

ASSEMBLY, No. 4539

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED DECEMBER 12, 2005

Sponsored by:

Assemblyman JOSEPH AZZOLINA

District 13 (Middlesex and Monmouth)

Assemblyman DOUGLAS H. FISHER

District 3 (Salem, Cumberland and Gloucester)

SYNOPSIS

Permits corporation with one or two employees who are the only shareholders to opt out of workers' compensation.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/10/2006)

1 AN ACT concerning workers' compensation coverage for employees
2 of certain corporations, supplementing chapter 15 of Title 34 of the
3 Revised Statutes and amending R.S. 34:15-79.

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

7
8 1. (New section) a. (1) Notwithstanding any other provision of
9 law to the contrary, if an individual is the sole shareholder and the sole
10 employee of a corporation, the corporation shall not be required to
11 secure and maintain workers' compensation insurance coverage.

12 (2) Notwithstanding any other provision of law to the contrary, if
13 two individuals are the sole shareholders, with each owning at least
14 one share of stock, and the sole employees of a corporation, the
15 corporation shall not be required to secure and maintain workers'
16 compensation insurance coverage.

17 (3) If and when a corporation, which was not required to secure
18 and maintain workers' compensation insurance coverage pursuant to
19 paragraph (1) or (2) of this subsection, becomes an employer of more
20 than one employee or two employees, as applicable, or the one
21 employee or two employees are no longer the sole shareholder or the
22 two sole shareholders, as applicable, it shall be required to provide
23 workers' compensation insurance coverage.

24 b. An insurance producer or insurer shall not be liable for a
25 corporation's failure to secure and maintain workers' compensation
26 insurance coverage pursuant to this section, unless the insurance
27 producer or insurer causes damage by a willful, wanton or grossly
28 negligent act of commission or omission.

29 c. A corporation which elects not to secure and maintain workers'
30 compensation insurance coverage, as provided for in paragraphs (1)
31 or (2) of subsection a. of this section, and the sole employee or two
32 employees, as the case may be, which contract to provide services or
33 work to another person, corporation or business entity, shall not be
34 deemed to be an employee of that person, corporation, or other
35 business entity for the purposes of chapter 15 of Title 34 of the
36 Revised Statutes, and shall not be eligible to collect workers'
37 compensation payments or benefits from that person, corporation, or
38 other business entity.

39 d. A corporation, which elects not to secure and maintain workers'
40 compensation insurance coverage, as provided for in paragraphs (1)
41 or (2) of subsection a. of this section, may not obtain coverage for one
42 calendar year following the corporation's election not to secure and
43 maintain coverage, except as required pursuant to subparagraph (3) of

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

Matter underlined thus is new matter.

1 subsection a. of this section.

2 e. A corporation which elects not to secure and maintain workers'
3 compensation coverage as provided for in paragraphs (1) or (2) of
4 subsection a. of this section shall file a certification with the Division
5 of Workers' Compensation no later than 30 days following the
6 termination of that coverage, if that coverage is in effect on the
7 effective date of this act, or, in the case of a corporation formed
8 following the effective date of this act, no later than 30 days following
9 the formation of the corporation, that (1) the corporation meets the
10 requirements set forth in paragraphs (1) or (2) of subsection a. of this
11 section; and (2) has elected not to secure that coverage. The
12 certification, in addition to any other information that may be required
13 by the division, shall be refiled with the division every year thereafter,
14 on the anniversary of that certification or on a date and according to
15 procedures established by the division, and shall be made available to
16 the Division of Workers' Compensation or any carrier upon request for
17 the purposes of ensuring compliance with the provisions of this act.

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19 2. R.S.34:15-79 is amended to read as follows:

20 34:15-79. An employer who fails to provide the protection
21 prescribed in this article shall be guilty of a disorderly persons offense
22 and shall be guilty of a crime of the fourth degree if such failure is
23 willful. In cases where a workers' compensation award in the Division
24 of Workers' Compensation of New Jersey against the defendant is not
25 paid at the time of the sentence, the court may suspend sentence upon
26 that defendant and place him on probation for any period with an order
27 to pay the delinquent compensation award to the claimant through the
28 probation office of the county. Where the employer is a corporation,
29 the president, secretary, and the treasurer thereof who are actively
30 engaged in the corporate business shall be liable for failure to secure
31 the protection prescribed by this article. Any contractor placing work
32 with a subcontractor shall, in the event of the subcontractor's failing
33 to carry workers' compensation insurance as required by this article,
34 become liable for any compensation which may be due an employee or
35 the dependents of a deceased employee of a subcontractor , except for
36 a subcontractor that elects not to secure workers' compensation
37 insurance pursuant to section 1 of P.L. _____, c. _____ (C. _____) (now
38 pending before the Legislature as this bill). The contractor shall then
39 have a right of action against the subcontractor for reimbursement.

40 Failure to produce at the time of the trial proof of workers'
41 compensation insurance coverage by a mutual association or stock
42 company authorized to write coverage on such risks in this State or
43 written authorization by the Commissioner of Banking and Insurance
44 to self-insure for workers' compensation pursuant to R.S.34:15-77,
45 which was in force for the time cited by the Department of Labor and
46 Workforce Development, creates a rebuttable presumption that the

1 employer was uninsured when charged with a violation of this section.

2 All fines collected under the terms of this section shall be paid to
3 the State Treasurer and credited on the records of the State
4 Comptroller to the account of the Division of Vocational
5 Rehabilitation Services in the Department of Labor and Workforce
6 Development, to be used in carrying out the provisions of P.L.1955,
7 c.64 (C.34:16-20 et seq.).

8 The Director of the Division of Workers' Compensation, or any
9 officer or employee of the division designated by him, upon finding
10 that an employer has failed for a period of not less than 10 consecutive
11 days to make the provisions for payment of compensation required by
12 R.S.34:15-71 and R.S.34:15-72, shall impose upon that employer, in
13 addition to all other penalties, fines or assessments provided for in
14 chapter 15 of Title 34 of the Revised Statutes or in any supplement
15 thereto, an assessment in the amount of up to \$1,000.00 and when the
16 period exceeds 20 days, an additional assessment of up to \$1,000.00
17 for each period of 10 days thereafter. All assessments under this act
18 shall be enforced and collected in accordance with section 12 of
19 P.L.1966, c.126 (C.34:15-120.3). All penalties and assessments
20 collected under this section shall be paid into the "uninsured
21 employer's fund."

22 (cf: 1995, c.393, s.1)

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24 3. This act shall take effect immediately.

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STATEMENT

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29 This bill provides that, if an individual is the sole shareholder and
30 the sole employee of a corporation, or if two individuals are the sole
31 shareholders and sole employees of a corporation, the corporation is
32 not required to secure and maintain workers' compensation insurance
33 coverage. If the corporation subsequently employs more than one or
34 two employees, or has more than one or two shareholders, as the case
35 may be, the corporation is required to provide workers' compensation
36 insurance coverage.

37 The bill further provides that a corporation electing not to maintain
38 workers' compensation coverage under the bill which contracts to
39 provide work or services for another person, corporation or business
40 entity, shall not be deemed to be an employee of that other business
41 and shall not be eligible to collect workers' compensation payments or
42 benefits from that other business.

43 The bill further provides that, a corporation, which elects not to
44 secure and maintain workers' compensation insurance coverage may
45 not obtain coverage for one calendar year following the corporation's
46 election not to secure and maintain coverage.

1 In addition, the bill provides immunity for insurance producers and
2 insurers if such a corporation fails to secure and maintain workers'
3 compensation insurance coverage pursuant to this bill.

4 Finally, the bill provides that a corporation which elects not to
5 secure and maintain workers' compensation coverage as permitted by
6 the bill shall file a certification with the Division of Workers'
7 Compensation not later than 30 days following the termination of that
8 coverage, if that coverage is in effect as of the effective date of the
9 bill, or, in the case of a corporation formed following the effective date
10 of the bill, no later than 30 days following the formation of the
11 corporation. The certification, in addition to any other information
12 that may be required by the division, shall be refiled with the division
13 every year thereafter, on the anniversary of the certification or on a
14 date and according to procedures established by the division, and shall
15 be made available to the Division of Workers' Compensation or any
16 carrier upon request.