

SENATE, No. 967

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED JANUARY 27, 2020

Sponsored by:

Senator ANTHONY M. BUCCO

District 25 (Morris and Somerset)

Senator TROY SINGLETON

District 7 (Burlington)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/10/2020)

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;
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】** at least one employee as defined in this section
17 who is 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 An individual who is the only individual performing services for
22 an S corporation and is the only shareholder in the corporation shall
23 not be deemed an "employee" of the corporation for purposes of
24 receipt of benefits and payment of premiums pursuant to R.S.34:15-
25 1 et seq., unless the corporation elects, to obtain coverage for the
26 individual. This paragraph shall not be construed as modifying in
27 any way the status of any individual or corporation with respect to
28 any tax or other law other than the workers' compensation law.

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

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

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

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

40 "Disability permanent in quality and partial in character" means
41 a permanent impairment caused by a compensable accident or
42 compensable occupational disease, based upon demonstrable
43 objective medical evidence, which restricts the function of the body
44 or of its members or organs; included in the criteria which shall be
45 considered shall be whether there has been a lessening to a material
46 degree of an employee's working ability. Subject to the above
47 provisions, nothing in this definition shall be construed to preclude
48 benefits to a worker who returns to work following a compensable

1 accident even if there be no reduction in earnings. Injuries such as
2 minor lacerations, minor contusions, minor sprains, and scars which
3 do not constitute significant permanent disfigurement, and
4 occupational disease of a minor nature such as mild dermatitis and
5 mild bronchitis shall not constitute permanent disability within the
6 meaning of this definition.

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

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

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

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

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

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

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31 2. This act shall take effect on the 180th day following
32 enactment and apply to all policies issued on or after that date.

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35 STATEMENT

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37 This bill revises the definition of "employee" in the workers'
38 compensation law, R.S.34:15-1 et seq., to permit an S corporation
39 that has only one individual who performs services for the
40 corporation and is the only shareholder in the corporation to choose
41 whether or not to obtain workers' compensation coverage.