

By: Huffman

S.B. No. 1784

A BILL TO BE ENTITLED

AN ACT

relating to workers' compensation insurance coverage for certain workplaces; providing administrative penalties.

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

SECTION 1. Chapter 406, Labor Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. COVERAGE FOR CERTAIN WORKPLACES

Sec. 406.181. DEFINITIONS. In this subchapter:

(1) "General contractor" has the meaning assigned by Section 406.121.

(2) "Hiring contractor" means a subcontractor or independent contractor who, in the course of regular business, subcontracts to other persons all or part of the work to be performed at a workplace.

(3) "Independent contractor" has the meaning assigned by Section 406.121.

(4) "Legal beneficiary" means a person entitled to receive a death benefit under this subtitle or to recover damages under other law for a person's death or injury related to employment at a covered workplace.

(5) "Legal representative" means a person, including an attorney or agent, authorized to act on behalf of a person.

(6) "Workplace" means a place of employment, job site, or project location where an employee performs work or a service, at

1 one geographical location containing one or more work areas, with
2 or without buildings. The term does not include a farm or ranch.

3 (7) "Workplace subscriber" means a person, other than
4 a governmental entity, who elects to provide workers' compensation
5 insurance coverage for persons, employees, general contractors,
6 subcontractors, and independent contractors who perform work or a
7 service at a workplace. The term includes a hiring contractor, a
8 general contractor, an independent contractor, a subcontractor, a
9 possessor of a part of the workplace, however that interest is
10 characterized, and a premises owner.

11 Sec. 406.182. ELECTION TO PROVIDE WORKPLACE COVERAGE;
12 ADMINISTRATIVE VIOLATION. (a) Notwithstanding any other provision
13 of this chapter or other law, a workplace subscriber may elect to
14 enter into a written agreement to provide workers' compensation
15 insurance coverage to every person performing work or services at a
16 specified workplace. A workplace subscriber that elects to enter
17 into a written agreement described by this subsection shall be
18 treated as an employer for purposes of this subtitle.

19 (b) The workplace subscriber shall file a copy of a written
20 agreement entered into under this section with the subscriber's
21 workers' compensation insurance carrier not later than the 10th day
22 after the date on which the contract is executed. If the workplace
23 subscriber is a certified self-insurer, the copy must be filed with
24 the division.

25 (c) Failure to file a copy of a written agreement under this
26 section is an administrative violation and does not adversely
27 affect the exclusive remedy provision under Sections 406.183(a) and

1 (b).

2 Sec. 406.183. REMEDIES; EXEMPLARY DAMAGES. (a) Recovery
3 of workers' compensation benefits is the exclusive remedy of a
4 person covered by workers' compensation insurance coverage, that
5 person's legal beneficiary, or that person's legal representative,
6 for a work-related injury or death sustained by the employee at a
7 covered workplace against:

8 (1) a workplace subscriber;

9 (2) an owner or possessor of a part of a covered
10 workplace, however that interest is characterized;

11 (3) a person who performs work at the covered
12 workplace, including a general contractor, a hiring contractor, an
13 independent contractor, and a subcontractor; and

14 (4) a legal representative or employee of a workplace
15 subscriber.

16 (b) This section does not prohibit the recovery of exemplary
17 damages by the surviving spouse or heirs of the body of a deceased
18 employee whose death was caused by an intentional act or omission of
19 the employer or by the employer's gross negligence. In this
20 subsection, "gross negligence" has the meaning assigned by Section
21 41.001, Civil Practice and Remedies Code.

22 (c) A determination under Section 406.032, 409.002, or
23 409.004 that a work-related injury is noncompensable does not
24 adversely affect the exclusive remedy provisions under Subsection
25 (a).

26 SECTION 2. Sections 408.001(a) and (b), Labor Code, are
27 amended to read as follows:

1 (a) Recovery of workers' compensation benefits is the
2 exclusive remedy of an employee covered by workers' compensation
3 insurance coverage or a legal beneficiary against:

4 (1) the employer or an agent or employee of the
5 employer for the death of or a work-related injury sustained by the
6 employee; or

7 (2) a workplace subscriber under Subchapter I, Chapter
8 406.

9 (b) This section does not prohibit the recovery of exemplary
10 damages by the surviving spouse or heirs of the body of a deceased
11 employee whose death was caused by an intentional act or omission of
12 the employer or workplace subscriber under Subchapter I, Chapter
13 406, or by the employer's or workplace subscriber's gross
14 negligence.

15 SECTION 3. Section 417.001(a), Labor Code, is amended to
16 read as follows:

17 (a) An employee or legal beneficiary may seek damages from a
18 third party, other than a workplace subscriber under Subchapter I,
19 Chapter 406, who is or becomes liable to pay damages for an injury
20 or death that is compensable under this subtitle and may also pursue
21 a claim for workers' compensation benefits under this subtitle.

22 SECTION 4. The changes in law made by this Act apply only to
23 an agreement to provide workers' compensation insurance coverage
24 entered into on or after the effective date of this Act. An
25 agreement entered into before the effective date of this Act is
26 governed by the law in effect at the time the agreement was entered
27 into, and the former law is continued in effect for that purpose.

1 SECTION 5. This Act takes effect September 1, 2011.