SENATE, No. 249

STATE OF NEW JERSEY
215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:
Senator ROBERT M. GORDON
District 38 (Bergen and Passaic)
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District 19 (Middlesex)

SYNOPSIS
Concerns workers’ compensation insurance requirements for certain corporations.

CURRENT VERSION OF TEXT
Introduced Pending Technical Review by Legislative Counsel
A N A C T concerning worker’s compensation insurance requirements
and amending R.S.34:15-36.

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

1. R.S.34:15-36 is amended to read as follows:
34:15-36. "Willful negligence" within the intent of this chapter
shall consist of (1) deliberate act or deliberate failure to act, or (2)
such conduct as evidences reckless indifference to safety, or (3)
intoxication, operating as the proximate cause of injury, or (4)
unlawful use of a controlled dangerous substance as defined in the
"New Jersey Controlled Dangerous Substances Act," P.L.1970,
c.226 (C.24:21-1 et seq.).
"Employer" is declared to be synonymous with master, and
includes natural persons, partnerships, and corporations;
"employee" is synonymous with servant, and includes all natural
persons, including officers of corporations, who perform service for
an employer for financial consideration, exclusive of (1) employees
eligible under the federal "Longshore and Harbor Workers'
Compensation Act," 44 Stat. 1424 (33 U.S.C.s.901 et seq.), for
benefits payable with respect to accidental death or injury, or
occupational disease or infection; and (2) casual employments,
which shall be defined, if in connection with the employer's
business, as employment the occasion for which arises by chance or
is purely accidental; or if not in connection with any business of the
employer, as employment not regular, periodic or recurring;
provided, however, that forest fire wardens and forest firefighters
employed by the State of New Jersey shall, in no event, be deemed
casual employees.

A self-employed person, partners of a limited liability
partnership, members of a limited liability company or partners of a
partnership who actively perform services on behalf of the self-
employed person's business, the limited liability partnership, limited
liability company or the partnership shall be deemed an "employee"
of the business, limited liability partnership, limited liability
company or partnership for purposes of receipt of benefits and
payment of premiums pursuant to this chapter, if the business,
limited liability partnership, limited liability company or
partnership elects, when the workers' compensation policy of the
business, limited liability partnership, limited liability company or
partnership is purchased or renewed, to obtain coverage for the
person, the limited liability partners, the limited liability company
members or the partners. If the business, limited liability

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.
partnership, limited liability company or partnership elects to obtain
coverage for the self-employed person, limited liability partners,
limited liability company members or the partners, the election may
only be made at purchase or at renewal and may not be withdrawn
during the policy term. If the business, limited liability partnership,
limited liability company or partnership performs services covered
under a homeowner’s policy or other policies providing
comprehensive personal liability insurance for domestic servants,
household employees or the dependents thereof, the workers’
compensation policy of the business, limited liability partnership,
limited liability company or partnership shall have primary
responsibility for the payment of benefits. Notwithstanding the
provisions of R.S.34:15-71 and 34:15-72, the business, limited
liability partnership, limited liability company or partnership shall
not be required to purchase a policy unless the business, limited
liability partnership, limited liability company or partnership is an
"employer" of [a] at least one employee as defined in this section
who is not a self-employed person, limited liability partner, limited
liability company member or partner actively performing services
on behalf of the business, limited liability partnership, limited
liability company or partnership.

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

Notwithstanding any other provision of law to the contrary, no
insurer or insurance producer as defined in section 2 of P.L.1987,
liable in an action for damages on account of the failure of a
business, limited liability partnership, limited liability company or
partnership to elect to obtain workers' compensation coverage for a
self-employed person, limited liability partner, limited liability
company member or partner, unless the insurer or insurance
producer causes damage by a willful, wanton or grossly negligent act of commission or omission. Every application for workers' compensation made on or after the effective date of this amendatory act shall include notice, as approved by the Commissioner of Banking and Insurance, concerning the availability of workers' compensation coverage for self-employed persons, limited liability partners, limited liability company members or partners. That application shall also contain a notice of election of coverage and shall clearly state that coverage for self-employed persons, limited liability partners, limited liability company members and partners shall not be provided under the policy unless the application containing the notice of election is executed and filed with the insurer or insurance producer. The application containing the notice of election shall also contain a statement that the insurer or insurance producer shall not be liable in an action for damages on account of the failure of a business, limited liability partnership, limited liability company or partnership to elect to obtain workers' compensation coverage for a self-employed person, limited liability partner, limited liability company member or partner, unless the insurer or insurance producer causes damage by a willful, wanton or grossly negligent act of commission or omission. The failure of a self-employed person, limited liability partnership, limited liability company or partnership to elect to obtain workers' compensation coverage for the self-employed person, the limited liability partners, the limited liability company members or the partners shall not affect benefits available under any other accident or health policy.

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

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

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

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

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

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

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

"S corporation" means a corporation included in the definition of
an "S corporation" pursuant to section 1361 of the federal Internal
(cf: P.L.1999, c.383, s.1)

2. This act shall take effect immediately.
This bill permits an S corporation that has only one individual who performs services for the corporation and is the only shareholder in the corporation to choose whether or not to obtain workers’ compensation coverage.