

**SUBCHAPTERS B, C, D, AND E**  
**28 TAC §§112.101, 112.102, 112.203, 112.301, AND 112.401**

**INTRODUCTION.** The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 TAC §§112.101, 112.102, 112.203, 112.301, and 112.401 concerning the scope of liability for compensation. These proposed amendments will conform DWC's rules to statutory changes made by House Bill 1665, 86th Legislature, Regular Session (2019).

**EXPLANATION.** DWC proposes to delete the headings for Subchapters B, C, D, and E in Chapter 112 to simplify how the rules are organized and make them easier to access and more-user friendly. Only the headings used for Subchapters B, C, D, and E will be deleted. The sections in Subchapters B, C, D, and E will not be deleted.

**Section 112.101** addresses Agreement Regarding Workers' Compensation Insurance Coverage Between General Contractors and Subcontractors. This proposal amends §112.101(a), (b), (c)(2), (d), and (e) to replace "shall" with "must." The proposal also amends §112.101(d) to add "insurance" before "carrier" and §112.101(e) to remove "the" before "Texas" and the comma after "Code." The proposal also amends the title of §112.101 to replace "Regarding" with "regarding" and "Between" with "between." These amendments are nonsubstantive but clarify the meaning of the rules and conform them to current agency style.

**Section 112.102** addresses Agreement between Motor Carriers and Owner Operators. This proposal amends §112.102(b), (d), (e), and (f) to replace "shall" with "must." The proposal also amends §112.102(f) to remove "the" before "Texas," as well as "Workers'

Compensation Act," and the comma after "\$406.005." The proposal adds "Labor Code" after "Texas." These amendments are nonsubstantive but clarify the meaning of the rules and conform them to current agency style.

**Section 112.203** addresses Exception to Application of Agreement To Affirm Independent Relationship for Certain Building and Construction Workers. This proposal amends §112.203(a) to remove "the Commission and" from the hiring contractor filing requirements. It is consistent with Labor Code changes in HB 1665, 86th Legislature, Regular Session (2019) that now require a copy of a subsequent hiring agreement, to which the joint agreement does not apply, to be filed with DWC only on DWC's request. This amendment is necessary to reflect DWC's intent that the agreement no longer must be filed with DWC. DWC also proposes amending §§112.203(b) and 112.203(d) to replace "Commission" with "division." These amendments are necessary to reflect DWC's current agency name and are consistent with the amendments DWC made to Chapter 112 in 2018. The proposal also amends the title of §112.203 to replace "To" with "to." This amendment is nonsubstantive but conforms it to current agency style.

**Section 112.301** addresses Labor Agent's Notification of Coverage. This proposal amends the title of §112.301 to "Labor Agent's Notification of Coverage for Certain Farm or Ranch Employees." This amendment adds clarity to the section title in the absence of subchapter titles.

**Section 112.401** addresses Election of Coverage by Certain Professional Athletes. This proposal amends §112.401(e) to expand the acceptable ways to deliver the agreement or contract between a professional athlete and a franchise. The proposal amends §112.401(b)

to replace "Texas Workers' Compensation Commission" with "Texas Department of Insurance, Division of Workers' Compensation" and §112.401(d) to replace "Commission" with "division." The proposal also amends the required language of the agreement or contract between a professional athlete and a franchise. These proposed amendments are nonsubstantive changes to DWC rules and are necessary to reflect the division's current name and conform this section to current agency style. The proposed amendments to the required language of the agreement or contract between a professional athlete and a franchise will be effective March 1, 2021.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Joseph McElrath, deputy commissioner of Business Process, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Mr. McElrath does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed amendments are in effect, Mr. McElrath expects that administering the proposed amendments will have the public benefit of ensuring that DWC's rules conform to the Texas Labor Code.

Mr. McElrath expects that the proposed amendments will not increase the cost to comply with Labor Code §406.145 because they do not impose requirements beyond those in the statute. Labor Code §406.145 permits a hiring contractor and an independent subcontractor to enter into a joint agreement declaring the subcontractor an independent contractor, not an employee of the hiring contractor, for workers' compensation insurance purposes. HB 1665 amended §406.145(f) to remove the requirement that a hiring contractor and an independent contractor file the joint agreement with DWC. The bill also included a new requirement that a copy be sent to DWC only when requested. These amendments result in cost savings to system participants by removing existing reporting requirements.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** DWC has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro-businesses, or on rural communities. Instead, the proposed amendments result in cost savings to system participants, including small or micro-businesses, by removing existing reporting requirements. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** DWC has determined that this proposal imposes a possible cost on regulated entities. However, no additional rule amendments are required under Government Code §2001.0045 because proposed §112.203 is necessary to implement legislation. The proposed rule implements Labor Code §406.145 enacted by HB 1665. Although there may be some costs associated with proposed §112.401, DWC proposes that the amendments to the language of the

agreement or contract between a professional athlete and a franchise be effective March 1, 2021, so that the franchises have the flexibility to implement the changes in a cost-effective way. No additional rule amendments are required under Government Code §2001.0045 because proposed §§112.301 and 112.401 reduce the burden and responsibilities these rules impose on the regulated entities.

**GOVERNMENT GROWTH IMPACT STATEMENT.** DWC has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; or
- will not positively or adversely affect the Texas economy.

**TAKINGS IMPACT ASSESSMENT.** DWC has determined that no private real property interests are affected by this proposal, and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. The proposed amendments to §112.401(b) make stylistic changes to the required language of the agreement or contract between a professional athlete and a franchise.

These proposed amendments are nonsubstantive changes to DWC rules. Further, DWC proposes that these amendments be effective March 1, 2021, so that the franchisees have the flexibility to implement the changes in a cost-effective way. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

**REQUEST FOR PUBLIC COMMENT.** DWC will consider any written comments on the proposal that DWC receives no later than 5 p.m., Central time, on December 14, 2020. Send your comments to [RuleComments@tdi.texas.gov](mailto:RuleComments@tdi.texas.gov); or to Cynthia Guillen, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, Legal Services, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

To request a public hearing on the proposal, submit a request before the end of the comment period, and separate from any comments, to [RuleComments@tdi.texas.gov](mailto:RuleComments@tdi.texas.gov); or to Cynthia Guillen, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, Legal Services, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. The request for public hearing must be separate from any comments and received by DWC no later than 5 p.m., Central time, on December 14, 2020. If DWC holds a public hearing, it will consider written and oral comments presented at the hearing.

**SUBCHAPTER B. APPLICATION TO GENERAL CONTRACTOR/SUBCONTRACTOR  
AND MOTOR CARRIER/OWNER OPERATOR.**

**28 TAC §§112.101 and 112.102.**

**STATUTORY AUTHORITY.** DWC proposes amended Subchapter B under Labor Code §402.00111, Relationship between Commissioner of Insurance and Commissioner of

Workers' Compensation; Separation of Authority; Rulemaking; Labor Code §402.00116, Chief Executive; Labor Code §402.061, Adoption of Rules; Labor Code §406.122, Status as Employee; and Labor Code §406.123, Election to Provide Coverage; Administrative Violation.

Labor Code §402.00111(a) states that, except as otherwise provided, the commissioner of workers' compensation will exercise all executive authority, including rulemaking authority, under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation will administer and enforce this title, other Texas workers' compensation laws, and other laws granting jurisdiction or applying to DWC or the commissioner.

Labor Code §402.061 authorizes the commissioner to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

Labor Code §406.122 states that a subcontractor and the subcontractor's employees are not employees of a general contractor if the subcontractor and general contractor have entered into a written agreement where the subcontractor assumes the responsibilities of an employer. The section further provides that an owner operator and the owner operator's employees are not employees of a motor carrier if the owner operator and motor carrier have entered into an agreement where the owner operator assumes the responsibilities of an employer.

Labor Code §406.123 provides that a general contractor and a subcontractor may enter into certain agreements and requires the general contractor to file a copy of the agreement with their insurance carrier. The general contractor must file a copy with the division only if they are a certified self-insurer. The section further allows motor carriers and owner operators to enter into agreements where the motor carrier agrees to provide workers' compensation insurance to the owner operator.

**CROSS-REFERENCE TO STATUTE.** Sections 112.101 and 112.102 implement Labor Code §406.123, enacted by HB 7, 79th Legislature, Regular Session (2005).

**TEXT.**

~~[SUBCHAPTER B. APPLICATION TO GENERAL CONTRACTOR/SUBCONTRACTOR AND MOTOR CARRIER/OWNER OPERATOR.]~~

§112.101. Agreement regarding ~~[Regarding]~~ Workers' Compensation Insurance Coverage between ~~[Between]~~ General Contractors and Subcontractors.

(a) An agreement between a general contractor and a subcontractor made in accordance with Texas Labor Code~~[,]~~ §406.123(a),(d),(e), or (l) must ~~[shall]~~:

(1)-(6) (No change.)

(b) The workers' compensation insurance coverage provided by the general contractor under the agreement will ~~[shall]~~ take effect no sooner than the date ~~[on which]~~ the agreement was executed, and deductions for the premiums must ~~[shall]~~ not be made for coverage provided before ~~[prior to]~~ that date.

(c) If a person who is covered by a subcontractor agreement signed under this section is found to be an employee of the general contractor, the person:

(1) (No change.)

(2) must ~~[shall]~~ receive a refund from the general contractor for all amounts improperly deducted as premium.

(d) The general contractor must ~~[shall]~~ maintain the original and file a legible copy of the agreement with the general contractor's workers' compensation insurance carrier within 10 days of the date of execution. An agreement is not considered filed if it is illegible or incomplete. If a general contractor and subcontractor enter into a written

agreement in which the subcontractor assumes the responsibilities of an employer as provided in ~~[the]~~ Texas Labor Code~~[,]~~ §406.122(b), the general contractor must ~~[shall]~~ provide a copy of the agreement to its insurance carrier within 10 days of execution. After January 1, 1993, a general contractor who is a certified self-insurer must ~~[shall]~~ file a copy of the agreement with the division within 10 days of the date of execution. The filing must ~~[Filing shall]~~ be made in the form and manner prescribed by the division.

(e) The general contractor must ~~[shall be required to]~~ give the subcontractor's employees the notice required under ~~[the]~~ Texas Labor Code~~[,]~~ §406.005 when such an agreement is made.

(f) (No change.)

#### §112.102. Agreements between Motor Carriers and Owner Operators.

(a) (No change.)

(b) An agreement made under subsection (a) of this section must ~~[shall]~~ be made at or before the time the contract for the work is made and must ~~[shall]~~:

(1)-(5) (No change.)

(c) (No change.)

(d) An agreement made under subsection (c) of this section must ~~[shall]~~ be made at or before the time the contract for the work is made and must ~~[shall]~~:

(1)-(5) (No change.)

(e) The workers' compensation insurance coverage provided by the motor carrier under the agreement must ~~[shall]~~ take effect no sooner than the date ~~[on which]~~ the agreement was executed, and deductions for the premiums must ~~[shall]~~ not be made for coverage provided before ~~[prior to]~~ that date.

(f) The motor carrier must [~~shall~~] be required to give the owner operator's employees the notice required under [the] Texas Labor Code [~~Workers' Compensation Act,~~] §406.005[;] when such an agreement is made.

## **SUBCHAPTER C. APPLICATION TO CERTAIN BUILDING AND CONSTRUCTION WORKERS.**

### **28 TAC §112.203.**

**STATUTORY AUTHORITY.** DWC proposes amended §112.203 under Labor Code §402.00111, Relationship between Commissioner of Insurance and Commissioner of Workers' Compensation; Separation of Authority; Rulemaking; Labor Code §402.00116, Chief Executive; Labor Code §402.061, Adoption of Rules; Labor Code §406.122, Status as Employee; Labor Code §406.123, Election to Provide Coverage; Administrative Violation; Labor Code §406.144, Election to Provide Coverage; Agreement; and Labor Code §406.145, Joint Agreement.

Labor Code §402.00111(a) states that, except as otherwise provided, the commissioner of workers' compensation will exercise all executive authority, including rulemaking authority, under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation will administer and enforce this title, other Texas workers' compensation laws, and other laws granting jurisdiction or applying to DWC or the commissioner.

Labor Code §402.061 authorizes the commissioner to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

Labor Code §406.122 states that a subcontractor and the subcontractor's employees are not employees of a general contractor if the subcontractor and general

contractor have entered into a written agreement where the subcontractor assumes the responsibilities of an employer. The section further provides that an owner operator and the owner operator's employees are not employees of a motor carrier if the owner operator and motor carrier have entered into an agreement where the owner operator assumes the responsibilities of an employer.

Labor Code §406.123 provides that a general contractor and a subcontractor may enter into certain agreements and requires the general contractor to file a copy of the agreement with their insurance carrier. The general contractor must file a copy with the division only if they are a certified self-insurer. The section further allows motor carriers and owner operators to enter into agreements where the motor carrier agrees to provide workers' compensation insurance to the owner operator.

Labor Code §406.144 states a hiring contractor is not responsible for providing workers' compensation insurance coverage for an independent contractor unless the hiring contractor and independent contractor enter into an agreement under which the hiring contractor, for the purpose of providing workers' compensation insurance coverage, is the employer of the independent contractor.

Labor Code §406.145 permits a hiring contractor and an independent subcontractor to enter into a joint agreement declaring the subcontractor as an independent contractor and not an employee of the hiring contractor for workers' compensation purposes. The joint agreement applies to each hiring agreement between the parties until the first anniversary of its filling date unless a later hiring agreement expressly states the joint agreement does not apply.

**CROSS-REFERENCE TO STATUTE.** Section 112.203 implements Labor Code §406.145, enacted by HB 1665, 86th Legislature, Regular Session (2019).

**TEXT.**

[SUBCHAPTER C. APPLICATION TO CERTAIN BUILDING AND CONSTRUCTION WORKERS.]

§112.203. Exception to Application of Agreement to ~~To~~ Affirm Independent Relationship for Certain Building and Construction Workers.

(a) If a subsequent hiring agreement is made that expressly states that the joint statement made under §112.202 of this title (relating to Joint Agreement To Affirm Independent Relationship for Certain Building and Construction Workers) does not apply to that hiring agreement, the hiring contractor must ~~shall~~ maintain the original and file a legible copy of the agreement with ~~the Commission and~~ the hiring contractor's insurance carrier. Nothing in this section otherwise nullifies the joint statement as it applies to other hiring agreements made during the term of the joint statement.

(b) The notification must ~~shall~~ be filed in the form and manner prescribed by the division ~~Commission~~ and must ~~shall~~:

(1)-(4) (No change.)

(c) If a person who is covered by an independent contractor agreement signed under this section is found to be an employee of the hiring contractor, the person:

(1) (No change.)

(2) must ~~shall~~ receive a refund from the hiring contractor for all amounts improperly deducted as premium.

(d) The notification ~~notice~~ must ~~shall~~ be provided in the form and manner prescribed by the division ~~Commission,~~ no later than 10 days from the date the subsequent hiring agreement was executed. An agreement is not considered filed if it is illegible or incomplete.

**SUBCHAPTER D. APPLICATION TO FARM OR RANCH EMPLOYEES.**

**28 TAC §112.301.**

**STATUTORY AUTHORITY.** DWC proposes amended §112.301 under Labor Code §402.00111, Relationship between Commissioner of Insurance and Commissioner of Workers' Compensation; Separation of Authority; Rulemaking; Labor Code §402.00116, Chief Executive; Labor Code §402.061, Adoption of Rules; and Labor Code §406.163, Liability of Labor Agent; Joint and Several Liability.

Labor Code §402.00111(a) states that, except as otherwise provided, the commissioner of workers' compensation will exercise all executive authority, including rulemaking authority, under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation will administer and enforce this title, other Texas workers' compensation laws, and other laws granting jurisdiction or applying to DWC or the commissioner.

Labor Code §402.061 authorizes the commissioner to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

Labor Code §406.163 states that a labor agent must notify each person the agent contracts with whether the agent has workers' compensation insurance coverage. If the agent has workers' compensation insurance coverage, they must present evidence of the coverage to each person the agent contracts with.

**CROSS-REFERENCE TO STATUTE.** Section 112.301 implements Labor Code §406.163, enacted by HB 752, 73rd Legislature, Regular Session (1993).

**TEXT.**

~~[SUBCHAPTER D. APPLICATION TO FARM OR RANCH EMPLOYEES.]~~

§112.301. Labor Agent's Notification of Coverage to Certain Farm or Ranch Employees.

(a) A labor agent must ~~[shall]~~ notify each person ~~[with whom]~~ the labor agent contracts with to provide the services of migrant and seasonal workers whether or not the labor agent has workers' compensation insurance coverage.

(b) The notification must ~~[shall]~~ be in writing and must ~~[shall]~~ be given at the time the contract for the services of the migrant or seasonal workers is made. The notification must ~~[shall]~~ be signed and dated by both parties and each party must ~~[shall]~~ retain a copy of the notice.

(c) If the labor agent does have workers' compensation insurance coverage, the labor agent must ~~[shall]~~ present evidence of the workers' compensation insurance coverage to each person ~~[with whom]~~ the agent contracts with to provide the services of migrant and seasonal workers. The evidence of coverage must ~~[shall]~~ be in writing and must ~~[shall]~~ be presented at the time the notification of coverage is made. Each party must ~~[shall]~~ retain a copy of the evidence of coverage with the copy of the notice. A certificate of insurance is ~~[shall be]~~ considered adequate evidence of coverage.

(d) The notice and evidence of coverage, if applicable, must ~~[shall]~~ be given each time a labor agent makes a contract with a person to provide migrant or seasonal workers. Any notice and evidence of coverage provided for a prior contract between the parties is ~~[shall be]~~ considered insufficient to meet the requirements of this section.

(e) If coverage is terminated during the period of the contract for employment, the labor agent must ~~[shall]~~ notify:

(1)-(2) (No change.)

**SUBCHAPTER E. PROFESSIONAL ATHLETES ELECTION OF COVERAGE.**

**28 TAC §112.401.**

**STATUTORY AUTHORITY.** DWC proposes amended §112.401 under Labor Code §402.00111, Relationship between Commissioner of Insurance and Commissioner of Workers' Compensation; Separation of Authority; Rulemaking; Labor Code §402.00116, Chief Executive; Labor Code §402.061, Adoption of Rules; and Labor Code §406.095, Certain Professional Athletes.

Labor Code §402.00111(a) states that, except as otherwise provided, the commissioner of workers' compensation will exercise all executive authority, including rulemaking authority, under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation will administer and enforce this title, other Texas workers' compensation laws, and other laws granting jurisdiction or applying to DWC or the commissioner.

Labor Code §402.061 authorizes the commissioner to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

Labor Code §406.095 states a professional athlete employed under a contract for hire or a collective bargaining agreement, who sustains an injury in the course and scope of the athlete's employment, must elect to receive either the benefits available under this subtitle or the benefits under the contract or agreement. Labor Code §406.095(b) states the commissioner by rule will establish the procedures and requirements for an election under this section.

**CROSS-REFERENCE TO STATUTE.** Section 112.401 implements the Texas Workers' Compensation Act, Labor Code, Title 5, Subtitle A.

**TEXT.**

~~[SUBCHAPTER E. PROFESSIONAL ATHLETES ELECTION OF COVERAGE.]~~

§112.401. Election of Coverage by Certain Professional Athletes.

(a) A professional athlete employed by a franchise with workers' compensation insurance coverage and subject to ~~the~~ Texas Labor Code~~;~~ §406.095~~;~~ must ~~shall~~ elect to receive either the benefits available under the Act or the equivalent benefits available under the athlete's contract or collective bargaining agreement. The election must ~~shall~~ be made not later than the 15th day after the athlete sustains an injury in the course and scope of employment. If the athlete fails to make an election, the athlete will be presumed to have elected the option which provides the highest benefits.

(b) When a contract is signed by a professional athlete, the employer must ~~shall~~ give the athlete a copy of the following statement: "(Name of employer) has workers' compensation coverage from (name of insurance carrier). If the benefits available to you under your contract and any applicable collective bargaining agreement are equivalent to or greater than those available to you under ~~the~~ Texas Labor Code~~;~~ §406.095, you are required to elect whether to receive the benefits available to you under the Act or the benefits available to you under your contract and any applicable collective bargaining agreement. You must make this election no later than 15 days after sustaining an injury. If you elect to receive the benefits available to you under your contract and any applicable collective bargaining agreement, you cannot obtain workers' compensation income or medical benefits if you are injured. You can get more information about your workers' compensation rights and the benefits available to you under the Act from any office of the Texas Department of Insurance, Division of Workers' Compensation, ~~Commission,~~ or by calling 1-800-252-7031."

(c) The election must ~~shall~~ be in writing and must ~~shall~~:

(1)-(3) (No change.)

(d) If the athlete elects to receive the benefits available under the Act, a legible copy of the election must ~~[shall]~~ be provided to the division ~~[Commission]~~ in the form and manner prescribed by the division ~~[Commission,]~~ within 10 days of the date of execution. A copy must also be provided to the franchise's workers' compensation insurance carrier within 10 days of the date of execution. The franchise must ~~[shall]~~ maintain the original election and provide a copy to the athlete.

(e) If the athlete elects to receive the benefits available under the contract and any agreement, the election must ~~[shall]~~ be filed with the franchise's workers' compensation insurance carrier ~~[by personal delivery or registered or certified mail]~~ within 10 days of the date of execution. An agreement is not considered filed if it is illegible or incomplete. Both the athlete and the franchise must ~~[shall]~~ keep a copy of the election.

(f) (No change.)

(g) The 2020 amendments on the language of the agreement or contract between a professional athlete and a franchise are effective March 1, 2021.

**CERTIFICATION.** This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's authority to adopt.

Issued in Austin, Texas, on October 27, 2020.



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Kara Mace  
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Texas Department of Insurance,  
Division of Workers' Compensation