

SENATE, No. 128

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Senator KYRILLOS

1 **AN ACT** providing workers' compensation for certain volunteers and
2 amending R.S.34:15-10, R.S.34:15-43, R.S.34:15-75 and
3 N.J.S.59:1-3.

4

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

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8 1. R.S.34:15-10 is amended to read as follows:

9 34:15-10. In the employment of minors, this article shall be
10 presumed to apply unless the notice be given by or to the parent or
11 guardian of the minor. If the injured employee at the time of the
12 accident or compensable occupational disease is a minor under 14
13 years of age employed in violation of the labor law or a minor between
14 14 and 18 years of age employed, permitted or suffered to work
15 without an employment certificate or special permit if required by law
16 or at an occupation prohibited at the minor's age by law, a
17 compensation or death benefit shall be payable to the employee or his
18 dependents which shall be double the amount payable under the
19 schedules provided in R.S.34:15-12 and R.S.34:15-13.

20 The possession of such duly issued employment certificate shall be
21 conclusive evidence for an employer that the minor has reached the
22 age certified to therein and no extra compensation shall be payable to
23 any minor engaged in an employment allowed by the law for the age
24 and sex certified to in such certificate. If the certificate presented by
25 the employee as one issued to that person shall have been really issued
26 to another child and the real age of the employee shall be such that
27 employment in any capacity or in the particular capacity the employee
28 was employed by the employer was prohibited and if the employer
29 shall show to the satisfaction of the Division of Workers'
30 Compensation that the employer accepted the certificate in good faith
31 as having been issued to the employee and could not have, despite
32 reasonable diligence, discovered the fraud, in such event no extra

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 compensation shall be paid to the employee illegally employed.

2 The employer alone and not the insurance carrier shall be liable for
3 the extra compensation or death benefit which is over and above the
4 amount of the compensation or death benefit provided under
5 R.S.34:15-12 or R.S.34:15-13. Any provision in an insurance policy
6 undertaking to relieve an employer from the liability for the extra
7 compensation or extra death benefit shall be void.

8 Nothing in this chapter contained shall deprive an infant under the
9 age of 18 years of the right or rights now existing to recover damages
10 in a common law or other appropriate action or proceeding for injuries
11 received by reason of the negligence of his or her master.

12 Nothing in this section regarding the payment of a compensation or
13 death benefit in double the amount payable under the schedules
14 provided in R.S.34:15-12 and R.S.34:15-13 shall apply to: members
15 of a junior firemen's auxiliary established pursuant to [P.L.1968, c.309
16 (C.40:47-30.6 et seq.)] N.J.S.40A:14-95; employees, of the age of 18
17 years or under, employed in summer camps operated by the Boy
18 Scouts of America, the Girl Scouts of America, the Knights of
19 Columbus, the Young Men's Christian Association, the Young
20 Women's Christian Association, the Young Men's Hebrew Association,
21 or any domestic corporation organized solely for religious or
22 charitable purposes; student-learners employed in a cooperative
23 vocational education program approved by the State Board of
24 Education; [or] persons, 18 years of age or younger, participating,
25 under the supervision of the Palisades Interstate Park Commission, in
26 volunteer programs in that part of the Palisades Interstate Park located
27 in New Jersey; or persons, 18 years of age or younger, doing volunteer
28 work for the Division of Parks and Forestry, the Division of Fish,
29 Game and Wildlife, the New Jersey Natural Lands Trust or the New
30 Jersey Historic Trust, as authorized by the Commissioner of
31 Environmental Protection.

32 (cf: P.L.1987, c.259, s.2)

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34 2. R.S.34:15-43 is amended to read as follows:

35 34:15-43. Every officer, appointed or elected, and every employee
36 of the State, county, municipality or any board or commission, or any
37 other governing body, including boards of education, and governing
38 bodies of service districts, individuals who are under the general
39 supervision of the Palisades Interstate Park Commission and who work
40 in that part of the Palisades Interstate Park which is located in this
41 State, and also each and every member of a volunteer fire company
42 doing public fire duty and also each and every active volunteer, first
43 aid or rescue squad worker, including each and every authorized
44 worker who is not a member of the volunteer fire company within
45 which the first aid or rescue squad may have been created, doing
46 public first aid or rescue duty under the control or supervision of any

1 commission, council, or any other governing body of any municipality,
2 any board of fire commissioners of such municipality or of any fire
3 district within the State, or of the board of managers of any State
4 institution, every county fire marshal and assistant county fire marshal
5 [and] , every special, reserve or auxiliary policeman doing volunteer
6 public police duty under the control or supervision of any commission,
7 council or any other governing body of any municipality and any
8 person doing volunteer work for the Division of Parks and Forestry,
9 the Division of Fish, Game and Wildlife, the New Jersey Natural Lands
10 Trust or the New Jersey Historic Trust, as authorized by the
11 Commissioner of Environmental Protection, who may be injured in line
12 of duty shall be compensated under and by virtue of the provisions of
13 this article and article 2 of this chapter (R.S.34:15-7 et seq.). No
14 former employee who has been retired on pension by reason of injury
15 or disability shall be entitled under this section to compensation for
16 such injury or disability; provided, however, that such employee,
17 despite retirement, shall, nevertheless, be entitled to the medical,
18 surgical and other treatment and hospital services as set forth in
19 R.S.34:15-15.

20 Benefits available under this section to volunteers participating in
21 activities of the Division of Parks and Forestry, the Division of Fish,
22 Game and Wildlife, the New Jersey Natural Lands Trust or the New
23 Jersey Historic Trust, shall not be paid to any claimant who has
24 another single source of injury or death benefits that provides the
25 claimant with an amount of compensation that exceeds the
26 compensation available to the claimant under R.S.34:15-1 et seq.

27 As used in this section, the terms "doing public fire duty" and "who
28 may be injured in line of duty," as applied to members of volunteer fire
29 companies, county fire marshals or assistant county fire marshals, and
30 the term "doing public first aid or rescue duty," as applied to active
31 volunteer first aid or rescue squad workers, shall be deemed to include
32 participation in any authorized construction, installation, alteration,
33 maintenance or repair work upon the premises, apparatus or other
34 equipment owned or used by the fire company or the first aid or rescue
35 squad, participation in any authorized public drill, showing, exhibition,
36 fund raising activity or parade, and to include also the rendering of
37 assistance in case of fire and, when authorized, in connection with
38 other events affecting the public health or safety, in any political
39 subdivision or territory of another [State] state of the United States or
40 on property ceded to the federal government while such assistance is
41 being rendered and while going to and returning from the place in
42 which it is rendered.

43 Also, as used in this section, "doing public police duty" and "who
44 may be injured in line of duty" as applied to special, reserve or
45 auxiliary policemen, shall be deemed to include participation in any
46 authorized public drill, showing, exhibition or parade, and to include

1 also the rendering of assistance in connection with other events
2 affecting the public health or safety in the municipality, and also, when
3 authorized, in connection with any such events in any political
4 subdivision or territory of this or any other [State] state of the United
5 States or on property ceded to the federal government while such
6 assistance is being rendered and while going to and returning from the
7 place in which it is rendered.

8 Every member of a volunteer fire company shall be deemed to be
9 doing public fire duty under the control or supervision of any such
10 commission, council, governing body, board of fire commissioners or
11 fire district or board of managers of any State institution within the
12 meaning of this section, if such control or supervision is provided for
13 by statute or by rule or regulation of the board of managers or the
14 superintendent of such State institution, or if the fire company of
15 which he is a member receives contributions from, or a substantial part
16 of its expenses or equipment are paid for by, the municipality, or board
17 of fire commissioners of the fire district or if such fire company has
18 been or hereafter shall be designated by ordinance as the fire
19 department of the municipality.

20 Every active volunteer, first aid or rescue squad worker, including
21 every authorized worker who is not a member of the volunteer fire
22 company within which the first aid or rescue squad may have been
23 created, shall be deemed to be doing public first aid or rescue duty
24 under the control or supervision of any such commission, council,
25 governing body, board of fire commissioners or fire district within the
26 meaning of this section if such control or supervision is provided for
27 by statute, or if the first aid or rescue squad of which he is a member
28 or authorized worker receives or is eligible to receive contributions
29 from, or a substantial part of its expenses or equipment are paid for by,
30 the municipality, or board of fire commissioners of the fire district, or
31 if such first aid or rescue squad has been or hereafter shall be
32 designated by ordinance as the first aid or rescue squad of the
33 municipality.

34 As used in this section and in [section] R.S.34:15-74 [of this
35 chapter], the term "authorized worker" shall mean and include, in
36 addition to an active volunteer fireman and an active volunteer first aid
37 or rescue squad worker, any person performing any public fire duty or
38 public first aid or rescue squad duty, as the same are defined in this
39 section, at the request of the chief or acting chief of a fire company or
40 the president or person in charge of a first aid or rescue squad for the
41 time being.

42 Nothing herein contained shall be construed as affecting or
43 changing in any way the provisions of any statute providing for sick,
44 disability, vacation or other leave for public employees or any
45 provision of any retirement or pension fund provided by law.

46 (cf: P.L.1987, c.259, s.3)

1 3. R.S.34:15-75 is amended to read as follows:

2 34:15-75. Compensation for injury and death, either or both, of any
3 volunteer fireman, county fire marshal, assistant county fire marshal,
4 volunteer first aid or rescue squad worker, volunteer driver of any
5 municipally-owned or operated ambulance, [or of any] forest fire
6 warden or forest fire fighter employed by the State of New Jersey, [or
7 of any] member of a board of education, [or of any] special reserve or
8 auxiliary policeman doing volunteer public police duty under the
9 control or supervision of any commission, council or any other
10 governing body of any municipality, or any volunteer worker for the
11 Division of Parks and Forestry, the Division of Fish, Game and
12 Wildlife, the New Jersey Natural Lands Trust or the New Jersey
13 Historic Trust, shall be based upon a weekly salary or compensation
14 conclusively presumed to be received by such person in an amount
15 sufficient to entitle him, or, in the event of his death, his dependents,
16 to receive the maximum compensation by this chapter authorized.

17 (cf: P.L.1978, c.145, s.3)

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19 4. N.J.S.59:1-3 is amended to read as follows:

20 59:1-3. Definitions. As used in this subtitle:

21 "Employee" includes an officer, employee, or servant, whether or
22 not compensated or part-time, who is authorized to perform any act
23 or service; provided, however, that the term does not include an
24 independent contractor.

25 "Employment" includes office; position; employment; or service,
26 under the supervision of the Palisades Interstate Park Commission, in
27 a volunteer program in that part of the Palisades Interstate Park
28 located in New Jersey, or as a volunteer doing work for the Division
29 of Parks and Forestry, the Division of Fish, Game and Wildlife, the
30 New Jersey Natural Lands Trust or the New Jersey Historic Trust, as
31 authorized by the Commissioner of Environmental Protection.

32 "Enactment" includes a constitutional provision, statute, executive
33 order, ordinance, resolution or regulation.

34 "Injury" means death, injury to a person, damage to or loss of
35 property or any other injury that a person may suffer that would be
36 actionable if inflicted by a private person.

37 "Law" includes enactments and also the decisional law applicable
38 within this State as determined and declared from time to time by the
39 courts of this State and of the United States.

40 "Public employee" means an employee of a public entity, and
41 includes: a person participating, under the supervision of the Palisades
42 Interstate Park Commission, in a volunteer program in that part of the
43 Palisades Interstate Park located in New Jersey; a volunteer doing
44 work for the Division of Parks and Forestry, the Division of Fish,
45 Game and Wildlife, the New Jersey Natural Lands Trust or the New
46 Jersey Historic Trust, as authorized by the Commissioner of

1 **Environmental Protection;** and any person retained by the public
2 defender to serve as an arbitrator, mediator, or in such similar
3 capacity. "Public employee" does not include any independent
4 contractors or other individuals, agencies, or entities not established
5 in or employed by the Office of the Public Defender designated to
6 provide protection and advocacy services to indigent mental hospital
7 admittees or persons with a developmental disability as the term is
8 defined in section 3 of P.L.1977, c.82 (C.30:6D-3).

"Public entity" includes the State, and any county, municipality, district, public authority, public agency, and any other political subdivision or public body in the State. "Public entity" does not include any independent contractors or other individuals, agencies, or entities not established in or employed by the Office of the Public Defender designated to provide protection and advocacy services to indigent mental hospital admittees or persons with a developmental disability as the term is defined in section 3 of P.L.1977, c.82 (C.30:6D-3).

"State" shall mean the State and any office, department, division, bureau, board, commission or agency of the State, but shall not include any such entity which is statutorily authorized to sue and be sued. "State" also means the Palisades Interstate Park Commission, but only with respect to employees, property and activities within the State of New Jersey.

24 "Statute" means an act adopted by the Legislature of this State or
25 by the Congress of the United States.

26 (cf: P.L.1994, c.58, s.64)

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28 5. This act shall take effect on the 30th day following enactment.

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STATEMENT

This bill extends the coverage of the workers' compensation law, R.S.34:15-1 et seq., to any volunteer doing work for the Division of Parks and Forestry, the Division of Fish, Game and Wildlife, the New Jersey Natural Lands Trust or the New Jersey Historic Trust in activities authorized by the Commissioner of Environmental Protection.

39 The bill provides that these volunteers will be entitled to the
40 maximum level of compensation authorized by the workers'
41 compensation law. In addition, the bill provides that benefits shall not
42 be paid to any claimant who has another single source of injury or
43 death benefits that provides the claimant with an amount of
44 compensation that exceeds the compensation available to the claimant
45 under the workers' compensation law.

46 The bill also extends the coverage of the "New Jersey Tort Claims

1 Act," N.J.S.59:1-1 et seq., to these volunteers. This will limit the
2 liability of these volunteers during their period of voluntary service to
3 the liability established for regular service of public employees covered
4 by the "New Jersey Tort Claims Act."

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9 Provides workers' compensation coverage for certain DEP volunteers.