

ASSEMBLY, No. 1036

STATE OF NEW JERSEY 220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

Sponsored by:

Assemblyman JAY WEBBER

District 26 (Essex, Morris and Passaic)

Co-Sponsored by:

Assemblymen Space and Wirths

SYNOPSIS

Concerns workers' compensation insurance requirements for certain corporations and partnerships.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



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

3

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) such
10 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
16 includes 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.s.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 A self-employed person, partners of a limited liability partnership,
31 members of a limited liability company or partners of a partnership
32 who actively perform services on behalf of the self-employed person's
33 business, the limited liability partnership, limited liability company or
34 the partnership shall be deemed an "employee" of the business, limited
35 liability partnership, limited liability company or partnership for
36 purposes of receipt of benefits and payment of premiums pursuant to
37 this chapter, if the business, limited liability partnership, limited
38 liability company or partnership elects, when the workers'
39 compensation policy of the business, limited liability partnership,
40 limited liability company or partnership is purchased or renewed, to
41 obtain coverage for the person, the limited liability partners, the
42 limited liability company members or the partners. If the business,
43 limited liability partnership, limited liability company or partnership
44 elects to obtain coverage for the self-employed person, limited liability
45 partners, limited liability company members or the partners, 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 election may only be made at purchase or at renewal and may not be
2 withdrawn during the policy term. If the business, limited liability
3 partnership, limited liability company or partnership performs services
4 covered under a homeowner's policy or other policies providing
5 comprehensive personal liability insurance for domestic servants,
6 household employees or the dependents thereof, the workers'
7 compensation policy of the business, limited liability partnership,
8 limited liability company or partnership shall have primary
9 responsibility for the payment of benefits. Notwithstanding the
10 provisions of R.S.34:15-71 and 34:15-72, the business, limited liability
11 partnership, limited liability company or partnership shall not be
12 required to purchase a policy unless the business, limited liability
13 partnership, limited liability company or partnership is an "employer"
14 of **[a]** at least one employee as defined in this section who is not a
15 self-employed person, limited liability partner, limited liability
16 company member or partner actively performing services on behalf of
17 the business, limited liability partnership, limited liability company or
18 partnership.

19 An individual who is the only individual performing services for
20 an S corporation and is the only shareholder in the corporation shall
21 not be deemed an "employee" of the corporation for purposes of
22 receipt of benefits and payment of premiums pursuant to R.S.34:15-1
23 et seq., unless the corporation elects, to obtain coverage for the
24 individual. This paragraph shall not be construed as modifying in any
25 way the status of any individual or corporation with respect to any tax
26 or other law other than the workers' compensation law.

27 Notwithstanding any other provision of law to the contrary, no
28 insurer or insurance producer as defined in section **[2 of P.L.1987,**
29 **c.293 (C.17:22A-2)]** 3 of P.L.2001, c.210 (C.17:22A-28) shall be
30 liable in an action for damages on account of the failure of a business,
31 limited liability partnership, limited liability company or partnership to
32 elect to obtain workers' compensation coverage for a self-employed
33 person, limited liability partner, limited liability company member or
34 partner, unless the insurer or insurance producer causes damage by a
35 willful, wanton or grossly negligent act of commission or omission.
36 Every application for workers' compensation made on or after the
37 effective date of this amendatory act shall include notice, as approved
38 by the Commissioner of Banking and Insurance, concerning the
39 availability of workers' compensation coverage for self-employed
40 persons, limited liability partners, limited liability company members
41 or partners. That application shall also contain a notice of election of
42 coverage and shall clearly state that coverage for self-employed
43 persons, limited liability partners, limited liability company members
44 and partners shall not be provided under the policy unless the
45 application containing the notice of election is executed and filed with
46 the insurer or insurance producer. The application containing the
47 notice of election shall also contain a statement that the insurer or
48 insurance producer shall not be liable in an action for damages on

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1 account of the failure of a business, limited liability partnership,
2 limited liability company or partnership to elect to obtain workers'
3 compensation coverage for a self-employed person, limited liability
4 partner, limited liability company member or partner, unless the
5 insurer or insurance producer causes damage by a willful, wanton or
6 grossly negligent act of commission or omission. The failure of a self-
7 employed person, limited liability partnership, limited liability
8 company or partnership to elect to obtain workers' compensation
9 coverage for the self-employed person, the limited liability partners,
10 the limited liability company members or the partners shall not affect
11 benefits 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 and
14 shall terminate when the employee leaves the employer's place of
15 employment, excluding areas not under the control of the employer;
16 provided, however, when the employee is required by the employer to
17 be away from the employer's place of employment, the employee shall
18 be deemed to be in the course of employment when the employee is
19 engaged in the direct performance of duties assigned or directed by the
20 employer; but the employment of employee paid travel time by an
21 employer for time spent traveling to and from a job site or of any
22 employee who utilizes an employer authorized vehicle shall
23 commence and terminate with the time spent traveling to and from a
24 job site or the authorized operation of a vehicle on business authorized
25 by the employer. Travel by a policeman, fireman, or a member of a
26 first aid or rescue squad, in responding to and returning from an
27 emergency, shall be deemed to be in the course of employment.

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

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

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

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

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

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

20 "S corporation" means a corporation included in the definition of
21 an "S corporation" pursuant to section 1361 of the federal Internal
22 Revenue Code of 1986, 26 U.S.C. s.1361.

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

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25 2. This act shall take effect on the 180th day following
26 enactment and apply to all policies issued on or after that date.

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STATEMENT

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31 This bill revises the definition of "employee" in the workers'
32 compensation law, R.S.34:15-1 et seq., to permit an S corporation that
33 has only one individual who performs services for the corporation and
34 is the only shareholder in the corporation to choose whether or not to
35 obtain workers' compensation coverage.