

SENATE, No. 771

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

Assemblywoman JOANN DOWNEY

District 11 (Monmouth)

SYNOPSIS

Expands workers' compensation coverage to parking areas provided by employer.

CURRENT VERSION OF TEXT

As reported by the Senate Labor Committee with technical review.



(Sponsorship Updated As Of: 12/20/2021)

1 **AN ACT** concerning workers' compensation and amending
2 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;
17 "employee" is synonymous with servant, and includes all natural
18 persons, including officers of corporations, who perform service for
19 an employer for financial consideration, exclusive of (1) employees
20 eligible under the federal "Longshore and Harbor Workers'
21 Compensation Act," 44 Stat.1424 (33 U.S.C. s.901 et seq.), for
22 benefits payable with respect to accidental death or injury, or
23 occupational disease or infection; and (2) casual employments,
24 which shall be defined, if in connection with the employer's
25 business, as employment the occasion for which arises by chance or
26 is purely accidental; or if not in connection with any business of the
27 employer, as employment not regular, periodic or recurring;
28 provided, however, that forest fire wardens and forest firefighters
29 employed by the State of New Jersey shall, in no event, be deemed
30 casual employees.

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

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

21 Notwithstanding any other provision of law to the contrary, no
22 insurer or insurance producer as defined in section **2** of P.L.1987,
23 c.293 (C.17:22A-2) **3** of P.L.2001, c.210 (C.17:22A-28) shall be
24 liable in an action for damages on account of the failure of a
25 business, limited liability partnership, limited liability company or
26 partnership to elect to obtain workers' compensation coverage for a
27 self-employed person, limited liability partner, limited liability
28 company member or partner, unless the insurer or insurance
29 producer causes damage by a willful, wanton or grossly negligent
30 act of commission or omission. Every application for workers'
31 compensation made on or after the effective date of this amendatory
32 act shall include notice, as approved by the Commissioner of
33 Banking and Insurance, concerning the availability of workers'
34 compensation coverage for self-employed persons, limited liability
35 partners, limited liability company members or partners. That
36 application shall also contain a notice of election of coverage and
37 shall clearly state that coverage for self-employed persons, limited
38 liability partners, limited liability company members and partners
39 shall not be provided under the policy unless the application
40 containing the notice of election is executed and filed with the
41 insurer or insurance producer. The application containing the notice
42 of election shall also contain a statement that the insurer or
43 insurance producer shall not be liable in an action for damages on
44 account of the failure of a business, limited liability partnership,
45 limited liability company or partnership to elect to obtain workers'

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

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

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

35 Employment shall also be deemed to commence, if an employer
36 provides or designates a parking area for use by an employee, when
37 an employee arrives at the parking area prior to reporting for work
38 and shall terminate when an employee leaves the parking area at the
39 end of a work period; provided that, if the site of the parking area is
40 separate from the place of employment, an employee shall be
41 deemed to be in the course of employment while the employee
42 travels directly from the parking area to the place of employment
43 prior to reporting for work and while the employee travels directly
44 from the place of employment to the parking area at the end of a
45 work period.

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

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

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

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

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

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

36

37 2. This act shall take effect immediately.