

34:15-36

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LAWS OF: 1999 **CHAPTER:** 383

NJSA: 34:15-36 (Self employed—eligible for workers comp)

BILL NO: A1647 (Substituted for S1749)

SPONSOR(S): Gregg and LeFevre

DATE INTRODUCED: February 10, 1998

COMMITTEE: **ASSEMBLY:** Labor

SENATE: Commerce

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** June 24, 1999 **Re-enacted:** 1-10-2000

SENATE: December 13, 1999 **Re-enacted:** 1-10-2000

DATE OF APPROVAL: January 14, 2000

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL: 3rd Reprint
(Amendments during passage denoted by superscript number)

A1647

SPONSORS STATEMENT: (Begins on page 4 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: Yes

FLOOR AMENDMENT STATEMENTS: Yes

LEGISLATIVE FISCAL ESTIMATE: No

S1749

SPONSORS STATEMENT: (Begins on page 4 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: Yes

GOVERNOR'S PRESS RELEASE ON SIGNING:

No

FOLLOWING WERE PRINTED:

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NEWSPAPER ARTICLES:

No

P.L. 1999, CHAPTER 383, *approved January 14, 2000*
Assembly, No. 1647 (*Third Reprint*)

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

3

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

6

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.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. ¹**Notwithstanding any other provision of**
30 **law to the contrary, a self-employed person or a partner of a**
31 **partnership, but not including a limited partner, may be included as an**
32 **insured entitled to all policy benefits in a compensation insurance**
33 **policy if the self-employed person or partner files a notice of election**
34 **of coverage with the insurance carrier on a form prescribed by the**
35 **Commissioner of Banking and Insurance. This election of coverage**
36 **shall be final and binding upon a self-employed person or partner until**
37 **revoked by the self-employed person or partnership.**

38 **A self-employed person** ³**[or a partner]** , partners of a limited

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ **Assembly ALA committee amendments adopted February 11, 1999.**

² **Assembly floor amendments adopted June 10, 1999.**

³ **Assembly amendments adopted in accordance with Governor's recommendations January 10, 2000.**

1 liability partnership, members of a limited liability company or
2 partners³ of a partnership who actively³ [performs]perform³ services
3 on behalf of the self-employed person's business³, the limited liability
4 partnership, limited liability company³ or the partnership shall be
5 deemed an "employee" of the business³, limited liability partnership,
6 limited liability company³ or partnership for purposes of receipt of
7 benefits and payment of premiums pursuant to this chapter, if the
8 business³, limited liability partnership, limited liability company³ or
9 partnership elects, when the workers' compensation policy of the
10 business³, limited liability partnership, limited liability company³ or
11 partnership is purchased or renewed, to obtain coverage for the
12 person³ [or partner], the limited liability partners, the limited liability
13 company members or the partners³.² If the business³, limited
14 liability partnership, limited liability company³ or partnership elects to
15 obtain coverage for the self-employed person³ [or partner]³, limited
16 liability partners, limited liability company members or the partners³,
17 the³ [policy shall stay in effect for not less than one year. If a business
18 or partnership electing to obtain the coverage discontinues the
19 coverage for the self-employed person or partner at any time, the
20 business or partnership shall not be permitted to obtain coverage for
21 any self-employed person or partner for a period of not less than two
22 years] election may only be made at purchase or at renewal and may
23 not be withdrawn during the policy term³.² If the business³, limited
24 liability partnership, limited liability company³ or partnership performs
25 services covered under a homeowner's policy or other policies
26 providing comprehensive personal liability insurance for domestic
27 servants, household employees or the dependents thereof, the workers'
28 compensation policy³ of the business, limited liability partnership,
29 limited liability company or partnership³ shall have primary
30 responsibility for the payment of benefits. Notwithstanding the
31 provisions of R.S.34:15-71 and 34:15-72, the business³, limited
32 liability partnership, limited liability company³ or partnership shall not
33 be required to purchase a policy unless the business³, limited liability
34 partnership, limited liability company³ or partnership is an "employer"
35 of a least one employee as defined in this section who is not a self-
36 employed person³, limited liability partner, limited liability company
37 member³ or partner actively performing services on behalf of the
38 business³, limited liability partnership, limited liability company³ or
39 partnership.¹

40 ²Notwithstanding any other provision of law to the contrary, no
41 insurer or insurance producer as defined in section 2 of P.L 1987, c.
42 293 (C.17:22A-2) shall be liable in an action for damages on account
43 of the failure of a business³, limited liability partnership, limited
44 liability company³ or partnership to elect to obtain workers'
45 compensation coverage for a self-employed person³ limited liability
46 partner, limited liability company member³ or partner, unless the

1 insurer or insurance producer causes damage by a willful, wanton or
2 grossly negligent act of commission or omission. Every ³[policy]
3 application³ for workers' compensation ³[issued or renewed] made³
4 on or after the effective date of this amendatory act shall include
5 notice ³[on a form] , as³ approved by the Commissioner of Banking
6 and Insurance ³[of] , concerning³ the availability of workers'
7 compensation coverage for self-employed persons ³ , limited liability
8 partners, limited liability company members³ or partners. That
9 ³[notice shall be accompanied by] application shall also contain³ a
10 notice of election of coverage and shall clearly state that coverage for
11 self-employed persons ³,limited liability partners, limited liability
12 company members³ and partners shall not be provided under the policy
13 unless the ³application containing the³ notice of election is executed
14 and filed with the insurer or insurance producer. The ³application
15 containing the³ notice of election shall also contain a statement that
16 the insurer or insurance producer shall not be liable in an action for
17 damages on account of the failure of a business ³ , limited liability
18 partnership, limited liability company³ or partnership to elect to obtain
19 workers' compensation coverage for a self-employed person ³,limited
20 liability partner, limited liability company member ³ or partner, unless
21 the insurer or insurance producer causes damage by a willful, wanton
22 or grossly negligent act of commission or omission.² ³The failure of
23 a self-employed person, limited liability partnership, limited liability
24 company or partnership to elect to obtain workers' compensation
25 coverage for the self-employed person, the limited liability partners,
26 the limited liability company members or the partners shall not affect
27 benefits available under any other accident or health policy.³

28 Employment shall be deemed to commence when an employee
29 arrives at the employer's place of employment to report for work and
30 shall terminate when the employee leaves the employer's place of
31 employment, excluding areas not under the control of the employer;
32 provided, however, when the employee is required by the employer to
33 be away from the employer's place of employment, the employee shall
34 be deemed to be in the course of employment when the employee is
35 engaged in the direct performance of duties assigned or directed by the
36 employer; but the employment of employee paid travel time by an
37 employer for time spent traveling to and from a job site or of any
38 employee who utilizes an employer authorized vehicle shall commence
39 and terminate with the time spent traveling to and from a job site or
40 the authorized operation of a vehicle on business authorized by the
41 employer. Travel by a policeman, fireman, or a member of a first aid
42 or rescue squad, in responding to and returning from an emergency,
43 shall be deemed to be in the course of employment.

44 Employment shall also be deemed to commence when an employee
45 is traveling in a ridesharing arrangement between his or her place of
46 residence or terminal near such place and his or her place of

1 employment, if one of the following conditions is satisfied: the
2 vehicle used in the ridesharing arrangement is owned, leased or
3 contracted for by the employer, or the employee is required by the
4 employer to travel in a ridesharing arrangement as a condition of
5 employment.

6 "Disability permanent in quality and partial in character" means a
7 permanent impairment caused by a compensable accident or
8 compensable occupational disease, based upon demonstrable objective
9 medical evidence, which restricts the function of the body or of its
10 members or organs; included in the criteria which shall be considered
11 shall be whether there has been a lessening to a material degree of an
12 employee's working ability. Subject to the above provisions, nothing
13 in this definition shall be construed to preclude benefits to a worker
14 who returns to work following a compensable accident even if there
15 be no reduction in earnings. Injuries such as minor lacerations, minor
16 contusions, minor sprains, and scars which do not constitute
17 significant permanent disfigurement, and occupational disease of a
18 minor nature such as mild dermatitis and mild bronchitis shall not
19 constitute permanent disability within the meaning of this definition.

20 "Disability permanent in quality and total in character" means a
21 physical or neuropsychiatric total permanent impairment caused by a
22 compensable accident or compensable occupational disease, where no
23 fundamental or marked improvement in such condition can be
24 reasonably expected.

25 Factors other than physical and neuropsychiatric impairments may
26 be considered in the determination of permanent total disability, where
27 such physical and neuropsychiatric impairments constitute at least 75%
28 or higher of total disability.

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

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

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

40

41 2. This act shall take effect on the ³~~60th~~ 90th³ day following
42 enactment and apply to all policies issued on or after that date.

43

44

45

46 _____
47 Permits self-employed persons and business partners to be eligible for
workers' compensation.

ASSEMBLY, No. 1647

STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED FEBRUARY 10, 1998

Sponsored by:

Assemblyman GUY R. GREGG

District 24 (Sussex, Hunterdon and Morris)

Assemblyman KENNETH C. LEFEVRE

District 2 (Atlantic)

Co-Sponsored by:

**Assemblymen Talarico, Asselta, Blee, Greenwald, Conners,
Assemblywomen Buono, Previte and Assemblyman Gibson**

SYNOPSIS

Permits self-employed persons and business partners to be eligible for workers' compensation.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/24/1998)

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2 R.S.34:15-36.

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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. Notwithstanding any other provision of law
30 to the contrary, a self-employed person or a partner of a partnership,
31 but not including a limited partner, may be included as an insured
32 entitled to all policy benefits in a compensation insurance policy if the
33 self-employed person or partner files a notice of election of coverage
34 with the insurance carrier on a form prescribed by the Commissioner
35 of Banking and Insurance. This election of coverage shall be final and
36 binding upon a self-employed person or partner until revoked by the
37 self-employed person or partnership.

38 Employment shall be deemed to commence when an employee
39 arrives at the employer's place of employment to report for work and
40 shall terminate when the employee leaves the employer's place of
41 employment, excluding areas not under the control of the employer;
42 provided, however, when the employee is required by the employer to
43 be away from the employer's place of employment, the employee shall

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

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

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

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35 compensable accident or compensable occupational disease, where no
36 fundamental or marked improvement in such condition can be
37 reasonably expected.

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

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

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

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

7
8 2. This act shall take effect on the 60th day following enactment
9 and apply to all policies issued on or after that date.

10
11
12 STATEMENT
13

14 This bill amends the workers' compensation law, R.S.34:15-1 et
15 seq., to allow self-employed persons and general partners of businesses
16 the opportunity to elect workers' compensation coverage for
17 themselves.

18 Current law does not permit self-employed persons and general
19 partners to receive workers' compensation benefits, which historically
20 have been intended for employees rather than business owners.
21 Nevertheless, as a practical matter, self-employed persons and
22 partnerships with employees are required by law to purchase workers'
23 compensation coverage; and some self-employed persons and
24 partnerships with no employees are compelled to purchase workers'
25 compensation insurance in order to qualify to perform work in many
26 common business transactions, even though the policy provides no
27 benefits to anyone. The bill would provide the opportunity for these
28 self-employed persons and partners to elect to be covered in these
29 circumstances and thus to qualify for workers' compensation benefits
30 in the event of a work-related injury. The bill would not, however,
31 compel purchase of a workers' compensation policy by such businesses
32 with no employees.

33 Any election would be binding on the self-employed person or
34 partnership until revoked.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1647

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 11, 1999

The Assembly Labor Committee reports favorably Assembly Bill No. 1647, with committee amendments.

This bill amends the workers' compensation law, R.S.34:15-1 et seq., to allow self-employed persons and general partners of businesses the opportunity to elect workers' compensation coverage for themselves.

Current law does not permit self-employed persons and general partners to receive workers' compensation benefits, which historically have been intended for employees rather than business owners. Nevertheless, as a practical matter, self-employed persons and partnerships with employees are required by law to purchase workers' compensation coverage; and some self-employed persons and partnerships with no employees are compelled to purchase workers' compensation insurance in order to qualify to perform work in many common business transactions, even though the policy provides no benefits to anyone. The bill would provide the opportunity for these self-employed persons and partners to elect to be covered in these circumstances and thus to qualify for workers' compensation benefits in the event of a work-related injury. The bill would not, however, compel purchase of a workers' compensation policy by such businesses with no regular employees.

The committee amendments: (1) permit a partnership or the business of a self-employed person to obtain workers' compensation coverage for a partner or the self-employed person only if the partnership or business elects to obtain the coverage when the workers' compensation policy is purchased or renewed; and (2) require that workers' compensation benefits have primary responsibility in cases where a homeowner's policy or other comprehensive insurance also applies.

SENATE COMMERCE COMMITTEE

STATEMENT TO

[Second Reprint]

ASSEMBLY, No. 1647

STATE OF NEW JERSEY

DATED: DECEMBER 2, 1999

The Senate Commerce Committee reports favorably Assembly Bill No. 1647 (2R).

This bill permits self-employed persons and business partners who actively perform services on behalf of the business or partnership to obtain workers' compensation coverage for themselves.

If a business or partnership elects to obtain workers' compensation coverage for the self-employed person or partner, the bill specifies the following:

- (1) The policy must stay in effect for at least one year;
- (2) If the business or partnership later discontinues this coverage, it may not obtain coverage for a self-employed person or partnership for two years;
- (3) The workers' compensation policy will have primary responsibility for the payment of benefits if the business or partnership performs services covered under a homeowner's policy or other policies providing comprehensive personal liability insurance.

The bill provides further that no insurer or insurance producer shall be liable, in an action for damages, for a business or partnership's failure to choose to obtain workers' compensation coverage for a self-employed person or partner, unless the insurer or insurance producer willfully, wantonly or with gross negligence causes damage.

For every workers' compensation policy issued on or after its effective date, the bill requires that a notice of the availability of coverage for self-employed persons and business partners be included, along with a notice of election of coverage and a statement of the immunity provided for insurers and producers.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 1647

with Assembly Floor Amendments
(Proposed By Assemblyman GREGG)

ADOPTED: JUNE 10, 1999

These Assembly Amendments require that if a business or partnership elects to obtain the workers' compensation coverage for a self-employed person or partner of the partnership, the policy shall stay in effect for not less than one year and that, if the business or partnership electing to obtain the coverage discontinues the coverage for the self-employed person or partner at any time, the business or partnership shall not be permitted to obtain coverage for any self-employed person or partner for a period of not less than two years. The amendments also provide that no insurer or insurance producer shall be held liable in an action for damages on account of the failure of a business or partnership to elect to obtain workers' compensation coverage from the insurer or insurance producer for a self-employed person or partner, unless the insurer or insurance producer causes damage by a willful, wanton or grossly negligent act of commission or omission.

SENATE, No. 1749

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED MARCH 15, 1999

Sponsored by:

Senator ROBERT E. LITTELL

District 24 (Sussex, Hunterdon and Morris)

Senator JACK SINAGRA

District 18 (Middlesex)

SYNOPSIS

Permits self-employed persons and business partners to be eligible for workers' compensation.

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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
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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 or a partner of a partnership who actively
31 performs services on behalf of the self-employed person's business or
32 the partnership shall be deemed an "employee" of the business or
33 partnership for purposes of receipt of benefits and payment of
34 premiums pursuant to this chapter, if the business or partnership
35 elects, when the workers' compensation policy of the business or
36 partnership is purchased or renewed, to obtain coverage for the
37 person or partner. If the business or partnership performs services
38 covered under a homeowner's policy or other policies providing
39 comprehensive personal liability insurance for domestic servants,
40 household employees or the dependents thereof, the workers'
41 compensation policy shall have primary responsibility for the payment
42 of benefits. Notwithstanding the provisions of R.S.34:15-71 and R.S.
43 34:15-72, the business or partnership shall not be required to purchase

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

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1 a policy unless the business or partnership is an “employer” of at least
2 one employee as defined in this section who is not a self-employed
3 person or partner actively performing services on behalf of the
4 business or partnership.

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

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

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

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44 physical or neuropsychiatric total permanent impairment caused by a
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2 Factors other than physical and neuropsychiatric impairments may
3 be considered in the determination of permanent total disability, where
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5 or higher of total disability.

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

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

17

18 2. This act shall take effect on the 60th day following enactment
19 and apply to all policies issued on or after that date.

20

21

22 STATEMENT

23

24 This bill amends the workers' compensation law, R.S.34:15-1 et
25 seq., to allow self-employed persons and general partners of businesses
26 the opportunity to elect workers' compensation coverage for
27 themselves.

28 Current law does not permit self-employed persons and general
29 partners to receive workers' compensation benefits, which historically
30 have been intended for employees rather than business owners.
31 Nevertheless, as a practical matter, self-employed persons and
32 partnerships with employees are required by law to purchase workers'
33 compensation coverage; and some self-employed persons and
34 partnerships with no employees are compelled to purchase workers'
35 compensation insurance in order to qualify to perform work in many
36 common business transactions, even though the policy provides no
37 benefits to anyone. The bill would provide the opportunity for these
38 self-employed persons and partners to elect to be covered in these
39 circumstances and thus to qualify for workers' compensation benefits
40 in the event of a work-related injury. The bill would not, however,
41 compel purchase of a workers' compensation policy by such businesses
42 with no regular employees.

43 The bill permits a partnership or the business of a self-employed
44 person to obtain workers' compensation coverage for a partner or the
45 self-employed person only if the partnership or business elects to
46 obtain the coverage when the workers' compensation policy is

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1 purchased or renewed. The bill also requires that a workers'
2 compensation policy have primary responsibility in any case in which
3 a homeowner's policy or other comprehensive insurance also applies.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 1749 and 484

STATE OF NEW JERSEY

DATED: DECEMBER 2, 1999

The Senate Commerce Committee reports favorably Senate Committee Substitute for Senate Bill Nos. 1749 and 484.

This bill, a Senate Committee Substitute for Senate, Nos. 1749 and 484, permits self-employed persons and business partners who actively perform services on behalf of the business or partnership to obtain workers' compensation coverage for themselves.

If a business or partnership elects to obtain workers' compensation coverage for the self-employed person or partner, the bill specifies the following:

- (1) The policy must stay in effect for at least one year;
- (2) If the business or partnership later discontinues this coverage, it may not obtain coverage for a self-employed person or partnership for two years;
- (3) The workers' compensation policy will have primary responsibility for the payment of benefits if the business or partnership performs services covered under a homeowner's policy or other policies providing comprehensive personal liability insurance.

The bill provides further that no insurer or insurance producer shall be liable, in an action for damages, for a business or partnership's failure to choose to obtain workers' compensation coverage for a self-employed person or partner, unless the insurer or insurance producer willfully, wantonly or with gross negligence causes damage.

For every workers' compensation policy issued on or after its effective date, the bill requires that a notice of the availability of coverage for self-employed persons and business partners be included, along with a notice of election of coverage and a statement of the immunity provided for insurers and producers.

As reported, this bill is identical to Assembly Bill No. 1647 (2R).

ASSEMBLY BILL NO. 1647
Second Reprint

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Assembly Bill No. 1647 with my recommendations for reconsideration.

SUMMARY OF BILL

This bill permits self-employed persons and business partners to be eligible for workers' compensation coverage. It allows self-employed persons and business partners to be deemed an "employee" of a business or partnership and be eligible for coverage, if the self-employed person or partner so elects. The self-employed person or partner must elect coverage when a business or partnership purchases a new policy or renews an existing policy on behalf of the business, and the policy must stay in effect for not less than one year. Further, if a business or partnership elects to obtain coverage for a self-employed person or partner and then chooses to discontinue it, that business or partnership shall not be permitted to obtain coverage for a self-employed person or partner for a period of at least two years. The workers' compensation policy shall also have primary responsibility for the payment of benefits, in the event that the business or partnership performs services that are also covered under a homeowner's policy or other comprehensive personal liability insurance policy.

Additionally, the bill requires that every policy issued or renewed after the effective date of this act shall include a notice of a self-employed person's or partner's election of workers' compensation coverage, on a form approved by the Commissioner of the Department of Banking and Insurance. The notice of election shall also include a statement that such coverage shall not be provided under the policy unless the notice is filed with the insurer or insurance producer. Finally, an insurer or insurance producer shall not be liable in an action for damages on account of the failure of the business or partnership to elect coverage, unless the damage was caused by a willful, wanton or grossly negligent act.

RECOMMENDED ACTION

New Jersey's workers' compensation system has been hailed as a model for resolving employees' injuries. It is an equitable, efficient and stable system, and has long provided invaluable insurance coverage for New Jersey's employees. Underlying this system are the principles that insurance coverage should be provided to as many employees as possible, and that employees should not have to pay for medical treatment

for workplace-related injuries. Because self-employed persons and partners are not "employees" under current law, they have been precluded from receiving workers' compensation benefits. This bill comports with the principles of workers' compensation law by extending access to workers' compensation coverage to self-employed persons and partners. I share the sponsor's goal to allow more individuals under this umbrella of coverage, and applaud his recognition of the value in doing so.

Self-employed persons and partners will now be able to make claims on their own behalf and, under the provisions of this bill, will have the unique ability to choose whether or not to become part of the system. Currently, no other individual or entity has the ability to elect coverage, or the flexibility to cancel coverage, as self-employed persons and partners of partnerships would under this bill. My recommended changes seek to preserve the consistency and efficiency that embody our existing workers' compensation system, and ensure that the expansions proposed by this bill are integrated appropriately.

I have two concerns about a provision of this bill which extends the ability to obtain coverage to "a partner of a partnership who actively performs services on behalf of the ... partnership." Because "partnership" is undefined, I first recommend that the bill specifically include limited liability companies and limited liability partnerships to eliminate any potential confusion as to whether these less traditionally structured corporate entities are eligible for coverage.

Second, I believe that business decisions regarding insurance coverage should be made in a manner that properly treats the business as an entity, and that piecemeal coverage for some, but not all partners in a partnership, invites confusion. Additionally, I am advised that permitting piecemeal coverage will eventually erode the premium base upon which industry-specific rates are set, and that losses may not be covered adequately with a smaller base. Moreover, the ability to elect who may or may not be covered by workers' compensation insurance treats partners differently than any other individual or entity now part of the system. I hesitate to carve exceptions to a system that has worked remarkably well for so long. I have respectfully recommended, therefore, that an election of workers' compensation insurance made on behalf of a partnership shall be effective for all partners. This change does not alter the election of coverage provision; partners may still consider whether they choose to enjoy the benefits of workers' compensation insurance. My suggested amendment simply extends the benefits to all partners, once such an election is made on behalf of the partnership.

I further recommend that the decision to elect coverage shall only be made at the

time of purchase or policy renewal, and that the election shall stay in effect for the policy term. This amendment will avert the possibility of continued insurance coverage during the policy term in the event of nonpayment of premium.

In order to provide sufficient notice to self-employed persons, limited liability partners, limited liability company members or partners about the availability of workers' compensation insurance, I recommend a technical change so that such notice is printed on each application for insurance, rather than on each new or renewal policy. Additionally, I recommend that coverage shall not be provided unless the application containing the notice of election is executed and filed with the insurer or insurance producer. Finally, I recommend that the application contain a statement which exempts insurers or insurance producers from liability on account of the failure of a business or partnership to elect coverage, unless the insurer or insurance producer causes damage by a willful, wanton or grossly negligent act. These changes will simplify the notice provisions in the bill, and ensure that the election of coverage is duly filed with the insurance industry.

I also recommend that the decision not to elect workers' compensation insurance shall not affect benefits available under any other accident or health policy. This change will ensure that existing insurance coverage remains intact.

Finally, in order that the Department of Banking and Insurance has sufficient time to implement the provisions of this bill, I recommend that it take effect 90 days following enactment and apply to all policies issued on or after that date.

Therefore, I herewith return Assembly Bill No. 1647 and recommend that it be amended as follows:

<u>Page 2, Section 1, Line 38:</u>	Delete "or a partner" and insert ", partners of a limited liability partnership, members of a limited liability company or partners"
<u>Page 2, Section 1, Line 39:</u>	Delete "performs" and insert "perform"
<u>Page 2, Section 1, Line 39:</u>	After "business" insert ", the limited liability partnership, the limited liability company"
<u>Page 2, Section 1, Line 40:</u>	After "business" insert ", limited liability partnership, limited liability company"
<u>Page 3, Section 1, Line 1:</u>	After "business" insert ", limited liability partnership, limited liability company"
<u>Page 3, Section 1, Line 2:</u>	After "business" insert ", limited liability partnership, limited liability company"
<u>Page 3, Section 1, Line 4:</u>	Delete "or partner" and insert ", the limited liability partners, the limited

liability company members or the partners"

Page 3, Section 1, Line 4:

After "business" insert ", limited liability partnership, limited liability company"

Page 3, Section 1, Line 5:

Delete "or partner" and insert ", limited liability partners, limited liability company members or the partners"

Page 3, Section 1, Lines 5-10:

Delete "policy shall stay in effect for not less than one year. If a business or partnership electing to obtain the coverage discontinues the coverage for the self-employed person or partner at any time, the business or partnership shall not be permitted to obtain coverage for any self-employed person or partner for a period of not less than two years" and insert "election may only be made at purchase or at renewal and may not be withdrawn during the policy term"

Page 3, Section 1, Line 10:

After "business" insert ", limited liability partnership, limited liability company"

Page 3, Section 1, Line 14:

After "policy" insert "of the business, limited liability partnership, limited liability company or partnership"

Page 3, Section 1, Line 16:

After "business" insert ", limited liability partnership, limited liability company"

Page 3, Section 1, Line 17:

After "business" insert ", limited liability partnership, limited liability company"

Page 3, Section 1, Line 19:

After "person" insert ", limited liability partner, limited liability company member"

Page 3, Section 1, Line 20:

After "business" insert ", limited liability partnership, limited liability company"

Page 3, Section 1, Line 24:

After "business" insert ", limited liability partnership, limited liability company"

Page 3, Section 1, Line 25:

After "person" insert ", limited liability partner, limited liability company member"

Page 3, Section 1, Line 27:

Delete "policy" and insert "application"

Page 3, Section 1, Line 28:

Delete "issued or renewed" and insert "made"

Page 3, Section 1, Line 29:

Delete "on a form" and insert ", as"

Page 3, Section 1, Line 30:

After "Insurance" delete "of" and insert ", concerning"

Page 3, Section 1, Line 31:

After "persons" insert ", limited liability partners, limited liability company members"

Page 3, Section 1, Line 32:

Delete "notice shall be accompanied by" and insert "application shall also contain"

Page 3, Section 1, Line 34:

After "persons" insert ", limited liability partners, limited liability company members" After "unless the" insert

- Page 3, Section 1, Line 36: "application containing the"
After "The" insert "application containing the"
- Page 3, Section 1, Line 38: After "business" insert ", limited liability partnership, limited liability company"
- Page 3, Section 1, Line 39: After "person" insert ", limited liability partner, limited liability company member"
- Page 3, Section 1, Line 41: After "omission." insert "The failure of a self-employed person, limited liability partnership, limited liability company or partnership to elect to obtain workers' compensation coverage for the self-employed person, the limited liability partners, the limited liability company members or the partners shall not affect benefits available under any other accident or health policy"
- Page 5, Section 2, Line 9: Delete "60th" and insert "90th"

Respectfully,

Christine Todd Whitman
Governor

Attest:

Richard S. Mroz
Chief Counsel to the Governor