

# Texas 86th Session *in* Review

TXTA and SMA Wrap Up the  
2019 Texas Legislative Session



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## ITEMS OF INTEREST

**TOWING**

**NORTH CYPRESS**

## SESSION AT A GLANCE

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**TXTA & SMA 86th Session Recap**

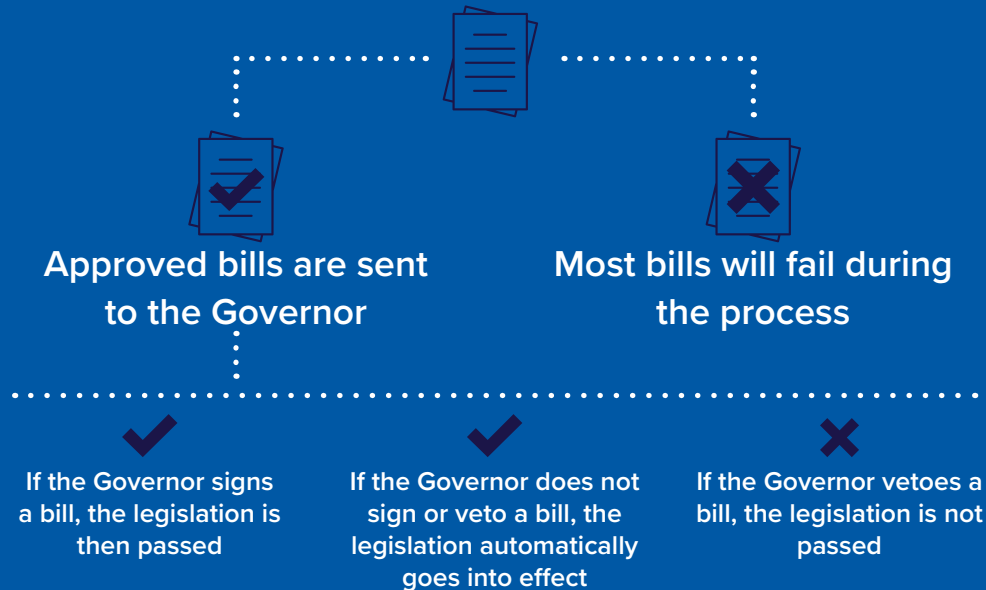
Most New Laws Were Effective September 1, 2019, Document Created July 2019

The 86th Texas Legislative Session proved mostly void of the controversial issues seen in the past few sessions, a welcome change for any industry with an aggressive agenda. The 2019 session proved to be a successful one for the trucking and moving industries. Perhaps most successful was the work done on the defensive front.

# The Texas Legislative Process at a Glance



Bills are proposed by the Texas House and Senate and must be approved by both chambers





# Bills That Passed

## Legislation Led By TXTA

### HB 1693

#### Medical Expense Affidavits (Tort Reform)

Addresses the overly tight time lines by which defendants must file an affidavit to controvert the reasonableness or necessity of medical expenses in a lawsuit. While the current affidavit process for certain civil actions in which a party seeks to prove the cost and necessity of services may be useful, certain aspects required clarification to ensure fair treatment for all parties. This new law does that by revising certain deadlines and clarifying the nature of findings supported by these affidavits. Further, it provides that an affidavit is not evidence of, and does not support a finding of causation. It requires the party offering the affidavit to serve a copy, the earlier of 90 days after the defendant files an answer, rather than at least 30 days before the day on which evidence is first presented at trial. The new law includes the date the offering party is required to designate any expert witness as required by the Texas Rules of Civil Procedure.

It also requires a party intending to controvert a claim reflected by the affidavit, to serve a copy of the counter affidavit as well. This must be served on each party, or the party's attorney of record by the earlier of 120 days after the date the defendant files its answer, rather than, not later than 30 days after the day the party receives a copy of the affidavit. In addition, at least 14 days before the day on which evidence is first presented at trial. It also requires the date the party offering the counter affidavit is required to designate expert witnesses under a court order or as required by the Texas Rules of Civil Procedure, rather than with leave of the court at any time before the commencement of evidence at trial.

### HB 1505

#### Household Goods Enforcement

New law makes it clear to a law enforcement officer if a suspect is immediately subject to enhanced penalties by allowing them to see previous convictions. Any convictions of failing to register with the Texas Department of Motor Vehicles (TxDMV) will now be on a person's driving record. Existing penalties remain the same, but now law enforcement officers are provided the tools to properly enforce.



## HB 105

### Share the Road with Commercial Vehicles Driver License Education

Requires increased education on sharing the road with commercial motor vehicles during driver license testing and training. Concerns have been raised about the lack of instruction regarding the safe operation of a vehicle, specifically near oversize or overweight trucks, in the curriculum for driver education courses. Enhancing the education in the curriculum will help inform new motorists of the proper safe following distances and passing methods when sharing the road with commercial motor vehicles. This benefits an increased awareness of safety for all trucks.



# Legislation Influenced By TXTA

## HB 799

### Bridge and Overpass Strikes

The more recent steady increase in oilfield activity in and around the Permian Basin has resulted in an alarming amount of bridge strikes by commercial vehicles, all without oversize permits. The new law will increase the liability for damages, changing a Class C misdemeanor to a Class B for strikes knowingly and recklessly caused by commercial vehicles exceeding maximum height limitations. It revises the liability for any damage to a bridge, underpass, or similar structure that is caused by the height of a vehicle to make the vehicle's owner strictly liable for said damage. TXTA worked to ensure protections for the motor carrier were in place to separate negligence from any such incidences. As examples, if at the time the damage was caused the vehicle was stolen; the vertical clearance of the structure was less than that posted on the structure; the vehicle was being operated under the immediate direction of a law enforcement agency or the vehicle was being operated in compliance with a permit authorizing the movement of the vehicle. The author worked very closely with the industry to remove any and all aspects of concerns raised.



## HB 511, HB 695, HB 917, SB 636

### Local Enforcement

TXTA has witnessed numerous attempts each session to add new law enforcement jurisdictions to the existing authority granted by the legislature over two decades ago. The Texas Department of Public Safety (TxDPS) does this through a memorandum of understanding (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. Last session, TXTA worked to pass legislation that strengthened existing transparency requirements through the Texas Comptroller's Office, adding assurances that enforcement was based on safety and not revenue generation. With the passage of the bills above, Williamson County, Jacksonville, Katy, the Permian Basin and certain areas of the border 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 did not pass) that either expanded authority outside the protection of transparency or beyond the scope of the spirit of law in which the objective criteria we have come to expect from TxDPS would be threatened. TXTA worked to further ensure protection of the integrity in the required reporting, making certain TxDPS has the authority to remove any agency not complying with the reporting requirements.

## HB 1346

### Diesel Emissions Reduction Incentive Program Changes (TERP)

Provides more flexibility in administering the program in order to improve participation. These are financial incentives created through the Texas Emissions Reduction Plan (TERP) in 2001 to reduce emissions from vehicles and equipment in order to assist the federal Environmental Protection Agency (EPA) reach certain air quality standards in Texas. HB 1346 seeks to address this by making revisions for eligibility, allowing the Texas Commission on Environmental Quality (TCEQ) to set the minimum percentage of vehicle miles traveled, or hours of operation required to take place in a nonattainment area or affected county at a percentage, and for a period of time that is different than the original 75 percent. This also provides that TCEQ is prohibited from setting the minimum percentage at a level that is less than 55 percent.

## HB 61

### Lights for Escort Flagger Vehicles

This new law permits the use of flashing blue and amber lights, similar to highway maintenance or construction vehicles, for escort flag vehicles proceeding or following oversized or overweight vehicles. It focuses on differentiating between law enforcement vehicles and private security entities using green, amber or white lights. TXTA worked closely with the author as a resource and supported the legislation.



## HB 2620

### Escort Flagger Training

This bill allows escort flaggers to direct traffic, similar to law enforcement officers. It requires the same traffic control training as peace officers and makes it an offense to disregard. Cities and counties cannot require the use of a flagger for the movement of manufactured homes, provided the movement is under TxDMV permit. It also requires the person or employee that is listed on the permit to be operating the vehicle, with the exception of a tow truck. TxDMV also has the ability to deny a permit if the carrier is under a federal out-of-service order, TxDPS has determined the carrier has an unsatisfactory rating, or has multiple violations of Chapter 644 or its rules. It also requires the permit be carried in the vehicle. The law provides for TxDMV to issue administrative penalties for violations including failure to provide a shipper's certification of weight (under 623.274(b)) and requires carriers to present a certificate of weight to TxDMV before permit is issued if the combined weight is more than 200,000 lbs. The new law also allows TxDMV to issue a permit for equipment to load timber in certain counties.

## HB 2837

### Covered Farm Vehicle Exemption and Personal Conveyance

The Highway Patrol Division of TxDPS reported several corrections regarding the applicability and practicality of Transportation Code requirements needed for some vehicles and drivers, such as covered farm vehicles, slow moving vehicles, authorized emergency vehicles, and certain trailers. This amends the Transportation Code to allow for an exception to CDL when drivers are engaged in personal use only, or when they meet the definition of a Covered Farm Vehicle. The new law allows slow moving vehicles to operate on the improved shoulder of a roadway. Trailers with a gross weight greater than 4500 lbs. are required to have an emergency trailer breakaway device. Trailers greater than 4500 lbs. are also required brakes at this threshold. The previous statute was conflicting, requiring a breakaway device at 3000 lbs. but brakes at 4500 lbs. It specifies slow-moving emblem requirements to be mounted base down on the rear of the vehicle and at a height that does not impair the visibility of the emblem, rather than from three to five feet above the road surface.



# Legislation Impacting Our Industry

## HB 1941

### Unconscionable Emergency Medical Pricing

This new law offers some helpful tort reform by providing guidance for the Department of State Health Services Consumer Protection Division. Specifically, under which the definition of false, misleading or deceptive acts or practices to define unconscionable pricing for medical services at emergency facilities, be that above 200 percent of the average charge for the same or substantially similar care provided to other individuals by a hospital emergency room pricing.

## HB 1

### State Budget (Funding for Truck Driver Training)

Within Article III of the state budget resides \$1.1 million in funding for the Professional Truck Driving Academy at the Lamar Institute of Technology (LIT). The demand for truck drivers in Southeast Texas has demonstrated a need to double the amount of funding currently available to LIT.

## HB 1079

### Study for I-27 Expansion

The TxDOT 2017 Freight Mobility Plan lays out the need for further study of a long-anticipated I-27 expansion. The Ports to Plains initiative has been organizing for years behind this effort as well. Greater capacity is a benefit to the trucking industry and linking the energy and agricultural sectors to state, national and international trade a strategic goal as well. TxDOT has recommended a more detailed study of the extension to determine whether an incremental improvement approach or a complete interstate facility approach would meet safety and mobility needs.

## HB 3460

### Matagorda County Port Authority Permits

This amends current law relating to the route designation for the issuance of a permit for the movement of oversize and overweight vehicles in certain counties to include Matagorda. The Texas Transportation Commission will designate the most direct route from the Matagorda County line to the entrance of the Port of Palacios using State Highway 35, State Highway 60, FM 71 and State Highway 71.





## **SB 2223, SB 1915, HB 4445**

### **Governance of Harris County Ports**

The board of pilot commissioners for the ports of Harris County is tasked with the licensing and regulation of vessels, pilots, and pilot services for Harris County Ports. These ports and the board which governs them have been able to accommodate two-way vessel traffic to date. However, with the new depth and widening of the Panama Canal, larger vessels are now capable of calling on these ports but cannot safely and efficiently access them under normal weather conditions while maintaining two-way traffic. A series of bills this session were filed to address these concerns and change the governance over port logistics. SB 2223 limits a vessel for which one-way traffic is imposed from calling and departing from a Port Authority of Harris County terminal on the same day and requires such a vessel to be capable of turning around within the turning basin. It also sets the maximum length of 1,100 feet to ensure safe and efficient pilot services. Vessels greater than this size will fall under yet to be established rules set forth by a newly established board of pilot commissioners. The Port of Houston Authority of Harris County was created by the state legislature to serve as the local partner with the federal government to maintain and grow the Houston Ship Channel and to facilitate commerce for the benefit of the region and state. However, concerns that the two roles currently performed by members of the port commission of the authority distracts from their foremost mission to serve as the primary steward of the Houston Ship Channel has

brought about these changes. SB 1915 establishes members of the port commission for Harris County ports and includes appointed pilot commissioners. The board has exclusive jurisdiction over the regulation of pilots who provide pilot services in Harris County ports and conditions rulemaking under the Houston Pilots Licensing and Regulatory Act involving the adoption and implementation of ship movement strategies for use by pilots in the navigable water in Texas on the recommendation of a minimum of 80 percent of the pilots authorized to operate under the board's jurisdiction. The law defines "pilot commissioner" and revises the definition of "pilot services" to specify that the term includes the adoption and implementation of ship movement strategies, such as navigation safety guidelines, for use by pilots in the navigable water in Texas. The bill clarifies that the board has exclusive jurisdiction over the regulation of pilots who provide pilot services in Harris County ports.

## **HB 1627**

### **Rescinds EPA Nonattainment Designation for Victoria County**

Victoria County had previously been declared a nonattainment area—however, the county has not been designated as such since the EPA re-designated the area some two decades ago. This situation has prompted calls to remove the county as an affected county for purposes of TERP.



## SB 616

### **TxDPS Sunset Bill (CDL Expiration Extension)**

It has been suggested that the period of time during which a commercial driver's license is valid in Texas is too short, which burdens initial and renewal applicants and contributes to other customer service inefficiencies regarding the issuance of the license, such as longer wait times. This law seeks to address this by extending the period of time during which certain commercial driver's licenses are valid from five years to eight, and by increasing fees for the issuance of those licenses from \$60 to \$96 and sets the fee for the issuance of a license with a hazardous material endorsement at \$60. The bill's provisions apply to a commercial driver's license issued or renewed on or after June 1, 2020. The bill was originally a stand-alone bill in HB 1938 which did not pass.



TXTA and SMA  
members met with  
Texas Governor Greg  
Abbott and all Texas'  
Legislative offices  
during Trucking and  
Moving Day 2019



# The 2019 Legislative Session by the Numbers



**7,324**

Bills Filed

**1,429**

Bills Passed



**19.51**

Percent  
Passage Rate



**204**

Bills Actively  
Tracked by TXTA

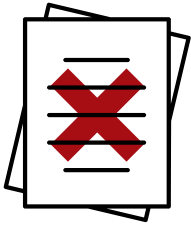


**56**

Number Vetoed  
By Governor

The trucking and moving industries benefited from a number of significant take-aways resulting in measured progress for our strategic goals. Your support of TXTA's and SMA's initiatives, while ensuring the strong voice of trucking, remained united behind the issues members deemed most important was key to our successes this session.





# Bills Not Passed

## Legislation Supported by TXTA

### SB 1215, HB 3832

#### Mitigation of Damages

SB 1215, also known as failure to mitigate. Under the paid or incurred rule, a liable defendant is only responsible in damages for medical expenses actually paid or incurred by the claimant, not the full charged master rate for the service. A growing practice in which plaintiffs do not file insurance claims under so-called “letters of protection” under which the plaintiff’s attorney promises to pay more for medical services than the negotiated rate. This threatens to undermine the paid or incurred rule altogether. This bill proposed that the trier-of-fact may consider the claimants omission to file an insurance claim as failure to mitigate damages. HB 3832 was the companion bill in the House. Both of these tort reform efforts proved far reaching and were killed in committee.

### HB 2096, SB 1567

#### Third Party Disclosure

HB 2096, a tort reform effort that saw early traction would have directed the supreme court to adopt rules providing for mandatory disclosure of third-party litigation financing agreements to the parties of a civil action. SB 1567 was the companion bill in the Senate and had identical language to HB 2096. The bill had a hearing date but was pulled down in anticipation of some negotiated changes. Ironically, several conservative groups raised issues with these changes, primarily over concerns of disclosures over their public interest litigation therefore these bills died in committee.

### HB 3238

#### Motion to Transfer Venue

Another measure of tort reform would have allowed for a motion to transfer venue based on the improper joining of legal issues (joinder) in cases of certain defendants. This bill did not receive a hearing.



## HB 2495

### Model Safety Legislation

This bill would have prevented the requirement of the use of safety technology, such as incident recorders, lane departure warning or anti-rollover devices, as evidence for reclassifying independent contractors as employees. Utilizing safety technology should not subject one to misclassification. This bill was also opposed by the trial lawyers. However, TXTA was able to reach an agreement on compromised language before the bill died in committee.

# Legislation Opposed By TXTA

## HB 153

### Electronic Logging Devices Exemption for Intrastate

This bill would have exempted all intrastate carriers from the mandatory use of ELDs also failed.

## SB 1523

### Electronic Logging Devices Repeal

This bill would have prohibited the use of any state funds to be used for the implementation or enforcement of the federal Electronic Logging Device (ELD) requirements failed this session.

## HB 3469

### Commercial Vehicle Consumption Fees

TXTA worked to oppose this bill that sought to impose truck only consumption fees in addition to the current motor fuels tax. Consumption fees have proven to be overly burdensome to honest tax-payers and extremely difficult to enforce. Many states have attempted to implement and failed to gain any benefits from consumption fees due to increased processing and low, inequitable participation. Excessive administrative costs simply result in less revenue for highway construction and maintenance, placing greater burden on the average motorist and forcing the legislature to look elsewhere for highway funding. TXTA attempted to work with the author, ultimately resulting in several substitutes and inevitably relegated the bill to a study. However, TXTA discovered concerns with these substitutes and amendments as well. The cost to study the issue was approximately \$600,000 in state funds.



## **SB 78**

### **Automatic Plate Readers**

This bill would have allowed for law enforcement agencies or municipal parking enforcement entities to use digital photographs to issue citations failed this session. TXTA worked early on to ensure commercial motor vehicles were excluded.

## **HB 2679**

### **Bridge and Overpass Strikes**

This bill was originally worded similar to HB 799 but as TXTA worked closer with both authors, aspects of the bill which were repetitive of HB 799 were changed to focus specifically on insurance recovery. The bill would have authorized the Texas Department of Transportation (TxDOT) to submit a claim with the insurer of the operator of a motor vehicle or the owner of the vehicle that causes damage to state transportation infrastructure to recover the estimated cost to repair or replace the damaged infrastructure. If a claim were to be denied and TxDOT prevails in a suit against the owner, the bill would have authorized TxDOT to recover costs incurred in bringing the suit, including reasonable attorney's fees and court costs.

## **HB 3935, HB 4144, HB 4349**

### **Constables and Deputy Constables Local Enforcement**

There were a number of bills also filed this session looking to add different local enforcement entities to become eligible through the TxDPS to engage in commercial vehicle enforcement that did not pass. TXTA opposed all attempts, both by filed legislation or amendments to germane bills that were moving through the legislative process. Generally speaking, TXTA has supported increases in enforcement capacity, but these have been limited to traditional entities which include sheriffs' departments and local police departments. TXTA expressed concerns over county constables and deputy constables entering into these agreements, particularly those where local sheriffs in the county were not seeking authority. These concerns center over added layers of jurisdictions. There were numerous attempts to include constables and deputy constables, which TXTA successfully opposed. One in particular was amended on the House floor to HB 511 and removed in the Senate before that particular bill passed.



# Legislation Impacting Our Industry

## HB 2602, SB 1267

### Cummins Warranty Work

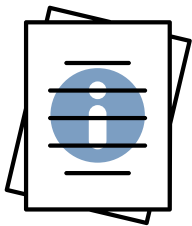
For a second straight session, a bill that would have allowed Cummins to service warranty work for its engines as they have for decades, failed under the weight of the opposition of the Texas Automobile Dealers Association. The dealerships, who have been primarily concerned with protecting the dealership system from the threat of a Tesla model market on the industry today, offered no compromise. The Cummins sales and service network provides parts and repairs for their warranty work directly to trucking companies. That option will likely go away.

## HB 2855

### Study Increased Weights for Frac Sand Hauling

Concerns raised regarding the increase of commercial motor vehicle traffic with respect to trucks transporting sand in areas of the state already saturated with heavy traffic from the oil and gas industry have led to further discussions over increasing weight. It has been suggested that doing so for trucks transporting sand could reduce traffic in the region while improving safety for other motorists. This bill would have sought to address this issue by providing for a study on the impacts to roadways and bridges resulting from increasing the maximum weight limit for trucks transporting sand. The Texas A&M Transportation Institute would have conducted a study by 2021 on the estimated impacts to state and local roads and bridges, including impacts on traffic volume and safety on those roads and bridges, resulting from increasing the maximum allowable weight limits established for a truck-tractor and semitrailer combination transporting sand at certain gross weights and axle requirements. It is important to also note that there were several bills looking to make adjustments to weight or otherwise mirror or make adjustments similar to the intermodal heavy haul changes from last session that were all unsuccessful.





# Items of Interest

## Legislation Impacting Our Industry

### TOWING

#### Non-Consent Tows

Both associations worked diligently during the interim and this session on a myriad of towing reform items identified with the support of the membership, mostly centering around non-consent tows. This session, numerous stakeholder discussions were led by a key member of the legislature, the two state towing associations and a number of TXTA towing members. Legislation was drafted, but an agreement was not reached to file a bill. The bill drafter has suggested an interim study to address the issue and the agency that oversees the authority, the Texas Department of Licensing and Regulation (TDLR), is scheduled for sunset review next session.

### NORTH CYPRESS

#### North Cypress Ruling

A significant tort reform victory for the trucking industry occurred in the defense of the North Cypress ruling this session. No specific legislation was filed looking to reverse the North Cypress Medical Center Supreme Court ruling either by the March bill filing deadline or by way of floor amendments. The late Fall 2018 ruling denying the appeal to prevent motions to compel production of documents showing the amounts the hospital (North Cypress) would have accepted from all other private and public health insurers was upheld as the court ruled relevant and discoverable. TXTA successfully worked to ensure this section of the law was void of any strategic attempts to reverse this decision, which has already proven to be successful in defense cases thus far.

For additional summaries, statistics and information related to the 86th Texas Legislative Session and other past sessions please visit the Legislative Reference Library of Texas at [www.lrl.texas.gov/sessions/sessionYears.cfm](http://www.lrl.texas.gov/sessions/sessionYears.cfm)







POLITICAL ACTION COMMITTEE  
OF THE TEXAS TRUCKING INDUSTRY

## Political & Public Advocacy

Influencing Leaders and Promoting a  
Positive Image of the Texas Trucking Industry



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



Engage local  
elected officials  
and regulatory  
agency leaders



Make a positive  
impact within the  
trucking industry



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