

LABOR CODE

TITLE 5. WORKERS' COMPENSATION

SUBTITLE A. TEXAS WORKERS' COMPENSATION ACT

CHAPTER 406. WORKERS' COMPENSATION INSURANCE COVERAGE

SUBCHAPTER A. COVERAGE ELECTION; SECURITY PROCEDURES

Sec. 406.001. DEFINITION. In this subchapter, "employer" means a person who employs one or more employees.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.002. COVERAGE GENERALLY ELECTIVE. (a) Except for public employers and as otherwise provided by law, an employer may elect to obtain workers' compensation insurance coverage.

(b) An employer who elects to obtain coverage is subject to this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.003. METHODS OF OBTAINING COVERAGE. An employer may obtain workers' compensation insurance coverage through a licensed insurance company or through self-insurance as provided by this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.004. EMPLOYER NOTICE TO DIVISION. (a) An employer who does not obtain workers' compensation insurance coverage shall notify the division in writing, in the time and as prescribed by commissioner rule, that the employer elects not to obtain coverage.

(b) The commissioner shall prescribe forms to be used for the employer notification and shall require the employer to provide reasonable information to the division about the employer's business.

(c) The division may contract with the Texas Workforce Commission or the comptroller for assistance in collecting the notification required under this section. Those agencies shall cooperate with the division in enforcing this section.

(d) The employer notification filing required under this

section shall be filed with the division in accordance with Section 406.009.

(e) An employer commits an administrative violation if the employer fails to comply with this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.47(a), eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.023, eff. September 1, 2005.

Sec. 406.005. EMPLOYER NOTICE TO EMPLOYEES; ADMINISTRATIVE VIOLATION. (a) An employer shall notify each employee as provided by this section whether or not the employer has workers' compensation insurance coverage.

(b) The employer shall notify a new employee of the existence or absence of workers' compensation insurance coverage at the time the employee is hired.

(c) Each employer shall post a notice of whether the employer has workers' compensation insurance coverage at conspicuous locations at the employer's place of business as necessary to provide reasonable notice to the employees. The commissioner may adopt rules relating to the form and content of the notice. The employer shall revise the notice when the information contained in the notice is changed.

(d) An employer who obtains workers' compensation insurance coverage or whose coverage is terminated or canceled shall notify each employee that the coverage has been obtained, terminated, or canceled not later than the 15th day after the date on which the coverage, or the termination or cancellation of the coverage, takes effect.

(e) An employer commits an administrative violation if the employer fails to comply with this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.024, eff. September 1, 2005.

Sec. 406.006. INSURANCE COVERAGE AND CLAIM ADMINISTRATION REPORTING REQUIREMENTS; ADMINISTRATIVE VIOLATION. (a) An insurance company from which an employer has obtained workers' compensation insurance coverage, a certified self-insurer, a workers' compensation self-insurance group under Chapter 407A, and a political subdivision shall file notice of the coverage and claim administration contact information with the division not later than the 10th day after the date on which the coverage or claim administration agreement takes effect, unless the commissioner adopts a rule establishing a later date for filing. Coverage takes effect on the date on which a binder is issued, a later date and time agreed to by the parties, on the date provided by the certificate of self-insurance, or on the date provided in an interlocal agreement that provides for self-insurance. The commissioner may adopt rules that establish the coverage and claim administration contact information required under this subsection.

(b) The notice required under this section shall be filed with the division in accordance with Section 406.009.

(c) An insurance company, a certified self-insurer, a workers' compensation self-insurance group under Chapter 407A, or a political subdivision commits an administrative violation if the person fails to file notice with the division as provided by this section.

(d) In this section, "political subdivision" has the meaning assigned by Section 504.001.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.48(a), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 954, Sec. 2.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.025, eff. September 1, 2005.

Sec. 406.007. TERMINATION OF COVERAGE BY EMPLOYER; NOTICE.

(a) An employer who terminates workers' compensation insurance coverage obtained under this subtitle shall file a written notice with the division not later than the 10th day after the date on which the employer notified the insurance carrier to terminate the

coverage. The notice must include a statement certifying the date that notice was provided or will be provided to affected employees under Section 406.005.

(b) The notice required under this section shall be filed with the division in accordance with Section 406.009.

(c) Termination of coverage takes effect on the later of:

(1) the 30th day after the date of filing of notice with the division under Subsection (a); or

(2) the cancellation date of the policy.

(d) The coverage shall be extended until the date on which the termination of coverage takes effect, and the employer is obligated for premiums due for that period.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.49(a), eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.026, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 467 (H.B. 2112), Sec. 2, eff. June 9, 2017.

Sec. 406.008. CANCELLATION OR NONRENEWAL OF COVERAGE BY INSURANCE COMPANY; NOTICE. (a) An insurance company that cancels a policy of workers' compensation insurance or that does not renew the policy by the anniversary date of the policy shall deliver notice of the cancellation or nonrenewal to the division, and by certified mail, in person, or by electronic means in accordance with Chapter 35, Insurance Code, to the employer, not later than:

(1) the 30th day before the date on which the cancellation or nonrenewal takes effect; or

(2) the 10th day before the date on which the cancellation or nonrenewal takes effect if the insurance company cancels or does not renew because of:

(A) fraud in obtaining coverage;

(B) misrepresentation of the amount of payroll for purposes of premium calculation;

(C) failure to pay a premium when due;

(D) an increase in the hazard for which the

employer seeks coverage that results from an act or omission of the employer and that would produce an increase in the rate, including an increase because of a failure to comply with:

(i) reasonable recommendations for loss control; or

(ii) recommendations designed to reduce a hazard under the employer's control within a reasonable period; or

(E) a determination made by the commissioner of insurance that the continuation of the policy would place the insurer in violation of the law or would be hazardous to the interest of subscribers, creditors, or the general public.

(b) The notice required under this section shall be filed with the division.

(c) Failure of the insurance company to give notice as required by this section extends the policy until the date on which the required notice is provided to the employer and the division.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.50(a), eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.027, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 467 (H.B. 2112), Sec. 3, eff. June 9, 2017.

Sec. 406.009. COLLECTING AND MAINTAINING INFORMATION; MONITORING AND ENFORCING COMPLIANCE. (a) The division shall collect and maintain the information required under this subchapter and shall monitor compliance with the requirements of this subchapter.

(b) The commissioner may adopt rules as necessary to enforce this subchapter.

(c) The commissioner may designate a data collection agent, implement an electronic reporting and public information access program, and adopt rules as necessary to implement the data collection requirements of this subchapter. The commissioner may establish the form, manner, and procedure for the transmission of information to the division. A data collection agent designated

under this subsection must be qualified and may collect fees in the manner described by Section [401.024](#).

(d) The division may require an employer or insurance carrier subject to this subtitle to identify or confirm an employer's coverage status and claim administration contact information as necessary to achieve the purposes of this subtitle.

(e) An employer or insurance carrier commits an administrative violation if that person fails to comply with Subsection (d).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.51(a), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 954, Sec. 3, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. [7](#)), Sec. 3.028, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 410 (S.B. [800](#)), Sec. 2, eff. June 17, 2011.

Sec. 406.010. CLAIMS SERVICE; ADMINISTRATIVE VIOLATION.

(a) An insurance carrier shall provide claims service:

(1) through offices of the insurance carrier located in this state; or

(2) by other resident representatives with full power to act for the insurance carrier.

(b) Each insurance carrier shall designate persons to provide claims service in sufficient numbers and at appropriate locations to reasonably service policies written by the carrier. If an insurance carrier uses the services of a person required to hold a certificate of authority under Chapter [4151](#), Insurance Code, the carrier must comply with the requirements of that chapter.

(c) The commissioner by rule shall further specify the requirements of this section.

(d) A person commits an administrative violation if the person violates a rule adopted under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.029, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 3.01, eff. September 1, 2007.

Sec. 406.011. AUSTIN REPRESENTATIVE; ADMINISTRATIVE VIOLATION. (a) The commissioner by rule may require an insurance carrier to designate a representative in Austin to act as the insurance carrier's agent before the division in Austin. Notice to the designated agent constitutes notice to the insurance carrier.

(b) A person commits an administrative violation if the person violates a rule adopted under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.030, eff. September 1, 2005.

Sec. 406.012. ENFORCEMENT OF SUBCHAPTER. The commission shall enforce the administrative penalties established under this subchapter in accordance with Chapter 415.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER B. COVERAGE REQUIREMENTS

Sec. 406.031. LIABILITY FOR COMPENSATION. (a) An insurance carrier is liable for compensation for an employee's injury without regard to fault or negligence if:

(1) at the time of injury, the employee is subject to this subtitle; and

(2) the injury arises out of and in the course and scope of employment.

(b) If an injury is an occupational disease, the employer in whose employ the employee was last injuriously exposed to the hazards of the disease is considered to be the employer of the employee under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.032. EXCEPTIONS. An insurance carrier is not liable for compensation if:

(1) the injury:

(A) occurred while the employee was in a state of intoxication;

(B) was caused by the employee's wilful attempt to injure himself or to unlawfully injure another person;

(C) arose out of an act of a third person intended to injure the employee because of a personal reason and not directed at the employee as an employee or because of the employment;

(D) arose out of voluntary participation in an off-duty recreational, social, or athletic activity that did not constitute part of the employee's work-related duties, unless the activity is a reasonable expectancy of or is expressly or impliedly required by the employment; or

(E) arose out of an act of God, unless the employment exposes the employee to a greater risk of injury from an act of God than ordinarily applies to the general public; or

(2) the employee's horseplay was a producing cause of the injury.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.033. COMMON-LAW DEFENSES; BURDEN OF PROOF.

(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.

(b) This section does not reinstate or otherwise affect the availability of defenses at common law, including the defenses described by Subsection (a).

(c) The employer may defend the action on the ground that the injury was caused:

(1) by an act of the employee intended to bring about the injury; or

(2) while the employee was in a state of intoxication.

(d) In an action described by Subsection (a), 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.

(e) A cause of action described in Subsection (a) may not be waived by an employee before the employee's injury or death. Any agreement by an employee to waive a cause of action or any right described in Subsection (a) before the employee's injury or death is void and unenforceable.

(f) A cause of action described by Subsection (a) may not be waived by an employee after the employee's injury unless:

(1) the employee voluntarily enters into the waiver with knowledge of the waiver's effect;

(2) the waiver is entered into not earlier than the 10th business day after the date of the initial report of injury;

(3) the employee, before signing the waiver, has received a medical evaluation from a nonemergency care doctor; and

(4) the waiver is in a writing under which the true intent of the parties is specifically stated in the document.

(g) The waiver provisions required under Subsection (f) must be conspicuous and appear on the face of the agreement. To be conspicuous, the waiver provisions must appear in a type larger than the type contained in the body of the agreement or in contrasting colors.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 16.01, eff. June 17, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.031, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1108 (S.B. 1714), Sec. 1, eff. September 1, 2011.

Sec. 406.034. EMPLOYEE ELECTION. (a) Except as otherwise provided by law, unless the employee gives notice as provided by Subsection (b), an employee of an employer waives the employee's right of action at common law or under a statute of this state to recover damages for personal injuries or death sustained in the course and scope of the employment.

(b) An employee who desires to retain the common-law right of action to recover damages for personal injuries or death shall notify the employer in writing that the employee waives coverage under this subtitle and retains all rights of action under common law. The employee must notify the employer not later than the fifth day after the date on which the employee:

(1) begins the employment; or

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

(c) An employer may not require an employee to retain common-law rights under this section as a condition of employment.

(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.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1108 (S.B. [1714](#)), Sec. 2, eff. September 1, 2011.

Sec. 406.035. WAIVER OF COMPENSATION PROHIBITED. Except as provided by this subtitle, an agreement by an employee to waive the employee's right to compensation is void.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER C. COVERAGE THROUGH COMMERCIAL INSURANCE

Sec. 406.051. SECURITY BY COMMERCIAL INSURANCE. (a) An insurance company may contract to secure an employer's liability and obligations and to pay compensation by issuing a workers' compensation insurance policy under this subchapter.

(b) The contract for coverage must be written on a policy and endorsements approved by the Texas Department of Insurance.

(c) The employer may not transfer:

(1) the obligation to accept a report of injury under Section 409.001;

(2) the obligation to maintain records of injuries under Section 409.006;

(3) the obligation to report injuries to the insurance carrier under Section 409.005;

(4) liability for a violation of Section 415.006 or 415.008 or of Chapter 451; or

(5) the obligation to comply with a commissioner order.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 954, Sec. 4, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.032, eff. September 1, 2005.

Sec. 406.052. EFFECT OF OTHER INSURANCE COVERAGE. (a) A contract entered into to indemnify an employer from loss or damage resulting from an injury sustained by an employee that is compensable under this subtitle is void unless the contract also covers liability for payment of compensation under this subtitle.

(b) This section does not prohibit an employer who is not required to have workers' compensation insurance coverage and who has elected not to obtain workers' compensation insurance coverage from obtaining insurance coverage on the employer's employees if the insurance is not represented to any person as providing workers' compensation insurance coverage authorized under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.053. ALL STATES COVERAGE. The Texas Department of Insurance shall coordinate with the appropriate agencies of other states to:

(1) share information regarding an employer who obtains all states coverage; and

(2) ensure that the department has knowledge of an employer who obtains all states coverage in another state but fails to file notice with the department.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER D. EXTRATERRITORIAL COVERAGE

Sec. 406.071. EXTRATERRITORIAL COVERAGE. (a) An employee who is injured while working in another jurisdiction or the employee's legal beneficiary is entitled to all rights and remedies under this subtitle if:

(1) the injury would be compensable if it had occurred in this state; and

(2) the employee has significant contacts with this state or the employment is principally located in this state.

(b) An employee has significant contacts with this state if the employee was hired or recruited in this state and the employee:

(1) was injured not later than one year after the date of hire; or

(2) has worked in this state for at least 10 working days during the 12 months preceding the date of injury.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.072. PRINCIPAL LOCATION. The principal location of a person's employment is where:

(1) the employer has a place of business at or from which the employee regularly works; or

(2) the employee resides and spends a substantial part of the employee's working time.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.073. AGREEMENT ON PRINCIPAL LOCATION;
ADMINISTRATIVE VIOLATION. (a) An employee whose work requires
regular travel between this state and at least one other
jurisdiction may agree in writing with the employer on the
principal location of the employment.

(b) The employer shall file the agreement with the division
on request.

(c) A person commits an administrative violation if the
person violates Subsection (b).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.033, eff.
September 1, 2005.

Sec. 406.074. INTERJURISDICTIONAL AGREEMENTS. (a) The
commissioner may enter into an agreement with an appropriate agency
of another jurisdiction with respect to:

(1) conflicts of jurisdiction;

(2) assumption of jurisdiction in a case in which the
contract of employment arises in one state and the injury is
incurred in another;

(3) procedures for proceeding against a foreign
employer who fails to comply with this subtitle; and

(4) procedures for the appropriate agency to use to
proceed against an employer of this state who fails to comply with
the workers' compensation laws of the other jurisdiction.

(b) An executed agreement that has been adopted as a rule by
the commissioner binds all subject employers and employees.

(c) In this section, "appropriate agency" means an agency of
another jurisdiction that administers the workers' compensation
laws of that jurisdiction.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.034, eff.
September 1, 2005.

Sec. 406.075. EFFECT OF COMPENSATION PAID IN OTHER JURISDICTION. (a) An injured employee who elects to pursue the employee's remedy under the workers' compensation laws of another jurisdiction and who recovers benefits under those laws may not recover under this subtitle.

(b) The amount of benefits accepted under the laws of the other jurisdiction without an election under Subsection (a) shall be credited against the benefits that the employee would have received had the claim been made under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER E. APPLICATION OF COVERAGE TO CERTAIN EMPLOYEES

Sec. 406.091. EXEMPT EMPLOYEES; VOLUNTARY COVERAGE. (a) The following employees are not subject to this subtitle:

(1) a person employed as a domestic worker or a casual worker engaged in employment incidental to a personal residence;

(2) a person covered by a method of compensation established under federal law; or

(3) except as provided by Subchapter H, a farm or ranch employee.

(b) An employer may elect to obtain workers' compensation insurance coverage for an employee or classification of employees exempted from coverage under Subsection (a)(1) or (a)(3). Obtaining that coverage constitutes acceptance by the employer of the rights and responsibilities imposed under this subtitle as of the effective date of the coverage for as long as the coverage remains in effect.

(c) An employer who does not obtain coverage for exempt employees is not deprived of the common-law defenses described by Section 406.033, but this section does not reinstate or otherwise affect the availability of those or other defenses at common law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.092. ALIEN EMPLOYEES AND BENEFICIARIES. (a) A resident or nonresident alien employee or legal beneficiary is entitled to compensation under this subtitle.

(b) A nonresident alien employee or legal beneficiary, at the election of the employee or legal beneficiary, may be represented officially by a consular officer of the country of which the employee or legal beneficiary is a citizen. That officer may receive benefit payments for distribution to the employee or legal beneficiary. The receipt of the payments constitutes full discharge of the insurance carrier's liability for those payments. Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.093. LEGALLY INCOMPETENT EMPLOYEES. (a) The guardian of an injured employee who is a minor or is otherwise legally incompetent may exercise on the employee's behalf the rights and privileges granted to the employee under this subtitle.

(b) The commissioner by rule shall adopt procedures relating to the method of payment of benefits to legally incompetent employees.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.035, eff. September 1, 2005.

Sec. 406.094. CERTAIN PERSONS LICENSED BY TEXAS REAL ESTATE COMMISSION. (a) An employer who elects to provide workers' compensation insurance coverage may include in the coverage a real estate salesperson or broker who is:

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

(2) compensated solely by commissions.

(b) If coverage is elected by the employer, the insurance policy must specifically name the salesperson or broker. The coverage continues while the policy is in effect and the named salesperson or broker is endorsed on the policy.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.788, eff. Sept. 1, 2003.

Sec. 406.095. CERTAIN PROFESSIONAL ATHLETES. (a) A professional athlete employed under a contract for hire or a

collective bargaining agreement who is entitled to benefits for medical care and weekly benefits that are equal to or greater than the benefits provided under this subtitle may not receive benefits under this subtitle and the equivalent benefits under the contract or collective bargaining agreement. An athlete covered by such a contract or agreement who sustains an injury in the course and scope of the athlete's employment shall elect to receive either the benefits available under this subtitle or the benefits under the contract or agreement.

(b) The commissioner by rule shall establish the procedures and requirements for an election under this section.

(c) In this section, "professional athlete" means a person employed as a professional athlete by a franchise of:

- (1) the National Football League;
- (2) the National Basketball Association;
- (3) the American League of Professional Baseball Clubs;
- (4) the National League of Professional Baseball Clubs;
- (5) the International Hockey League;
- (6) the National Hockey League; or
- (7) the Central Hockey League.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 668, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.036, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 815 (S.B. 742), Sec. 1, eff. September 1, 2005.

Sec. 406.096. REQUIRED COVERAGE FOR CERTAIN BUILDING OR CONSTRUCTION CONTRACTORS. (a) A governmental entity that enters into a building or construction contract shall require the contractor to certify in writing that the contractor provides workers' compensation insurance coverage for each employee of the contractor employed on the public project.

(b) Each subcontractor on the public project shall provide

such a certificate relating to coverage of the subcontractor's employees to the general contractor, who shall provide the subcontractor's certificate to the governmental entity.

(c) A contractor who has a contract that requires workers' compensation insurance coverage may provide the coverage through a group plan or other method satisfactory to the governing body of the governmental entity.

(d) The employment of a maintenance employee by an employer who is not engaging in building or construction as the employer's primary business does not constitute engaging in building or construction.

(e) In this section:

(1) "Building or construction" includes:

(A) erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance;

(B) remodeling, extending, repairing, or demolishing a structure; or

(C) otherwise improving real property or an appurtenance to real property through similar activities.

(2) "Governmental entity" means this state or a political subdivision of this state. The term includes a municipality.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.097. EXECUTIVE EMPLOYEES OF CERTAIN BUSINESS ENTITIES. (a) A sole proprietor, partner, or corporate executive officer of a business entity that elects to provide workers' compensation insurance coverage is entitled to benefits under that coverage as an employee unless the sole proprietor, partner, or corporate executive officer is specifically excluded from coverage through an endorsement to the insurance policy or certificate of authority to self-insure.

(b) The dual capacity doctrine does not apply to a corporate executive officer with an equity ownership in the covered business entity of at least 25 percent and will not invalidate the exclusion of such a corporate executive officer from coverage under

Subsection (a).

(c) A sole proprietor or partner of a covered business entity or a corporate officer with an equity ownership in a covered business entity of at least 25 percent may be excluded from coverage under this section notwithstanding Section 406.096.

Added by Acts 1995, 74th Leg., ch. 980, Sec. 1.20, eff. Sept. 1, 1995.

Sec. 406.098. VOLUNTEER EMERGENCY SERVICE MEMBERS AND PERSONNEL. (a) An emergency service organization which is not a political subdivision or which is separate from any political subdivision may elect to obtain workers' compensation insurance coverage for its named volunteer members who participate in the normal functions of the organization. A person covered under this subsection is entitled to full medical benefits and the minimum compensation payments under the law.

(b) In this section, unless a different meaning is plainly required by law:

(1) "Emergency service organization" means any organization established to provide for the general public:

- (A) fire prevention and suppression;
- (B) hazardous materials response operations; or
- (C) emergency medical services.

(2) "Volunteer members" means individuals who are carried on the membership list of the organization as active participants and who receive no remuneration for their services.

(3) "Normal functions" means any response to, participation in, or departure from an incident scene; training; meetings; performance of equipment maintenance; or organizational functions.

(4) "Political subdivision" means a county, municipality, special district, school district, junior college district, housing authority, community center for mental health and mental retardation services established under Subchapter A, Chapter 534, Health and Safety Code, or any other legally constituted political subdivision of the state.

(c) The commissioner of insurance shall adopt rules

governing the method of calculating premiums for workers' compensation insurance coverage for volunteer members who are covered pursuant to this section.

Added by Acts 1995, 74th Leg., ch. 849, Sec. 1, eff. Aug. 28, 1995.

Renumbered from Labor Code Sec. 406.097 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(63), eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.037, eff. September 1, 2005.

SUBCHAPTER F. COVERAGE OF CERTAIN INDEPENDENT CONTRACTORS

Sec. 406.121. DEFINITIONS. In this subchapter:

(1) "General contractor" means a person who undertakes to procure the performance of work or a service, either separately or through the use of subcontractors. The term includes a "principal contractor," "original contractor," "prime contractor," or other analogous term. The term does not include a motor carrier that provides a transportation service through the use of an owner operator.

(2) "Independent contractor" means a person who contracts to perform work or provide a service for the benefit of another and who ordinarily:

(A) acts as the employer of any employee of the contractor by paying wages, directing activities, and performing other similar functions characteristic of an employer-employee relationship;

(B) is free to determine the manner in which the work or service is performed, including the hours of labor of or method of payment to any employee;

(C) is required to furnish or to have employees, if any, furnish necessary tools, supplies, or materials to perform the work or service; and

(D) possesses the skills required for the specific work or service.

(3) "Motor carrier" means a person who operates a motor vehicle over a public highway in this state to provide a

transportation service or who contracts to provide that service.

(4) "Owner operator" means a person who provides transportation services under contract for a motor carrier. An owner operator is an independent contractor.

(5) "Subcontractor" means a person who contracts with a general contractor to perform all or part of the work or services that the general contractor has undertaken to perform.

(6) "Transportation service" means providing a motor vehicle, with a driver under contract, to transport passengers or property.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.122. STATUS AS EMPLOYEE. (a) For purposes of workers' compensation insurance coverage, a person who performs work or provides a service for a general contractor or motor carrier who is an employer under this subtitle is an employee of that general contractor or motor carrier, unless the person is:

(1) operating as an independent contractor; or

(2) hired to perform the work or provide the service as an employee of a person operating as an independent contractor.

(b) A subcontractor and the subcontractor's employees are not employees of the general contractor for purposes of this subtitle if the subcontractor:

(1) is operating as an independent contractor; and

(2) has entered into a written agreement with the general contractor that evidences a relationship in which the subcontractor assumes the responsibilities of an employer for the performance of work.

(c) An owner operator and the owner operator's employees are not employees of a motor carrier for the purposes of this subtitle if the owner operator has entered into a written agreement with the motor carrier that evidences a relationship in which the owner operator assumes the responsibilities of an employer for the performance of work.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.123. ELECTION TO PROVIDE COVERAGE; ADMINISTRATIVE

VIOLATION. (a) A general contractor and a subcontractor may enter into a written agreement under which the general contractor provides workers' compensation insurance coverage to the subcontractor and the employees of the subcontractor.

(b) If a general contractor has workers' compensation insurance to protect the general contractor's employees and if, in the course and scope of the general contractor's business, the general contractor enters into a contract with a subcontractor who does not have employees, the general contractor shall be treated as the employer of the subcontractor for the purposes of this subtitle and may enter into an agreement for the deduction of premiums paid in accordance with Subsection (d).

(c) A motor carrier and an owner operator may enter into a written agreement under which the motor carrier provides workers' compensation insurance coverage to the owner operator and the employees of the owner operator.

(d) If a general contractor or a motor carrier elects to provide coverage under Subsection (a) or (c), then, notwithstanding Section 415.006, the actual premiums, based on payroll, that are paid or incurred by the general contractor or motor carrier for the coverage may be deducted from the contract price or other amount owed to the subcontractor or owner operator by the general contractor or motor carrier.

(e) An agreement under this section makes the general contractor the employer of the subcontractor and the subcontractor's employees only for purposes of the workers' compensation laws of this state.

(f) A general contractor shall file a copy of an agreement entered into under this section with the general contractor's workers' compensation insurance carrier not later than the 10th day after the date on which the contract is executed. If the general contractor is a certified self-insurer, the copy must be filed with the division.

(g) A general contractor who enters into an agreement with a subcontractor under this section commits an administrative violation if the contractor fails to file a copy of the agreement as required by Subsection (f).

(h) Notwithstanding Subsection (b), a person who performs work or provides a service for an oil or gas well operator and who is an independent contractor that has no employees shall be treated in the same manner as an independent contractor with employees and is not entitled to coverage under the general contractor's workers' compensation insurance policy unless the independent contractor and the general contractor enter into an agreement under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 88, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.038, eff. September 1, 2005.

Sec. 406.124. CAUSE OF ACTION. If a person who has workers' compensation insurance coverage subcontracts all or part of the work to be performed by the person to a subcontractor with the intent to avoid liability as an employer under this subtitle, an employee of the subcontractor who sustains a compensable injury in the course and scope of the employment shall be treated as an employee of the person for purposes of workers' compensation and shall have a separate right of action against the subcontractor. The right of action against the subcontractor does not affect the employee's right to compensation under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.125. RESTRICTION OF UNSAFE WORK PRACTICES UNAFFECTED. This subchapter does not prevent a general contractor from directing a subcontractor or the employees of a subcontractor to stop or change an unsafe work practice.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.126. EXEMPTION. This subchapter does not apply to farm or ranch employees.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.127. EFFECT OF CERTAIN CONTRACTS OF HIRE. An

insurance company may not demand an insurance premium from an employer for coverage of an independent contractor or an employee of an independent contractor if the independent contractor is under a contract of hire with the employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER G. COVERAGE OF CERTAIN BUILDING AND CONSTRUCTION WORKERS

Sec. 406.141. DEFINITIONS. In this subchapter:

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

(2) "Independent contractor" means a person who contracts to perform work or provide a service for the benefit of another and who:

(A) is paid by the job and not by the hour or some other time-measured basis;

(B) is free to hire as many helpers as desired and may determine the pay of each helper; and

(C) is free to, while under contract to the hiring contractor, work for other contractors or is free to send helpers to work for other contractors.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.142. APPLICATION. This subchapter applies only to contractors and workers preparing to construct, constructing, altering, repairing, extending, or demolishing:

(1) a residential structure;

(2) a commercial structure that does not exceed three stories in height or 20,000 square feet in area; or

(3) an appurtenance to a structure described by Subdivision (1) or (2).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.143. PROVISION OF WORKERS' COMPENSATION INSURANCE; INDEPENDENT CONTRACTOR WITHOUT EMPLOYEES. (a) Unless the independent contractor and hiring contractor enter into an

agreement under Section [406.144](#), the independent contractor is responsible for any workers' compensation insurance coverage provided to an employee of the independent contractor, and the independent contractor's employees are not entitled to workers' compensation insurance coverage from the hiring contractor.

(b) An independent contractor without employees shall be treated in the same manner as an independent contractor with employees and is not entitled to coverage under the hiring contractor's workers' compensation insurance policy unless the independent contractor and hiring contractor enter into an agreement under Section [406.144](#).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.144. ELECTION TO PROVIDE COVERAGE; AGREEMENT.

(a) Except as provided by this section, a hiring contractor is not responsible for providing workers' compensation insurance coverage for an independent contractor or the independent contractor's employee, helper, or subcontractor. An independent contractor and a hiring contractor may enter into a written agreement under which the independent contractor agrees that the hiring contractor may withhold the cost of workers' compensation insurance coverage from the contract price and that, for the purpose of providing workers' compensation insurance coverage, the hiring contractor is the employer of the independent contractor and the independent contractor's employees.

(b) A hiring contractor and independent contractor may enter into an agreement under Subsection (a) even if the independent contractor does not have an employee.

(c) Repealed by Acts 2017, 85th Leg., R.S., Ch. 467 (H.B. [2112](#)), Sec. 11(2), eff. June 9, 2017.

(d) The hiring contractor shall send a copy of an agreement under this section to:

(1) the hiring contractor's workers' compensation insurance carrier; and

(2) the division, on the division's request.

(e) An agreement under this section makes the hiring contractor the employer of the independent contractor and the

independent contractor's employees only for the purposes of the workers' compensation laws of this state.

(f) The deduction of the cost of the workers' compensation insurance coverage from the independent contractor's contract price is permitted notwithstanding Section [415.006](#).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. [7](#)), Sec. 3.039, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 467 (H.B. [2112](#)), Sec. 4, eff. June 9, 2017.

Acts 2017, 85th Leg., R.S., Ch. 467 (H.B. [2112](#)), Sec. 11(2), eff. June 9, 2017.

Sec. 406.145. JOINT AGREEMENT. (a) A hiring contractor and an independent subcontractor may make a joint agreement declaring that the subcontractor is an independent contractor as defined in Section [406.141](#)(2) and that the subcontractor is not the employee of the hiring contractor. If the joint agreement is signed by both the hiring contractor and the subcontractor and filed with the division, the subcontractor, as a matter of law, is an independent contractor and not an employee, and is not entitled to workers' compensation insurance coverage through the hiring contractor unless an agreement is entered into under Section [406.144](#) to provide workers' compensation insurance coverage. The commissioner shall prescribe forms for the joint agreement.

(b) Repealed by Acts 2017, 85th Leg., R.S., Ch. 467 (H.B. [2112](#)), Sec. 11(3), eff. June 9, 2017.

(c) The hiring contractor shall send a copy of a joint agreement signed under this section to:

(1) the hiring contractor's workers' compensation insurance carrier; and

(2) the division, on the division's request.

(d) Repealed by Acts 2017, 85th Leg., R.S., Ch. 467 (H.B. [2112](#)), Sec. 11(3), eff. June 9, 2017.

(e) A joint agreement signed under this section applies to each hiring agreement between the hiring contractor and the

independent contractor until the first anniversary of its filing date, unless a subsequent hiring agreement expressly states that the joint agreement does not apply.

(f) If a subsequent hiring agreement is made to which the joint agreement does not apply, the hiring contractor and independent contractor shall notify in writing:

(1) the hiring contractor's workers' compensation insurance carrier; and

(2) the division, on the division's request.

(g) If a hiring contractor and an independent contractor have filed a joint agreement under this section, an insurance company may not require the payment of an insurance premium by a hiring contractor for coverage of an independent contractor or an independent contractor's employee, helper, or subcontractor other than under an agreement entered into in compliance with Section [406.144](#).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. [7](#)), Sec. 3.040, eff. September 1, 2005.

Acts 2017, 85th Leg., R.S., Ch. 467 (H.B. [2112](#)), Sec. 5, eff. June 9, 2017.

Acts 2017, 85th Leg., R.S., Ch. 467 (H.B. [2112](#)), Sec. 11(3), eff. June 9, 2017.

Acts 2019, 86th Leg., R.S., Ch. 129 (H.B. [1665](#)), Sec. 1, eff. May 23, 2019.

Sec. 406.146. WRONGFUL INDUCEMENT PROHIBITED. (a) A hiring contractor may not:

(1) wrongfully induce an employee to enter into a joint agreement under Section [406.145](#) stating that the employee is an independent contractor; or

(2) exert controls over an independent contractor or an employee of an independent contractor sufficient to make that person an employee under common-law tests.

(b) A hiring contractor does not exert employer-like controls over an independent contractor or an independent

contractor's employee solely because of:

(1) controlling the hours of labor, if that control is exercised only to:

(A) establish the deadline for the completion of the work called for by the contract;

(B) schedule work to occur in a logical sequence and to avoid delays or interference with the work of other contractors; or

(C) schedule work to avoid disturbing neighbors during night or early morning hours or at other times when the independent contractor's activities would unreasonably disturb activities in the neighborhood; or

(2) stopping or directing work solely to prevent or correct an unsafe work practice or condition or to control work to ensure that the end product is in compliance with the contracted for result.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER H. COVERAGE OF FARM AND RANCH EMPLOYEES

Sec. 406.161. DEFINITIONS. In this subchapter:

(1) "Agricultural labor" means the planting, cultivating, or harvesting of an agricultural or horticultural commodity in its unmanufactured state.

(2) "Family" means persons related within the third degree by consanguinity or affinity.

(3) "Labor agent" means a person who:

(A) is a farm labor contractor for purposes of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. Section 1801 et seq.); or

(B) otherwise recruits, solicits, hires, employs, furnishes, or transports migrant or seasonal agricultural workers who work for the benefit of a third party.

(4) "Migrant worker" means an individual who is:

(A) employed in agricultural labor of a seasonal or temporary nature; and

(B) required to be absent overnight from the

worker's permanent place of residence.

(5) "Seasonal worker" means an individual who is:

(A) employed in agricultural or ranch labor of a seasonal or temporary nature; and

(B) not required to be absent overnight from the worker's permanent place of residence.

(6) "Truck farm" means a farm on which fruits, garden vegetables for human consumption, potatoes, sugar beets, or vegetable seeds are produced for market. The term includes a farm primarily devoted to one of those crops that also has incidental acreage of other crops.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.162. SCOPE. (a) This subtitle applies to an action to recover damages for personal injuries or death sustained by a farm or ranch employee who is:

(1) a migrant worker;

(2) a seasonal worker:

(A) employed on a truck farm, orchard, or vineyard;

(B) employed by a person with a gross annual payroll for the preceding year in an amount not less than the greater of the required payroll for the year preceding that year, adjusted for inflation, or \$25,000; or

(C) working for a farmer, ranch operator, or labor agent who employs a migrant worker and doing the same work at the same time and location as the migrant worker; or

(3) an employee, other than a migrant or seasonal worker:

(A) for years before 1991, employed by a person with a gross annual payroll for the preceding year of at least \$50,000; and

(B) for 1991 and subsequent years, employed by a person:

(i) with a gross annual payroll in an amount required for coverage of seasonal workers under Subdivision (2)(B); or

(ii) who employs three or more farm or ranch employees other than migrant or seasonal workers.

(b) The comptroller shall prepare a consumer price index for this state and shall certify the applicable index factor to the division before October 1 of each year. The division shall adjust the gross annual payroll requirement under Subsection (a)(2)(B) accordingly.

(c) For the purposes of this section, the gross annual payroll of a person includes any amount paid by the person to a labor agent for the agent's services and for the services of migrant or seasonal workers but does not include wages paid to:

(1) the person or a member of the person's family, if the person is a sole proprietor;

(2) a partner in a partnership or a member of the partner's family; or

(3) a shareholder of a corporation in which all shareholders are family members or a member of the shareholder's family.

(d) This subchapter does not affect the application or interpretation of this subtitle as it relates to persons engaged in activities determined before January 1, 1985, not to be farm or ranch labor.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.041, eff. September 1, 2005.

Sec. 406.163. LIABILITY OF LABOR AGENT; JOINT AND SEVERAL LIABILITY. (a) A labor agent who furnishes a migrant or seasonal worker is liable under this subtitle as if the labor agent were the employer of the worker, without regard to the right of control or other factors used to determine an employer-employee relationship.

(b) If the labor agent does not have workers' compensation insurance coverage, the person with whom the labor agent contracts for the services of the migrant or seasonal worker is jointly and severally liable with the labor agent in an action to recover damages for personal injuries or death suffered by the migrant or

seasonal worker as provided by this subtitle, and, for that purpose, the migrant or seasonal worker is considered the employee of the person with whom the labor agent contracts and that person may obtain workers' compensation insurance coverage for that worker as provided by this subtitle. If a migrant or seasonal worker is covered by workers' compensation insurance coverage, the person with whom the labor agent contracts is not liable in a separate action for injury or death except to the extent provided by this subtitle.

(c) A labor agent shall notify each person with whom the agent contracts of whether the agent has workers' compensation insurance coverage. If the agent does have workers' compensation insurance coverage, the agent shall present evidence of the coverage to each person with whom the agent contracts.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.164. ELECTIVE COVERAGE OF EMPLOYER AND FAMILY MEMBERS. (a) A person who purchases a workers' compensation insurance policy covering farm or ranch employees may cover the person, a partner, a corporate officer, or a family member in that policy. The insurance policy must specifically name the individual to be covered.

(b) The elective coverage continues while the policy is in effect and the named individual is endorsed on the policy.

(c) A member of an employer's family is exempt from coverage under the policy unless an election for that coverage is made under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.165. NOT APPLICABLE TO INDEPENDENT CONTRACTORS. (a) A farm or ranch employee who performs work or provides a service for a farm or ranch employer subject to this subchapter is an employee of that employer unless the employee is hired to perform the work or provide the service as an employee of an independent contractor.

(b) In this section, "independent contractor" means a person, other than a labor agent, who contracts with a farm or ranch

employer to perform work or provide a service for the benefit of the employer and who ordinarily:

(1) acts as the employer of the employee by paying wages, directing activities, and performing other similar functions characteristic of an employer-employee relationship;

(2) is free to determine the manner in which the work or service is performed, including the hours of labor or the method of payment;

(3) is required to furnish necessary tools, supplies, or materials to perform the work or service; and

(4) possesses skills required for the specific work or service.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.