

SENATE, No. 194

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator CHRISTOPHER J. CONNORS

District 9 (Atlantic, Burlington and Ocean)

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Senator Oroho

SYNOPSIS

Excludes certain illegal aliens from workers' compensation and temporary disability benefits.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 5/6/2021)

1 **AN ACT** concerning workers' compensation and temporary
2 disability benefits, and amending R.S.34:15-36 and P.L.1948,
3 c.110.

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

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

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

16 "Employer" is declared to be synonymous with master, and
17 includes natural persons, partnerships, and corporations;
18 "employee" is synonymous with servant, and includes all natural
19 persons, including officers of corporations, who perform service for
20 an employer for financial consideration, exclusive of (1) employees
21 eligible under the federal "Longshore and Harbor Workers'
22 Compensation Act," 44 Stat. 1424 (33U.S.C.s.901 et seq.), for
23 benefits payable with respect to accidental death or injury, or
24 occupational disease or infection; **[and]** (2) employees who are
25 aliens unless they were lawfully admitted for permanent residence
26 at the time the employment was performed, were lawfully present
27 for the purpose of performing the employment, or otherwise were
28 permanently residing in the United States under color of law at the
29 time the employment was performed; and (3) casual employments,
30 which shall be defined, if in connection with the employer's
31 business, as employment the occasion for which arises by chance or
32 is purely accidental; or if not in connection with any business of the
33 employer, as employment not regular, periodic or recurring;
34 provided, however, that forest fire wardens and forest firefighters
35 employed by the State of New Jersey shall, in no event, be deemed
36 casual employees.

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

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

27 Notwithstanding any other provision of law to the contrary, no
28 insurer or insurance producer as defined in section 2 of P.L.1987,
29 c.293 (C.17:22A-2) shall be liable in an action for damages on
30 account of the failure of a business, limited liability partnership,
31 limited liability company or partnership to elect to obtain workers'
32 compensation coverage for a self-employed person, limited liability
33 partner, limited liability company member or partner, unless the
34 insurer or insurance producer causes damage by a willful, wanton or
35 grossly negligent act of commission or omission. Every application
36 for workers' compensation made on or after the effective date of
37 this amendatory act shall include notice, as approved by the
38 Commissioner of Banking and Insurance, concerning the
39 availability of workers' compensation coverage for self-employed
40 persons, limited liability partners, limited liability company
41 members or partners. That application shall also contain a notice of
42 election of coverage and shall clearly state that coverage for self-
43 employed persons, limited liability partners, limited liability
44 company members and partners shall not be provided under the
45 policy unless the application containing the notice of election is
46 executed and filed with the insurer or insurance producer. The
47 application containing the notice of election shall also contain a
48 statement that the insurer or insurance producer shall not be liable

1 in an action for damages on account of the failure of a business,
2 limited liability partnership, limited liability company or
3 partnership to elect to obtain workers' compensation coverage for a
4 self-employed person, limited liability partner, limited liability
5 company member or partner, unless the insurer or insurance
6 producer causes damage by a willful, wanton or grossly negligent
7 act of commission or omission. The failure of a self-employed
8 person, limited liability partnership, limited liability company or
9 partnership to elect to obtain workers' compensation coverage for
10 the self-employed person, the limited liability partners, the limited
11 liability company members or the partners shall not affect benefits
12 available under any other accident or health policy.

13 Employment shall be deemed to commence when an employee
14 arrives at the employer's place of employment to report for work
15 and shall terminate when the employee leaves the employer's place
16 of employment, excluding areas not under the control of the
17 employer; provided, however, when the employee is required by the
18 employer to be away from the employer's place of employment, the
19 employee shall be deemed to be in the course of employment when
20 the employee is engaged in the direct performance of duties
21 assigned or directed by the employer; but the employment of
22 employee paid travel time by an employer for time spent traveling
23 to and from a job site or of any employee who utilizes an employer
24 authorized vehicle shall commence and terminate with the time
25 spent traveling to and from a job site or the authorized operation of
26 a vehicle on business authorized by the employer. Travel by a
27 policeman, fireman, or a member of a first aid or rescue squad, in
28 responding to and returning from an emergency, shall be deemed to
29 be in the course of employment.

30 Employment shall also be deemed to commence when an
31 employee is traveling in a ridesharing arrangement between his or
32 her place of residence or terminal near such place and his or her
33 place of employment, if one of the following conditions is satisfied:
34 the vehicle used in the ridesharing arrangement is owned, leased or
35 contracted for by the employer, or the employee is required by the
36 employer to travel in a ridesharing arrangement as a condition of
37 employment.

38 "Disability permanent in quality and partial in character" means
39 a permanent impairment caused by a compensable accident or
40 compensable occupational disease, based upon demonstrable
41 objective medical evidence, which restricts the function of the body
42 or of its members or organs; included in the criteria which shall be
43 considered shall be whether there has been a lessening to a material
44 degree of an employee's working ability. Subject to the above
45 provisions, nothing in this definition shall be construed to preclude
46 benefits to a worker who returns to work following a compensable
47 accident even if there be no reduction in earnings. Injuries such as
48 minor lacerations, minor contusions, minor sprains, and scars which

1 do not constitute significant permanent disfigurement, and
2 occupational disease of a minor nature such as mild dermatitis and
3 mild bronchitis shall not constitute permanent disability within the
4 meaning of this definition.

5 “Disability permanent in quality and total in character” means a
6 physical or neuropsychiatric total permanent impairment caused by
7 a compensable accident or compensable occupational disease,
8 where no fundamental or marked improvement in such condition
9 can be reasonably expected.

10 Factors other than physical and neuropsychiatric impairments
11 may be considered in the determination of permanent total
12 disability, where such physical and neuropsychiatric impairments
13 constitute at least 75% or higher of total disability.

14 “Ridesharing” means the transportation of persons in a motor
15 vehicle, with a maximum carrying capacity of not more than 15
16 passengers, including the driver, where such transportation is
17 incidental to the purpose of the driver. This term shall include such
18 ridesharing arrangements known as carpools and vanpools.

19 “Medical services, medical treatment, physicians’ services and
20 physicians’ treatment” shall include, but not be limited to, the
21 services which a chiropractor is authorized by law to perform and
22 which are authorized by an employer pursuant to the provisions of
23 R.S.34:15-1 et seq.

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

25

26 2. Section 15 of P.L.1948, c.110 (C.43:21-39) is amended to
27 read as follows:

28 15. Limitation of benefits. Notwithstanding any other provision
29 of the “Temporary Disability Benefits Law,” P.L.1948,
30 c.110 (C.43:21-25 et seq.), no benefits shall be payable under the
31 State plan to any person:

32 (a) for the first seven consecutive days of each period of
33 disability; except that if benefits shall be payable for three
34 consecutive weeks with respect to any period of disability
35 commencing on or after January 1, 1968, then benefits shall also be
36 payable with respect to the first seven days thereof;

37 (b) for more than 26 weeks with respect to any one period of
38 disability;

39 (c) for any period of disability which did not commence while
40 the claimant was a covered individual;

41 (d) for any period during which the claimant is not under the
42 care of a legally licensed physician, dentist, optometrist, podiatrist,
43 practicing psychologist, or chiropractor, who, when requested by
44 the division, shall certify within the scope of the practitioner’s
45 practice, the disability of the claimant, the probable duration
46 thereof, and, where applicable, the medical facts within the
47 practitioner’s knowledge;

- 1 (e) (Deleted by amendment, P.L.1980, c.90.)
- 2 (f) for any period of disability due to willfully and intentionally
- 3 self-inflicted injury, or to injury sustained in the perpetration by the
- 4 claimant of a crime of the first, second, or third degree;
- 5 (g) for any period during which the claimant performs any work
- 6 for remuneration or profit;
- 7 (h) in a weekly amount which together with any remuneration
- 8 the claimant continues to receive from the employer would exceed
- 9 regular weekly wages immediately prior to disability;
- 10 (i) for any period during which a covered individual would be
- 11 disqualified for unemployment compensation benefits under
- 12 subsection (d) of R.S.43:21-5, unless the disability commenced
- 13 prior to such disqualification; and there shall be no other cause of
- 14 disqualification or ineligibility to receive disability benefits
- 15 hereunder except as may be specifically provided in this act;
- 16 (j) for any period during which the claimant would be ineligible
- 17 for unemployment compensation benefits under subsection (i) of
- 18 R.S.43:21-4.
- 19 (cf: P.L.2004, c.168, s.2)

20

21 3. This act shall take effect immediately.

22

23

24 STATEMENT

25

26 This bill excludes illegal aliens from workers' compensation

27 coverage unless they were lawfully admitted for permanent

28 residence at the time the employment was performed, were lawfully

29 present for the purpose of performing the employment, or otherwise

30 were permanently residing in the United States under color of law at

31 the time the employment was performed.

32 The bill also provides that illegal aliens will not be eligible to

33 receive benefits pursuant to the "Temporary Disability Benefits

34 Law," P.L.1948, c.110 (C.43:21-25) if they are not eligible for

35 benefits pursuant to the "unemployment compensation law,"

36 R.S.43:21-1 et seq.

37 This bill is in response to the decision of Mateo Coria v. Board

38 of Review and National Fence Systems, No. A-5076-89-T5 (App.

39 Div. 1991). In that case, the Appellate Division of the New Jersey

40 Superior Court held that the "Temporary Disability Benefits Law"

41 does not disqualify individuals for benefits based upon their status

42 as illegal aliens.