

AN ACT

relating to certain actions against an employer by an employee who is not covered by workers' compensation insurance.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsections (a) and (d), Section 406.033, 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 2. Subsection (d), Section 406.034, Labor Code, is

1 amended to read as follows:

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

10 SECTION 3. (a) Sections 406.033 and 406.034, Labor Code,
11 as amended by this Act, do not apply to a cause of action by an
12 employee if:

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

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

18 (A) had workers' compensation insurance
19 coverage; and

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

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

1 filed, and the former law is continued in effect for that purpose.

2 SECTION 4. This Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1714 passed the Senate on April 7, 2011, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 26, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1714 passed the House, with amendments, on May 24, 2011, by the following vote: Yeas 145, Nays 0, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor