

6646

I N S E N A T E

February 21, 2014

Introduced by Sen. SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law and the workers' compensation law, in relation to exempting members of supervised collegiate summer baseball leagues from the definition of employees for purposes of workers' compensation insurance

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The insurance law is amended by adding a new section 3443-a
2 to read as follows:
3 S 3443-A. SUPERVISED COLLEGIATE SUMMER BASEBALL LEAGUES. MEMBERS OF A
4 SUPERVISED COLLEGIATE SUMMER BASEBALL LEAGUE OPERATED ON A FOR-PROFIT
5 BASIS SHALL BE EXEMPT FROM THE DEFINITION OF EMPLOYEE PURSUANT TO SUBDI-
6 VISION FOUR OF SECTION TWO OF THE WORKERS' COMPENSATION LAW. AS SUCH, AN
7 INSURER ISSUING A WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSUR-
8 ANCE POLICY SHALL NOT BE REQUIRED TO PROVIDE COVERAGE TO MEMBERS OF SAID
9 COLLEGIATE SUMMER BASEBALL LEAGUE.
10 S 2. The opening paragraph of subdivision 4 of section 2 of the work-
11 ers' compensation law, as amended by chapter 418 of the laws of 2010, is
12 amended to read as follows:
13 "Employee" means a person engaged in one of the occupations enumerated
14 in section three of this article or who is in the service of an employer
15 whose principal business is that of carrying on or conducting a hazard-
16 ous employment upon the premises or at the plant, or in the course of
17 his or her employment away from the plant of his or her employer;
18 "employee" shall also mean for the purposes of this chapter any individ-
19 ual performing services in construction for a contractor who does not
20 overcome the presumption of employment as provided under section eight
21 hundred sixty-one-c of the labor law; "employee" shall also mean for the
22 purposes of this chapter civil defense volunteers who are personnel of
23 volunteer agencies sponsored or authorized by a local office under regu-
24 lations of the civil defense commission, to the extent of the provisions
25 of groups seventeen and nineteen; "employee" shall at the election of a
26 municipal corporation made pursuant to local law duly enacted also mean

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 a member of an auxiliary police organization authorized by local law;
2 and for the purposes of this chapter only a newspaper carrier under the
3 age of eighteen years as defined in section thirty-two hundred twenty-
4 eight of the education law, and shall not include domestic servants
5 except as provided in section three of this chapter, and except where
6 the employer has elected to bring such employees under the law by secur-
7 ing compensation in accordance with the terms of section fifty of this
8 chapter. The term "employee" shall not include persons who are members
9 of a supervised amateur athletic activity operated on a non-profit
10 basis, OR PERSONS WHO ARE MEMBERS OF A SUPERVISED COLLEGIATE SUMMER
11 BASEBALL LEAGUE OPERATED ON A FOR-PROFIT BASIS, provided that said
12 members are not also otherwise engaged or employed by any person, firm
13 or corporation participating in said athletic activity OR COLLEGIATE
14 SUMMER BASEBALL LEAGUE, nor shall it include the spouse or minor child
15 of an employer who is a farmer unless the services of such spouse or
16 minor child shall be engaged by said employer under an express contract
17 of hire nor shall it include an executive officer of a corporation who
18 at all times during the period involved owns all of the issued and
19 outstanding stock of the corporation and holds all of the offices pursu-
20 ant to paragraph (e) of section seven hundred fifteen of the business
21 corporation law or two executive officers of a corporation who at all
22 times during the period involved between them own all of the issued and
23 outstanding stock of such corporation and hold all such offices except
24 as provided in subdivision six of section fifty-four of this chapter
25 provided, however, that where there are two executive officers of a
26 corporation each officer must own at least one share of stock, nor shall
27 it include a self-employed person or a partner of a partnership as
28 defined in section ten of the partnership law who is not covered under a
29 compensation insurance contract or a certificate of self-insurance as
30 provided in subdivision eight of section fifty-four of this chapter, nor
31 shall it include farm laborers except as provided in group fourteen-b of
32 section three of this chapter. If a farm labor contractor recruits or
33 supplies farm laborers for work on a farm, such farm laborers shall for
34 the purposes of this chapter be deemed to be employees of the owner or
35 lessee of such farm. The term "employee" shall not include baby sitters
36 as defined in subdivision three of section one hundred thirty-one and
37 subdivision three of section one hundred thirty-two of the labor law or
38 minors fourteen years of age or over engaged in casual employment
39 consisting of yard work and household chores in and about a one family
40 owner-occupied residence or the premises of a non-profit, non-commercial
41 organization, not involving the use of power-driven machinery. The term
42 "employee" shall not include persons engaged by the owner in casual
43 employment consisting of yard work, household chores and making repairs
44 to or painting in and about a one-family owner-occupied residence. The
45 term "employee" shall not include the services of a licensed real estate
46 broker or sales associate if it be proven that (a) substantially all of
47 the remuneration (whether or not paid in cash) for the services
48 performed by such broker or sales associate is directly related to sales
49 or other output (including the performance of services) rather than to
50 the number of hours worked; (b) the services performed by the broker or
51 sales associate are performed pursuant to a written contract executed
52 between such broker or sales associate and the person for whom the
53 services are performed within the past twelve to fifteen months; and (c)
54 the written contract provided for in paragraph (b) of this subdivision
55 was not executed under duress and contains the following provisions:

1 S 3. The opening paragraph of subdivision 4 of section 2 of the work-
2 ers' compensation law, as amended by chapter 558 of the laws of 2013, is
3 amended to read as follows:

4 "Employee" means a person engaged in one of the occupations enumerated
5 in section three of this article or who is in the service of an employer
6 whose principal business is that of carrying on or conducting a hazard-
7 ous employment upon the premises or at the plant, or in the course of
8 his or her employment away from the plant of his or her employer;
9 "employee" shall also mean for the purposes of this chapter any individ-
10 ual performing services in construction for a contractor who does not
11 overcome the presumption of employment as provided under section eight
12 hundred sixty-one-c of the labor law; "employee" shall also mean for the
13 purposes of this chapter any individual performing services in the
14 commercial goods transportation industry for a commercial goods trans-
15 portation contractor who does not overcome the presumption of employment
16 as provided under section eight hundred sixty-two-b of the labor law;
17 "employee" shall also mean for the purposes of this chapter civil
18 defense volunteers who are personnel of volunteer agencies sponsored or
19 authorized by a local office under regulations of the civil defense
20 commission, to the extent of the provisions of groups seventeen and
21 nineteen; "employee" shall at the election of a municipal corporation
22 made pursuant to local law duly enacted also mean a member of an auxil-
23 iary police organization authorized by local law; and for the purposes
24 of this chapter only a newspaper carrier under the age of eighteen years
25 as defined in section thirty-two hundred twenty-eight of the education
26 law, and shall not include domestic servants except as provided in
27 section three of this chapter, and except where the employer has elected
28 to bring such employees under the law by securing compensation in
29 accordance with the terms of section fifty of this chapter. The term
30 "employee" shall not include persons who are members of a supervised
31 amateur athletic activity operated on a non-profit basis, OR PERSONS WHO
32 ARE MEMBERS OF A SUPERVISED COLLEGIATE SUMMER BASEBALL LEAGUE OPERATED
33 ON FOR A FOR-PROFIT BASIS, provided that said members are not also
34 otherwise engaged or employed by any person, firm or corporation partic-
35 ipating in said athletic activity OR COLLEGIATE SUMMER BASEBALL LEAGUE,
36 nor shall it include the spouse or minor child of an employer who is a
37 farmer unless the services of such spouse or minor child shall be
38 engaged by said employer under an express contract of hire nor shall it
39 include an executive officer of a corporation who at all times during
40 the period involved owns all of the issued and outstanding stock of the
41 corporation and holds all of the offices pursuant to paragraph (e) of
42 section seven hundred fifteen of the business corporation law or two
43 executive officers of a corporation who at all times during the period
44 involved between them own all of the issued and outstanding stock of
45 such corporation and hold all such offices except as provided in subdi-
46 vision six of section fifty-four of this chapter provided, however, that
47 where there are two executive officers of a corporation each officer
48 must own at least one share of stock, nor shall it include a self-em-
49 ployed person or a partner of a partnership as defined in section ten of
50 the partnership law who is not covered under a compensation insurance
51 contract or a certificate of self-insurance as provided in subdivision
52 eight of section fifty-four of this chapter, nor shall it include farm
53 laborers except as provided in group fourteen-b of section three of this
54 chapter. If a farm labor contractor recruits or supplies farm laborers
55 for work on a farm, such farm laborers shall for the purposes of this
56 chapter be deemed to be employees of the owner or lessee of such farm.

1 The term "employee" shall not include baby sitters as defined in subdi-
2 vision three of section one hundred thirty-one and subdivision three of
3 section one hundred thirty-two of the labor law or minors fourteen years
4 of age or over engaged in casual employment consisting of yard work and
5 household chores in and about a one family owner-occupied residence or
6 the premises of a non-profit, non-commercial organization, not involving
7 the use of power-driven machinery. The term "employee" shall not include
8 persons engaged by the owner in casual employment consisting of yard
9 work, household chores and making repairs to or painting in and about a
10 one-family owner-occupied residence. The term "employee" shall not
11 include the services of a licensed real estate broker or sales associate
12 if it be proven that (a) substantially all of the remuneration (whether
13 or not paid in cash) for the services performed by such broker or sales
14 associate is directly related to sales or other output (including the
15 performance of services) rather than to the number of hours worked; (b)
16 the services performed by the broker or sales associate are performed
17 pursuant to a written contract executed between such broker or sales
18 associate and the person for whom the services are performed within the
19 past twelve to fifteen months; and (c) the written contract provided for
20 in paragraph (b) of this subdivision was not executed under duress and
21 contains the following provisions:

22 S 4. This act shall take effect immediately; provided, however that
23 section three of this act shall take effect on the same date and in the
24 same manner as chapter 558 of the laws of 2013, takes effect.