S T A T E O F N E W Y O R K

3779

2009-2010 Regular Sessions

I N S E N A T E

March 31, 2009

Introduced by Sen. SAVINO -- (at request of the Workers Compensation Board) -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

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:

Section 1. Subdivision 6 of section 160-aaa of the executive law, as added by chapter 392 of the laws of 2008, is amended to read as follows:

6. "Livery" means a for-hire vehicle licensed by a local taxi and limousine commission, carrying no more than [five] NINE passengers or such other limited number as set by a local taxi and limousine commission, which charges for service on the basis of flat rate, time, mileage or zones, and which is dispatched by a livery dispatch facility, but shall not include a vehicle owned or driven by a black car operator, as defined in article six-F of this chapter.

S 2. Paragraphs (a) and (c) of subdivision 6 of section 160-bbb of the executive law, as added by chapter 392 of the laws of 2008, is amended to read as follows:

(a) All of the directors shall have equal voting rights and [five or more directors] A MAJORITY OF APPOINTED DIRECTORS shall constitute a quorum. The affirmative vote of four directors shall be necessary for the transaction of any business or the exercise of any power or function of the fund.

(c) The board of directors may:

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

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[(i) delegate to one or more of its directors, officers, agents or employees such powers and duties as it may deem proper;
(ii) establish the procedure by which the fund shall determine how to provide the benefits due pursuant to this article;
(iii) establish accounting and record-keeping procedures for all financial transactions of the fund, its agents and the board of directors;
(iv) establish a procedure for determining and collecting the appropriate amount of assessments under and as consistent with this article;
(v) set forth the procedures by which the fund may exercise the audit rights granted to it under this article;
(vi) establish procedures to ensure prompt and accurate notification to the fund by independent livery bases of all deaths of independent livery drivers, and all injuries to livery drivers that resulted from a crime for which there is a police report, and provide for full reimbursement of the fund by any member whose failure to provide such notification results in the imposition of a penalty on the fund by the workers' compensation board;
(vii) recommend changes in the law or regulations governing workers' compensation benefits with livery drivers; and
(viii) engage in such additional actions as the board of directors may deem necessary or proper for the execution of the powers and duties of the fund.]
(I) RECOMMEND TO THE CHAIR OF THE WORKERS' COMPENSATION BOARD CHANGES IN THE LAW OR REGULATIONS GOVERNING WORKERS' COMPENSATION ISSUES AFFECTING LIVERY DRIVERS;
(II) REVIEW AND ADVISE THE CHAIR OF THE WORKERS' COMPENSATION BOARD WITH RESPECT TO PENDING WORKERS' COMPENSATION LEGISLATION AFFECTING LIVERY DRIVERS;
(III) ADVISE AND CONSULT WITH THE CHAIR OF THE WORKERS' COMPENSATION BOARD WITH RESPECT TO THE PROPER SUM OF MONEY NECESSARY TO FUND THE LIVERY ACCOUNT AUTHORIZED BY SECTION ONE HUNDRED SIXTY-CCC OF THIS ARTICLE; AND
(IV) ADVISE AND CONSULT WITH THE CHAIR OF THE WORKERS' COMPENSATION BOARD WITH RESPECT TO LIVERY DRIVER INJURIES THAT SHOULD BE SUBJECT TO WORKERS' COMPENSATION BENEFITS.

S 3. Sections 160-ccc and 160-ddd of the executive law, as added by chapter 392 of the laws of 2008, are amended to read as follows:

S 160-ccc. Contributions to the fund. Each independent livery base shall be assessed an annual payment to the fund, to be [set by the board of directors] ASSESSED BY MARCH FIFTEENTH OF EACH CALENDAR YEAR IN SUCH MANNER AS IS PRESCRIBED BY THE CHAIR OF THE WORKERS' COMPENSATION BOARD AND PAID no later than [January first] APRIL FIFTEENTH of each calendar year, or such other [date] DATES as the CHAIR OF THE WORKERS' COMPENSATION BOARD MAY SET UPON CONSULTATION WITH THE board of directors [may set] consistent with, and as necessary to effectuate, this article. The total amount of the payment shall be determined by the [fund] CHAIR UPON CONSULTATION WITH THE BOARD OF DIRECTORS as sufficient to [provide it with total assets equal to one hundred fifty percent of the cost of an insurance policy issued] MEET ITS OBLIGATIONS under section one hundred sixty-ddd of this article, and to provide for any administrative expense of the fund AND OF THE BOARD FOR THE ADMINISTRATION OF THIS ARTICLE. Each independent livery base's own share of such payments shall be determined by a formula set by the [board of directors] CHAIR, to be based on the number of liveries affiliated with each livery base at the time the payments are calculated, or such other measure set by the chair

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

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

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

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

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

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

(A) MAINTAIN SUCH MONEY IN THE FUND WITHOUT TAKING OTHER ACTION;

(B) WAIVE ALL OR PART OF THE ASSESSMENTS FOR THE FOLLOWING YEAR;

(C) USE SUCH MONEY TO FUND PROGRAMS THAT WILL INCREASE THE SAFETY OF, LIMIT INJURY TO, OR FACILITATE THE RETURN TO WORK OF, LIVERY DRIVERS; OR

(D) BY REGULATION, IN CONSULTATION WITH THE LIVERY FUND BOARD OF DIRECTORS, ADD TO THE LIST OF LIVERY DRIVER INJURIES THAT ARE ELIGIBLE FOR WORKERS' COMPENSATION BENEFITS UNDER THIS ARTICLE, ONLY IF THE CHAIR PROVIDES AN ACTUARIAL ANALYSIS TO THE LIVERY FUND BOARD OF DIRECTORS SHOWING THAT THERE IS A REASONABLE BASIS TO BELIEVE THAT (I) THERE IS SUFFICIENT MONEY IN THE FUND TO PAY BENEFITS ARISING OUT OF SUCH INJURIES FOR A PERIOD OF TWELVE MONTHS WITHOUT RAISING ASSESSMENTS FOR THE FUND; AND (II) THE FUND MAY PAY BENEFITS ARISING OUT OF SUCH INJURIES IN FUTURE YEARS WITHOUT RAISING ASSESSMENTS FOR THE FUND.

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

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

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

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

limousine commission either: (a) to be a member of the fund, to submit to the local taxi and limousine commission proof of such membership and to maintain such records as the CHAIR OF THE workers' compensation board, state department of motor vehicles or local taxi and limousine commission may direct in order to carry out the livery base's responsibilities under this article, and as necessary to determine the appropriate cost of compensation the fund must provide under the workers' compensation law; or (b) to present proof to the local taxi and limousine commission that it has secured compensation under the workers' compensation law, to the extent required of employers, for all livery drivers it dispatches.

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

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

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

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

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

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

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

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

(d) establish a procedure for determining and collecting the appropriate amount of assessments under this article; [and]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. If the membership of an independent livery base in the independent livery fund is suspended for failure to pay assessments under this article, the livery base may make application for reinstatement only upon payment of such assessments and such penalties and interest as the [local taxi and limousine commission or] CHAIR OF THE workers' compensation board has imposed, or upon the agreement by the base and fund to a schedule for such payment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. "Employer," except when otherwise expressly stated, means a person, partnership, association, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association or corporation, having one or more persons in employment, including the state, a municipal corporation, fire district or other political subdivision of the state, and every authority or commission heretofore or hereafter continued or created by the public authorities law. For the purposes of this chapter only "employer" shall also mean a person, partnership, association, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association or corporation who delivers or causes to be delivered newspapers or periodicals for delivering or selling and delivering by a newspaper carrier under the age of eighteen years as defined in section thirty-two hundred twenty-eight of the education law. For the purpose of this chapter only, "employer" shall also mean a person, partnership, association, or corporation who leases or otherwise contracts with an operator or lessee for the purpose of driving, operating or leasing a taxicab as so defined in section one hundred forty-eight-a of the vehicle and traffic law, except where such person is an owner-operator of such taxicab who personally regularly operates such vehicle an average of forty or more hours per week and leases such taxicab for some portion of the remaining time, and except if the taxicab is a livery [subject to section eighteen-c of this chapter] AS DEFINED IN ARTICLE SIX-G OF THE EXECUTIVE LAW, in which case the livery driver's employer shall only be such employer as is defined in [that section] SUCH ARTICLE AND IN SECTION EIGHTEEN-C OF THIS CHAPTER. For the purposes of this section only, such an owner-operator shall be deemed to be an employer if he OR SHE controls, directs, supervises, or has the power to hire or terminate such other person who leases the vehicle.

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

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

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

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

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

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

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

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

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

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

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

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

S 15. Subdivision (a) of section 13 of 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, is amended to read as follows:

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

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

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

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