

By: Walle

H.B. No. 4118

A BILL TO BE ENTITLED

1 AN ACT
2 relating to requiring employers who choose not to purchase workers'
3 compensation insurance coverage from an insurance carrier to
4 provide certain employee benefits; providing an administrative
5 violation; creating a criminal offense.

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

7 SECTION 1. Section 406.001, Labor Code, is amended to read
8 as follows:

9 Sec. 406.001. DEFINITION. In this subchapter,

10 (1) "employer" means a person who employs one or more
11 employees.

12 (2) "qualified benefit plan" means a plan that meets
13 the standards of section 406.002, subsection (b), Labor Code.

14 SECTION 2. Section 406.002(b), Labor Code, is amended and
15 sections 406.002(1)(2)(3) and (4), and 406.002(c) are added to read
16 as follows:

17 Sec. 406.002. EMPLOYER COVERAGE REQUIREMENT [~~COVERAGE~~
18 ~~GENERALLY ELECTIVE~~]. (a) An [~~Except for public employers and as~~
19 ~~otherwise provided by law, an~~] employer shall obtain workers'
20 compensation insurance coverage from an insurance carrier or
21 provide benefits through a qualified benefits plan or certified
22 self-insurance coverage that meets the requirements of Chapter 407
23 or 407A

24 (b) A qualified benefit plan must meet the following

1 requirements [~~An employer who elects to obtain coverage is subject~~
2 ~~to this subtitle.~~]:

3 (1) provide for payment of the same forms of benefits
4 included in the Workers' Compensation Act for: temporary total
5 disability, temporary partial disability, permanent partial
6 disability, vocational rehabilitation, permanent total disability,
7 disfigurement, amputation or permanent total loss of use of a
8 scheduled member, death and medical benefits as a result of an
9 occupational injury, on a no-fault basis, with the same statute of
10 limitations, and with dollar, percentage, and duration limits that
11 are at least equal to or greater than the dollar, percentage, and
12 duration limits contained in Chapter 408, Labor Code. For this
13 purpose, the standards for determination of average weekly wage,
14 death beneficiaries, and disability under the Workers'
15 Compensation Act shall apply;

16 (2) pay benefits regardless of whether the covered
17 employee, the employer, or a third party caused the occupational
18 injury; and

19 (3) provide the same forms and levels of benefits to
20 all employees of the employer.

21 (4) The Workers' Compensation Act does not define,
22 restrict, or apply in any other way to a qualified benefit plan.

23 (c) An employer providing a qualified benefit plan must
24 notify the Insurance Commissioner in writing of the election to
25 provide a qualified benefit plan and the date that the election is
26 to become effective;

27 (1) Shall pay to the Commissioner an annual

1 nonrefundable fee of 500.00 dollars on the date of filing written
2 notice and every year thereafter;

3 (2) Provide to the Commissioner and to all covered
4 employees notice of the name, title, address, and telephone number
5 for the person to contact for injury benefit claims administration.

6 SECTION 3. Section 406.003, Labor Code, is amended to read
7 as follows:

8 Sec. 406.003. WORKERS' COMPENSATION INSURANCE [~~METHODS OF~~
9 ~~OBTAINING~~] COVERAGE. An employer who obtains [~~may obtain~~] workers'
10 compensation insurance coverage through a licensed insurance
11 company, provides benefits [~~or~~] through self-insurance under
12 Chapter 407 or 407A, or provides benefits through a qualified
13 benefit plan is considered to provide workers' compensation
14 coverage for purposes of [~~as provided by~~] this subtitle.

15 SECTION 4. Sections 406.005(c) and (d), Labor Code, are
16 amended to read as follows:

17 (c) Each employer shall post a notice that [~~of whether~~] the
18 employer has workers' compensation insurance coverage and whether
19 the coverage is provided through an insurance carrier, through
20 self-insurance, or a qualified benefit plan at conspicuous
21 locations at the employer's place of business as necessary to
22 provide reasonable notice to the employees. The commissioner may
23 adopt rules relating to the form and content of the notice. The
24 employer shall revise the notice when the information contained in
25 the notice is changed.

26 (d) An employer [~~who obtains workers' compensation~~
27 ~~insurance coverage or~~] whose workers' compensation insurance

1 coverage is changed [~~terminated or canceled~~] shall notify each
2 employee that the coverage has been changed [~~obtained, terminated,~~
3 ~~or canceled~~] not later than the 15th day after the date on which the
4 change [~~coverage, or the termination or cancellation of the~~
5 ~~coverage,~~] takes effect.

6 SECTION 5. The heading to Section 406.007, Labor Code, is
7 amended to read as follows:

8 Sec. 406.007. CHANGE [~~TERMINATION~~] OF COVERAGE BY EMPLOYER;
9 NOTICE.

10 SECTION 6. Section 406.007(a), Labor Code, is amended to
11 read as follows:

12 (a) An employer who changes [~~terminates~~] workers'
13 compensation insurance coverage [~~obtained~~] under this subtitle
14 shall file a written notice with the division by certified mail not
15 later than the 10th day after the date on which the employer
16 notified the insurance carrier or decided to make a change under a
17 self-insurance plan or qualified benefit plan, as applicable [~~to~~
18 ~~terminate the coverage~~]. The notice must include a statement
19 certifying the date that notice was provided or will be provided to
20 affected employees under Section 406.005 and specify the manner in
21 which coverage will be provided to employees after the change.

22 SECTION 7. Section 406.034(b), Labor Code, is amended to
23 read as follows:

24 (b) An employee who desires to retain the common-law right
25 of action to recover damages for personal injuries or death shall
26 notify the employer in writing that the employee waives coverage
27 under this subtitle and retains all rights of action under common

1 law. The employee must notify the employer not later than the fifth
2 day after the date on which the employee[+]

3 [~~(1)~~] begins the employment[~~+~~ or

4 [~~(2)~~ receives written notice from the employer that
5 the employer has obtained workers' compensation insurance coverage
6 if the employer is not a covered employer at the time of the
7 employment but later obtains the coverage].

8 SECTION 8. Section 406.094(a), Labor Code, is amended to
9 read as follows:

10 (a) An employer [~~who elects to provide workers'~~
11 ~~compensation insurance coverage~~] may include in the employer's
12 workers' compensation insurance coverage a real estate salesperson
13 or broker who is:

14 (1) licensed under Chapter 1101, Occupations Code; and

15 (2) compensated solely by commissions.

16 SECTION 9. Section 406.097(a), Labor Code, is amended to
17 read as follows:

18 (a) A sole proprietor, partner, or corporate executive
19 officer of a business entity [~~that elects to provide workers'~~
20 ~~compensation insurance coverage~~] is entitled to benefits under the
21 business entity's workers' compensation insurance [~~that~~] coverage
22 as an employee [~~unless the sole proprietor, partner, or corporate~~
23 ~~executive officer is specifically excluded from coverage through an~~
24 ~~endorsement to the insurance policy or certificate of authority to~~
25 ~~self-insure~~].

26 SECTION 10. Section 407.045(a), Labor Code, is amended to
27 read as follows:

1 (a) A certified self-insurer may withdraw from
2 self-insurance by notifying [~~at any time with the approval of~~] the
3 commissioner that the certified self-insurer chooses to provide
4 workers' compensation insurance coverage through an insurance
5 carrier or qualified benefit plan. The commissioner shall approve
6 the withdrawal if the certified self-insurer shows to the
7 satisfaction of the commissioner that the certified self-insurer
8 has obtained a workers' compensation insurance coverage policy
9 through a licensed insurance company or qualified benefit plan
10 [~~established an adequate program to pay all incurred losses,~~
11 ~~including unreported losses, that arise out of accidents or~~
12 ~~occupational diseases first distinctly manifested during the~~
13 ~~period of operation as a certified self-insurer~~].

14 SECTION 11. Subchapter A, Chapter 415, Labor Code, is
15 amended by adding Section 415.0015 to read as follows:

16 Sec. 415.0015. ADMINISTRATIVE VIOLATION BY EMPLOYER. (a) An
17 employer commits a violation if the employer does not maintain
18 workers' compensation insurance coverage in a manner that complies
19 with Chapter 406.

20 (b) An employer who has committed an act described by
21 Subsection (a) that results in a denial of benefits to an employee
22 who sustains a compensable injury is liable for payment to the
23 employee of all benefits to which the employee would otherwise be
24 entitled.

25 (c) A violation under this section is a Class A
26 administrative violation.

27 SECTION 12. Chapter 418, Labor Code, is amended by adding

1 Section 418.004 to read as follows:

2 Sec. 418.004. PENALTY FOR NOT CARRYING REQUIRED WORKERS'
3 COMPENSATION INSURANCE COVERAGE. (a) An employer commits an offense
4 if the employer does not maintain workers' compensation insurance
5 coverage in a manner that complies with Chapter 406.

6 (b) An offense under Subsection (a) is a Class A
7 misdemeanor.

8 SECTION 13. Sections 406.004, 406.005(a) and (b),
9 406.007(c) and (d), 406.052(b), and 411.002(b) Labor Code, are
10 repealed.

11 SECTION 14. The commissioner of workers' compensation shall
12 adopt any rules necessary to implement this Act not later than
13 December 1, 2015.

14 SECTION 15. An employer subject to this Act is required to
15 comply with this Act not later than January 1, 2016.

16 SECTION 16. The change in law made by this Act applies only
17 to a claim for workers' compensation benefits based on a
18 compensable injury that occurs on or after January 1, 2016. A claim
19 based on a compensable injury that occurs before January 1, 2016, is
20 governed by the law in effect immediately before the effective date
21 of this Act, and the former law is continued in effect for that
22 purpose.

23 SECTION 17. This Act takes effect September 1, 2015.