

Texas 87th Session Recap

TXTA & SMA Wrap Up of the 2021 Legislative Session



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TXTA & SMA 87th Session Recap

Most New Laws Were Effective September 1, 2021

Texas 87th Legislative Session

TXTA and SMA made significant progress in our lawsuit reform efforts through our partnership with Texans for Lawsuit Reform (TLR) and the creation of the Keep Texas Trucking Coalition during the 87th Legislative Session. The Texas Legislature passed House Bill 19, which is a tremendous step in the right direction, but the work is not done! We need the industry to continue to be on alert as we prepare for the next legislative session. Join us in our fight against lawsuit abuse and support our advocacy efforts by making a donation to TXTA TruckPAC.





Passed Bills

Education

HB 3395

CDL Knowledge Testing

Rep. Trent Ashby / Sen. Chuy Hinojosa

✓ **Supported and Passed**

This bill allows third party testers to administer the commercial driver license (CDL) knowledge test. Driving schools operating under a memorandum of understanding (MOU) with the Texas Department of Public Safety (TxDPS) are already conducting the skills testing. During the COVID-19 pandemic, a waiver was issued by the Federal Motor Carrier Safety Administration (FMCSA) allowing these third-parties to also administer the knowledge test. This waiver ended on May 31, 2021. HB 3395 took effect September 1, 2021. Allowing these training schools to administer both the skills and knowledge tests reduces crowds at the driver license offices and eliminates wait time for students.

HB 3606

Vocational Training to Inmates

Rep. Jeff Leach / Sen. Paul Bettencourt

✓ **Supported and Passed**

Requires the Texas Department of Criminal Justice to provide vocational training on a voluntary basis to inmates confined in a transfer facility. Reducing the driver shortage is critical to the trucking industry and this bill will provide the opportunity for CDL training to qualifying inmates.



Tort Reform

HB 19

Commercial Vehicle Lawsuit Reform

Rep. Jeff Leach / Sen. Larry Taylor

✓ **Supported and Passed**

This bill is designed to address the abusive lawsuit climate that has plagued the commercial motor carrier industry and to restore fairness in courtrooms across the state. For too many years, some plaintiff's attorneys have manipulated juries using a technique known as the "Reptile Theory" to prejudice them against the defendant. This is done by bringing in any and all prior regulatory violations against a company whether or not they are related to the accident at hand. Many, if not all, of these previous violations could have been against other company drivers and vehicles from years past.

Plaintiff's attorneys use these unrelated violations to convince the jury that the company has a dangerous safety culture and then persuade the jury to punish the defendant by sending a message in the form of a large punitive verdict. The defendant, in many cases, is not at fault in the accident and the cost of damages are a fraction of what the plaintiff is seeking.

HB 19 addresses this problem by allowing for a bifurcated trial where the first phase of the trial

is about ordinary negligence. Only the evidence related to the crash at issue is allowed to be introduced. The carrier defendant must meet certain criteria in order to use this bifurcation. For example, the carrier must assume liability for the employees' actions while in the course of his/her duties. Also, certain regulatory conditions must be met such as was the employee properly licensed, medically certified, and had not failed or refused a required drug or alcohol test.

If a defendant is found to be grossly negligent in the first phase of the trial, all evidence related to the operation of the carrier is possibly admissible in the second phase.

Additionally, some trial courts are not allowing the admission of photographs of the accident that could be utilized to further exonerate plaintiffs. This bill provides that properly authenticated photos and video are presumed admissible and bars the court from requiring expert testimony in order to admit this evidence.



Studies

HB 2223

Highway Road Use Study

Rep. Terry Canales / Sen. Robert Nichols

✓ **Supported and Passed**

This bill requires the Texas Department of Transportation (TxDOT) in consultation with the Texas A&M Transportation Institute (TTI) to conduct a study on the impact on the roads by passenger vehicles, commercial motor vehicles and oversize or overweight vehicles.

The study will look at the following:

1. The number of vehicles that drive on the roads and bridges of this state each year.
2. The number of miles driven on roads and bridges.
3. The total revenue contribution from taxes and fees to the construction and maintenance of the roads and bridges of this state.
4. The financial impact due to the cost associated with construction and maintenance as well as congestion on the roads.
5. Whether, and by what amount, the total revenue contribution exceeds or falls short of the financial impact.

TXTA worked to amend the bill so that the study also assesses the overall economic benefits to the economy by commercial motor vehicles and oversize/overweight vehicles. The study will recommend one or more changes to existing tax or fee structures to ensure that vehicles of each classification contribute revenue in an amount at least equal to the financial impact upon the state's roadways. TXTA has been successful in removing any study that does not also take into account the impact of passenger vehicles. A report on the findings of this study is due no later than December 31, 2022.



SB 1815

Size and Weight Limitations

Sen. Kel Seliger / Rep. Armando Martinez

✓ Supported and Passed

This bill made numerous changes to the Texas Transportation Code concerning size and weight limitations. These changes were made to bring Texas into compliance with federal law and to avoid the loss of federal highway funds. Definitions were added for “Automobile Transporter,” “Backhaul,” and “Stinger-steered.” Texas law will now allow automobile transporters to carry non-vehicle commodities on a backhaul as long as the return trip is over or mostly over the same route. These automobile transporters are now able to have an over length of 82 feet and to extend the load four feet to the front and six feet to the rear.

The bill also cleaned up language concerning annual permits for oversized and overweight vehicles when transporting a load that cannot be reasonably dismantled.

Additionally, the weight variance for idle reduction systems has been raised from 400 pounds to 500 pounds.



Law Enforcement/Safety/Weight

HB 2748/ HB 2749

Local Enforcement City of Midlothian and Ellis County

Rep. Jake Ellzey / Sen. Brian Birdwell

✓ **Supported and Passed**

Every session, there are numerous attempts to add new law enforcement jurisdictions to the existing authority granted by the legislature more than two decades ago. Generally, TXTA has been supportive of these efforts if there is a demonstrable need. TxDPS oversees the program through an MOU with these jurisdictions for commercial vehicle enforcement. These have been generally successful, as TxDPS has overseen training and authority for the more than 70 jurisdictions active in their MOUs to date since the partnership began in 1996.

With the passage of HB 2749, Ellis County is now eligible to enter into the local enforcement MOU. HB 2748 updates the population bracket in statute so the city of Midlothian can remain in the local enforcement program. TXTA successfully worked to remove detrimental aspects of a number of these bills and opposed others (see failed bills) that either expanded authority outside the protection of transparency or beyond the scope of the spirit of the law in which objective criteria would be threatened.

SB 901

Local Enforcement Permian Basin

Sen. Charles Perry / Rep. Brooks Landgraf

✓ **Supported and Passed**

With the passage of this bill, counties within the Permian Basin and near New Mexico that generate a specific level of revenue from oil and gas are now eligible to enter into the local enforcement MOU. TXTA successfully worked to remove detrimental aspects of a number of these bills and opposed others (see failed bills) that either expanded authority outside the protection of transparency or beyond the scope of the spirit of the law in which objective criteria would be threatened.



The 2021 Legislative Session by the Numbers



6,927

Bills Filed

1,073

Bills Passed



15.5

Percent
Passage Rate



102

Bills Actively
Tracked by TXTA

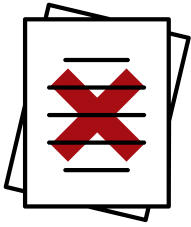


21

Number Vetoed
By Governor

Most New Laws Were Effective September 1, 2021





Failed Bills

Law Enforcement/Safety/Weight

HB 75

Constables and Deputy Constable Local Enforcement

Rep. Steve Toth

× **Opposed and Failed**

There were a number of local enforcement bills filed this session and TXTA, after having had conversations with all of the involved agencies, supported these bills except for HB 75. This bill would have allowed constables and deputy constables from Montgomery County to enforce FMCSA regulations and conduct roadside inspections. TXTA believes that enforcement of the regulations should only be conducted by TxDPS, sheriffs and police departments, yet is supportive of adding an agency when there is objective criteria to justify that addition. Currently, adding another layer of enforcement is redundant and would be a hardship on the industry. TXTA continues to maintain a close working relationship with TxDPS and local agencies involved in the program.

SB 1053

Commercial Vehicle Highway Routing

Sen. Lois Kolkhorst

× **Opposed and Failed**

This bill would have allowed Fayette County to reroute commercial traffic near the intersection of Interstate Highway 10 and U.S. Highway 77. The rerouting would have caused a major hardship on truck traffic with as much as 20 miles added to a trip. TXTA was concerned that other counties were interested in being added to the bill as well. TXTA reached out to the bill author and the bill failed to receive a hearing.



HB 1333

Engine Braking Restrictions by Counties

Rep. Vikki Goodwin

× **Opposed and Failed**

HB 1333 would have allowed counties to enact “No Engine Brake” ordinances, similar to what cities are allowed to do. TTXA attempted to work with the bill author, citing the fact that engine brakes are a safety device, critical to slowing a larger vehicle. TTXA opposed the attempt to reduce noise at the expense of safety.

HB 2520

Owner Operators and Required Safety Equipment

Rep. Ed Thompson

× **Supported and Failed**

This bill was refiled from last session and it failed to gain a hearing before the House Transportation Committee. This proposed legislation would have allowed motor carriers to require owner operators to install safety equipment, such as cameras, in commercial motor vehicles without changing the owner operator classification to an employee.

HB 4073

Load Zoned Weight Violation Fines

Rep. Reggie Smith / Sen. Lois Kolkhorst

× **Monitored and Failed**

Most overweight violations are subject to a graduated fine schedule. These fines can be as high as \$20,000 for the most egregious subsequent violations. The fine schedule for load zoned weight violations is not under this graduated scale, but under what is known as the general penalty. This general penalty consists of a \$200 fine for the first offense within a 12-month period and can be enhanced by subsequent violations. TTXA determined that some courts were assessing the graduated penalty for load zoned road violations and filed an amicus brief with the attorney general (AG) along with the request for an opinion from the Burnet County attorney. The AG concurred with TTXA, finding that these load zoned violations are under the general penalty and not the graduated fine scale. HB 4073 was filed and would have amended the Texas Transportation Code and placed load zoned violations under the higher graduated fine schedule. While this bill passed the House, it was withdrawn from the calendar in the Senate. This bill will return in future sessions and will most likely pass. TTXA strongly recommends that carriers buy 2060 permits if they operate on these roads.



Studies

HB 2191

Pavement Consumption Fee Study

Rep. Terry Wilson

✗ **Opposed and Failed**

TXTA again opposed this bill that sought to impose truck-only consumption fees in addition to the current motor fuel taxes. Consumption fees have proven to be overly burdensome to taxpayers and extremely difficult to enforce.



Governor Greg Abbott joined TXTA TruckPAC committee members for a reception. Photo credit Tyler Schmitt.

The 88th Texas Legislative Session will begin on January 10, 2023

In the time leading up to the next session, TXTA and SMA will continue to advocate on behalf of members and make lawmakers aware of potential legislative issues that will need attention in 2023.

**Please contact SMA
Government Relations and
Policy Director Dana Moore
at any time with legislative
or regulatory questions at
dana@mytexasmover.com.**



Tort Reform

SB 207/HB 1617

Paid or Incurred/Recovery of Medical Expenses

Sen. Charles Schwertner / Rep. Greg Bonnen

⊖ Supported and Voluntarily Pulled Down

This bill was designed to curtail inflated medical expenses by allowing the jury to hear what other medical expenses are paid out by insurers, Medicare, Medicaid and workers' compensation. Currently, many courts are not allowing the defense to present evidence as to what another payer is charging for an identical procedure. In these cases, the jury will only hear about the charges from the medical provider that is working in conjunction with the plaintiff's lawyer. For example, the plaintiff's medical doctor enters into a letter of protection with the lawyer. This provider will then encourage the plaintiff to undergo extensive and, many times, unnecessary treatment. The medical bills will be submitted to the court at a highly inflated value. The jury will not be allowed to hear that the same procedure reimbursed by an insurance company is only a fraction of the amount being charged. By only hearing from the plaintiff's doctor, the jury does not have a way to determine the reasonableness of the charges.

While the bill was successfully making its way through the legislative process, the Supreme Court of Texas issued two rulings (*In re Allstate and In re K&L Auto Crushers*) requiring trial courts to allow evidence of reasonableness involving medical charges. In fact, the wording of the court's rulings was much stronger than the filed bill. For this reason, TLR and TXTA requested that the bill be allowed to die. The authors of the House and Senate versions, who are both medical doctors, agreed and the bill was pulled down.

In re Allstate limits plaintiff lawyers' ability to manipulate Texas law regarding the presentation of medical damages. Judges will no longer be able to ignore counter-affidavits challenging medical charges which prevents the defense from offering relevant evidence countering outrageous charges.

In re K&L Auto Crushers reinforced the earlier ruling of *In re North Cypress* that rates charged by providers to private insurers and public payors constitute relevant facts and data and therefore are discoverable.



SMA MovePAC

Political Action Committee of Southwest Movers Association

Political & Public Advocacy

Influencing Leaders and Promoting a Positive Image of the Texas Trucking and Moving Industries

The SMA MovePAC Committee is a critical network of SMA leaders and members who donate their time and dollars to supporting the association and promoting a positive image of the trucking and moving industries. Donations to MovePAC are used to strengthen our legislative advocacy efforts.



Engage local elected officials and regulatory agency leaders



Make a positive impact within the trucking and moving industries



Participate in PAC Committee meetings and special legislative events



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