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2015-2016 Regular Sessions

I N   A S S E M B L Y

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Introduced by M. of A. PRETLOW -- read once and referred to the Committee on Racing and Wagering -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Racing and Wagering in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the racing, pari-mutuel wagering and breeding law and the workers' compensation law, in relation to the New York Jockey Injury Compensation Fund, Inc.

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

1     Section 1. Subdivision 6 of section 221 of the racing, pari-mutuel  
2     wagering and breeding law, as amended by chapter 325 of the laws of 2004  
3     and such section as renumbered by chapter 18 of the laws of 2008, is  
4     amended to read as follows:

5     6. (A) The fund shall secure workers' compensation insurance coverage  
6     on a blanket basis for the benefit of all jockeys, apprentice jockeys  
7     and exercise persons licensed pursuant to this article or article four  
8     of this chapter who are employees under section two of the workers'  
9     compensation law, AND MAY ELECT WITH THE APPROVAL OF THE GAMING COMMISSION, TO SECURE WORKERS' COMPENSATION INSURANCE FOR LICENSED EMPLOYEES  
10    OF LICENSED TRAINERS.

11  
12    (B) THE FUND MAY ELECT, WITH THE APPROVAL OF THE GAMING COMMISSION, TO  
13    SECURE WORKERS' COMPENSATION INSURANCE COVERAGE THROUGH A FORM OF SELF-  
14    INSURANCE, INCLUDING, WITHOUT LIMITATION, PURSUANT TO SUBDIVISION THREE  
15    OF SECTION FIFTY OF THE WORKERS' COMPENSATION LAW.

16    S 2. The fourth undesignated paragraph of subdivision 7 of section 221  
17    of the racing, pari-mutuel wagering and breeding law, as amended by  
18    chapter 18 of the laws of 2008, is amended to read as follows:

19    All amounts collected by a horsemen's bookkeeper pursuant to this  
20    section shall be transferred to the fund created under this section and

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

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1 shall be used by the fund to purchase workers' compensation insurance  
2 for jockeys, apprentice jockeys and exercise persons licensed pursuant  
3 to this article or article four of this chapter who are employees under  
4 section two of the workers' compensation law, AND AT THE ELECTION OF THE  
5 FUND, WITH THE APPROVAL OF THE GAMING COMMISSION, TO SECURE WORKERS'  
6 COMPENSATION INSURANCE FOR LICENSED EMPLOYEES OF LICENSED TRAINERS to  
7 pay for any of its liabilities under section fourteen-a of the workers'  
8 compensation law and to administer the workers' compensation program for  
9 such jockeys, apprentice jockeys [and], exercise persons AND, IF  
10 APPROVED, LICENSED EMPLOYEES OF LICENSED TRAINERS required by this  
11 section and the workers' compensation law.

12 S 3. Subdivision 12 of section 221 of the racing, pari-mutuel wagering  
13 and breeding law, as amended by chapter 325 of the laws of 2004 and such  
14 section as renumbered by chapter 18 of the laws of 2008, is amended to  
15 read as follows:

16 12. FOR PURPOSES OF THIS SECTION, THE TERM "LICENSED EMPLOYEES OF  
17 LICENSED TRAINERS" SHALL HAVE THE SAME MEANING AS SUBDIVISION  
18 TWENTY-FOUR OF SECTION TWO OF THE WORKERS' COMPENSATION LAW.

19 13. The fund and the state racing and wagering board shall have such  
20 power as is necessary to implement the provisions of this section.

21 S 4. Section 2 of the workers' compensation law is amended by adding a  
22 new subdivision 24 to read as follows:

23 24. "LICENSED EMPLOYEES OF LICENSED TRAINERS" MEANS ASSISTANT TRAIN-  
24 ERS, FOREMAN, WATCHMEN AND STABLE EMPLOYEES, INCLUDING GROOMS AND  
25 HOT-WALKERS.

26 S 5. The second undesignated paragraph of subdivision 3 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, "employer" shall mean, with respect to a jockey,  
31 apprentice jockey or exercise person licensed under article two or four  
32 of the racing, pari-mutuel wagering and breeding law, AND, AT THE  
33 ELECTION OF THE NEW YORK JOCKEY INJURY COMPENSATION FUND, INC. AND WITH  
34 THE APPROVAL OF THE GAMING COMMISSION, LICENSED EMPLOYEES OF LICENSED  
35 TRAINERS, performing services for an owner or trainer in connection with  
36 the training or racing of a horse at a facility of a racing association  
37 or corporation subject to article two or four of the racing, pari-mutuel  
38 wagering and breeding law and subject to the jurisdiction of the New  
39 York state [racing and wagering board] GAMING COMMISSION, The New York  
40 Jockey Injury Compensation Fund, Inc. and all owners and trainers who  
41 are licensed or required to be licensed under article two or four of the  
42 racing, pari-mutuel wagering and breeding law at the time of any occur-  
43 rence for which benefits are payable pursuant to this chapter in respect  
44 to the injury or death of such jockey, apprentice jockey [or], exercise  
45 person OR, IF APPROVED, A LICENSED EMPLOYEE OF A LICENSED TRAINER.

46 S 6. The fifth undesignated paragraph of subdivision 4 of section 2 of  
47 the workers' compensation law, as amended by chapter 169 of the laws of  
48 2007, is amended to read as follows:

49 Notwithstanding any other provision of this chapter, and for purposes  
50 of this chapter only, a jockey, apprentice jockey or exercise person  
51 licensed under article two or four of the racing, pari-mutuel wagering  
52 and breeding law AND, AT THE ELECTION OF THE NEW YORK JOCKEY INJURY  
53 COMPENSATION FUND, INC. AND WITH THE APPROVAL OF THE GAMING COMMISSION,  
54 LICENSED EMPLOYEES OF LICENSED TRAINERS, performing services for an  
55 owner or trainer in connection with the training or racing of a horse at  
56 a facility of a racing association or corporation subject to article two

1 or four of the racing, pari-mutuel wagering and breeding law and subject  
2 to the jurisdiction of the New York state [racing and wagering board]  
3 GAMING COMMISSION shall be regarded as the "employee" not solely of such  
4 owner or trainer, but shall instead be conclusively presumed to be the  
5 "employee" of The New York Jockey Injury Compensation Fund, Inc. and  
6 also of all owners and trainers who are licensed or required to be  
7 licensed under article two or four of the racing, pari-mutuel wagering  
8 and breeding law at the time of any occurrence for which benefits are  
9 payable pursuant to this chapter in respect of the injury or death of  
10 such jockey, apprentice jockey [or], exercise person OR, IF APPROVED, A  
11 LICENSED EMPLOYEE OF A LICENSED TRAINER.

12 S 7. The third undesignated paragraph of subdivision 5 of section 2 of  
13 the workers' compensation law, as amended by chapter 392 of the laws of  
14 2008, is amended to read as follows:

15 Notwithstanding any other provision of this chapter, and for purposes  
16 of this chapter only, a jockey, apprentice jockey or exercise person  
17 licensed under article two or four of the racing, pari-mutuel wagering  
18 and breeding law AND, AT THE ELECTION OF THE NEW YORK JOCKEY INJURY  
19 COMPENSATION FUND, INC. AND WITH THE APPROVAL OF THE GAMING COMMISSION,  
20 LICENSED EMPLOYEES OF LICENSED TRAINERS, performing services for an  
21 owner or trainer in connection with the training or racing of a horse at  
22 a facility of a racing association or corporation subject to article two  
23 or four of the racing, pari-mutuel wagering and breeding law and subject  
24 to the jurisdiction of the New York state [racing and wagering board]  
25 GAMING COMMISSION shall be regarded as in the "employment" not solely of  
26 such owner and trainer, but shall instead be conclusively presumed to be  
27 in the "employment" of The New York Jockey Injury Compensation Fund,  
28 Inc. and of all owners and trainers who are licensed or required to be  
29 licensed under article two or four of the racing, pari-mutuel wagering  
30 and breeding law, at the time of any occurrence for which benefits are  
31 payable pursuant to this chapter in respect of the injury or death of  
32 such jockey, apprentice jockey [or], exercise person OR, IF APPROVED, A  
33 LICENSED EMPLOYEE OF A LICENSED TRAINER. For the purpose of this chap-  
34 ter only, whether a livery driver's performance of covered services, as  
35 those terms are defined in article six-G of the executive law, consti-  
36 tutes "employment" shall be determined in accordance with section eigh-  
37 teen-c of this chapter.

38 S 8. The opening paragraph of section 11 of the workers' compensation  
39 law, as amended by chapter 169 of the laws of 2007, is amended to read  
40 as follows:

41 The liability of an employer prescribed by the last preceding section  
42 shall be exclusive and in place of any other liability whatsoever, to  
43 such employee, his or her personal representatives, spouse, parents,  
44 dependents, distributees, or any person otherwise entitled to recover  
45 damages, contribution or indemnity, at common law or otherwise, on  
46 account of such injury or death or liability arising therefrom, except  
47 that if an employer fails to secure the payment of compensation for his  
48 or her injured employees and their dependents as provided in section  
49 fifty of this chapter, an injured employee, or his or her legal repre-  
50 sentative in case of death results from the injury, may, at his or her  
51 option, elect to claim compensation under this chapter, or to maintain  
52 an action in the courts for damages on account of such injury; and in  
53 such an action it shall not be necessary to plead or prove freedom from  
54 contributory negligence nor may the defendant plead as a defense that  
55 the injury was caused by the negligence of a fellow servant nor that the  
56 employee assumed the risk of his or her employment, nor that the injury

1 was due to the contributory negligence of the employee. The liability  
2 under this chapter of The New York Jockey Injury Compensation Fund, Inc.  
3 created under section two hundred [thirteen-a] TWENTY-ONE of the racing,  
4 pari-mutuel wagering and breeding law shall be limited to the provision  
5 of workers' compensation coverage to jockeys, apprentice jockeys [and],  
6 exercise persons AND, AT THE ELECTION OF THE NEW YORK JOCKEY INJURY  
7 COMPENSATION FUND, INC. AND WITH THE APPROVAL OF THE GAMING COMMISSION,  
8 A LICENSED EMPLOYEE OF A LICENSED TRAINER licensed under article two or  
9 four of the racing, pari-mutuel wagering and breeding law and any statu-  
10 tory penalties resulting from the failure to provide such coverage.

11 S 9. Subdivision 4 of section 14-a of the workers' compensation law,  
12 as amended by chapter 169 of the laws of 2007, is amended to read as  
13 follows:

14 4. With respect to a jockey, apprentice jockey or exercise person  
15 licensed under article two or four of the racing, pari-mutuel wagering  
16 and breeding law AND, AT THE ELECTION OF THE NEW YORK JOCKEY INJURY  
17 COMPENSATION FUND, INC. AND WITH THE APPROVAL OF THE GAMING COMMISSION,  
18 A LICENSED EMPLOYEE OF A LICENSED TRAINER who, pursuant to section two  
19 of this chapter, is an employee of all owners and trainers licensed or  
20 required to be licensed under article two or four of the racing, pari-  
21 mutuel wagering and breeding law and The New York Jockey Injury Compen-  
22 sation Fund, Inc., the owner or trainer for whom such jockey, apprentice  
23 jockey [or], exercise person OR, IF APPROVED, A LICENSED EMPLOYEE OF A  
24 LICENSED TRAINER was performing services at the time of the accident  
25 shall be solely responsible for the double payments described in subdi-  
26 vision one of this section, to the extent that such payments exceed any  
27 amounts otherwise payable with respect to such jockey, apprentice jockey  
28 [or], exercise person OR, IF APPROVED, A LICENSED EMPLOYEE OF A LICENSED  
29 TRAINER under any other section of this chapter, and the New York Jockey  
30 Injury Compensation Fund, Inc. shall have no responsibility for such  
31 excess payments, unless there shall be a failure of the responsible  
32 owner or trainer to pay such award within the time provided under this  
33 chapter. In the event of such failure to pay and the board requires the  
34 fund to pay the award on behalf of such owner or trainer who has been  
35 found to have violated this section, the fund shall be entitled to an  
36 award against such owner or trainer for the amount so paid which shall  
37 be collected in the same manner as an award of compensation.

38 S 10. Section 18-a of the workers' compensation law, as amended by  
39 chapter 169 of the laws of 2007, is amended to read as follows:

40 S 18-a. Notice: The New York Jockey Injury Compensation Fund, Inc.  
41 Wherever in this chapter it shall be required that notice be given to an  
42 employer, except for claims involving section fourteen-a of the workers'  
43 compensation law such notice requirement shall be deemed satisfied by  
44 giving notice to the New York Jockey Injury Compensation Fund, Inc., in  
45 connection with an injury to a jockey, apprentice jockey or exercise  
46 person licensed under article two or four of the racing, pari-mutuel  
47 wagering and breeding law AND, AT THE ELECTION OF THE NEW YORK JOCKEY  
48 INJURY COMPENSATION FUND, INC. AND WITH THE APPROVAL OF THE GAMING  
49 COMMISSION, A LICENSED EMPLOYEE OF A LICENSED TRAINER, who, pursuant to  
50 section two of this chapter, is an employee of all owners and trainers  
51 licensed or required to be licensed under article two or four of the  
52 racing, pari-mutuel wagering and breeding law and of the fund. In a  
53 claim involving section fourteen-a of the workers' compensation law such  
54 required notice shall be given to the employing owner and/or trainer of  
55 the fund.

1 S 11. Subdivision 8 of section 50 of the workers' compensation law, as  
2 amended by chapter 169 of the laws of 2007, is amended to read as  
3 follows:

4 8. The requirements of section ten of this chapter regarding the  
5 provision of workers' compensation insurance as to owners and trainers  
6 governed by the racing, pari-mutuel wagering and breeding law who are  
7 employers under section two of this chapter are satisfied in full by  
8 compliance with the requirements imposed upon owners and trainers by  
9 section two hundred [thirteen-a] TWENTY-ONE of the racing, pari-mutuel  
10 wagering and breeding law, provided that in the event double compen-  
11 sation, death benefits, or awards are payable with respect to an injured  
12 employee under section fourteen-a of this chapter, the owner or trainer  
13 for whom the injured jockey, apprentice jockey or exercise person  
14 licensed under article two or four of the racing, pari-mutuel wagering  
15 and breeding law AND, AT THE ELECTION OF THE NEW YORK JOCKEY INJURY  
16 COMPENSATION FUND, INC. AND WITH THE APPROVAL OF THE GAMING COMMISSION,  
17 A LICENSED EMPLOYEE OF A LICENSED TRAINER, is performing services as a  
18 jockey, apprentice jockey or exercise person so licensed at the time of  
19 the accident OR, IF APPROVED, A LICENSED EMPLOYEE OF A LICENSED TRAINER  
20 shall bear the sole responsibility for the amount payable pursuant to  
21 such section fourteen-a in excess of the amount otherwise payable under  
22 this chapter, unless there shall be a failure of the responsible owner  
23 or trainer to pay such award within the time provided under this chap-  
24 ter. In the event of such failure to pay and the board requires the fund  
25 to pay the award on behalf of such owner or trainer who has been found  
26 to have violated section fourteen-a OF THIS CHAPTER, the fund shall be  
27 entitled to an award against such owner or trainer for the amount so  
28 paid which shall be collected in the same manner as an award of compen-  
29 sation. Coverage directly procured by any owner or trainer for the  
30 purpose of satisfying the requirements of this chapter with respect to  
31 employees of the owner or trainer shall not include coverage on any  
32 jockey, apprentice jockey or exercise person licensed under article two  
33 or four of the racing, pari-mutuel wagering and breeding law AND, AT THE  
34 ELECTION OF THE NEW YORK JOCKEY INJURY COMPENSATION FUND, INC. AND WITH  
35 THE APPROVAL OF THE GAMING COMMISSION, A LICENSED EMPLOYEE OF A LICENSED  
36 TRAINER, to the extent that such jockey, apprentice jockey [or], exer-  
37 cise person OR, IF APPROVED, A LICENSED EMPLOYEE OF A LICENSED TRAINER  
38 is also covered under coverage procured by The New York Jockey Injury  
39 Compensation Fund, Inc. pursuant to the requirements of section two  
40 hundred [thirteen-a] TWENTY-ONE of the racing, pari-mutuel wagering and  
41 breeding law, and to that extent, coverage procured by the fund pursuant  
42 to the requirements of the racing, pari-mutuel wagering and breeding law  
43 shall be considered primary.

44 S 12. This act shall take effect immediately.