

BILL ANALYSIS

Senate Research Center

S.B. 1714
By: Duncan
State Affairs
8/15/2011
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1714 addresses a United States Court of Appeals, Fifth Circuit, decision that held that an employee covered by a non-workers' compensation occupational plan can provide a pre-injury waiver as long as his employer has workers' compensation insurance in addition to an occupational plan.

In the case, the employer offered a nonsubscriber occupational plan, workers' compensation insurance, or no plan and retention of remedies. Sections 406.033(a) and (e) (relating to prohibiting a cause of action from being waived by an employee before the employee's injury or death), Labor Code, currently provide that an employee may not waive, pre-injury, "an action against an employer who does not have workers' compensation insurance coverage." Thus, the current waiver prohibition is dependent on the employer's actions, rather than the employee's actions. The legislative intent is well-established that employees with nonsubscriber occupational plans cannot waive tort remedies.

This bill amends the statute to focus on what the employee receives and thus reestablishes that an employee cannot waive his right to sue in an action against a nonsubscribing employer.

S.B. 1714 amends current law relating to certain actions against an employer by an employee who is not covered by workers' compensation insurance.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 406.033(a) and (d), Labor Code, as follows:

(a) Provides that, in an action against an employer by or on behalf of an employee who is not covered by workers' compensation insurance obtained in the manner authorized by Section 406.003 (Methods of Obtaining 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) Requires the plaintiff, in an action described by Subsection (a), rather than in an action described by Subsection (a) against an employer who does not have workers' compensation insurance coverage, to 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 2. Amends Section 406.034(d), Labor Code, to provide that, notwithstanding Section 406.033 (Common-Law Defenses; Burden of Proof), 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 3. (a) Provides that 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 had workers' compensation insurance coverage, and offered its employees a program providing benefits for occupational injury or death that is not governed by Subtitle A (Texas Workers' Compensation Act), Title 5 (Workers' Compensation), Labor Code.

(b) Makes application of Sections 406.033 and 406.034, Labor Code, as amended by this Act, except as provided by Subsection (a) of this section, prospective.

SECTION 4. Effective date: September 1, 2011.