

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:

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,
10 TO SECURE WORKERS' COMPENSATION INSURANCE FOR LICENSED EMPLOYEES
11 OF LICENSED TRAINERS.
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.

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

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

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

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

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

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

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

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

31 S 5. The second undesignated paragraph of subdivision 3 of section 2
32 of the workers' compensation law, as amended by chapter 392 of the laws
33 of 2008, is amended to read as follows:

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

51 S 6. The fifth undesignated paragraph of subdivision 4 of section 2 of
52 the workers' compensation law, as amended by chapter 169 of the laws of
53 2007, is amended to read as follows:

54 Notwithstanding any other provision of this chapter, and for purposes
55 of this chapter only, a jockey, apprentice jockey or exercise person
56 licensed under article two or four of the racing, pari-mutuel wagering

1 and breeding law AND, AT THE ELECTION OF THE NEW YORK JOCKEY INJURY
2 COMPENSATION FUND, INC. AND WITH THE APPROVAL OF THE GAMING COMMISSION,
3 LICENSED EMPLOYEES OF LICENSED TRAINERS, performing services for an
4 owner or trainer in connection with the training or racing of a horse at
5 a facility of a racing association or corporation subject to article two
6 or four of the racing, pari-mutuel wagering and breeding law and subject
7 to the jurisdiction of the New York state [racing and wagering board]
8 GAMING COMMISSION shall be regarded as the "employee" not solely of such
9 owner or trainer, but shall instead be conclusively presumed to be the
10 "employee" of The New York Jockey Injury Compensation Fund, Inc. and
11 also of all owners and trainers who are licensed or required to be
12 licensed under article two or four of the racing, pari-mutuel wagering
13 and breeding law at the time of any occurrence for which benefits are
14 payable pursuant to this chapter in respect of the injury or death of
15 such jockey, apprentice jockey [or], exercise person OR, IF APPROVED, A
16 LICENSED EMPLOYEE OF A LICENSED TRAINER.

17 S 7. The third undesignated paragraph of subdivision 5 of section 2 of
18 the workers' compensation law, as amended by chapter 392 of the laws of
19 2008, is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

48 S 12. This act shall take effect immediately.