payment incentives push some truck drivers to cover as much distance as fast as possible. By combining a requirement that drivers are paid fairly by the hour with lower truck speed limits, Texas would ensure: (a) that truck drivers don't bear the financial costs of driving less miles in the same number of driving hours; and (b) lives are saved when there are crashes involving heavy trucks.

Chameleon Carriers

The Government Accountability Office [defines chameleon carriers](#) as “motor carriers [that] have registered and been operating illegally in interstate commerce by using a new identity in an effort to disguise their former identity and evade enforcement actions issued against them by the Federal Motor Carrier Safety Administration (FMCSA), which is the federal agency responsible for overseeing motor carrier safety.

To ensure trucking companies are operating above board, Texas should:

- Require authorities to check and determine if a carrier has been out of business before granting a new license; and
- Harmonize minimum insurance limits to incentivize professional conduct and disincentivize fly-by-night operators. Currently, Texas has a [\\$500,000 policy minimum](#) for intrastate trucking; it should be raised to \$750,000 for intrastate general freight haulers to conform to federal minimum limits.

Maintenance

Inspecting, maintaining, and repairing trucks are essential tasks for keeping them safe. Failing to ensure parts and accessories are in safe and proper condition has fatal consequences.

The following common-sense measures would help keep trucks roadworthy:

- All trucking, logistics, or shipping companies should check the safety of their trucks or the trucks they contract with using a free inspection report through the FMCSA. Running a "Safer Systems Report" requires only a few minutes and should be done on a monthly basis; and
- Provide funding for law enforcement to create a point of emphasis leading to greater enforcement through braking inspections given the widespread nature of truck brake deficiencies and related out-of-service issues.

Driver Training & Safety

Current training requirements for truck drivers in Texas are inadequate, and well below a number of other skilled professions in the state. There is not a minimum number of behind-the-wheel hours required for entry level truck drivers, leading to higher turnover rates and lower levels of safety.

Therefore, Texas should:

- Require hours behind the wheel during training to ensure drivers are ready to share the road safely with the driving public. Some training schools only provide 50 hours behind the wheel, which is less time than one full driving week (i.e., 70 hours). At a bare minimum, require drivers to have 100 hours of behind-the-wheel experience before they may graduate from their driving school;
- Require driver training behind the wheel to include a mix of challenging scenarios, including nighttime driving, driving in traffic, and adverse road services, such as rain or other weather conditions; and
- Review trucker health every year by a certified medical examiner with a particular emphasis on identifying chronic health conditions that may imperil their ability to safely pilot the truck (e.g., sleep apnea). Regular reviews can help support drivers and get them the medical treatment they need to protect their lives and the lives of others.

Work Zones

Work Zone crashes are getting much worse in Texas. In 2010, 15 percent of work zone fatalities involved a large truck; in 2019, that number skyrocketed to 35 percent per NHTSA's FARS database.

Texas needs:

- Greater enforcement of Work Zone moving violations;
- More "heads up" of upcoming Work Zones for the motoring public, notifying drivers with plenty of time to allow them to adjust their speed; and
- Stiffer fines for violations to impress the importance of safety in these areas.

We will always endeavor to get you the best information possible and stand ready to help this committee improve safety in our state. For a national perspective from leading safety advocates, we also commend the [Institute for Safer Trucking](#) to you as an invaluable resource.

There is a way to meet the trucking industry's stated goal of lowering insurance costs and litigation rates. Most importantly, we can reduce the number of needless injuries and deaths across our state. The solution to the problem is safety.

Respectfully,

A handwritten signature in blue ink that reads "Ware V. Wendell". The signature is written in a cursive style with a large, sweeping initial "W".

Ware V. Wendell
Executive Director
Texas Watch