

# STATE OF NEW YORK

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4517

2017-2018 Regular Sessions

## IN ASSEMBLY

February 2, 2017

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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. (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 commis-  
10 sion, 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.

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

19 All amounts collected by a horsemen's bookkeeper pursuant to this  
20 section shall be transferred to the fund created under this section and  
21 shall be used by the fund to purchase workers' compensation insurance  
22 for jockeys, apprentice jockeys and exercise persons licensed pursuant  
23 to this article or article four of this chapter who are employees under  
24 section two of the workers' compensation law, and at the election of the

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

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1 fund, with the approval of the gaming commission, to secure workers'  
2 compensation insurance for licensed employees of licensed trainers to  
3 pay for any of its liabilities under section fourteen-a of the workers'  
4 compensation law and to administer the workers' compensation program for  
5 such jockeys, apprentice jockeys [~~and~~], exercise persons and, if  
6 approved, licensed employees of licensed trainers required by this  
7 section and the workers' compensation law.

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

12 12. For purposes of this section, the term "licensed employees of  
13 licensed trainers" shall have the same meaning as subdivision twenty-  
14 four of section two of the workers' compensation law.

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

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

19 24. "Licensed employees of licensed trainers" means assistant train-  
20 ers, foreman, watchmen and stable employees, including grooms and hot-  
21 walkers.

22 § 5. The second undesignated paragraph of subdivision 3 of section 2  
23 of the workers' compensation law, as amended by chapter 392 of the laws  
24 of 2008, is amended to read as follows:

25 Notwithstanding any other provision of this chapter and for purposes  
26 of this chapter only, "employer" shall mean, with respect to a jockey,  
27 apprentice jockey or exercise person licensed under article two or four  
28 of the racing, pari-mutuel wagering and breeding law, and, at the  
29 election of the New York Jockey Injury Compensation Fund, Inc. and with  
30 the approval of the gaming commission, licensed employees of licensed  
31 trainers, performing services for an owner or trainer in connection with  
32 the training or racing of a horse at a facility of a racing association  
33 or 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~~] gaming commission, The New York  
36 Jockey Injury Compensation Fund, Inc. and all owners and trainers who  
37 are licensed or required to be licensed under article two or four of the  
38 racing, pari-mutuel wagering and breeding law at the time of any occur-  
39 rence for which benefits are payable pursuant to this chapter in respect  
40 to the injury or death of such jockey, apprentice jockey [~~or~~], exercise  
41 person or, if approved, a licensed employee of a licensed trainer.

42 § 6. The fifth undesignated paragraph of subdivision 4 of section 2 of  
43 the workers' compensation law, as amended by chapter 169 of the laws of  
44 2007, is amended to read as follows:

45 Notwithstanding any other provision of this chapter, and for purposes  
46 of this chapter only, a jockey, apprentice jockey or exercise person  
47 licensed under article two or four of the racing, pari-mutuel wagering  
48 and breeding law and, at the election of the New York Jockey Injury  
49 Compensation Fund, Inc. and with the approval of the gaming commission,  
50 licensed employees of licensed trainers, performing services for an  
51 owner or trainer in connection with the training or racing of a horse at  
52 a facility of a racing association or corporation subject to article two  
53 or four of the racing, pari-mutuel wagering and breeding law and subject  
54 to the jurisdiction of the New York state [~~racing and wagering board~~]  
55 gaming commission shall be regarded as the "employee" not solely of such  
56 owner or trainer, but shall instead be conclusively presumed to be the

1 "employee" of The New York Jockey Injury Compensation Fund, Inc. and  
2 also of all owners and trainers who are licensed or required to be  
3 licensed under article two or four of the racing, pari-mutuel wagering  
4 and breeding law at the time of any occurrence for which benefits are  
5 payable pursuant to this chapter in respect of the injury or death of  
6 such jockey, apprentice jockey ~~[or]~~, exercise person or, if approved, a  
7 licensed employee of a licensed trainer.

8 § 7. The third undesignated paragraph of subdivision 5 of section 2 of  
9 the workers' compensation law, as amended by chapter 392 of the laws of  
10 2008, is amended to read as follows:

11 Notwithstanding any other provision of this chapter, and for purposes  
12 of this chapter only, a jockey, apprentice jockey or exercise person  
13 licensed under article two or four of the racing, pari-mutuel wagering  
14 and breeding law and, at the election of the New York Jockey Injury  
15 Compensation Fund, Inc. and with the approval of the gaming commission,  
16 licensed employees of licensed trainers, performing services for an  
17 owner or trainer in connection with the training or racing of a horse at  
18 a facility of a racing association or corporation subject to article two  
19 or four of the racing, pari-mutuel wagering and breeding law and subject  
20 to the jurisdiction of the New York state ~~[racing and wagering board]~~  
21 gaming commission shall be regarded as in the "employment" not solely of  
22 such owner and trainer, but shall instead be conclusively presumed to be  
23 in the "employment" of The New York Jockey Injury Compensation Fund,  
24 Inc. and of all owners and trainers who are licensed or required to be  
25 licensed under article two or four of the racing, pari-mutuel wagering  
26 and breeding law, at the time of any occurrence for which benefits are  
27 payable pursuant to this chapter in respect of the injury or death of  
28 such jockey, apprentice jockey ~~[or]~~, exercise person or, if approved, a  
29 licensed employee of a licensed trainer. For the purpose of this chap-  
30 ter only, whether a livery driver's performance of covered services, as  
31 those terms are defined in article six-G of the executive law, consti-  
32 tutes "employment" shall be determined in accordance with section eigh-  
33 teen-c of this chapter.

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

37 The liability of an employer prescribed by the last preceding section  
38 shall be exclusive and in place of any other liability whatsoever, to  
39 such employee, his or her personal representatives, spouse, parents,  
40 dependents, distributees, or any person otherwise entitled to recover  
41 damages, contribution or indemnity, at common law or otherwise, on  
42 account of such injury or death or liability arising therefrom, except  
43 that if an employer fails to secure the payment of compensation for his  
44 or her injured employees and their dependents as provided in section  
45 fifty of this chapter, an injured employee, or his or her legal repre-  
46 sentative in case of death results from the injury, may, at his or her  
47 option, elect to claim compensation under this chapter, or to maintain  
48 an action in the courts for damages on account of such injury; and in  
49 such an action it shall not be necessary to plead or prove freedom from  
50 contributory negligence nor may the defendant plead as a defense that  
51 the injury was caused by the negligence of a fellow servant nor that the  
52 employee assumed the risk of his or her employment, nor that the injury  
53 was due to the contributory negligence of the employee. The liability  
54 under this chapter of The New York Jockey Injury Compensation Fund, Inc.  
55 created under section two hundred ~~[thirteen-a]~~ twenty-one of the racing,  
56 pari-mutuel wagering and breeding law shall be limited to the provision

1 of workers' compensation coverage to jockeys, apprentice jockeys [~~and~~],  
2 exercise persons and, at the election of the New York Jockey Injury  
3 Compensation Fund, Inc. and with the approval of the gaming commission,  
4 a licensed employee of a licensed trainer licensed under article two or  
5 four of the racing, pari-mutuel wagering and breeding law and any statu-  
6 tory penalties resulting from the failure to provide such coverage.

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

10 4. With respect to a jockey, apprentice jockey or exercise person  
11 licensed under article two or four of the racing, pari-mutuel wagering  
12 and breeding law and, at the election of the New York Jockey Injury  
13 Compensation Fund, Inc. and with the approval of the gaming commission,  
14 a licensed employee of a licensed trainer who, pursuant to section two  
15 of this chapter, is an employee of all owners and trainers licensed or  
16 required to be licensed under article two or four of the racing, pari-  
17 mutuel wagering and breeding law and The New York Jockey Injury Compen-  
18 sation Fund, Inc., the owner or trainer for whom such jockey, apprentice  
19 jockey [~~or~~], exercise person or, if approved, a licensed employee of a  
20 licensed trainer was performing services at the time of the accident  
21 shall be solely responsible for the double payments described in subdi-  
22 vision one of this section, to the extent that such payments exceed any  
23 amounts otherwise payable with respect to such jockey, apprentice jockey  
24 [~~or~~], exercise person or, if approved, a licensed employee of a licensed  
25 trainer under any other section of this chapter, and the New York Jockey  
26 Injury Compensation Fund, Inc. shall have no responsibility for such  
27 excess payments, unless there shall be a failure of the responsible  
28 owner or trainer to pay such award within the time provided under this  
29 chapter. In the event of such failure to pay and the board requires the  
30 fund to pay the award on behalf of such owner or trainer who has been  
31 found to have violated this section, the fund shall be entitled to an  
32 award against such owner or trainer for the amount so paid which shall  
33 be collected in the same manner as an award of compensation.

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

36 § 18-a. Notice: The New York Jockey Injury Compensation Fund, Inc.  
37 Wherever in this chapter it shall be required that notice be given to an  
38 employer, except for claims involving section fourteen-a of the workers'  
39 compensation law such notice requirement shall be deemed satisfied by  
40 giving notice to the New York Jockey Injury Compensation Fund, Inc., in  
41 connection with an injury to a jockey, apprentice jockey or exercise  
42 person licensed under article two or four of the racing, pari-mutuel  
43 wagering and breeding law and, at the election of the New York Jockey  
44 Injury Compensation Fund, Inc. and with the approval of the gaming  
45 commission, a licensed employee of a licensed trainer, who, pursuant to  
46 section two of this chapter, is an employee of all owners and trainers  
47 licensed or required to be licensed under article two or four of the  
48 racing, pari-mutuel wagering and breeding law and of the fund. In a  
49 claim involving section fourteen-a of the workers' compensation law such  
50 required notice shall be given to the employing owner and/or trainer of  
51 the fund.

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

55 8. The requirements of section ten of this chapter regarding the  
56 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 ~~[ex]~~, 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.

§ 12. This act shall take effect immediately.