Chapter 1108

S.B. No. 1714

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 workers' compensation insurance obtained in the manner authorized by Section
406.003 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
amended to read as follows:

(d) An employee who elects to retain the right of action or a legal beneficiary of that employee may bring a cause of action for damages for injuries sustained in the course and scope of the employment under common law or under a statute of this state. Notwithstanding Section 406.033, 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) 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:

(A) had workers’ compensation insurance coverage; and

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

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

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

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.

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.

Approved:

17 Jun'11

Date

Rick Perry
Governor

FILED IN THE OFFICE OF THE SECRETARY OF STATE
4PM O'CLOCK

Sec'y of State

Secretary of State

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