

8898--A

I N A S S E M B L Y

February 27, 2014

Introduced by M. of A. MAGEE -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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. AMATEUR,
4 UNPAID, COLLEGIATE PLAYERS, EXCEPT THOSE DETERMINED TO BE EMPLOYEES
5 PURSUANT TO THE NATIONAL LABOR RELATIONS ACT, IN A SUPERVISED COLLEGIATE
6 SUMMER BASEBALL LEAGUE OPERATED ON A FOR-PROFIT BASIS SHALL BE EXEMPT
7 FROM THE DEFINITION OF EMPLOYEE PURSUANT TO SUBDIVISION FOUR OF SECTION
8 TWO OF THE WORKERS' COMPENSATION LAW. AS SUCH, AN INSURER ISSUING A
9 WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY SHALL
10 NOT BE REQUIRED TO PROVIDE COVERAGE TO AMATEUR, UNPAID, COLLEGIATE PLAY-
11 ERS, EXCEPT THOSE DETERMINED TO BE EMPLOYEES PURSUANT TO THE NATIONAL
12 LABOR RELATIONS ACT, IN SAID COLLEGIATE SUMMER BASEBALL LEAGUE.

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

16 "Employee" means a person engaged in one of the occupations enumerated
17 in section three of this article or who is in the service of an employer
18 whose principal business is that of carrying on or conducting a hazard-
19 ous employment upon the premises or at the plant, or in the course of
20 his or her employment away from the plant of his or her employer;
21 "employee" shall also mean for the purposes of this chapter any individ-
22 ual performing services in construction for a contractor who does not
23 overcome the presumption of employment as provided under section eight
24 hundred sixty-one-c of the labor law; "employee" shall also mean for the
25 purposes of this chapter any individual performing services in the

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

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1 commercial goods transportation industry for a commercial goods trans-
2 portation contractor who does not overcome the presumption of employment
3 as provided under section eight hundred sixty-two-b of the labor law;
4 "employee" shall also mean for the purposes of this chapter civil
5 defense volunteers who are personnel of volunteer agencies sponsored or
6 authorized by a local office under regulations of the civil defense
7 commission, to the extent of the provisions of groups seventeen and
8 nineteen; "employee" shall at the election of a municipal corporation
9 made pursuant to local law duly enacted also mean a member of an auxil-
10 iary police organization authorized by local law; and for the purposes
11 of this chapter only a newspaper carrier under the age of eighteen years
12 as defined in section thirty-two hundred twenty-eight of the education
13 law, and shall not include domestic servants except as provided in
14 section three of this [chapter] ARTICLE, and except where the employer
15 has elected to bring such employees under the law by securing compen-
16 sation in accordance with the terms of section fifty of this chapter.
17 The term "employee" shall not include persons who are members of a
18 supervised amateur athletic activity operated on a non-profit basis, OR
19 PERSONS WHO ARE AMATEUR, UNPAID PLAYERS IN A SUPERVISED COLLEGIATE
20 SUMMER BASEBALL LEAGUE OPERATED ON A FOR-PROFIT BASIS, EXCEPT THOSE
21 AMATEUR, UNPAID PLAYERS IN A SUPERVISED COLLEGIATE SUMMER BASEBALL LEAG-
22 UE OPERATED ON A FOR-PROFIT BASIS WHO ARE DETERMINED TO BE EMPLOYEES
23 PURSUANT TO THE NATIONAL LABOR RELATIONS ACT, provided that said
24 [members] PERSONS are not also otherwise engaged or employed by any
25 person, firm or corporation participating in said athletic activity OR
26 COLLEGIATE SUMMER BASEBALL LEAGUE, nor shall it include the spouse or
27 minor child of an employer who is a farmer unless the services of such
28 spouse or minor child shall be engaged by said employer under an express
29 contract of hire nor shall it include an executive officer of a corpo-
30 ration who at all times during the period involved owns all of the
31 issued and outstanding stock of the corporation and holds all of the
32 offices pursuant to paragraph (e) of section seven hundred fifteen of
33 the business corporation law or two executive officers of a corporation
34 who at all times during the period involved between them own all of the
35 issued and outstanding stock of such corporation and hold all such
36 offices except as provided in subdivision six of section fifty-four of
37 this chapter provided, however, that where there are two executive offi-
38 cers of a corporation each officer must own at least one share of stock,
39 nor shall it include a self-employed person or a partner of a partner-
40 ship as defined in section ten of the partnership law who is not covered
41 under a compensation insurance contract or a certificate of self-insu-
42 rance as provided in subdivision eight of section fifty-four of this
43 chapter, nor shall it include farm laborers except as provided in group
44 fourteen-b of section three of this [chapter] ARTICLE. If a farm labor
45 contractor recruits or supplies farm laborers for work on a farm, such
46 farm laborers shall for the purposes of this chapter be deemed to be
47 employees of the owner or lessee of such farm. The term "employee" shall
48 not include baby sitters as defined in subdivision three of section one
49 hundred thirty-one and subdivision three of section one hundred thirty-
50 two of the labor law or minors fourteen years of age or over engaged in
51 casual employment consisting of yard work and household chores in and
52 about a one family owner-occupied residence or the premises of a non-
53 profit, non-commercial organization, not involving the use of power-dri-
54 ven machinery. The term "employee" shall not include persons engaged by
55 the owner in casual employment consisting of yard work, household chores
56 and making repairs to or painting in and about a one-family owner-occu-

1 pied residence. The term "employee" shall not include the services of a
2 licensed real estate broker or sales associate if it be proven that (a)
3 substantially all of the remuneration (whether or not paid in cash) for
4 the services performed by such broker or sales associate is directly
5 related to sales or other output (including the performance of services)
6 rather than to the number of hours worked; (b) the services performed by
7 the broker or sales associate are performed pursuant to a written
8 contract executed between such broker or sales associate and the person
9 for whom the services are performed within the past twelve to fifteen
10 months; and (c) the written contract provided for in paragraph (b) of
11 this subdivision was not executed under duress and contains the follow-
12 ing provisions:

13 S 3. This act shall take effect immediately.