

4355

2011-2012 Regular Sessions

I N S E N A T E

March 31, 2011

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

AN ACT to amend the workers' compensation law, in relation to the definition of employee

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

1 Section 1. Subdivision 4 of section 2 of the workers' compensation law
2 is amended by adding five new undesignated paragraphs to read as
3 follows:
4 NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, "EMPLOYEE" SHALL
5 NOT INCLUDE THE SERVICES OF A HARNESS RACE DRIVER IF IT BE PROVEN THAT
6 (A) SUBSTANTIALLY ALL OF THE COMPENSATION (WHETHER OR NOT PAID IN CASH)
7 FOR THE SERVICES PERFORMED BY SUCH HARNESS RACE DRIVER IS RELATED TO HIS
8 OR HER PERFORMANCE IN THE HARNESS RACE RATHER THAN THE NUMBER OF HOURS
9 WORKED; (B) THE HARNESS RACE DRIVER IS FREE TO ACCEPT OR TO DECLINE ANY
10 REQUEST TO DRIVE HORSES; (C) THE HARNESS RACE DRIVER IS FREE TO DRIVE
11 HORSES FOR OWNERS AND/OR TRAINERS OF HIS OR HER CHOOSING AND/OR TO
12 ENGAGE IN OTHER EMPLOYMENT; (D) THE HARNESS RACE DRIVER MAY UNILATERALLY
13 DETERMINE WHEN AND WHERE HE OR SHE WILL WORK; (E) THE HARNESS RACE DRIV-
14 ER IS RESPONSIBLE FOR HIS OR HER OWN EXPENSES; (F) THE HARNESS RACE
15 DRIVER IS RESPONSIBLE FOR FURNISHING HIS OR HER OWN VEST, HELMET, WHIP
16 AND SULKY; (G) THE HARNESS RACE DRIVER IS FREE TO TERMINATE HIS OR HER
17 SERVICES AT ANY TIME; AND (H) THE PERSON OR ENTITY THAT RETAINS THE
18 HARNESS RACE DRIVER TO PROVIDE SERVICES IS NOT TREATED BY SUCH PERSON OR
19 ENTITY AS AN EMPLOYEE WITH RESPECT TO SUCH SERVICES FOR FEDERAL OR STATE
20 TAX PURPOSES.
21 NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, A GROOM AND/OR
22 CARETAKER OF A HARNESS RACE HORSE SHALL NOT BE DEEMED AN "EMPLOYEE" OF A
23 DESIGNATED TRAINER AND/OR SUBSTITUTE TRAINER OF THE HARNESS RACE HORSE
24 IF IT BE PROVEN THAT (A) THE COMPENSATION (WHETHER OR NOT PAID IN CASH)
25 FOR THE SERVICES PERFORMED BY SUCH GROOM AND/OR CARETAKER RELATING TO

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

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1 THE HARNESS RACE HORSE IS NOT PAID BY THE DESIGNATED TRAINER AND/OR
2 SUBSTITUTE TRAINER OF SUCH HARNESS RACE HORSE; (B) THE DESIGNATED TRAIN-
3 ER AND/OR SUBSTITUTE TRAINER OF THE HARNESS RACE HORSE DOES NOT CONTROL
4 THE WORKING HOURS OF THE GROOM AND/OR CARETAKER; (C) THE GROOM AND/OR
5 CARETAKER PROVIDING SERVICES TO THE DESIGNATED TRAINER AND/OR SUBSTITUTE
6 TRAINER OF THE HARNESS RACE HORSE IS FREE TO PROVIDE HIS OR HER SERVICES
7 TO OTHER TRAINERS (INCLUDING OTHER DESIGNATED TRAINERS AND/OR SUBSTITUTE
8 TRAINERS) OF HARNESS RACE HORSES; (D) THE DESIGNATED TRAINER AND/OR
9 SUBSTITUTE TRAINER OF THE HARNESS RACE HORSE PROVIDES NO EQUIPMENT OR
10 SUPPLIES TO THE GROOM AND/OR CARETAKER PROVIDING SERVICES TO SUCH DESIG-
11 NATED TRAINER AND/OR SUBSTITUTE TRAINER; (E) THE DESIGNATED TRAINER
12 AND/OR SUBSTITUTE TRAINER OF THE HARNESS RACE HORSE IS NOT RESPONSIBLE
13 AND DOES NOT REIMBURSE THE GROOM AND/OR CARETAKER FOR HIS OR HER
14 EXPENSES; AND (F) THE GROOM AND/OR CARETAKER PROVIDING SERVICES TO THE
15 DESIGNATED TRAINER AND/OR SUBSTITUTE TRAINER OF THE HARNESS RACE HORSE
16 IS NOT TREATED AS AN EMPLOYEE WITH RESPECT TO SUCH SERVICES FOR FEDERAL
17 OR STATE TAX PURPOSES BY THE DESIGNATED TRAINER AND/OR SUBSTITUTE TRAIN-
18 ER.

19 NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, "EMPLOYEE" SHALL
20 NOT INCLUDE THE SERVICES OF A SHIPPER OR TRANSPORTER OF A HARNESS RACE
21 HORSE IF IT BE PROVEN THAT (A) SUBSTANTIALLY ALL OF THE COMPENSATION
22 (WHETHER OR NOT PAID IN CASH) FOR THE SERVICES PERFORMED BY THE SHIPPER
23 OR TRANSPORTER OF THE HARNESS RACE HORSE IS DIRECTLY RELATED TO MILEAGE
24 OR SOME OTHER TYPE OF AGREED UPON RATE THAT IS NOT RELATED TO ACTUAL
25 HOURS WORKED; (B) THE SHIPPER OR TRANSPORTER OF THE HARNESS RACE HORSE
26 IS FREE TO PROVIDE SERVICES TO CUSTOMERS OF HIS OR HER CHOOSING AND/OR
27 TO ENTER INTO OTHER EMPLOYMENT RELATIONSHIPS; (C) THE SHIPPER OR TRANS-
28 PORTER OF THE HARNESS RACE HORSE MAY UNILATERALLY DETERMINE WHEN AND
29 WHERE HE OR SHE WILL WORK; (D) THE SHIPPER OR TRANSPORTER OF THE HARNESS
30 RACE HORSE IS RESPONSIBLE FOR HIS OR HER OWN EXPENSES; (E) THE SHIPPER
31 OR TRANSPORTER OF THE HARNESS RACE HORSE IS RESPONSIBLE FOR FURNISHING
32 HIS OR HER OWN EQUIPMENT AND/OR VEHICLE; (F) THE SHIPPER OR TRANSPORTER
33 OF THE HARNESS RACE HORSE IS FREE TO TERMINATE HIS OR HER SERVICES AT
34 ANY TIME; AND (G) THE PARTY THAT RETAINS THE SERVICES OF SHIPPER OR
35 TRANSPORTER OF THE HARNESS RACE HORSE DOES NOT TREAT SUCH SHIPPER OR
36 TRANSPORTER AS AN EMPLOYEE WITH RESPECT TO SUCH SERVICE FOR FEDERAL AND
37 STATE TAX PURPOSES.

38 NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, "EMPLOYEE" SHALL
39 NOT INCLUDE THE SERVICES OF A FARRIER WHOSE SERVICES ARE RENDERED TO A
40 HARNESS RACE HORSE, IF IT IS PROVEN THAT (A) SUBSTANTIALLY ALL OF THE
41 COMPENSATION (WHETHER OR NOT PAID IN CASH) FOR THE SERVICES RENDERED BY
42 THE FARRIER TO THE HARNESS RACE HORSE IS RELATED TO A NEGOTIATED FEE OR
43 ONE SET BY THE FARRIER AND IS NOT RELATED TO ACTUAL HOURS WORKED; (B)
44 THE FARRIER RETAINED TO PROVIDE SERVICES FOR THE HARNESS RACE HORSE IS
45 FREE TO PROVIDE SERVICES TO CUSTOMERS OF HIS OR HER CHOOSING, INCLUDING
46 PROVIDING FARRIER SERVICES TO ANY OTHER HARNESS RACE HORSE AND/OR TO
47 ENTER INTO OTHER EMPLOYMENT RELATIONSHIPS; (C) THE FARRIER RETAINED TO
48 PROVIDE SERVICES FOR THE HARNESS RACE HORSE MAY UNILATERALLY DETERMINE
49 WHERE AND WHEN HE OR SHE WILL WORK; (D) THE FARRIER RETAINED TO PROVIDE
50 SERVICES FOR THE HARNESS RACE HORSE IS RESPONSIBLE FOR HIS OR HER
51 EXPENSES; (E) THE FARRIER RETAINED TO PROVIDE SERVICES FOR THE HARNESS
52 RACE HORSE IS RESPONSIBLE FOR FURNISHING HIS OR HER OWN EQUIPMENT; (F)
53 THE FARRIER RETAINED TO PROVIDE SERVICES TO THE HARNESS RACE HORSE IS
54 FREE TO TERMINATE OR DECLINE TO PROVIDE HIS OR HER SERVICES AT ANY TIME;
55 AND (G) THE PARTY THAT RETAINS THE SERVICES OF THE FARRIER DOES NOT

1 TREAT HIM OR HER AS AN EMPLOYEE FOR FEDERAL AND STATE TAX PURPOSES WITH
2 RESPECT TO HIS OR HER SERVICES PROVIDED TO THE HARNESS RACE HORSE.

3 NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, THE TERM "EMPLOY-
4 EE" SHALL NOT INCLUDE THE SERVICES OF A VETERINARIAN RETAINED TO TREAT A
5 HARNESS RACE HORSE IF IT BE PROVEN THAT (A) SUBSTANTIALLY ALL OF THE
6 COMPENSATION (WHETHER OR NOT PAID IN CASH) FOR THE SERVICES RENDERED BY
7 THE VETERINARIAN TO THE HARNESS RACE HORSE IS RELATED TO A FEE NEGOTI-
8 ATED OR SOME OTHER TYPE OF AGREED UPON RATE AND NOT RELATED TO ACTUAL
9 HOURS WORKED; (B) THE VETERINARIAN RETAINED TO PROVIDE SERVICES TO THE
10 HARNESS RACE HORSE IS FREE TO PROVIDE HIS OR HER SERVICES TO CUSTOMERS
11 OF HIS OR HER CHOOSING, INCLUDING PROVIDING VETERINARIAN SERVICES TO ANY
12 OTHER HARNESS RACE HORSE AND/OR TO ENTER INTO OTHER EMPLOYMENT RELATION-
13 SHIPS; (C) THE VETERINARIAN RETAINED TO PROVIDE SERVICES FOR THE HARNESS
14 RACE HORSE MAY UNILATERALLY DETERMINE WHERE AND WHEN HE OR SHE WILL
15 WORK; (D) THE VETERINARIAN RETAINED TO PROVIDE SERVICES TO THE HARNESS
16 RACE HORSE IS RESPONSIBLE FOR HIS OR HER EXPENSES; (E) THE VETERINARIAN
17 RETAINED TO PROVIDE SERVICES TO THE HARNESS RACE HORSE IS RESPONSIBLE
18 FOR FURNISHING HIS OR HER OWN EQUIPMENT; (F) THE VETERINARIAN PROVIDING
19 SERVICES TO THE HARNESS RACE HORSE IS FREE TO TERMINATE PROVIDING HIS OR
20 HER SERVICES AT ANY TIME; AND (G) THE PARTY THAT RETAINS THE SERVICES OF
21 THE VETERINARIAN DOES NOT TREAT HIM OR HER AS AN EMPLOYEE FOR FEDERAL
22 AND STATE TAX PURPOSES WITH RESPECT TO HIS OR HER SERVICES PROVIDED TO
23 THE HARNESS RACE HORSE.

24 S 2. This act shall take effect immediately.