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

5541--B

2015-2016 Regular Sessions

I N S E N A T E

May 14, 2015

Introduced by Sens. BONACIC, MARCHIONE -- read twice and ordered printed, and when printed to be committed to the Committee on Racing, Gaming and Wagering -- reported favorably from said committee and committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Racing, Gaming and Wagering in accordance with Senate Rule 6, sec. 8 -- 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:

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

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

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

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

LBD11066-07-6

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

All amounts collected by a horsemen's bookkeeper pursuant to this section shall be transferred to the fund created under this section and shall be used by the fund to purchase workers' compensation insurance for jockeys, apprentice jockeys and exercise persons licensed pursuant to this article or article four of this chapter who are employees under section two of the workers' compensation law, AND AT THE ELECTION OF THE FUND, WITH THE APPROVAL OF THE GAMING COMMISSION, TO SECURE WORKERS' COMPENSATION INSURANCE FOR LICENSED EMPLOYEES OF LICENSED TRAINERS to pay for any of its liabilities under section fourteen-a of the workers' compensation law and to administer the workers' compensation program for such jockeys, apprentice jockeys [and], exercise persons AND, IF APPROVED, LICENSED EMPLOYEES OF LICENSED TRAINERS required by this section and the workers' compensation law.

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

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

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

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

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

S 5. The second undesignated paragraph of 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:

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, AND, AT THE ELECTION OF THE NEW YORK JOCKEY INJURY COMPENSATION FUND, INC. AND WITH THE APPROVAL OF THE GAMING COMMISSION, LICENSED EMPLOYEES OF LICENSED TRAINERS, 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] GAMING COMMISSION, 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 OR, IF APPROVED, A LICENSED EMPLOYEE OF A LICENSED TRAINER.

S 6. The fifth undesignated paragraph of subdivision 4 of section 2 of the workers' compensation law, as amended by chapter 169 of the laws of 2007, 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 AND, AT THE ELECTION OF THE NEW YORK JOCKEY INJURY COMPENSATION FUND, INC. AND WITH THE APPROVAL OF THE GAMING COMMISSION, LICENSED EMPLOYEES OF LICENSED TRAINERS, 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] GAMING COMMISSION shall be regarded as the "employee" not solely of such owner or trainer, but shall instead be conclusively presumed to be the "employee" of The New York Jockey Injury Compensation Fund, Inc. and also 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 OR, IF APPROVED, A LICENSED EMPLOYEE OF A LICENSED TRAINER.

S 7. 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 AND, AT THE ELECTION OF THE NEW YORK JOCKEY INJURY COMPENSATION FUND, INC. AND WITH THE APPROVAL OF THE GAMING COMMISSION, LICENSED EMPLOYEES OF LICENSED TRAINERS, 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] GAMING COMMISSION 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 OR, IF APPROVED, A LICENSED EMPLOYEE OF A LICENSED TRAINER. 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 section eighteen-c of this chapter.

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

The liability of an employer prescribed by the last preceding section shall be exclusive and in place of any other liability whatsoever, to such employee, his or her personal representatives, spouse, parents, dependents, distributees, or any person otherwise entitled to recover damages, contribution or indemnity, at common law or otherwise, on account of such injury or death or liability arising therefrom, except that if an employer fails to secure the payment of compensation for his or her injured employees and their dependents as provided in section fifty of this chapter, an injured employee, or his or her legal representative in case of death results from the injury, may, at his or her option, elect to claim compensation under this chapter, or to maintain

an action in the courts for damages on account of such injury; and in such an action it shall not be necessary to plead or prove freedom from contributory negligence nor may the defendant plead as a defense that the injury was caused by the negligence of a fellow servant nor that the employee assumed the risk of his or her employment, nor that the injury was due to the contributory negligence of the employee. The liability under this chapter of The New York Jockey Injury Compensation Fund, Inc. created under section two hundred [thirteen-a] TWENTY-ONE of the racing, pari-mutuel wagering and breeding law shall be limited to the provision of workers' compensation coverage to jockeys, apprentice jockeys [and], exercise persons AND, AT THE ELECTION OF THE NEW YORK JOCKEY INJURY COMPENSATION FUND, INC. AND WITH THE APPROVAL OF THE GAMING COMMISSION, A LICENSED EMPLOYEE OF A LICENSED TRAINER licensed under article two or four of the racing, pari-mutuel wagering and breeding law and any statutory penalties resulting from the failure to provide such coverage.

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

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

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

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

racing, pari-mutuel wagering and breeding law and of the fund. In a claim involving section fourteen-a of the workers' compensation law such required notice shall be given to the employing owner and/or trainer of the fund.

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

8. The requirements of section ten of this chapter regarding the provision of workers' compensation insurance as to owners and trainers governed by the racing, pari-mutuel wagering and breeding law who are employers under section two of this chapter are satisfied in full by compliance with the requirements imposed upon owners and trainers by section two hundred [thirteen-a] TWENTY-ONE of the racing, pari-mutuel wagering and breeding law, provided that in the event double compensation, death benefits, or awards are payable with respect to an injured employee under section fourteen-a of this chapter, the owner or trainer for whom the injured jockey, apprentice jockey or exercise person licensed under article two or four of the racing, pari-mutuel wagering and breeding law AND, AT THE ELECTION OF THE NEW YORK JOCKEY INJURY COMPENSATION FUND, INC. AND WITH THE APPROVAL OF THE GAMING COMMISSION, A LICENSED EMPLOYEE OF A LICENSED TRAINER, is performing services as a jockey, apprentice jockey or exercise person so licensed at the time of the accident OR, IF APPROVED, A LICENSED EMPLOYEE OF A LICENSED TRAINER shall bear the sole responsibility for the amount payable pursuant to such section fourteen-a in excess of the amount otherwise payable under this chapter, unless there shall be a failure of the responsible owner or trainer to pay such award within the time provided under this chapter. In the event of such failure to pay and the board requires the fund to pay the award on behalf of such owner or trainer who has been found to have violated section fourteen-a OF THIS CHAPTER, the fund shall be entitled to an award against such owner or trainer for the amount so paid which shall be collected in the same manner as an award of compensation. Coverage directly procured by any owner or trainer for the purpose of satisfying the requirements of this chapter with respect to employees of the owner or trainer shall not include coverage on any jockey, apprentice jockey or exercise person licensed under article two or four of the racing, pari-mutuel wagering and breeding law AND, AT THE ELECTION OF THE NEW YORK JOCKEY INJURY COMPENSATION FUND, INC. AND WITH THE APPROVAL OF THE GAMING COMMISSION, A LICENSED EMPLOYEE OF A LICENSED TRAINER, to the extent that such jockey, apprentice jockey [or], exercise person OR, IF APPROVED, A LICENSED EMPLOYEE OF A LICENSED TRAINER is also covered under coverage procured by The New York Jockey Injury Compensation Fund, Inc. pursuant to the requirements of section two hundred [thirteen-a] TWENTY-ONE of the racing, pari-mutuel wagering and breeding law, and to that extent, coverage procured by the fund pursuant to the requirements of the racing, pari-mutuel wagering and breeding law shall be considered primary.

S 12. This act shall take effect immediately.