

## **BILL ANALYSIS**

Senate Research Center  
82R7112 RWG-F

S.B. 1714  
By: Duncan  
State Affairs  
3/25/2011  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 1714 addresses a United States Court of Appeals, Fifth Circuit, decision that held that an employee covered by a non-workers' compensation occupational plan can provide a pre-injury waiver as long as his employer has workers' compensation insurance in addition to an occupational plan.

In the case, the employer offered a nonsubscriber occupational plan, workers' compensation insurance, or no plan and retention of remedies. Sections 406.033(a) and (e) (relating to prohibiting a cause of action from being waived by an employee before the employee's injury or death), Labor Code, currently provide that an employee may not waive, pre-injury, "an action against an employer who does not have workers' compensation insurance coverage." Thus, the current waiver prohibition is dependent on the employer's actions, rather than the employee's actions. The legislative intent is well-established that employees with nonsubscriber occupational plans cannot waive tort remedies.

This bill amends the statute to focus on what the employee receives and thus reestablishes that an employee cannot waive his right to sue in an action against a nonsubscribing employer.

As proposed, S.B. 1714 amends current law relating to certain actions against an employer by an employee who is not covered by workers' compensation insurance.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Sections 406.033(a) and (d), Labor Code, as follows:

(a) Provides that, 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 (Methods of Obtaining 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) Requires the plaintiff, in an action described by Subsection (a) 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 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. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2011.