

BILL ANALYSIS

C.S.S.B. 1714

By: Duncan

Economic & Small Business Development
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties report that a recent federal judicial decision permits an employee covered by a non-workers' compensation occupational plan to provide a pre-injury waiver of an employee's work-related injury cause of action against the employer, so long as the employer has workers' compensation insurance in addition to an occupational plan. Interested parties believe that state law should address this decision. C.S.S.B. 1714 seeks to amend current law relating to certain actions against an employer by an employee who is not covered by workers' compensation insurance to focus on the actions of the employee rather than the employer.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 1714 amends the Labor Code, for purposes of Texas Workers' Compensation Act provisions making certain common-law defenses inapplicable in an action to recover damages for personal injuries or death sustained by an employee in the course and scope of the employment, establishing the burden of proof in such an action, and establishing the conditions under which an employee is prohibited from waiving such a cause of action, to make those provisions applicable to an action against an employer by or on behalf of an employee who is not covered by workers' compensation insurance obtained through a licensed insurance company or through self-insurance, rather than an action against an employer who does not have workers' compensation insurance coverage.

C.S.S.B. 1714 creates an exception for a cause of action brought by an employee who has waived workers' compensation insurance coverage under an agreement with the employer to the provision of law making a cause of action brought by an employee who has waived workers' compensation insurance subject to all defenses available under Texas common law and statutory law.

C.S.S.B. 1714 makes its provisions inapplicable to a cause of action by an employee if the employee is subject to a valid and enforceable contract with the employee's employer relating to benefits for occupational injury or death and the employer, since January 1, 2011, has continuously had workers' compensation insurance coverage and offered its employee a program providing benefits for occupational injury or death that is not governed by the Texas Workers' Compensation Act.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.S.B. 1714 contains a provision not included in the original relating to a cause of action brought by an employee who has waived workers' compensation insurance coverage under an agreement with the employer.

C.S.S.B. 1714 contains a provision not included in the original relating to the applicability of its provisions to a cause of action by an employee under certain conditions.

C.S.S.B. 1714 differs from the original by providing that a cause of action that accrues before the effective date of the bill is governed by the law in effect on the date the action is filed, whereas the original provides that such a cause of action is governed by the law in effect on the date the action accrued.

C.S.S.B. 1714 differs from the original in nonsubstantive ways.