

ASSEMBLY, No. 2336

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 19, 1996

By Assemblyman DeCROCE and Assemblywoman
FARRAGHER

1 AN ACT concerning workers' compensation and amending
2 R.S.34:15-36.

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

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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, c.226
14 (C.24:21-1 et seq.).

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

30 Notwithstanding any of the foregoing, "employee" shall not include
31 an individual who owns a motor vehicle or holds or operates a motor
32 vehicle under lease and who, under a written contract or lease with an
33 authorized carrier as defined in 49 C.F.R. §1057, provides that vehicle

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 and the services of a driver, including driving services by that
2 individual, to an authorized carrier. Such an individual shall be
3 considered an independent contractor with the authorized carrier.
4 "Employee" shall include such an individual if he is the sole proprietor,
5 partner or shareholder of the business which provides a motor vehicle
6 to an authorized carrier under a written contract or lease. "Employer"
7 shall not include such an authorized carrier, who shall be under no
8 obligation to answer to, or provide anything required by R.S. 34:15-1
9 et seq. to such an individual independent contractor, or employee of
10 such an independent contractor.

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

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

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

1 constitute permanent disability within the meaning of this definition.

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

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

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

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

21 (cf: P.L.1994, c.74, s.1)

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23 2. This act shall take effect immediately.

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STATEMENT

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28 This bill amends the workers' compensation law, R.S.34:15-1 et
29 seq., to provide that an individual who owns a motor vehicle or holds
30 or operates a motor vehicle under lease and who, under a written
31 contract or lease with an authorized carrier as defined in 49 C.F.R.
32 §1057, provides that vehicle and the services of a driver, including
33 driving services by that individual, to an authorized carrier is not an
34 "employee" of that authorized carrier. Instead, such an individual shall
35 be considered an independent contractor with the authorized carrier.
36 If the individual is the sole proprietor, partner or shareholder in any
37 business which provides a motor vehicle to an authorized carrier that
38 individual shall be considered an "employee" of such business for the
39 purposes of obtaining workers' compensation coverage and not the
40 employee of the authorized carrier. "Employer" shall not include such
41 an authorized carrier, who shall be under no obligation to answer to,
42 or provide anything required by R.S.34:15-1 et seq. to such an
43 individual independent contractor, or employee of such an independent
44 contractor.

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3 Modifies definitions of "employee" and "employer" under workers'
4 compensation law to treat certain motor vehicle operators as
5 independent contractors.