

7731

2015-2016 Regular Sessions

I N   A S S E M B L Y

May 26, 2015

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Introduced by M. of A. PRETLOW -- read once and referred to the Committee on Racing and Wagering

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. [The] (A) PURSUANT TO THE ELECTION AUTHORIZED IN PARAGRAPH (B) OF  
6     THIS SUBDIVISION, THE fund shall secure workers' compensation insurance  
7     coverage on a blanket basis for the benefit of EITHER (I) all jockeys,  
8     apprentice jockeys and exercise persons, OR (II) ALL JOCKEYS AND APPREN-  
9     TICE JOCKEYS licensed pursuant to this article or article four of this  
10    chapter who are employees under section two of the workers' compensation  
11    law.  
12    (B) THE FUND MAY, IN ITS SOLE DISCRETION, ELECT TO SECURE WORKERS'  
13    COMPENSATION INSURANCE ON A BLANKET BASIS FOR THE BENEFIT OF EITHER OF  
14    THE TWO CLASSES IDENTIFIED IN SUBPARAGRAPH (I) OR (II) OF PARAGRAPH (A)  
15    OF THIS SUBDIVISION, AND IT SHALL PROVIDE THE WORKERS' COMPENSATION  
16    BOARD WITH NOTICE WITHIN FIFTEEN DAYS OF MAKING SUCH ELECTION.  
17    S 2. The fourth undesignated paragraph of subdivision 7 of section 221  
18    of the racing, pari-mutuel wagering and breeding law, as amended by  
19    chapter 18 of the laws of 2008, is amended to read as follows:  
20    All amounts collected by a horsemen's bookkeeper pursuant to this  
21    section shall be transferred to the fund created under this section and  
22    shall be used by the fund to purchase workers' compensation insurance  
23    for EITHER (I) ALL jockeys, apprentice jockeys and exercise persons OR  
24    (II) ALL JOCKEYS AND ASSISTANT JOCKEYS AS AUTHORIZED IN SUBDIVISION SIX

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

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1 OF THIS SECTION licensed pursuant to this article or article four of  
2 this chapter who are employees under section two of the workers' compen-  
3 sation law, to pay for any of its liabilities under section fourteen-a  
4 of the workers' compensation law and to administer the workers' compen-  
5 sation program for EITHER (I) such jockeys, apprentice jockeys and exer-  
6 cise persons, OR (II) SUCH JOCKEYS AND ASSISTANT JOCKEYS, AS THE CASE  
7 MAY BE, required by this section and the workers' compensation law.

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

11 Notwithstanding any other provision of this chapter and for purposes  
12 of this chapter only, "employer" shall mean, with respect to a jockey[,]  
13 OR apprentice jockey or exercise person licensed under article two or  
14 four of the racing, pari-mutuel wagering and breeding law performing  
15 services for an owner or trainer in connection with the training or  
16 racing of a horse at a facility of a racing association or corporation  
17 subject to article two or four of the racing, pari-mutuel wagering and  
18 breeding law and subject to the jurisdiction of the New York state  
19 racing and wagering board, The New York Jockey Injury Compensation Fund,  
20 Inc. and all owners and trainers who are licensed or required to be  
21 licensed under article two or four of the racing, pari-mutuel wagering  
22 and breeding law at the time of any occurrence for which benefits are  
23 payable pursuant to this chapter in respect to the injury or death of  
24 such jockey[,] OR apprentice jockey or exercise person PROVIDED, HOWEV-  
25 ER, THAT WHERE THE NEW YORK JOCKEY INJURY COMPENSATION FUND MAKES THE  
26 ELECTION AS AUTHORIZED IN SUBDIVISION SIX OF SECTION TWO HUNDRED TWEN-  
27 TY-ONE OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW TO SECURE  
28 WORKERS' COMPENSATION INSURANCE ONLY FOR JOCKEYS AND APPRENTICE JOCKEYS  
29 "EMPLOYER" SHALL MEAN, WITH RESPECT TO AN EXERCISE PERSON LICENSED UNDER  
30 ARTICLE TWO OR FOUR OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW  
31 PERFORMING SERVICES FOR AN OWNER OR TRAINER IN CONNECTION WITH THE  
32 TRAINING OR RACING OF A HORSE AT A FACILITY OF A RACING ASSOCIATION OR  
33 CORPORATION SUBJECT TO ARTICLE TWO OR FOUR OF THE RACING, PARI-MUTUEL  
34 WAGERING AND BREEDING LAW AND SUBJECT TO THE JURISDICTION OF THE NEW  
35 YORK STATE RACING AND WAGERING BOARD, THE OWNER AND TRAINER WHO ARE  
36 LICENSED OR REQUIRED TO BE LICENSED UNDER ARTICLE TWO OR FOUR OF THE  
37 RACING, PARI-MUTUEL WAGERING AND BREEDING LAW AT THE TIME OF ANY OCCUR-  
38 RENCE FOR WHICH BENEFITS ARE PAYABLE PURSUANT TO THIS CHAPTER IN RESPECT  
39 TO THE INJURY OR DEATH OF SUCH EXERCISE PERSON.

40 S 4. The fifth undesignated paragraph of subdivision 4 of section 2 of  
41 the workers' compensation law, as added by chapter 169 of the laws of  
42 2007, is amended to read as follows:

43 Notwithstanding any other provision of this chapter, and for purposes  
44 of this chapter only, a jockey, apprentice jockey or exercise person  
45 licensed under article two or four of the racing, pari-mutuel wagering  
46 and breeding law performing services for an owner or trainer in  
47 connection with the training or racing of a horse at a facility of a  
48 racing association or corporation subject to article two or four of the  
49 racing, pari-mutuel wagering and breeding law and subject to the juris-  
50 diction of the New York state racing and wagering board shall be  
51 regarded as the "employee" not solely of such owner or trainer, but  
52 shall instead be conclusively presumed to be the "employee" of The New  
53 York Jockey Injury Compensation Fund, Inc. and also of all owners and  
54 trainers who are licensed or required to be licensed under article two  
55 or four of the racing, pari-mutuel wagering and breeding law at the time  
56 of any occurrence for which benefits are payable pursuant to this chap-

1 ter in respect of the injury or death of such jockey, apprentice jockey  
2 or exercise person PROVIDED, HOWEVER, THAT WHERE THE NEW YORK JOCKEY  
3 INJURY COMPENSATION FUND MAKES THE ELECTION AS AUTHORIZED IN SUBDIVISION  
4 SIX OF SECTION TWO HUNDRED TWENTY-ONE OF THE RACING, PARI-MUTUEL WAGER-  
5 ING AND BREEDING LAW TO SECURE WORKERS' COMPENSATION INSURANCE ONLY FOR  
6 JOCKEYS AND APPRENTICE JOCKEYS, WITH RESPECT TO AN EXERCISE PERSON  
7 LICENSED UNDER ARTICLE TWO OR FOUR OF THE RACING, PARI-MUTUEL WAGERING  
8 AND BREEDING LAW PERFORMING SERVICES FOR AN OWNER OR TRAINER IN  
9 CONNECTION WITH THE TRAINING OR RACING OF A HORSE AT A FACILITY OF A  
10 RACING ASSOCIATION OR CORPORATION SUBJECT TO ARTICLE TWO OR FOUR OF THE  
11 RACING, PARI-MUTUEL WAGERING AND BREEDING LAW AND SUBJECT TO THE JURIS-  
12 DICTION OF THE NEW YORK STATE RACING AND WAGERING BOARD, SUCH EXERCISE  
13 PERSON SHALL BE REGARDED AS THE "EMPLOYEE" OF THE OWNER AND TRAINER WHO  
14 ARE LICENSED OR REQUIRED TO BE LICENSED UNDER ARTICLE TWO OR FOUR OF THE  
15 RACING, PARI-MUTUEL WAGERING AND BREEDING LAW AT THE TIME OF ANY OCCUR-  
16 RENCE FOR WHICH BENEFITS ARE PAYABLE PURSUANT TO THIS CHAPTER IN RESPECT  
17 TO THE INJURY OR DEATH OF SUCH EXERCISE PERSON.

18 S 5. The third undesignated paragraph of subdivision 5 of section 2 of  
19 the workers' compensation law, as added by chapter 392 of the laws of  
20 2008, is amended to read as follows:

21 Notwithstanding any other provision of this chapter, and for purposes  
22 of this chapter only, a jockey, apprentice jockey or exercise person  
23 licensed under article two or four of the racing, pari-mutuel wagering  
24 and breeding law performing services for an owner or trainer in  
25 connection with the training or racing of a horse at a facility of a  
26 racing association or corporation subject to article two or four of the  
27 racing, pari-mutuel wagering and breeding law and subject to the juris-  
28 diction of the New York state racing and wagering board shall be  
29 regarded as in the "employment" not solely of such owner and trainer,  
30 but shall instead be conclusively presumed to be in the "employment" of  
31 The New York Jockey Injury Compensation Fund, Inc. and of all owners and  
32 trainers who are licensed or required to be licensed under article two  
33 or four of the racing, pari-mutuel wagering and breeding law, at the  
34 time of any occurrence for which benefits are payable pursuant to this  
35 chapter in respect of the injury or death of such jockey, apprentice  
36 jockey or exercise person, PROVIDED, HOWEVER, THAT WHERE THE NEW YORK  
37 JOCKEY INJURY COMPENSATION FUND MAKES THE ELECTION AS AUTHORIZED IN  
38 SUBDIVISION SIX OF SECTION TWO HUNDRED TWENTY-ONE OF THE RACING,  
39 PARI-MUTUEL WAGERING AND BREEDING LAW TO SECURE WORKERS' COMPENSATION  
40 INSURANCE ONLY FOR JOCKEYS AND APPRENTICE JOCKEYS AN EXERCISE PERSON  
41 LICENSED UNDER ARTICLE TWO OR FOUR OF THE RACING, PARI-MUTUEL WAGERING  
42 AND BREEDING LAW PERFORMING SERVICES FOR AN OWNER OR TRAINER IN  
43 CONNECTION WITH THE TRAINING OR RACING OF A HORSE AT A FACILITY OF A  
44 RACING ASSOCIATION OR CORPORATION SUBJECT TO ARTICLE TWO OR FOUR OF THE  
45 RACING, PARI-MUTUEL WAGERING AND BREEDING LAW AND SUBJECT TO THE JURIS-  
46 DICTION OF THE NEW YORK STATE RACING AND WAGERING BOARD, SHALL BE  
47 REGARDED AS IN THE "EMPLOYMENT" OF THE OWNER AND TRAINER WHO ARE  
48 LICENSED OR REQUIRED TO BE LICENSED UNDER ARTICLE TWO OR FOUR OF THE  
49 RACING, PARI-MUTUEL WAGERING AND BREEDING LAW AT THE TIME OF ANY OCCUR-  
50 RENCE FOR WHICH BENEFITS ARE PAYABLE PURSUANT TO THIS CHAPTER IN RESPECT  
51 TO THE INJURY OR DEATH OF SUCH EXERCISE PERSON. For the purpose of this  
52 chapter only, whether a livery driver's performance of covered services,  
53 as those terms are defined in article six-G of the executive law,  
54 constitutes "employment" shall be determined in accordance with section  
55 eighteen-c of this chapter.

1 S 6. The opening paragraph of section 11 of the workers' compensation  
2 law, as amended by chapter 169 of the laws of 2007, is amended to read  
3 as follows:

4 The liability of an employer prescribed by the last preceding section  
5 shall be exclusive and in place of any other liability whatsoever, to  
6 such employee, his or her personal representatives, spouse, parents,  
7 dependents, distributees, or any person otherwise entitled to recover  
8 damages, contribution or indemnity, at common law or otherwise, on  
9 account of such injury or death or liability arising therefrom, except  
10 that if an employer fails to secure the payment of compensation for his  
11 or her injured employees and their dependents as provided in section  
12 fifty of this chapter, an injured employee, or his or her legal repre-  
13 sentative in case of death results from the injury, may, at his or her  
14 option, elect to claim compensation under this chapter, or to maintain  
15 an action in the courts for damages on account of such injury; and in  
16 such an action it shall not be necessary to plead or prove freedom from  
17 contributory negligence nor may the defendant plead as a defense that  
18 the injury was caused by the negligence of a fellow servant nor that the  
19 employee assumed the risk of his or her employment, nor that the injury  
20 was due to the contributory negligence of the employee. The liability  
21 under this chapter of The New York Jockey Injury Compensation Fund, Inc.  
22 created under section two hundred [thirteen-a] TWENTY-ONE of the racing,  
23 pari-mutuel wagering and breeding law shall be limited to the provision  
24 of workers' compensation coverage to jockeys, apprentice jockeys and  
25 exercise persons OR JOCKEYS AND APPRENTICE JOCKEYS AS licensed under  
26 article two or four of the racing, pari-mutuel wagering and breeding law  
27 and any statutory penalties resulting from the failure to provide such  
28 coverage DEPENDENT UPON THE ELECTION MADE BY SUCH FUND PURSUANT TO  
29 SUBDIVISION SIX OF SECTION TWO HUNDRED TWENTY-ONE OF THE RACING,  
30 PARI-MUTUEL WAGERING AND BREEDING LAW.

31 S 7. Subdivision 4 of section 14-a of the workers' compensation law,  
32 as amended by chapter 169 of the laws of 2007, is amended to read as  
33 follows:

34 4. [With] WHERE THE ELECTION MADE BY THE NEW YORK JOCKEY INJURY  
35 COMPENSATION FUND IS TO PROVIDE WORKERS' COMPENSATION FOR JOCKEYS,  
36 APPRENTICE JOCKEYS AND EXERCISE PERSONS, WITH respect to a jockey,  
37 apprentice jockey or exercise person licensed under article two or four  
38 of the racing, pari-mutuel wagering and breeding law who, pursuant to  
39 section two of this chapter, is an employee of all owners and trainers  
40 licensed or required to be licensed under article two or four of the  
41 racing, pari-mutuel wagering and breeding law and The New York Jockey  
42 Injury Compensation Fund, Inc., the owner or trainer for whom such jock-  
43 ey, apprentice jockey or exercise person was performing services at the  
44 time of the accident shall be solely responsible for the double payments  
45 described in subdivision one of this section, to the extent that such  
46 payments exceed any amounts otherwise payable with respect to such jock-  
47 ey, apprentice jockey or exercise person under any other section of this  
48 chapter, and the New York Jockey Injury Compensation Fund, Inc. shall  
49 have no responsibility for such excess payments, unless there shall be a  
50 failure of the responsible owner or trainer to pay such award within the  
51 time provided under this chapter. In the event of such failure to pay  
52 and the board requires the fund to pay the award on behalf of such owner  
53 or trainer who has been found to have violated this section, the fund  
54 shall be entitled to an award against such owner or trainer for the  
55 amount so paid which shall be collected in the same manner as an award  
56 of compensation.

1 S 8. Section 18-a of the workers' compensation law, as added by chap-  
2 ter 169 of the laws of 2007, is amended to read as follows:

3 S 18-a. Notice: The New York Jockey Injury Compensation Fund, Inc.  
4 Wherever in this chapter it shall be required that notice be given to an  
5 employer, except for claims involving section fourteen-a of the workers'  
6 compensation law such notice requirement shall be deemed satisfied by  
7 giving notice to the New York Jockey Injury Compensation Fund, Inc., in  
8 connection with an injury to a jockey, apprentice jockey or exercise  
9 person licensed under article two or four of the racing, pari-mutuel  
10 wagering and breeding law who, pursuant to section two of this chapter,  
11 is an employee of all owners and trainers licensed or required to be  
12 licensed under article two or four of the racing, pari-mutuel wagering  
13 and breeding law and of the fund WHERE THE ELECTION HAS BEEN MADE BY THE  
14 NEW YORK JOCKEY INJURY COMPENSATION FUND TO PROVIDE WORKERS' COMPEN-  
15 SATION TO ALL JOCKEYS, APPRENTICE JOCKEYS AND EXERCISE PERSONS. In a  
16 claim involving section fourteen-a of the workers' compensation law AND  
17 WHERE SUCH ELECTION HAS BEEN MADE TO PROVIDE WORKERS' COMPENSATION ONLY  
18 TO JOCKEYS AND APPRENTICE JOCKEYS, such required notice shall be given  
19 to the employing owner and/or trainer of the fund.

20 S 9. Subdivision 8 of section 50 of the workers' compensation law, as  
21 amended by chapter 169 of the laws of 2007, is amended to read as  
22 follows:

23 8. [The] WHERE THE ELECTION MADE BY THE NEW YORK JOCKEY INJURY COMPEN-  
24 SATION FUND IS TO PROVIDE WORKERS' COMPENSATION FOR JOCKEYS, APPRENTICE  
25 JOCKEYS AND EXERCISE PERSONS, THE requirements of section ten of this  
26 chapter regarding the provision of workers' compensation insurance as to  
27 owners and trainers governed by the racing, pari-mutuel wagering and  
28 breeding law who are employers under section two of this chapter are  
29 satisfied in full by compliance with the requirements imposed upon  
30 owners and trainers by section two hundred [thirteen-a] TWENTY-ONE of  
31 the racing, pari-mutuel wagering and breeding law, provided that in the  
32 event double compensation, death benefits, or awards are payable with  
33 respect to an injured employee under section fourteen-a of this chapter,  
34 the owner or trainer for whom the injured jockey, apprentice jockey or  
35 exercise person licensed under article two or four of the racing, pari-  
36 mutuel wagering and breeding law is performing services as a jockey,  
37 apprentice jockey or exercise person so licensed at the time of the  
38 accident shall bear the sole responsibility for the amount payable  
39 pursuant to such section fourteen-a in excess of the amount otherwise  
40 payable under this chapter, unless there shall be a failure of the  
41 responsible owner or trainer to pay such award within the time provided  
42 under this chapter. In the event of such failure to pay and the board  
43 requires the fund to pay the award on behalf of such owner or trainer  
44 who has been found to have violated section fourteen-a OF THIS CHAPTER,  
45 the fund shall be entitled to an award against such owner or trainer for  
46 the amount so paid which shall be collected in the same manner as an  
47 award of compensation. Coverage directly procured by any owner or train-  
48 er for the purpose of satisfying the requirements of this chapter with  
49 respect to employees of the owner or trainer shall not include coverage  
50 on any jockey, apprentice jockey or exercise person licensed under arti-  
51 cle two or four of the racing, pari-mutuel wagering and breeding law to  
52 the extent that such jockey, apprentice jockey or exercise person is  
53 also covered under coverage procured by The New York Jockey Injury  
54 Compensation Fund, Inc. pursuant to the requirements of section two  
55 hundred [thirteen-a] TWENTY-ONE of the racing, pari-mutuel wagering and  
56 breeding law, and to that extent, coverage procured by the fund pursuant

1 to the requirements of the racing, pari-mutuel wagering and breeding law  
2 shall be considered primary.  
3 S 10. This act shall take effect immediately.