

3701

2011-2012 Regular Sessions

I N   S E N A T E

March 2, 2011

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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

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

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(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 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 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 UNILATERALLY DETERMINE WHEN AND WHERE IT WILL WORK;

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

(E) THE SHIPPER OR TRANSPORTER OF THE HARNESS RACE HORSE IS RESPONSIBLE 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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 S 2. This act shall take effect immediately.