

Amend CSHB 2605 (senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Sections 406.033(a) and (d), Labor Code, are amended to read as follows:

(a) In an action against an employer by or on behalf of an employee who is not covered by ~~[who does not have]~~ workers' compensation insurance obtained in the manner authorized by Section 406.003 ~~[coverage]~~ to recover damages for personal injuries or death sustained by an employee in the course and scope of the employment, it is not a defense that:

(1) the employee was guilty of contributory negligence;

(2) the employee assumed the risk of injury or death;
or

(3) the injury or death was caused by the negligence of a fellow employee.

(d) In an action described by Subsection (a) ~~[against an employer who does not have workers' compensation insurance coverage]~~, the plaintiff must prove negligence of the employer or of an agent or servant of the employer acting within the general scope of the agent's or servant's employment.

SECTION _____. Section 406.034(d), Labor Code, is amended to read as follows:

(d) An employee who elects to retain the right of action or a legal beneficiary of that employee may bring a cause of action for damages for injuries sustained in the course and scope of the employment under common law or under a statute of this state. Notwithstanding Section 406.033, the cause of action is subject to all defenses available under common law and the statutes of this state unless the employee has waived coverage in connection with an agreement with the employer.

SECTION _____. (a) Sections 406.033 and 406.034, Labor Code, as amended by this Act, do not apply to a cause of action by an employee if:

(1) the employee is subject to a valid and enforceable contract with the employee's employer relating to benefits for occupational injury or death; and

(2) the employer, since January 1, 2011, has continuously:

(A) had workers' compensation insurance coverage; and

(B) offered its employees a program providing benefits for occupational injury or death that is not governed by Subtitle A, Title 5, Labor Code.

(b) Except as provided by Subsection (a) of this section, Sections 406.033 and 406.034, Labor Code, as amended by this Act, apply only to a cause of action that is filed on or after the effective date of this Act. A cause of action that is filed before that date is governed by the law in effect on the date the action is filed, and the former law is continued in effect for that purpose.