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

3645

2011-2012 Regular Sessions

I N A S S E M B L Y

January 26, 2011

Introduced by M. of A. PRETLOW, REILLY -- read once and referred 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:

Section 1. Subdivision 4 of section 2 of the workers' compensation law is amended by adding five new undesignated paragraphs to read as follows:

NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, "EMPLOYEE" SHALL NOT INCLUDE THE SERVICES OF A HARNESS RACE DRIVER IF IT BE PROVEN THAT (A) SUBSTANTIALLY ALL OF THE COMPENSATION (WHETHER OR NOT PAID IN CASH) FOR THE SERVICES PERFORMED BY SUCH HARNESS RACE DRIVER IS RELATED TO HIS OR HER PERFORMANCE IN THE HARNESS RACE RATHER THAN THE NUMBER OF HOURS WORKED; (B) THE HARNESS RACE DRIVER IS FREE TO ACCEPT OR TO DECLINE ANY REQUEST TO DRIVE HORSES; (C) THE HARNESS RACE DRIVER IS FREE TO DRIVE HORSES FOR OWNERS AND/OR TRAINERS OF HIS OR HER CHOOSING AND/OR TO ENGAGE IN OTHER EMPLOYMENT; (D) THE HARNESS RACE DRIVER MAY UNILATERALLY DETERMINE WHEN AND WHERE HE OR SHE WILL WORK; (E) THE HARNESS RACE DRIVER IS RESPONSIBLE FOR HIS OR HER OWN EXPENSES; (F) THE HARNESS RACE DRIVER IS RESPONSIBLE FOR FURNISHING HIS OR HER OWN VEST, HELMET, WHIP AND SULKY; (G) THE HARNESS RACE DRIVER IS FREE TO TERMINATE HIS OR HER SERVICES AT ANY TIME; AND (H) THE PERSON OR ENTITY THAT RETAINS THE HARNESS RACE DRIVER TO PROVIDE SERVICES IS NOT TREATED BY SUCH PERSON OR ENTITY AS AN EMPLOYEE WITH RESPECT TO SUCH SERVICES FOR FEDERAL OR STATE TAX PURPOSES.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, A GROOM AND/OR CARETAKER 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) THE COMPENSATION (WHETHER OR NOT PAID IN CASH) 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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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 CARETAKER; (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 DESIGNATED 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 CARETAKER PROVIDING SERVICES TO SUCH 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, "EMPLOYEE" SHALL NOT INCLUDE THE SERVICES OF A SHIPPER OR TRANSPORTER OF A HARNESS RACE HORSE IF IT BE PROVEN THAT (A) SUBSTANTIALLY ALL OF THE 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 HIS OR HER CHOOSING AND/OR TO ENTER INTO OTHER EMPLOYMENT RELATIONSHIPS; (C) THE SHIPPER OR TRANSPORTER OF THE HARNESS RACE HORSE MAY UNILATERALLY DETERMINE WHEN AND WHERE HE OR SHE WILL WORK; (D) THE SHIPPER OR TRANSPORTER OF THE HARNESS RACE HORSE IS RESPONSIBLE FOR HIS OR HER OWN EXPENSES; (E) THE SHIPPER OR TRANSPORTER OF THE HARNESS RACE HORSE IS RESPONSIBLE FOR FURNISHING HIS OR HER OWN EQUIPMENT AND/OR VEHICLE; (F) THE SHIPPER OR TRANSPORTER OF THE HARNESS RACE HORSE IS FREE TO TERMINATE HIS OR HER SERVICES AT ANY TIME; AND (G) THE PARTY THAT RETAINS THE SERVICES OF 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, "EMPLOYEE" SHALL NOT INCLUDE THE SERVICES OF A FARRIER WHOSE SERVICES ARE RENDERED TO A HARNESS RACE HORSE, IF IT IS PROVEN THAT (A) SUBSTANTIALLY ALL OF THE 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; (B) THE FARRIER RETAINED TO PROVIDE SERVICES FOR THE HARNESS RACE HORSE IS FREE TO PROVIDE SERVICES TO CUSTOMERS OF HIS OR HER CHOOSING, INCLUDING PROVIDING FARRIER SERVICES TO ANY OTHER HARNESS RACE HORSE AND/OR TO ENTER INTO OTHER EMPLOYMENT RELATIONSHIPS; (C) THE FARRIER RETAINED TO PROVIDE SERVICES FOR THE HARNESS RACE HORSE MAY UNILATERALLY DETERMINE WHERE AND WHEN HE OR SHE WILL WORK; (D) THE FARRIER RETAINED TO PROVIDE SERVICES FOR THE HARNESS RACE HORSE IS RESPONSIBLE FOR HIS OR HER EXPENSES; (E) THE FARRIER RETAINED TO PROVIDE SERVICES FOR THE HARNESS RACE HORSE IS RESPONSIBLE FOR FURNISHING HIS OR HER OWN EQUIPMENT; (F) THE FARRIER RETAINED TO PROVIDE SERVICES TO THE HARNESS RACE HORSE IS FREE TO TERMINATE OR DECLINE TO PROVIDE HIS OR HER SERVICES AT ANY TIME; AND (G) THE PARTY THAT RETAINS THE SERVICES OF THE FARRIER DOES NOT

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

NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, THE TERM "EMPLOYEE" SHALL NOT INCLUDE THE SERVICES OF A VETERINARIAN RETAINED TO TREAT A HARNESS RACE HORSE IF IT BE PROVEN THAT (A) SUBSTANTIALLY ALL OF THE COMPENSATION (WHETHER OR NOT PAID IN CASH) FOR THE SERVICES RENDERED BY THE VETERINARIAN TO THE HARNESS RACE HORSE IS RELATED TO A FEE NEGOTIATED OR SOME OTHER TYPE OF AGREED UPON RATE AND NOT RELATED TO ACTUAL HOURS WORKED; (B) THE VETERINARIAN RETAINED TO PROVIDE SERVICES TO THE HARNESS RACE HORSE IS FREE TO PROVIDE HIS OR HER SERVICES TO CUSTOMERS OF HIS OR HER CHOOSING, INCLUDING PROVIDING VETERINARIAN SERVICES TO ANY OTHER HARNESS RACE HORSE AND/OR TO ENTER INTO OTHER EMPLOYMENT RELATIONSHIPS; (C) THE VETERINARIAN RETAINED TO PROVIDE SERVICES FOR THE HARNESS RACE HORSE MAY UNILATERALLY DETERMINE WHERE AND WHEN HE OR SHE WILL WORK; (D) THE VETERINARIAN RETAINED TO PROVIDE SERVICES TO THE HARNESS RACE HORSE IS RESPONSIBLE FOR HIS OR HER EXPENSES; (E) THE VETERINARIAN RETAINED TO PROVIDE SERVICES TO THE HARNESS RACE HORSE IS RESPONSIBLE FOR FURNISHING HIS OR HER OWN EQUIPMENT; (F) THE VETERINARIAN PROVIDING SERVICES TO THE HARNESS RACE HORSE IS FREE TO TERMINATE PROVIDING HIS OR HER SERVICES AT ANY TIME; AND (G) THE PARTY THAT RETAINS THE SERVICES OF THE VETERINARIAN DOES NOT TREAT HIM OR HER AS AN EMPLOYEE FOR FEDERAL AND STATE TAX PURPOSES WITH RESPECT TO HIS OR HER SERVICES PROVIDED TO THE HARNESS RACE HORSE.

S 2. This act shall take effect immediately.