

5541

2015-2016 Regular Sessions

I N S E N A T E

May 14, 2015

Introduced by Sen. BONACIC -- read twice and ordered printed, and when printed to be committed to the Committee on Racing, Gaming 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

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

LBD11066-01-5

(II) ALL JOCKEYS AND ASSISTANT JOCKEYS AS AUTHORIZED IN SUBDIVISION SIX OF THIS SECTION licensed pursuant to this article or article four of this chapter who are employees under section two of the workers' compensation law, to pay for any of its liabilities under section fourteen-a of the workers' compensation law and to administer the workers' compensation program for EITHER (I) such jockeys, apprentice jockeys and exercise persons, OR (II) SUCH JOCKEYS AND ASSISTANT JOCKEYS, AS THE CASE MAY BE, required by this section and the workers' compensation law.

S 3. 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[,], OR apprentice jockey or exercise person licensed under article two or four of the racing, pari-mutuel wagering and breeding law 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, 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[,], OR apprentice jockey or exercise person PROVIDED, HOWEVER, THAT WHERE THE NEW YORK JOCKEY INJURY COMPENSATION FUND MAKES THE ELECTION AS AUTHORIZED IN SUBDIVISION SIX OF SECTION TWO HUNDRED TWENTY-ONE OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW TO SECURE WORKERS' COMPENSATION INSURANCE ONLY FOR JOCKEYS AND APPRENTICE JOCKEYS "EMPLOYER" SHALL MEAN, WITH RESPECT TO AN EXERCISE PERSON LICENSED UNDER ARTICLE TWO OR FOUR OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW 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, THE OWNER AND TRAINER 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 EXERCISE PERSON.

S 4. The fifth undesignated paragraph of subdivision 4 of section 2 of the workers' compensation law, as added 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 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 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

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

19 S 5. The third undesignated paragraph of subdivision 5 of section 2 of
20 the workers' compensation law, as added by chapter 392 of the laws of
21 2008, is amended to read as follows:

22 Notwithstanding any other provision of this chapter, and for purposes
23 of this chapter only, a jockey, apprentice jockey or exercise person
24 licensed under article two or four of the racing, pari-mutuel wagering
25 and breeding law performing services for an owner or trainer in
26 connection with the training or racing of a horse at a facility of a
27 racing association or corporation subject to article two or four of the
28 racing, pari-mutuel wagering and breeding law and subject to the juris-
29 diction of the New York state racing and wagering board shall be
30 regarded as in the "employment" not solely of such owner and trainer,
31 but shall instead be conclusively presumed to be in the "employment" of
32 The New York Jockey Injury Compensation Fund, Inc. and of all owners and
33 trainers who are licensed or required to be licensed under article two
34 or four of the racing, pari-mutuel wagering and breeding law, at the
35 time of any occurrence for which benefits are payable pursuant to this
36 chapter in respect of the injury or death of such jockey, apprentice
37 jockey or exercise person, PROVIDED, HOWEVER, THAT WHERE THE NEW YORK
38 JOCKEY INJURY COMPENSATION FUND MAKES THE ELECTION AS AUTHORIZED IN
39 SUBDIVISION SIX OF SECTION TWO HUNDRED TWENTY-ONE OF THE RACING,
40 PARI-MUTUEL WAGERING AND BREEDING LAW TO SECURE WORKERS' COMPENSATION
41 INSURANCE ONLY FOR JOCKEYS AND APPRENTICE JOCKEYS AN EXERCISE PERSON
42 LICENSED UNDER ARTICLE TWO OR FOUR OF THE RACING, PARI-MUTUEL WAGERING
43 AND BREEDING LAW PERFORMING SERVICES FOR AN OWNER OR TRAINER IN
44 CONNECTION WITH THE TRAINING OR RACING OF A HORSE AT A FACILITY OF A
45 RACING ASSOCIATION OR CORPORATION SUBJECT TO ARTICLE TWO OR FOUR OF THE
46 RACING, PARI-MUTUEL WAGERING AND BREEDING LAW AND SUBJECT TO THE JURIS-
47 DICTION OF THE NEW YORK STATE RACING AND WAGERING BOARD, SHALL BE
48 REGARDED AS IN THE "EMPLOYMENT" OF THE OWNER AND TRAINER WHO ARE
49 LICENSED OR REQUIRED TO BE LICENSED UNDER ARTICLE TWO OR FOUR OF THE
50 RACING, PARI-MUTUEL WAGERING AND BREEDING LAW AT THE TIME OF ANY OCCUR-
51 RENCE FOR WHICH BENEFITS ARE PAYABLE PURSUANT TO THIS CHAPTER IN RESPECT
52 TO THE INJURY OR DEATH OF SUCH EXERCISE PERSON. For the purpose of this
53 chapter only, whether a livery driver's performance of covered services,
54 as those terms are defined in article six-G of the executive law,
55 constitutes "employment" shall be determined in accordance with section
56 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.