

**ASSEMBLY, No. 508**

---

**STATE OF NEW JERSEY**

**219th LEGISLATURE**

---

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

**Sponsored by:**

**Assemblyman JAY WEBBER**

**District 26 (Essex, Morris and Passaic)**

**Assemblywoman BETTYLOU DECROCE**

**District 26 (Essex, Morris and Passaic)**

**Co-Sponsored by:**

**Assemblymen Space and Wirths**

**SYNOPSIS**

Concerns workers' compensation insurance requirements for certain corporations and partnerships.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



1   **AN ACT** concerning workers' compensation insurance requirements  
2       and amending R.S.34:15-36.

3

4       **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6

7       1. R.S.34:15-36 is amended to read as follows:

8       34:15-36. "Willful negligence" within the intent of this chapter  
9 shall consist of (1) deliberate act or deliberate failure to act, or (2)  
10 such conduct as evidences reckless indifference to safety, or (3)  
11 intoxication, operating as the proximate cause of injury, or (4)  
12 unlawful use of a controlled dangerous substance as defined in the  
13 "New Jersey Controlled Dangerous Substances Act," P.L.1970,  
14 c.226 (C.24:21-1 et seq.).

15       "Employer" is declared to be synonymous with master, and  
16 includes natural persons, partnerships, and corporations, except  
17 that, notwithstanding any other provision of this section,  
18 "employer" shall not mean a partnership that consists of only two  
19 partners if there is no other individual or individuals who perform  
20 services for the partnership; "employee" is synonymous with  
21 servant, and includes all natural persons, including officers of  
22 corporations, who perform service for an employer for financial  
23 consideration, exclusive of (1) employees eligible under the federal  
24 "Longshore and Harbor Workers' Compensation Act," 44 Stat. 1424  
25 (33 U.S.C.s.901 et seq.), for benefits payable with respect to  
26 accidental death or injury, or occupational disease or infection; and  
27 (2) casual employments, which shall be defined, if in connection  
28 with the employer's business, as employment the occasion for which  
29 arises by chance or is purely accidental; or if not in connection with  
30 any business of the employer, as employment not regular, periodic  
31 or recurring; provided, however, that forest fire wardens and forest  
32 firefighters employed by the State of New Jersey shall, in no event,  
33 be deemed casual employees.

34       A self-employed person, partners of a limited liability  
35 partnership, members of a limited liability company or partners of a  
36 partnership who actively perform services on behalf of the self-  
37 employed person's business, the limited liability partnership, limited  
38 liability company or the partnership shall be deemed an "employee"  
39 of the business, limited liability partnership, limited liability  
40 company or partnership for purposes of receipt of benefits and  
41 payment of premiums pursuant to this chapter, if the business,  
42 limited liability partnership, limited liability company or  
43 partnership elects, when the workers' compensation policy of the  
44 business, limited liability partnership, limited liability company or  
45 partnership is purchased or renewed, to obtain coverage for the

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 person, the limited liability partners, the limited liability company  
2 members or the partners. If the business, limited liability  
3 partnership, limited liability company or partnership elects to obtain  
4 coverage for the self-employed person, limited liability partners,  
5 limited liability company members or the partners, the election may  
6 only be made at purchase or at renewal and may not be withdrawn  
7 during the policy term. If the business, limited liability partnership,  
8 limited liability company or partnership performs services covered  
9 under a homeowner's policy or other policies providing  
10 comprehensive personal liability insurance for domestic servants,  
11 household employees or the dependents thereof, the workers'  
12 compensation policy of the business, limited liability partnership,  
13 limited liability company or partnership shall have primary  
14 responsibility for the payment of benefits. Notwithstanding the  
15 provisions of R.S.34:15-71 and 34:15-72, the business, limited  
16 liability partnership, limited liability company or partnership shall  
17 not be required to purchase a policy unless the business, limited  
18 liability partnership, limited liability company or partnership is an  
19 "employer" of [a] at least one employee as defined in this section  
20 who is not a self-employed person, limited liability partner, limited  
21 liability company member or partner actively performing services  
22 on behalf of the business, limited liability partnership, limited  
23 liability company or partnership.

24 An individual who is the only individual performing services for  
25 an S corporation and is the only shareholder in the corporation shall  
26 be deemed an "employee" of the corporation for purposes of receipt  
27 of benefits and payment of premiums pursuant to R.S.34:15-1 et  
28 seq., if the corporation elects, when the workers' compensation  
29 policy of the corporation is purchased or renewed, to obtain  
30 coverage for the individual. If the corporation elects to obtain  
31 coverage for the individual, the election may only be made at the  
32 time of purchase or renewal and may not be withdrawn during the  
33 policy term. If the corporation performs services covered under a  
34 homeowner's policy or other policies providing comprehensive  
35 personal liability insurance for domestic servants, household  
36 employees or the dependents thereof, the workers' compensation  
37 policy of the corporation shall have primary responsibility for the  
38 payment of benefits. This paragraph shall not be construed as  
39 modifying in any way the status of any individual or corporation  
40 with respect to any tax or other law other than the workers'  
41 compensation law.

42 Notwithstanding any other provision of law to the contrary, no  
43 insurer or insurance producer as defined in section [2 of P.L.1987,  
44 c.293 (C.17:22A-2)] 3 of P.L.2001, c.210 (C.17:22A-28) shall be  
45 liable in an action for damages on account of the failure of a  
46 business, limited liability partnership, limited liability company or  
47 partnership to elect to obtain workers' compensation coverage for a  
48 self-employed person, limited liability partner, limited liability

1 company member or partner, unless the insurer or insurance  
2 producer causes damage by a willful, wanton or grossly negligent  
3 act of commission or omission. Every application for workers'  
4 compensation made on or after the effective date of this amendatory  
5 act shall include notice, as approved by the Commissioner of  
6 Banking and Insurance, concerning the availability of workers'  
7 compensation coverage for self-employed persons, limited liability  
8 partners, limited liability company members or partners. That  
9 application shall also contain a notice of election of coverage and  
10 shall clearly state that coverage for self-employed persons, limited  
11 liability partners, limited liability company members and partners  
12 shall not be provided under the policy unless the application  
13 containing the notice of election is executed and filed with the  
14 insurer or insurance producer. The application containing the  
15 notice of election shall also contain a statement that the insurer or  
16 insurance producer shall not be liable in an action for damages on  
17 account of the failure of a business, limited liability partnership,  
18 limited liability company or partnership to elect to obtain workers'  
19 compensation coverage for a self-employed person, limited liability  
20 partner, limited liability company member or partner, unless the  
21 insurer or insurance producer causes damage by a willful, wanton or  
22 grossly negligent act of commission or omission. The failure of a  
23 self-employed person, limited liability partnership, limited liability  
24 company or partnership to elect to obtain workers' compensation  
25 coverage for the self-employed person, the limited liability partners,  
26 the limited liability company members or the partners shall not  
27 affect benefits available under any other accident or health policy.

28 Employment shall be deemed to commence when an employee  
29 arrives at the employer's place of employment to report for work  
30 and shall terminate when the employee leaves the employer's place  
31 of employment, excluding areas not under the control of the  
32 employer; provided, however, when the employee is required by the  
33 employer to be away from the employer's place of employment, the  
34 employee shall be deemed to be in the course of employment when  
35 the employee is engaged in the direct performance of duties  
36 assigned or directed by the employer; but the employment of  
37 employee paid travel time by an employer for time spent traveling  
38 to and from a job site or of any employee who utilizes an employer  
39 authorized vehicle shall commence and terminate with the time  
40 spent traveling to and from a job site or the authorized operation of  
41 a vehicle on business authorized by the employer. Travel by a  
42 policeman, fireman, or a member of a first aid or rescue squad, in  
43 responding to and returning from an emergency, shall be deemed to  
44 be in the course of employment.

45 Employment shall also be deemed to commence when an  
46 employee is traveling in a ridesharing arrangement between his or  
47 her place of residence or terminal near such place and his or her  
48 place of employment, if one of the following conditions is satisfied:  
49 the vehicle used in the ridesharing arrangement is owned, leased or

1 contracted for by the employer, or the employee is required by the  
2 employer to travel in a ridesharing arrangement as a condition of  
3 employment.

4 "Disability permanent in quality and partial in character" means  
5 a permanent impairment caused by a compensable accident or  
6 compensable occupational disease, based upon demonstrable  
7 objective medical evidence, which restricts the function of the body  
8 or of its members or organs; included in the criteria which shall be  
9 considered shall be whether there has been a lessening to a material  
10 degree of an employee's working ability. Subject to the above  
11 provisions, nothing in this definition shall be construed to preclude  
12 benefits to a worker who returns to work following a compensable  
13 accident even if there be no reduction in earnings. Injuries such as  
14 minor lacerations, minor contusions, minor sprains, and scars which  
15 do not constitute significant permanent disfigurement, and  
16 occupational disease of a minor nature such as mild dermatitis and  
17 mild bronchitis shall not constitute permanent disability within the  
18 meaning of this definition.

19 "Disability permanent in quality and total in character" means a  
20 physical or neuropsychiatric total permanent impairment caused by  
21 a compensable accident or compensable occupational disease,  
22 where no fundamental or marked improvement in such condition  
23 can be reasonably expected.

24 Factors other than physical and neuropsychiatric impairments  
25 may be considered in the determination of permanent total  
26 disability, where such physical and neuropsychiatric impairments  
27 constitute at least 75% or higher of total disability.

28 "Ridesharing" means the transportation of persons in a motor  
29 vehicle, with a maximum carrying capacity of not more than 15  
30 passengers, including the driver, where such transportation is  
31 incidental to the purpose of the driver. This term shall include such  
32 ridesharing arrangements known as carpools and vanpools.

33 "Medical services, medical treatment, physicians' services and  
34 physicians' treatment" shall include, but not be limited to, the  
35 services which a chiropractor is authorized by law to perform and  
36 which are authorized by an employer pursuant to the provisions of  
37 R.S.34:15-1 et seq.

38 "S corporation" means a corporation included in the definition of  
39 an "S corporation" pursuant to section 1361 of the federal Internal  
40 Revenue Code of 1986, 26 U.S.C. s.1361.

41 (cf: P.L.1999, c.383, s.1)

42  
43 2. This act shall take effect immediately.

44  
45  
46 STATEMENT

47  
48 This bill revises the definition of "employer" in the workers'  
49 compensation law, R.S.34:15-1 et seq., to exempt certain

1 partnerships from the requirements of that law. The bill provides  
2 that a partnership is not subject to the requirements of the workers'  
3 compensation law if there are only two partners and if there is no  
4 other individual or individuals that perform services for the  
5 partnership.

6 The bill revises the definition of "employee" in the law to permit  
7 an S corporation that has only one individual who performs services  
8 for the corporation and is the only shareholder in the corporation to  
9 choose whether or not to obtain workers' compensation coverage.