

**SUBJECT:** Report to the Legislature on employers not covered by workers' comp

**COMMITTEE:** Business and Industry — committee substitute recommended

**VOTE:** 6 ayes — Giddings, Elkins, Darby, Bohac, Castro, Solomons  
1 nay — Zedler  
2 absent — Bailey, Martinez

**WITNESSES:** (*On original version:*)  
For — (*Registered, but did not testify:* Michael Cunningham, Texas State Building and Construction Trades, AFL-CIO; Rick Levy, Texas AFL-CIO)  
  
Against — Steve Bent, Texas Association of Responsible Nonsubscribers; (*Registered, but did not testify:* Cathy DeWitt, Texas Association of Business; Richard Evans, Texas Alliance of Nonsubscribers; Lance Lively, National Federation of Independent Business; Brad Shields, Texas Retailers Association)  
  
On — (*Registered, but did not testify:* Amy Lee, Texas Department of Insurance)  
  
(*On committee substitute:*)  
For — Allen Cooper, Equal Justice Center; Pedro Hernandez  
  
Against — None  
  
On — Emily Timm, translator

**BACKGROUND:** Labor Code, sec. 406.004 states that an employer who does not obtain workers' compensation insurance coverage must notify in writing the division of workers' compensation at the Texas Department of Insurance (TDI). Sec. 406.005 instructs an employer to notify each employee at the time of hire whether or not the employer has workers' compensation insurance coverage. Failure of an employer to comply with either notification requirement is an administrative violation.

Sec. 411.032 maintains that an employer must file with the division a report of:

- an on-the-job injury that results in the employee's absence from work for more than one day; and
- occupational disease of which the employer has knowledge.

An employer commits an administrative violation if the employer fails to report to the division as required. For the purposes of this section, employer includes one who is not required and does not obtain workers' compensation insurance coverage and who employs five or more employees not exempt from workers' compensation insurance coverage.

In 2005, the 79th Legislature enacted HB 7 by Solomons, which authorizes the commissioner of the workers' compensation division to assess an administrative penalty of up to \$25,000 per day per occurrence if the commissioner believes that an administrative violation warrants the extra penalty.

**DIGEST:**

CSHB 1772 would require TDI's division of workers' compensation to report annually to the Legislature any information regarding:

- compliance with notice requirements of employers who did not obtain or provide worker's compensation insurance coverage;
- any administrative penalties assessed against these employers for failure to comply with notice requirements;
- compliance of these employers who did not obtain or provide workers' compensation insurance coverage with the requirement to report certain on-the-job injuries and occupational disease; and
- any administrative penalties assessed against an employer who failed to comply with the injury-related reporting requirements.

CSHB 1772 would allow the division to issue a separate report or include its report in TDI's annual report to the governor and the Legislature.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

SUPPORTERS  
SAY:

CSHB 1772 would help the Legislature craft better workers' compensation policies by requiring TDI's division of workers' compensation annually to collect and report data on non-subscriber compliance with statutory reporting and notification to employees, as well as administrative penalties assessed by the division for non-compliance.

According to information obtained from TDI in an open records request, in 2005, non-subscribers, who hired 23 percent of private sector workers, reported 8,641 injuries involving lost time from work. Workers' compensation subscribers, who employed 77 percent of the private workforce, reported more than 122,000 injuries. In other words, workers' compensation subscribers employed three times as many workers but reported more than 14 times as many injuries. While subscriber and non-subscriber reporting requirements are somewhat different, the discrepancy suggests underreporting among non-subscribers.

Failure of non-subscribers to report to TDI is itself a violation of current law, punishable with administrative penalties. According to open records information, the division of workers' compensation has not collected any administrative penalties from non-subscribers who failed to comply with statutory reporting requirements since 2000. By specifying that TDI report non-subscriber compliance information and penalties levied for non-compliance annually to the Legislature, CSHB 1772 could encourage the division to levy penalties and increase compliance. Also, it is possible that compliance and penalties were low due to lack of enforcement resources. After reviewing the compliance information in the report, the Legislature could make an informed decision about whether to grant the division additional resources.

Texas does have certain responsible non-subscribers who provide outstanding benefits to their employees, such as the HEB grocery chain. In the absence of information related to non-subscriber compliance, the Legislature cannot make accurate determinations on how to improve compliance requirements or how well the workers' compensation system is functioning overall.

The Bureau of Labor Statistics (BLS) is a valuable resource of reliable data, but it has no authority to require reporting. Its National Compensation Survey in 2000 depended on employers to report information voluntarily. In the area of workers' compensation and non-subscription, BLS's Texas data is presented by region or metropolitan area

and is not comprehensive. For example, it does not include the Beaumont-Port Arthur region. With regard to workers' injuries and occupational illnesses, BLS bases its information on the Occupational Safety and Health Administration (OSHA) logs, which do not include information as to whether an employer is covered by workers' compensation insurance.

OPPONENTS  
SAY:

The reporting requirements of CSHB 1772 are unnecessary because most of the required information would be available from other sources. The BLS has annual surveys that include data from both subscribers and non-subscribers. In addition, OSHA produces a list of businesses, both subscribers and non-subscribers, whose workers sustain a higher frequency of injuries. The Legislature should be wary of any attempt to pull non-subscribers further into the workers' compensation bureaucracy.

NOTES:

CSHB 1772 differs from the original version by requiring the division of workers' compensation at TDI to report information annually to the Legislature regarding non-subscriber compliance with reporting to TDI and notification to employees, as well as administrative penalties assessed for noncompliance.

The bill as introduced would have established enhanced requirements for non-subscribers to report annually to TDI regarding work-related injuries. It would have authorized the commissioner of workers' compensation to adopt rules and to prescribe forms related to the reporting requirements. The original version would have made failure of an employer to comply a class D administrative violation, punishable by an administrative penalty up to \$500.

The House-passed version of HB 1 by Chisum, the general appropriations bill for fiscal 2008-09, contains an amendment to Art. 8 (Amendment no. 127 by Villarreal) that would direct the division of workers' compensation at TDI to report annually the same information specified in CSHB 1772 out of the funds appropriated to that division.