

5541--A

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

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:

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

LBD11066-02-5

1 All amounts collected by a horsemen's bookkeeper pursuant to this
2 section shall be transferred to the fund created under this section and
3 shall be used by the fund to purchase workers' compensation insurance
4 for EITHER (I) ALL jockeys, apprentice jockeys and exercise persons OR
5 (II) ALL JOCKEYS AND APPRENTICE JOCKEYS AS AUTHORIZED IN SUBDIVISION SIX
6 OF THIS SECTION licensed pursuant to this article or article four of
7 this chapter who are employees under section two of the workers' compen-
8 sation law, to pay for any of its liabilities under section fourteen-a
9 of the workers' compensation law and to administer the workers' compen-
10 sation program for EITHER (I) such jockeys, apprentice jockeys and exer-
11 cise persons, OR (II) SUCH JOCKEYS AND APPRENTICE JOCKEYS, AS THE CASE
12 MAY BE, required by this section and the workers' compensation law.

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

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

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

48 Notwithstanding any other provision of this chapter, and for purposes
49 of this chapter only, a jockey, apprentice jockey or exercise person
50 licensed under article two or four of the racing, pari-mutuel wagering
51 and breeding law performing services for an owner or trainer in
52 connection with the training or racing of a horse at a facility of a
53 racing association or corporation subject to article two or four of the
54 racing, pari-mutuel wagering and breeding law and subject to the juris-
55 diction of the New York state racing and wagering board shall be
56 regarded as the "employee" not solely of such owner or trainer, but

1 shall instead be conclusively presumed to be the "employee" of The New
2 York Jockey Injury Compensation Fund, Inc. and also of all owners and
3 trainers who are licensed or required to be licensed under article two
4 or four of the racing, pari-mutuel wagering and breeding law at the time
5 of any occurrence for which benefits are payable pursuant to this chap-
6 ter in respect of the injury or death of such jockey, apprentice jockey
7 or exercise person PROVIDED, HOWEVER, THAT WHERE THE NEW YORK JOCKEY
8 INJURY COMPENSATION FUND MAKES THE ELECTION AS AUTHORIZED IN SUBDIVISION
9 SIX OF SECTION TWO HUNDRED TWENTY-ONE OF THE RACING, PARI-MUTUEL WAGER-
10 ING AND BREEDING LAW TO SECURE WORKERS' COMPENSATION INSURANCE ONLY FOR
11 JOCKEYS AND APPRENTICE JOCKEYS, WITH RESPECT TO AN EXERCISE PERSON
12 LICENSED UNDER ARTICLE TWO OR FOUR OF THE RACING, PARI-MUTUEL WAGERING
13 AND BREEDING LAW PERFORMING SERVICES FOR AN OWNER OR TRAINER IN
14 CONNECTION WITH THE TRAINING OR RACING OF A HORSE AT A FACILITY OF A
15 RACING ASSOCIATION OR CORPORATION SUBJECT TO ARTICLE TWO OR FOUR OF THE
16 RACING, PARI-MUTUEL WAGERING AND BREEDING LAW AND SUBJECT TO THE JURIS-
17 DICTION OF THE NEW YORK STATE RACING AND WAGERING BOARD, SUCH EXERCISE
18 PERSON SHALL BE REGARDED AS THE "EMPLOYEE" OF THE OWNER AND TRAINER WHO
19 ARE LICENSED OR REQUIRED TO BE LICENSED UNDER ARTICLE TWO OR FOUR OF THE
20 RACING, PARI-MUTUEL WAGERING AND BREEDING LAW AT THE TIME OF ANY OCCUR-
21 RENCE FOR WHICH BENEFITS ARE PAYABLE PURSUANT TO THIS CHAPTER IN RESPECT
22 TO THE INJURY OR DEATH OF SUCH EXERCISE PERSON.

23 S 5. The third undesignated paragraph of subdivision 5 of section 2 of
24 the workers' compensation law, as added by chapter 392 of the laws of
25 2008, is amended to read as follows:

26 Notwithstanding any other provision of this chapter, and for purposes
27 of this chapter only, a jockey, apprentice jockey or exercise person
28 licensed under article two or four of the racing, pari-mutuel wagering
29 and breeding law performing services for an owner or trainer in
30 connection with the training or racing of a horse at a facility of a
31 racing association or corporation subject to article two or four of the
32 racing, pari-mutuel wagering and breeding law and subject to the juris-
33 diction of the New York state racing and wagering board shall be
34 regarded as in the "employment" not solely of such owner and trainer,
35 but shall instead be conclusively presumed to be in the "employment" of
36 The New York Jockey Injury Compensation Fund, Inc. and of all owners and
37 trainers who are licensed or required to be licensed under article two
38 or four of the racing, pari-mutuel wagering and breeding law, at the
39 time of any occurrence for which benefits are payable pursuant to this
40 chapter in respect of the injury or death of such jockey, apprentice
41 jockey or exercise person, PROVIDED, HOWEVER, THAT WHERE THE NEW YORK
42 JOCKEY INJURY COMPENSATION FUND MAKES THE ELECTION AS AUTHORIZED IN
43 SUBDIVISION SIX OF SECTION TWO HUNDRED TWENTY-ONE OF THE RACING,
44 PARI-MUTUEL WAGERING AND BREEDING LAW TO SECURE WORKERS' COMPENSATION
45 INSURANCE ONLY FOR JOCKEYS AND APPRENTICE JOCKEYS AN EXERCISE PERSON
46 LICENSED UNDER ARTICLE TWO OR FOUR OF THE RACING, PARI-MUTUEL WAGERING
47 AND BREEDING LAW PERFORMING SERVICES FOR AN OWNER OR TRAINER IN
48 CONNECTION WITH THE TRAINING OR RACING OF A HORSE AT A FACILITY OF A
49 RACING ASSOCIATION OR CORPORATION SUBJECT TO ARTICLE TWO OR FOUR OF THE
50 RACING, PARI-MUTUEL WAGERING AND BREEDING LAW AND SUBJECT TO THE JURIS-
51 DICTION OF THE NEW YORK STATE RACING AND WAGERING BOARD, SHALL BE
52 REGARDED AS IN THE "EMPLOYMENT" OF THE OWNER AND TRAINER WHO ARE
53 LICENSED OR REQUIRED TO BE LICENSED UNDER ARTICLE TWO OR FOUR OF THE
54 RACING, PARI-MUTUEL WAGERING AND BREEDING LAW AT THE TIME OF ANY OCCUR-
55 RENCE FOR WHICH BENEFITS ARE PAYABLE PURSUANT TO THIS CHAPTER IN RESPECT
56 TO THE INJURY OR DEATH OF SUCH EXERCISE PERSON. 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 6. 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 OR JOCKEYS AND APPRENTICE JOCKEYS AS 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 DEPENDENT UPON THE ELECTION MADE BY SUCH FUND PURSUANT TO SUBDIVISION SIX OF SECTION TWO HUNDRED TWENTY-ONE OF THE RACING, PARI-MUTUEL WAGERING AND BREEDING LAW.

S 7. 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] WHERE THE ELECTION MADE BY THE NEW YORK JOCKEY INJURY COMPENSATION FUND, INC. IS TO PROVIDE WORKERS' COMPENSATION FOR JOCKEYS, APPRENTICE JOCKEYS AND EXERCISE PERSONS, 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 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 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 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

1 or trainer who has been found to have violated this section, the fund
2 shall be entitled to an award against such owner or trainer for the
3 amount so paid which shall be collected in the same manner as an award
4 of compensation.

5 S 8. Section 18-a of the workers' compensation law, as amended by
6 chapter 169 of the laws of 2007, is amended to read as follows:

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

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

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

1 exercise person is also covered under coverage procured by The New York
2 Jockey Injury Compensation Fund, Inc. pursuant to the requirements of
3 section two hundred [thirteen-a] TWENTY-ONE of the racing, pari-mutuel
4 wagering and breeding law, and to that extent, coverage procured by the
5 fund pursuant to the requirements of the racing, pari-mutuel wagering
6 and breeding law shall be considered primary.
7 S 10. This act shall take effect immediately.