

7072

I N   S E N A T E

March 10, 2010

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Introduced by Sen. ADAMS -- 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 exclusions to the definition of employee for workers' compensation purposes

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, THE TERM "EMPLOY-  
5     EE" SHALL NOT INCLUDE THE SERVICES OF A HARNESS RACE DRIVER IF IT BE  
6     PROVEN THAT:  
7     (A) SUBSTANTIALLY ALL OF THE COMPENSATION (WHETHER OR NOT PAID IN  
8     CASH) FOR THE SERVICES PERFORMED BY SUCH HARNESS RACE DRIVER IS RELATED  
9     TO HIS OR HER PERFORMANCE IN THE HARNESS RACE RATHER THAN THE NUMBER OF  
10    HOURS WORKED;  
11    (B) THE HARNESS RACE DRIVER IS FREE TO ACCEPT OR DECLINE ANY REQUEST  
12    TO DRIVE HORSES;  
13    (C) THE HARNESS RACE DRIVER IS FREE TO DRIVE HORSES FOR THE OWNER  
14    AND/OR TRAINERS OF HIS OR HER CHOOSING AND/OR ENGAGE IN OTHER EMPLOY-  
15    MENT;  
16    (D) THE HARNESS RACE DRIVER MAY UNILATERALLY DETERMINE WHEN AND WHERE  
17    HE OR SHE WILL WORK;  
18    (E) THE HARNESS RACE DRIVER IS RESPONSIBLE FOR HIS OR HER OWN  
19    EXPENSES;  
20    (F) THE HARNESS RACE DRIVER IS RESPONSIBLE FOR FURNISHING HIS OR HER  
21    OWN VEST, HELMET AND WHIP;  
22    (G) THE HARNESS RACE DRIVER IS FREE TO TERMINATE HIS OR HER SERVICES  
23    AT ANY TIME; AND  
24    (H) THE PERSON OR ENTITY THAT RETAINS THE HARNESS RACE DRIVER TO  
25    PROVIDE SERVICES IS NOT TREATED BY SUCH PERSON OR ENTITY AS AN EMPLOYEE  
26    WITH RESPECT TO SUCH SERVICES FOR FEDERAL OR STATE TAX PURPOSES.  
27    NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, A GROOM AND/OR  
28    CARETAKER OF A HARNESS RACE HORSE SHALL NOT BE DEEMED AN "EMPLOYEE" OF A

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

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DESIGNATED TRAINER AND/OR SUBSTITUTE TRAINER OF THE HARNESS RACE HORSE  
IF IT BE PROVEN THAT:

(A) THE COMPENSATION (WHETHER OR NOT PAID IN CASH) FOR THE SERVICES  
PERFORMED BY SUCH GROOM AND/OR CARETAKER RELATING TO THE HARNESS RACE  
HORSE IS NOT PAID BY THE DESIGNATED TRAINER AND/OR SUBSTITUTE TRAINER OF  
SUCH HARNESS RACE HORSE;

(B) THE DESIGNATED TRAINER AND/OR SUBSTITUTE TRAINER OF THE HARNESS  
RACE HORSE DOES NOT CONTROL THE WORKING HOURS OF THE GROOM AND/OR CARE-  
TAKER;

(C) THE GROOM AND/OR CARETAKER PROVIDING SERVICES TO THE DESIGNATED  
TRAINER AND/OR SUBSTITUTE TRAINER OF THE HARNESS RACE HORSE IS FREE TO  
PROVIDE HIS OR HER SERVICES TO OTHER TRAINERS (INCLUDING OTHER DESIG-  
NATED TRAINERS AND/OR SUBSTITUTE TRAINERS) OF HARNESS RACE HORSES;

(D) THE DESIGNATED TRAINER AND/OR SUBSTITUTE TRAINER OF THE HARNESS  
RACE HORSE PROVIDES NO EQUIPMENT OR SUPPLIES TO THE GROOM AND/OR CARE-  
TAKER PROVIDING SERVICES TO THAT DESIGNATED TRAINER AND/OR SUBSTITUTE  
TRAINER;

(E) THE DESIGNATED TRAINER AND/OR SUBSTITUTE TRAINER OF THE HARNESS  
RACE HORSE IS NOT RESPONSIBLE AND DOES NOT REIMBURSE THE GROOM AND/OR  
CARETAKER FOR HIS OR HER EXPENSES; AND

(F) THE GROOM AND/OR CARETAKER PROVIDING SERVICES TO THE DESIGNATED  
TRAINER AND/OR SUBSTITUTE TRAINER OF THE HARNESS RACE HORSE IS NOT  
TREATED AS AN EMPLOYEE WITH RESPECT TO SUCH SERVICES FOR FEDERAL OR  
STATE TAX PURPOSES BY THE DESIGNATED TRAINER AND/OR SUBSTITUTE TRAINER.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, THE SERVICES OF A  
SHIPPER OR TRANSPORTER OF A HARNESS RACE HORSE SHALL NOT BE DEEMED AN  
"EMPLOYEE" OF A DESIGNATED TRAINER AND/OR SUBSTITUTE TRAINER OF THE  
HARNESS RACE HORSE IF IT BE PROVEN THAT:

(A) SUBSTANTIALLY ALL OF COMPENSATION (WHETHER OR NOT PAID IN CASH)  
FOR THE SERVICES PERFORMED BY THE SHIPPER OR TRANSPORTER OF THE HARNESS  
RACE HORSE IS DIRECTLY RELATED TO MILEAGE OR SOME OTHER TYPE OF AGREED-  
UPON RATE THAT IS NOT RELATED TO ACTUAL HOURS WORKED;

(B) THE SHIPPER OR TRANSPORTER OF THE HARNESS RACE HORSE IS FREE TO  
PROVIDE SERVICES TO CUSTOMERS OF ITS CHOOSING AND/OR TO ENTER INTO OTHER  
EMPLOYMENT RELATIONSHIPS;

(C) THE SHIPPER OR TRANSPORTER OF THE HARNESS RACE HORSE MAY UNILATER-  
ALLY DETERMINE WHEN AND WHERE IT WILL WORK;

(D) THE SHIPPER OR TRANSPORTER OF THE HARNESS RACE HORSE IS RESPONSI-  
BLE FOR ITS OWN EXPENSES;

(E) THE SHIPPER OR TRANSPORTER OF THE HARNESS RACE HORSE IS RESPONSI-  
BLE FOR FURNISHING ITS OWN EQUIPMENT AND/OR VEHICLE;

(F) THE SHIPPER OR TRANSPORTER OF THE HARNESS RACE HORSE IS FREE TO  
TERMINATE ITS SERVICES AT ANY TIME; AND

(G) THE PARTY THAT RETAINS THE SERVICES OF THE SHIPPER OR TRANSPORTER  
OF THE HARNESS RACE HORSE DOES NOT TREAT SUCH SHIPPER OR TRANSPORTER AS  
AN EMPLOYEE WITH RESPECT TO SUCH SERVICE FOR FEDERAL AND STATE TAX  
PURPOSES.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, THE SERVICES OF A  
FARRIER WHOSE SERVICES ARE RENDERED TO A HARNESS RACE HORSE SHALL NOT BE  
DEEMED AN "EMPLOYEE" OF A DESIGNATED TRAINER AND/OR SUBSTITUTE TRAINER  
OF THE HARNESS RACE HORSE IF IT BE PROVEN THAT:

(A) SUBSTANTIALLY ALL OF COMPENSATION (WHETHER OR NOT PAID IN CASH)  
FOR THE SERVICES RENDERED BY THE FARRIER TO THE HARNESS RACE HORSE IS  
RELATED TO A NEGOTIATED FEE OR ONE SET BY THE FARRIER AND IS NOT RELATED  
TO ACTUAL HOURS WORKED;

1 (B) THE FARRIER RETAINED TO PROVIDE SERVICES FOR THE HARNESS RACE  
2 HORSE IF FREE TO PROVIDE HIS OR HER SERVICES TO CUSTOMERS OF HIS OR HER  
3 CHOOSING, INCLUDING PROVIDING FARRIER SERVICES TO ANY OTHER HARNESS RACE  
4 HORSE AND/OR TO ENTER INTO OTHER EMPLOYMENT RELATIONSHIPS;

5 (C) THE FARRIER RETAINED TO PROVIDE SERVICES FOR THE HARNESS RACE  
6 HORSE MAY UNILATERALLY DETERMINE WHERE AND WHEN HE OR SHE WILL WORK;

7 (D) THE FARRIER RETAINED TO PROVIDE SERVICES FOR THE HARNESS RACE  
8 HORSE IS RESPONSIBLE FOR HIS OR HER EXPENSES;

9 (E) THE FARRIER RETAINED TO PROVIDE SERVICES FOR THE HARNESS RACE  
10 HORSE IS RESPONSIBLE FOR FURNISHING HIS OR HER OWN EQUIPMENT;

11 (F) THE FARRIER RETAINED TO PROVIDE SERVICES FOR THE HARNESS RACE  
12 HORSE IS FREE TO TERMINATE OR DECLINE TO PROVIDE HIS OR HER SERVICES AT  
13 ANY TIME; AND

14 (G) THE PARTY THAT RETAINS THE SERVICES OF THE FARRIER DOES NOT TREAT  
15 HIM OR HER AS AN EMPLOYEE FOR FEDERAL AND STATE TAX PURPOSES WITH  
16 RESPECT TO HIS OR HER SERVICES PROVIDED TO THE HARNESS RACE HORSE.

17 NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, THE SERVICES OF A  
18 VETERINARIAN RETAINED TO TREAT A HARNESS RACE HORSE SHALL NOT BE DEEMED  
19 AN "EMPLOYEE" OF A DESIGNATED TRAINER AND/OR SUBSTITUTE TRAINER OF THE  
20 HARNESS RACE HORSE IF IT BE PROVEN THAT:

21 (A) SUBSTANTIALLY ALL OF COMPENSATION (WHETHER OR NOT PAID IN CASH)  
22 FOR THE SERVICES RENDERED BY THE VETERINARIAN TO THE HARNESS RACE HORSE  
23 IS RELATED TO A FEE NEGOTIATED OR SOME OTHER TYPE OF AGREED-UPON RATE  
24 AND IS NOT RELATED TO ACTUAL HOURS WORKED;

25 (B) THE VETERINARIAN RETAINED TO PROVIDE SERVICES TO THE HARNESS RACE  
26 HORSE IS FREE TO PROVIDE HIS OR HER SERVICES TO CUSTOMERS OF HIS OR HER  
27 CHOOSING, INCLUDING PROVIDING VETERINARIAN SERVICES TO ANY OTHER HARNESS  
28 RACE HORSE AND/OR TO ENTER INTO OTHER EMPLOYMENT RELATIONSHIPS;

29 (C) THE VETERINARIAN RETAINED TO PROVIDE SERVICES FOR THE HARNESS RACE  
30 HORSE MAY UNILATERALLY DETERMINE WHERE AND WHEN HE OR SHE WILL WORK;

31 (D) THE VETERINARIAN RETAINED TO PROVIDE SERVICES TO THE HARNESS RACE  
32 HORSE IS RESPONSIBLE FOR HIS OR HER EXPENSES;

33 (E) THE VETERINARIAN RETAINED TO PROVIDE SERVICES TO THE HARNESS RACE  
34 HORSE IS RESPONSIBLE FOR FURNISHING HIS OR HER OWN EQUIPMENT;

35 (F) THE VETERINARIAN PROVIDING SERVICES TO THE HARNESS RACE HORSE IS  
36 FREE TO TERMINATE PROVIDING HIS OR HER SERVICES AT ANY TIME; AND

37 (G) THE PARTY THAT RETAINS THE SERVICES OF THE VETERINARIAN DOES NOT  
38 TREAT HIM OR HER AS AN EMPLOYEE FOR FEDERAL AND STATE TAX PURPOSES WITH  
39 RESPECT TO HIS OR HER SERVICES PROVIDED TO THE HARNESS RACE HORSE.

40 S 2. This act shall take effect immediately.