

7661

2009-2010 Regular Sessions

I N A S S E M B L Y

April 20, 2009

Introduced by M. of A. ESPAILLAT, PERALTA -- (at request of the Workers Compensation Board) -- read once and referred to the Committee on Labor

AN ACT to amend the executive law and the workers' compensation law, in relation to the independent livery driver benefit fund; to amend chapter 392 of the laws of 2008, amending the executive law, the workers' compensation law, and the insurance law, relating to the livery driver benefit fund, in relation to authorizing the chair of the workers' compensation board to review and approve certain affirmations; and to amend the insurance law, in relation to workers compensation and employers' liability insurance

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

- 1 Section 1. Subdivision 6 of section 160-aaa of the executive law, as
2 added by chapter 392 of the laws of 2008, is amended to read as follows:
3 6. "Livery" means a for-hire vehicle licensed by a local taxi and
4 limousine commission, carrying no more than [five] NINE passengers or
5 such other limited number as set by a local taxi and limousine commis-
6 sion, which charges for service on the basis of flat rate, time, mileage
7 or zones, and which is dispatched by a livery dispatch facility, but
8 shall not include a vehicle owned or driven by a black car operator, as
9 defined in article six-F of this chapter.
- 10 S 2. Paragraphs (a) and (c) of subdivision 6 of section 160-bbb of the
11 executive law, as added by chapter 392 of the laws of 2008, is amended
12 to read as follows:
13 (a) All of the directors shall have equal voting rights and [five or
14 more directors] A MAJORITY OF APPOINTED DIRECTORS shall constitute a
15 quorum. The affirmative vote of four directors shall be necessary for
16 the transaction of any business or the exercise of any power or function
17 of the fund.
18 (c) The board of directors may:

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

LBD09713-03-9

1 [(i) delegate to one or more of its directors, officers, agents or
2 employees such powers and duties as it may deem proper;
3 (ii) establish the procedure by which the fund shall determine how to
4 provide the benefits due pursuant to this article;
5 (iii) establish accounting and record-keeping procedures for all
6 financial transactions of the fund, its agents and the board of direc-
7 tors;
8 (iv) establish a procedure for determining and collecting the appro-
9 priate amount of assessments under and as consistent with this article;
10 (v) set forth the procedures by which the fund may exercise the audit
11 rights granted to it under this article;
12 (vi) establish procedures to ensure prompt and accurate notification
13 to the fund by independent livery bases of all deaths of independent
14 livery drivers, and all injuries to livery drivers that resulted from a
15 crime for which there is a police report, and provide for full
16 reimbursement of the fund by any member whose failure to provide such
17 notification results in the imposition of a penalty on the fund by the
18 workers' compensation board;
19 (vii) recommend changes in the law or regulations governing workers'
20 compensation benefits with livery drivers; and
21 (viii) engage in such additional actions as the board of directors may
22 deem necessary or proper for the execution of the powers and duties of
23 the fund.]

24 (I) RECOMMEND TO THE CHAIR OF THE WORKERS' COMPENSATION BOARD CHANGES
25 IN THE LAW OR REGULATIONS GOVERNING WORKERS' COMPENSATION ISSUES AFFECT-
26 ING LIVERY DRIVERS;

27 (II) REVIEW AND ADVISE THE CHAIR OF THE WORKERS' COMPENSATION BOARD
28 WITH RESPECT TO PENDING WORKERS' COMPENSATION LEGISLATION AFFECTING
29 LIVERY DRIVERS;

30 (III) ADVISE AND CONSULT WITH THE CHAIR OF THE WORKERS' COMPENSATION
31 BOARD WITH RESPECT TO THE PROPER SUM OF MONEY NECESSARY TO FUND THE
32 LIVERY ACCOUNT AUTHORIZED BY SECTION ONE HUNDRED SIXTY-CCC OF THIS ARTI-
33 CLE; AND

34 (IV) ADVISE AND CONSULT WITH THE CHAIR OF THE WORKERS' COMPENSATION
35 BOARD WITH RESPECT TO LIVERY DRIVER INJURIES THAT SHOULD BE SUBJECT TO
36 WORKERS' COMPENSATION BENEFITS.

37 S 3. Sections 160-ccc and 160-ddd of the executive law, as added by
38 chapter 392 of the laws of 2008, are amended to read as follows:
39 S 160-ccc. Contributions to the fund. Each independent livery base
40 shall be assessed an annual payment to the fund, to be [set by the board
41 of directors] ASSESSED BY MARCH FIFTEENTH OF EACH CALENDAR YEAR IN SUCH
42 MANNER AS IS PRESCRIBED BY THE CHAIR OF THE WORKERS' COMPENSATION BOARD
43 AND PAID no later than [January first] APRIL FIFTEENTH of each calendar
44 year, or such other [date] DATES as the CHAIR OF THE WORKERS' COMPEN-
45 SATION BOARD MAY SET UPON CONSULTATION WITH THE board of directors [may
46 set] consistent with, and as necessary to effectuate, this article. The
47 total amount of the payment shall be determined by the [fund] CHAIR UPON
48 CONSULTATION WITH THE BOARD OF DIRECTORS as sufficient to [provide it
49 with total assets equal to one hundred fifty percent of the cost of an
50 insurance policy issued] MEET ITS OBLIGATIONS under section one hundred
51 sixty-ddd of this article, and to provide for any administrative expense
52 of the fund AND OF THE BOARD FOR THE ADMINISTRATION OF THIS ARTICLE.
53 Each independent livery base's own share of such payments shall be
54 determined by a formula set by the [board of directors] CHAIR, to be
55 based on the number of liveries affiliated with each livery base at the
56 time the payments are calculated, or such other measure set by the chair

1 of the workers' compensation board. [Each independent livery base shall
2 make the payments assessed against it annually within thirty days of
3 assessment.] If it is determined by the board of directors that there
4 may be an insufficient amount of money in the fund to [purchase the
5 requisite coverage] MEET ITS OBLIGATIONS UNDER SECTION ONE HUNDRED
6 SIXTY-DDD OF THIS ARTICLE or to pay administrative expenses in a given
7 year, the board of directors may require each independent livery base to
8 make an additional payment to the fund based on the amount of its affil-
9 iated drivers on an annualized basis or such other criteria as shall be
10 established by the chair of the workers' compensation board, except that
11 no such payments shall be assessed, such that the fund will have funds
12 greater than necessary to provide compensation under the workers'
13 compensation law, to the extent set forth in section one hundred sixty-
14 ddd of this article for eighteen months.

15 S 160-ddd. Use of the fund. 1. Moneys deposited into the fund shall be
16 used to provide benefits under the workers' compensation law[, by
17 purchase of a policy from the state insurance fund, or from a carrier
18 licensed to write workers' compensation insurance to the extent permit-
19 ted by section three thousand four hundred fifty-one of the insurance
20 law, for livery drivers dispatched by independent livery bases, to
21 provide benefits under the workers' compensation law] for deaths of
22 livery drivers arising out of and in the course of providing covered
23 services, and all injuries arising out of and in the course of providing
24 covered services either: [(1)] (A) resulting from a crime against such
25 livery driver as evidenced by a police report or [(2)] (B) for the
26 following conditions: [(a)] (I) the amputation or loss of an arm, leg,
27 hand, foot, multiple fingers, index finger, multiple toes, ear, or nose,
28 [(b)] (II) paraplegia or quadriplegia, or [(c)] (III) total and perma-
29 nent blindness or deafness. The provisions of the workers' compensation
30 law shall govern any application for and the receipt of such benefits
31 EXCEPT THAT NO PAYMENT OF ASSESSMENTS SHALL BE REQUIRED UNDER SECTION
32 FIFTEEN, TWENTY-FIVE-A, FIFTY OR ONE HUNDRED FIFTY-ONE OF THE WORKERS'
33 COMPENSATION LAW. SUCH BENEFITS SHALL BE PROVIDED BY PURCHASE OF A POLI-
34 CY FROM THE STATE INSURANCE FUND, OR FROM A CARRIER LICENSED TO WRITE
35 WORKERS' COMPENSATION INSURANCE TO THE EXTENT PERMITTED BY SECTION THREE
36 THOUSAND FOUR HUNDRED FIFTY-ONE OF THE INSURANCE LAW, AS ADDED BY CHAP-
37 TER THREE HUNDRED NINETY-TWO OF THE LAWS OF TWO THOUSAND EIGHT, OR IF
38 AUTHORIZED BY THE CHAIR OF THE WORKERS' COMPENSATION BOARD UPON CONSUL-
39 TATION WITH THE LIVERY FUND BOARD OF DIRECTORS, BY DEPOSITS BY MEMBERS
40 OF THE FUND INTO AN ACCOUNT MAINTAINED BY THE CHAIR, IN A SUM DETERMINED
41 IN ACCORDANCE WITH SUBDIVISION TWO OF THIS SECTION.

42 2. UPON NOTICE TO THE BOARD OF DIRECTORS OF THE INDEPENDENT LIVERY
43 DRIVER BENEFIT FUND, THE CHAIR MAY ESTABLISH AN ACCOUNT IN THE CUSTODY
44 OF THE COMMISSIONER OF TAXATION AND FINANCE, TO BE KNOWN AS THE INDE-
45 PENDENT LIVERY ACCOUNT FOR THE PAYMENT OF THE CLAIMS OF INDEPENDENT
46 LIVERY DRIVERS IN ACCORDANCE WITH THIS ARTICLE. IF SO AUTHORIZED, EACH
47 YEAR ON OR BEFORE JANUARY FIRST THE CHAIR SHALL DETERMINE A SUM THAT
48 WILL BE SUFFICIENT TO FUND THE RESERVES OF ESTIMATED CLAIMS AND THE
49 WORKERS' COMPENSATION BOARD'S COSTS ASSOCIATED WITH THE ADMINISTRATION
50 OF THE INDEPENDENT LIVERY DRIVER BENEFIT FUND FOR THE YEAR BEGINNING ON
51 THE FOLLOWING APRIL FIRST, WHICH SUM SHALL IN NO EVENT BE LESS THAN THE
52 AMOUNT WHICH WILL RAISE THE NET CASH ASSETS OF THE FUND TO THE LEVEL OF
53 THE AMOUNT SPENT FROM THE ACCOUNT IN THE PRIOR CALENDAR YEAR. THE CHAIR
54 SHALL ASSESS SUCH COSTS AGAINST THE MEMBERS OF THE FUND ANNUALLY IN
55 ACCORDANCE WITH SECTION ONE HUNDRED SIXTY-CCC, TO MEET THEIR OBLIGATIONS
56 UNDER THIS SECTION IN LIEU OF PURCHASING A POLICY THEREUNDER. LIVERY

1 BASES JOINING THE FUND DURING THE COURSE OF A YEAR SHALL BE ASSESSED A
2 PRO-RATED AMOUNT AND ASSESSED ANNUALLY THEREAFTER. THE CHAIR OF THE
3 WORKERS' COMPENSATION BOARD MAY REQUIRE THE MEMBERS TO MAKE ADDITIONAL
4 DEPOSITS INTO THE ACCOUNT AT SUCH OTHER TIMES AS MAY BE NECESSARY TO
5 COVER ADDITIONAL COSTS IN EXCESS OF ITS ESTIMATE, WHICH THE FUND SHALL
6 ASSESS AGAINST ITS MEMBERS IN ACCORDANCE WITH THIS ARTICLE. ANY DEPOSITS
7 IN THE INDEPENDENT LIVERY ACCOUNT SHALL BE SEGREGATED FROM OTHER FUNDS,
8 SHALL BE USED SOLELY FOR THE PURPOSES SET FORTH IN THIS ARTICLE. ALL
9 PAYMENTS MADE FROM THE FUND FOR THE BENEFITS PROVIDED FOR INDEPENDENT
10 LIVERY DRIVERS UNDER THIS ARTICLE SHALL BE FIRST MADE FROM THE MONEYS IN
11 THE INDEPENDENT LIVERY ACCOUNT.

12 3. IF THE CHAIR DOES NOT RECEIVE THE PAYMENTS REQUIRED UNDER THIS
13 SECTION TO MEET THE OBLIGATIONS THAT MUST BE PAID FROM THE INDEPENDENT
14 LIVERY ACCOUNT, THE CHAIR MAY DIRECT A TRANSFER TO THE ACCOUNT OUT OF
15 MONEYS COLLECTED PURSUANT TO SUBDIVISION TWO OF SECTION ONE HUNDRED
16 FIFTY-ONE OF THE WORKERS' COMPENSATION LAW, UP TO AN AMOUNT WHICH WILL
17 RAISE THE NET CASH ASSETS OF THE FUND TO THE LEVEL OF EITHER THE AMOUNT
18 SPENT BY THE FUND IN THE PRIOR YEAR, OR THE AMOUNT ESTIMATED TO BE
19 EXPENDED BY THE FUND IN THAT YEAR, WHICHEVER IS GREATER. ANY SUM SO
20 TRANSFERRED SHALL BE ASSESSED AGAINST AND PAID BY THE MEMBERS OF THE
21 INDEPENDENT LIVERY DRIVER BENEFIT FUND.

22 4. IF THE CHAIR DETERMINES VIA AN ACTUARIAL ANALYSIS THAT THERE IS
23 SUFFICIENT MONEY IN THE FUND TO FUND RESERVES FOR ALL CLAIMS FOR THE
24 FOLLOWING YEAR WITHOUT COLLECTING ADDITIONAL ASSESSMENTS, THE CHAIR MAY,
25 IN ITS DISCRETION UPON CONSULTATION WITH THE LIVERY FUND BOARD:

26 (A) MAINTAIN SUCH MONEY IN THE FUND WITHOUT TAKING OTHER ACTION;
27 (B) WAIVE ALL OR PART OF THE ASSESSMENTS FOR THE FOLLOWING YEAR;
28 (C) USE SUCH MONEY TO FUND PROGRAMS THAT WILL INCREASE THE SAFETY OF,
29 LIMIT INJURY TO, OR FACILITATE THE RETURN TO WORK OF, LIVERY DRIVERS; OR
30 (D) BY REGULATION, IN CONSULTATION WITH THE LIVERY FUND BOARD OF
31 DIRECTORS, ADD TO THE LIST OF LIVERY DRIVER INJURIES THAT ARE ELIGIBLE
32 FOR WORKERS' COMPENSATION BENEFITS UNDER THIS ARTICLE, ONLY IF THE CHAIR
33 PROVIDES AN ACTUARIAL ANALYSIS TO THE LIVERY FUND BOARD OF DIRECTORS
34 SHOWING THAT THERE IS A REASONABLE BASIS TO BELIEVE THAT (I) THERE IS
35 SUFFICIENT MONEY IN THE FUND TO PAY BENEFITS ARISING OUT OF SUCH INJU-
36 RIES FOR A PERIOD OF TWELVE MONTHS WITHOUT RAISING ASSESSMENTS FOR THE
37 FUND; AND (II) THE FUND MAY PAY BENEFITS ARISING OUT OF SUCH INJURIES IN
38 FUTURE YEARS WITHOUT RAISING ASSESSMENTS FOR THE FUND.

39 5. UPON DISSOLUTION OF THE FUND, FOR ANY REASON, THE ASSETS OF THE
40 FUND WILL REVERT TO THE STATE OF NEW YORK.

41 S 4. Section 160-fff of the executive law, as added by chapter 392 of
42 the laws of 2008, is amended to read as follows:

43 S 160-fff. Membership in the fund. 1. The membership of the fund shall
44 be comprised of all independent livery bases. If the CHAIR OF THE work-
45 ers' compensation board or THE local taxi and limousine commission
46 revokes a livery base's authorization to act as an independent livery
47 base, it shall cease to be a member of the fund within thirty days. Such
48 revocation shall not entitle the livery base to the return of any moneys
49 deposited into the fund. IF A LIVERY BASE'S MEMBERSHIP IN THE FUND IS
50 REVOKED, IT SHALL BE ENTITLED TO THE NOTIFICATION PROVIDED FOR IN SUBDI-
51 VISION FIVE OF SECTION FIFTY-FOUR OF THE WORKERS' COMPENSATION LAW. THE
52 LOCAL TAXI AND LIMOUSINE COMMISSION WITH JURISDICTION OVER SUCH LIVERY
53 BASE SHALL ALSO RECEIVE SUCH NOTICE.

54 2. [Each] ON AND AFTER APRIL FIFTEENTH, TWO THOUSAND TEN, EACH livery
55 base shall be required, as a condition of obtaining or retaining any
56 license it receives to operate as a livery base from a local taxi and

1 limousine commission either: (a) to be a member of the fund, to submit
2 to the local taxi and limousine commission proof of such membership and
3 to maintain such records as the CHAIR OF THE workers' compensation
4 board, state department of motor vehicles or local taxi and limousine
5 commission may direct in order to carry out the livery base's responsi-
6 bilities under this article, and as necessary to determine the appropri-
7 ate cost of compensation the fund must provide under the workers'
8 compensation law; or (b) to present proof to the local taxi and limou-
9 sine commission that it has secured compensation under the workers'
10 compensation law, to the extent required of employers, for all livery
11 drivers it dispatches.

12 3. Each local taxi and limousine commission shall supply the fund and
13 the CHAIR OF THE workers' compensation board, at any such time as the
14 fund or THE CHAIR OF THE workers' compensation board requests, a list of
15 all liveries affiliated with each livery base licensed by the commis-
16 sion.

17 4. The fund shall, within seventy-five days of the appointment of the
18 fund's board of directors, provide to its members a copy of the proposed
19 plan of operation filed with the CHAIR OF THE workers' compensation
20 board and all local taxi and limousine commissions and shall inform its
21 members of their rights and duties pursuant to this article, IN PLAIN
22 LANGUAGE, IN ENGLISH AND ANY LANGUAGE THAT IS THE PRIMARY SPOKEN
23 LANGUAGE OF AT LEAST HALF OF ITS MEMBERS.

24 S 5. Section 160-ggg of the executive law, as added by chapter 392 of
25 the laws of 2008, is amended to read as follows:

26 S 160-ggg. Plan of operation. 1. Within seventy-five days of the
27 appointment of the fund's board of directors, the fund shall file with
28 the CHAIR OF THE workers' compensation board and local taxi and limou-
29 sine commissions its plan of operation, which shall be designed to
30 assure the fair, reasonable and equitable administration of the fund.
31 The plan of operation and any subsequent amendments thereto shall become
32 effective upon being filed with the workers' compensation board and all
33 taxi and limousine commissions.

34 2. The plan of operation shall constitute the by-laws of the fund and
35 shall, in addition to the requirements enumerated elsewhere in this
36 article:

37 (a) establish procedures for collecting and managing the assets of the
38 fund;

39 (b) establish regular places and times for meetings of the fund's
40 board of directors;

41 (c) establish accounting and record-keeping procedures for all finan-
42 cial transactions of the fund, its agents and the board of directors;

43 (d) establish a procedure for determining and collecting the appropri-
44 ate amount of assessments under this article; [and]

45 (e) contain such additional provisions as the board of directors of
46 the fund may deem necessary or proper for the execution of the powers
47 and duties of the fund; AND

48 (F) ESTABLISH A WEBSITE TO INFORM ITS MEMBERS ON THE PLAN OF OPERATION
49 AND ANY OTHER INFORMATION THAT WILL HELP THE FUND'S MEMBERS COMPLY WITH
50 THIS ARTICLE.

51 S 6. Subdivisions 2, 4, 5, 6, 7, 8, 10, 11 and 12 of section 160-hhh
52 of the executive law, as added by chapter 392 of the laws of 2008, are
53 amended to read as follows:

54 2. The CHAIR OF THE workers' compensation board [or local taxi and
55 limousine commission] may, upon its own motion or the application of a
56 local taxi and limousine commission or the independent livery fund, and

1 upon notice to the independent livery base, conduct a hearing as to the
2 validity of any affirmation filed under section eighteen-c of the work-
3 ers' compensation law, or to determine whether there has been any other
4 violation of this article. Should the CHAIR OF THE workers' compensation
5 board [or local taxi and limousine commission] determine that the
6 certification contains any materially false statements, the CHAIR OF THE
7 workers' compensation board may:

8 (a) revoke the livery base's authorization as an independent livery
9 base for a period of up to five years; AND/OR

10 (b) impose a civil penalty of up to ten thousand dollars[; and/or

11 (c) refer the independent livery base to the local taxi and limousine
12 commission for such additional sanction as it may impose under its rules
13 and regulations].

14 4. If an independent livery base fails to submit to the independent
15 livery driver benefit fund any required charge, the CHAIR OF THE work-
16 ers' compensation board [or local taxi and limousine commission] may
17 order that it pay [into the fund], upon application of the fund and
18 following notice to the independent livery base (a) the amount overdue
19 plus interest on such amount INTO THE FUND, and/or (b) a penalty of up
20 to five hundred dollars for each thirty days after notice is given that
21 the payment is overdue. The CHAIR OF THE workers' compensation board [or
22 local taxi and limousine commission] may suspend or revoke such livery
23 base's authorization to act as an independent livery base for failure to
24 make such payment. The rate of interest applicable to this subdivision
25 shall be twelve percent per annum. [Any monetary penalty imposed pursu-
26 ant to this subdivision shall be retained by the workers' compensation
27 board and be used to defray the costs of administering this article.]

28 5. If the CHAIR OF THE workers' compensation board [or local taxi and
29 limousine commission] determines that any independent livery base has
30 made any material misrepresentations, or temporarily altered the affil-
31 iation of any livery, livery driver or livery registrant, for the
32 purpose of reducing its payments into the fund, the CHAIR OF THE work-
33 ers' compensation board [or local taxi and limousine commission] may
34 suspend the livery base's membership in the fund for a period of up to
35 two years, and may impose a penalty of up to five thousand dollars.

36 6. If the CHAIR OF THE workers' compensation board [or local taxi and
37 limousine commission] determines that any independent livery base has
38 coerced any livery driver into making false statements or refraining
39 from reporting any violations of this article, the CHAIR OF THE workers'
40 compensation board [or local taxi and limousine commission] may suspend
41 the livery base's membership in the fund for a period of up to two
42 years, and may impose a penalty of up to five thousand dollars.

43 7. Except as otherwise provided in this section, a livery base that is
44 found to have violated a provision of this article or a rule promulgated
45 by the CHAIR OF THE workers' compensation board [or local taxi and
46 limousine commission] pursuant to this article shall be liable for a
47 fine in an amount not to exceed five thousand dollars per violation.

48 8. If the fund has reason to believe a violation of this article by a
49 fund member may have occurred, the fund shall notify the CHAIR OF THE
50 workers' compensation board. Upon receipt of such a referral, the CHAIR
51 OF THE workers' compensation board shall hold a hearing to determine the
52 validity of the charge[, or refer the matter to the local taxi and
53 limousine commission for such determination].

54 10. Failure of the independent livery base, or of its responsible
55 persons, to pay any charges or penalties awarded pursuant to this
56 section within [twenty] THIRTY days of issuance of a valid order so to

1 do, or in the event an appeal has been taken from the determination of
2 the CHAIR OF THE workers' compensation board, to deposit with the CHAIR
3 OF THE workers' compensation board within [twenty] THIRTY days of the
4 issuance of the determination from which the appeal is taken the total
5 amount of the award as security for its payment, shall entitle the CHAIR
6 OF THE workers' compensation board [or local taxi and limousine commis-
7 sion] to file with the clerk of Albany county [or the county where the
8 local taxi and limousine commission is located] a certified copy of the
9 determination of the CHAIR OF THE workers' compensation board [or the
10 local taxi and limousine commission], and thereupon judgment shall be
11 entered in the supreme court by the clerk of the county where the deter-
12 mination is filed immediately upon such filing. Such judgment shall be
13 entered in the same manner, have the same effect and be subject to the
14 same proceedings as though rendered in a suit duly heard and determined
15 by the supreme court, except that no appeal may be taken therefrom.

16 11. Within [twenty] THIRTY days after issuance by the CHAIR OF THE
17 workers' compensation board of a determination adverse to a livery base
18 pursuant to this section, an appeal may be taken therefrom to the appel-
19 late division of the supreme court, third department, by the aggrieved
20 party. THE ATTORNEY GENERAL SHALL REPRESENT THE WORKERS' COMPENSATION
21 BOARD IN ANY SUCH APPEAL.

22 12. If the membership of an independent livery base in the independent
23 livery fund is suspended for failure to pay assessments under this arti-
24 cle, the livery base may make application for reinstatement only upon
25 payment of such assessments and such penalties and interest as the
26 [local taxi and limousine commission or] CHAIR OF THE workers' compen-
27 sation board has imposed, or upon the agreement by the base and fund to
28 a schedule for such payment.

29 S 7. Section 160-hhh of the executive law is amended by adding a new
30 subdivision 14 to read as follows:

31 14. ANY MONETARY PENALTY IMPOSED PURSUANT TO THIS SECTION SHALL BE
32 RETAINED BY THE WORKERS' COMPENSATION BOARD AND BE USED TO DEFRAY THE
33 COSTS OF ADMINISTERING THIS ARTICLE.

34 S 8. Subdivision 3 of section 18-c of the workers' compensation law,
35 as added by chapter 392 of the laws of 2008, is amended to read as
36 follows:

37 3. The [board] CHAIR may revoke any livery base's status as an inde-
38 pendent livery base if it determines that the base is in violation of
39 any of the criteria set forth in subdivision one of this section, or may
40 suspend the livery base's status as an independent livery base pending
41 the base's compliance with any such criteria.

42 S 9. Subdivision 2 of section 18-c of the workers' compensation law,
43 as added by chapter 392 of the laws of 2008, is amended to read as
44 follows:

45 2. The [board] CHAIR shall designate a livery base as an independent
46 livery base[, only if the base meets each of the following criteria] AS
47 FOLLOWS:

48 (a) The base submits an affirmation sworn under penalty of perjury by
49 an officer or director and such other individuals as the chair may
50 direct, on such form as is provided by the [board] CHAIR, which attests
51 to the truth of such criteria as are set by the chair by regulation IN
52 CONSULTATION WITH THE LIVERY FUND BOARD OF DIRECTORS, or in the absence
53 of such regulation attests to the truth of the following EXCEPT WHERE
54 OTHERWISE PROVIDED BY THE RULES OF A LOCAL TAXI AND LIMOUSINE COMMISSION
55 OR LOCAL LAW: (i) the base is not, directly or indirectly, including
56 through any director or officer, the owner or registrant of any livery

1 dispatched by the base, EXCEPT THAT A DIRECTOR OR OFFICER MAY BE THE
2 OWNER OR REGISTRANT OF A SINGLE LIVERY WHICH THAT INDIVIDUAL OPERATES;
3 (ii) all livery drivers dispatched by the base provide and select their
4 own clothing; (iii) all livery drivers dispatched by the base set their
5 own hours and days of work; (iv) all livery drivers choose which
6 dispatches or fares to accept, and no livery driver suffers any conse-
7 quence by the livery base for failing to respond to its dispatch; (v)
8 livery drivers dispatched by the base may enter into a contractual
9 relationship with one or more other bases; (vi) no livery driver
10 dispatched by the base receives an internal revenue service form W-2
11 from such base, or is subject to the withholding of any federal income
12 taxes by the base; (vii) the base does not pay for the fuel or mainte-
13 nance of any liveries; (viii) the base does not impose any fines and
14 penalties on any livery drivers, except that it may decline to provide
15 further dispatches for misconduct during any dispatch; and (ix) no
16 livery driver is subject to being fired or discharged by the livery
17 base. The base shall agree to provide the [board] CHAIR with immediate
18 notice of any inaccuracies in the affirmation, including any failure to
19 adhere to any of the matters set forth on its affirmation.

20 (b) The [board] CHAIR shall alter the criteria set forth in paragraph
21 (a) of this subdivision to conform to any statutory definition for
22 employer or independent contractor applicable to livery drivers.

23 (c) The livery shall provide the [board] CHAIR and local taxi and
24 limousine commission, and all livery registrants or drivers whose
25 liveries may be dispatched by the livery base, with a copy of a written
26 policy in plain language, in the primary language spoken by each regis-
27 trant or driver, setting forth all matters to which it has attested on
28 the affirmation provided for in paragraph (a) of this subdivision. The
29 failure to distribute such a policy shall not have any legal consequence
30 except in accordance with section one hundred sixty-hhh of the executive
31 law.

32 (d) The base shall pay into the independent livery fund such payments
33 as are directed by the independent livery driver benefit fund pursuant
34 to article six-G of the executive law.

35 (e) The base may not owe any payments into the fund established under
36 section twenty-six-a of this article, or otherwise owe any moneys under
37 this chapter, unless it has an agreement with the [board] CHAIR to repay
38 the money owed, or to relieve it of the obligation to make any such
39 payments.

40 (f) The base shall maintain such records as are provided for by regu-
41 lation of the chair, UPON CONSULTATION WITH THE LIVERY FUND BOARD OF
42 DIRECTORS.

43 (g) The base shall permit the [local taxi and limousine commission]
44 CHAIR, the independent livery fund, THE BOARD and any carrier providing
45 compensation COVERAGE under this title for the independent livery fund
46 to audit its books and records during regular business hours solely as
47 necessary to determine compliance with this section, or to determine the
48 amount owed to the fund.

49 (h) No responsible persons of the livery base may have been a respon-
50 sible person of a base whose status as an independent livery base was
51 revoked within the previous five years, or which has no agreement on
52 moneys owed in as required by paragraph (e) of this subdivision, unless
53 such criteria are waived in the discretion of the board.

54 S 10. Subdivision 3 of section 2 of the workers' compensation law, as
55 amended by chapter 392 of the laws of 2008, is amended to read as
56 follows:

1 3. "Employer," except when otherwise expressly stated, means a person,
2 partnership, association, corporation, and the legal representatives of
3 a deceased employer, or the receiver or trustee of a person, partner-
4 ship, association or corporation, having one or more persons in employ-
5 ment, including the state, a municipal corporation, fire district or
6 other political subdivision of the state, and every authority or commis-
7 sion heretofore or hereafter continued or created by the public authori-
8 ties law. For the purposes of this chapter only "employer" shall also
9 mean a person, partnership, association, corporation, and the legal
10 representatives of a deceased employer, or the receiver or trustee of a
11 person, partnership, association or corporation who delivers or causes
12 to be delivered newspapers or periodicals for delivering or selling and
13 delivering by a newspaper carrier under the age of eighteen years as
14 defined in section thirty-two hundred twenty-eight of the education law.
15 For the purpose of this chapter only, "employer" shall also mean a
16 person, partnership, association, or corporation who leases or otherwise
17 contracts with an operator or lessee for the purpose of driving, operat-
18 ing or leasing a taxicab as so defined in section one hundred forty-
19 eight-a of the vehicle and traffic law, except where such person is an
20 owner-operator of such taxicab who personally regularly operates such
21 vehicle an average of forty or more hours per week and leases such taxi-
22 cab for some portion of the remaining time, and except if the taxicab is
23 a livery [subject to section eighteen-c of this chapter] AS DEFINED IN
24 ARTICLE SIX-G OF THE EXECUTIVE LAW, in which case the livery driver's
25 employer shall only be such employer as is defined in [that section]
26 SUCH ARTICLE AND IN SECTION EIGHTEEN-C OF THIS CHAPTER. For the
27 purposes of this section only, such an owner-operator shall be deemed to
28 be an employer if he OR SHE controls, directs, supervises, or has the
29 power to hire or terminate such other person who leases the vehicle.

30 Notwithstanding any other provision of this chapter and for purposes
31 of this chapter only, "employer" shall mean, with respect to a jockey,
32 apprentice jockey or exercise person licensed under article two or four
33 of the racing, pari-mutuel wagering and breeding law performing services
34 for an owner or trainer in connection with the training or racing of a
35 horse at a facility of a racing association or corporation subject to
36 article two or four of the racing, pari-mutuel wagering and breeding law
37 and subject to the jurisdiction of the New York state racing and wager-
38 ing board, The New York Jockey Injury Compensation Fund, Inc. and all
39 owners and trainers who are licensed or required to be licensed under
40 article two or four of the racing, pari-mutuel wagering and breeding law
41 at the time of any occurrence for which benefits are payable pursuant to
42 this chapter in respect to the injury or death of such jockey, appren-
43 tice jockey or exercise person.

44 Notwithstanding any other provision of this chapter, and for purposes
45 of this chapter only, the employer of a black car operator, as defined
46 in article six-F of the executive law, shall, on and after the fund
47 liability date, as defined in such article, be the New York black car
48 operators' injury compensation fund, inc. created pursuant to such arti-
49 cle.

50 For the purpose of this chapter only, whether a livery base operating
51 in any locality where liveries must register with a local taxi and
52 limousine commission shall be deemed the "employer" of any livery driver
53 engaging in covered services shall be determined in accordance with
54 ARTICLE SIX-G OF THE EXECUTIVE LAW AND section eighteen-c of this chap-
55 ter.

1 S 11. The closing paragraph of subdivision 4 of section 2 of the work-
2 ers' compensation law, as added by chapter 392 of the laws of 2008, is
3 amended to read as follows:

4 For the purpose of this chapter only, whether a livery driver
5 dispatched by an independent livery base, as those terms are defined in
6 article six-G of the executive law, is an "employee" OF A LIVERY BASE OR
7 OWNER-OPERATOR OF A LIVERY shall be determined in accordance with ARTI-
8 CLE SIX-G OF THE EXECUTIVE LAW AND section eighteen-c of this chapter.

9 S 12. The third undesignated paragraph of subdivision 4 of section 2
10 of the workers' compensation law, as amended by chapter 392 of the laws
11 of 2008, is amended to read as follows:

12 For the purpose of this chapter only, "employee" shall also mean a
13 driver, operator or lessee who contracts with an owner, operator or
14 lessor for the purpose of operating a taxicab as so defined in section
15 one hundred forty-eight-a of the vehicle and traffic law, except where
16 such person leases the taxicab from a person who personally, regularly
17 operates such vehicle an average of forty or more hours per week, and
18 except if the taxicab is a livery [subject to section eighteen-c of this
19 chapter] AS DEFINED IN ARTICLE SIX-G OF THE EXECUTIVE LAW, in which case
20 the livery driver's employer shall only be such employer as is defined
21 in [that section] SUCH ARTICLE AND IN SECTION EIGHTEEN-C OF THIS
22 CHAPTER. For the purposes of this section only, such person shall be
23 deemed to be an employee of the owner-operator if the owner-operator
24 controls, directs, supervises, or has the power to hire or terminate
25 such person.

26 S 13. The third undesignated paragraph of subdivision 5 of section 2
27 of the workers' compensation law, as amended by chapter 392 of the laws
28 of 2008, is amended to read as follows:

29 Notwithstanding any other provision of this chapter, and for purposes
30 of this chapter only, a jockey, apprentice jockey or exercise person
31 licensed under article two or four of the racing, pari-mutuel wagering
32 and breeding law performing services for an owner or trainer in
33 connection with the training or racing of a horse at a facility of a
34 racing association or corporation subject to article two or four of the
35 racing, pari-mutuel wagering and breeding law and subject to the juris-
36 diction of the New York state racing and wagering board shall be
37 regarded as in the "employment" not solely of such owner and trainer,
38 but shall instead be conclusively presumed to be in the "employment" of
39 The New York Jockey Injury Compensation Fund, Inc. and of all owners and
40 trainers who are licensed or required to be licensed under article two
41 or four of the racing, pari-mutuel wagering and breeding law, at the
42 time of any occurrence for which benefits are payable pursuant to this
43 chapter in respect of the injury or death of such jockey, apprentice
44 jockey or exercise person. For the purpose of this chapter only, whether
45 a livery driver's performance of covered services, as those terms are
46 defined in article six-G of the executive law, constitutes "employment"
47 shall be determined in accordance with ARTICLE SIX-G OF THE EXECUTIVE
48 LAW AND section eighteen-c of this chapter.

49 S 14. The closing paragraph of section 11 of the workers' compensation
50 law, as added by chapter 392 of the laws of 2008, is amended to read as
51 follows:

52 The liability under this chapter of the New York independent livery
53 driver benefit fund, inc. shall be limited to: (i) [securing the payment
54 of workers' compensation coverage to cover those matters required by
55 article six-G of the executive law for independent livery drivers, as
56 defined in such article, whose injury arose out of and in the course of

1 providing covered services for a livery base, as defined in such arti-
2 cle, that is a registered member of such fund] MAKING SUCH PAYMENTS AS
3 ARE REQUIRED UNDER SECTION ONE HUNDRED SIXTY-DDD OF THE EXECUTIVE LAW,
4 and (ii) any statutory penalty resulting from the failure to secure such
5 payment.

6 S 15. Subdivision (a) of section 13 of chapter 392 of the laws of
7 2008, amending the executive law, the workers' compensation law, and the
8 insurance law, relating to the livery driver benefit fund, is amended to
9 read as follows:

10 (a) the CHAIR OF THE workers' compensation board may review and
11 approve affirmations filed under section two of this act at any time
12 after such effective date; and

13 S 16. Paragraph 15 of subsection (a) of section 1113 of the insurance
14 law, as amended by chapter 392 of the laws of 2008, is amended to read
15 as follows:

16 (15) "Workers' compensation and employers' liability insurance," means
17 insurance against the legal liability, under common law or statute or
18 assumed by contract, of any employer for the death or disablement of, or
19 injury to, his employee, including volunteer firefighters' benefit
20 insurance provided pursuant to the volunteer firefighters' benefit law
21 including volunteer ambulance workers' benefit insurance provided pursu-
22 ant to the volunteer ambulance workers' benefit law and insurance for
23 [workers' compensation] benefits for death and injuries [arising out of
24 crimes] provided by the independent livery driver benefit fund pursuant
25 to article six-G of the executive law.

26 S 17. This act shall take effect immediately, and shall be deemed to
27 have been in full force and effect on and after January 1, 2009.