

# SENATE, No. 254

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## STATE OF NEW JERSEY 217th LEGISLATURE

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PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

**Sponsored by:**

**Senator CHRISTOPHER J. CONNORS**

**District 9 (Atlantic, Burlington and Ocean)**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



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  
46 partnership elects, when the workers' compensation policy of the

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8 only be made at purchase or at renewal and may not be withdrawn  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

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

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

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

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

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

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

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

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

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

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

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

24

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

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

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

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

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

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

47 (e) (Deleted by amendment, P.L.1980, c.90.)

48 (f) for any period of disability due to willfully and intentionally

1 self-inflicted injury, or to injury sustained in the perpetration by the  
2 claimant of a crime of the first, second, or third degree;

3 (g) for any period during which the claimant performs any work  
4 for remuneration or profit;

5 (h) in a weekly amount which together with any remuneration  
6 the claimant continues to receive from the employer would exceed  
7 regular weekly wages immediately prior to disability;

8 (i) for any period during which a covered individual would be  
9 disqualified for unemployment compensation benefits under  
10 subsection (d) of R.S.43:21-5, unless the disability commenced  
11 prior to such disqualification; and there shall be no other cause of  
12 disqualification or ineligibility to receive disability benefits  
13 hereunder except as may be specifically provided in this act;

14 (j) for any period during which the claimant would be ineligible  
15 for unemployment compensation benefits under subsection (i) of  
16 R.S.43:21-4.

17 (cf: P.L.2004, c.168, s.2)

18  
19 3. This act shall take effect immediately.  
20  
21

## 22 STATEMENT

23  
24 This bill excludes illegal aliens from workers' compensation  
25 coverage unless they were lawfully admitted for permanent  
26 residence at the time the employment was performed, were lawfully  
27 present for the purpose of performing the employment, or otherwise  
28 were permanently residing in the United States under color of law at  
29 the time the employment was performed.

30 The bill also provides that illegal aliens will not be eligible to  
31 receive benefits pursuant to the "Temporary Disability Benefits  
32 Law," P.L.1948, c.110 (C.43:21-25) if they are not eligible for  
33 benefits pursuant to the "unemployment compensation law,"  
34 R.S.43:21-1 et seq.

35 This bill is in response to the decision of Mateo Coria v. Board  
36 of Review and National Fence Systems, No. A-5076-89-T5 (App.  
37 Div. 1991). In that case, the Appellate Division of the New Jersey  
38 Superior Court held that the "Temporary Disability Benefits Law"  
39 does not disqualify individuals for benefits based upon their status  
40 as illegal aliens.