

SENATE, No. 2004

STATE OF NEW JERSEY

INTRODUCED APRIL 17, 1997

By Senator CARDINALE

1 AN ACT to exclude direct sellers from the definition of employee in
2 the workers' compensation law and amending 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]
23 (2) casual employments, which shall be defined, if in connection with
24 the employer's business, as employment the occasion for which arises
25 by 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; and (3) services of a direct seller as defined
30 in 26 U.S.C.§3508 (b)(2).

31 Employment shall be deemed to commence when an employee
32 arrives at the employer's place of employment to report for work and
33 shall terminate when the employee leaves the employer's place of
34 employment, excluding areas not under the control of the employer;

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 provided, however, when the employee is required by the employer to
2 be away from the employer's place of employment, the employee shall
3 be deemed to be in the course of employment when the employee is
4 engaged in the direct performance of duties assigned or directed by the
5 employer; but the employment of employee paid travel time by an
6 employer for time spent traveling to and from a job site or of any
7 employee who utilizes an employer authorized vehicle shall commence
8 and terminate with the time spent traveling to and from a job site or
9 the authorized operation of a vehicle on business authorized by the
10 employer. Travel by a policeman, fireman, or a member of a first aid
11 or rescue squad, in responding to and returning from an emergency,
12 shall be deemed to be in the course of employment.

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

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

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

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

43 "Ridesharing" means the transportation of persons in a motor
44 vehicle, with a maximum carrying capacity of not more than 15
45 passengers, including the driver, where such transportation is
46 incidental to the purpose of the driver. This term shall include such

1 ridesharing arrangements known as carpools and vanpools.
2 "Medical services, medical treatment, physicians' services and
3 physicians' treatment" shall include, but not be limited to, the services
4 which a chiropractor is authorized by law to perform and which are
5 authorized by an employer pursuant to the provisions of R.S.34:15-1
6 et seq.
7 (cf: P.L.1994, c.74, s.1)

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9 2. This act shall take effect immediately.

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STATEMENT

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14 This bill provides that direct sellers are not employees under the
15 provisions of the workers' compensation law. Under federal law, a
16 direct seller is defined as a person: who engages in the trade or
17 occupation of selling consumer products in the home or otherwise than
18 in a permanent retail establishment; whose remuneration for the
19 performance of services is directly related to sales or other output
20 rather than to the number of hours worked; and who performs the
21 services under a written contract which provides that the person will
22 not be treated as an employee with respect to those services.

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27 Exempts direct sellers from the provisions of the workers'
28 compensation law.