

STATE OF NEW YORK

4286

2017-2018 Regular Sessions

IN SENATE

February 8, 2017

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. (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 or owners. In the event the fund elects, with the
12 approval of the gaming commission, to secure workers' compensation
13 insurance for licensed employees of licensed trainers or owners, then
14 the fund may discontinue to secure workers' compensation insurance for
15 licensed employees of licensed trainers or owners only upon prior
16 approval of the gaming commission.

17 (b) The fund may elect, with the approval of the gaming commission, to
18 secure workers' compensation insurance coverage through a form of self-
19 insurance, including, without limitation, by becoming an individual
20 self-insurer or by becoming a member of a self-insured group, provided
21 that the fund has met the requirements of the New York state department
22 of financial services and workers' compensation board, including, with-

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

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1 out limitation, subdivision three of section fifty of the workers'
2 compensation law.

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

6 All amounts collected by a horsemen's bookkeeper pursuant to this
7 section shall be transferred to the fund created under this section and
8 shall be used by the fund to purchase workers' compensation insurance
9 for jockeys, apprentice jockeys and exercise persons licensed pursuant
10 to this article or article four of this chapter who are employees under
11 section two of the workers' compensation law, and at the election of the
12 fund, with the approval of the gaming commission, to secure workers'
13 compensation insurance for licensed employees of licensed trainers or
14 owners to pay for any of its liabilities under section fourteen-a of the
15 workers' compensation law and to administer the workers' compensation
16 program for such jockeys, apprentice jockeys ~~[and]~~, exercise persons
17 and, if approved, licensed employees of licensed trainers or owners
18 required by this section and the workers' compensation law.

19 § 3. Subdivision 7 of section 221 of the racing, pari-mutuel wagering
20 and breeding law is amended by adding a new fifth undesignated paragraph
21 to read as follows:

22 In the event the fund elects, with the approval of the gaming commis-
23 sion, to secure workers' compensation insurance for licensed employees
24 of licensed trainers or owners, then the fund may elect to have the sum
25 required to be paid by an owner or trainer pursuant to this section be
26 subject to an examination of workers' compensation claims attributable
27 under the fund to each such owner or trainer, including the frequency
28 and severity of accidents and injuries.

29 § 4. Subdivision 12 of section 221 of the racing, pari-mutuel wagering
30 and breeding law, as amended by chapter 325 of the laws of 2004 and such
31 section as renumbered by chapter 18 of the laws of 2008, is renumbered
32 subdivision 14 and amended, and two new subdivisions 12 and 13 are added
33 to read as follows:

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

37 13. (a) There is hereby created a standing advisory racing safety
38 committee to be known as the New York Racing Safety Committee and
39 referred to in this section as "the safety committee". The safety
40 committee shall consist of seven members, with the fund, gaming commis-
41 sion, the racing association or corporation, subject to article two or
42 four of this chapter and subject to the jurisdiction of the gaming
43 commission, which operates the racing and training facilities at Aque-
44 duct Race Track, Belmont Park and Saratoga Race Track, the racing asso-
45 ciation or corporation, subject to article two or four of this chapter
46 and subject to the jurisdiction of the gaming commission which operates
47 the racing and training facilities at Finger Lakes Race Track, the
48 Finger Lakes Horsemen's Benevolent & Protective Association, Inc.
49 ("FLHBRA"), and the Jockeys' Guild each to appoint one member in a
50 manner and for terms to be prescribed by the respective member. The
51 member of the safety committee appointed by the fund shall serve as
52 chairperson and the member of the safety committee appointed by the
53 gaming commission shall serve as vice-chairperson. Although each member
54 of the safety committee shall have equal voting rights with the others,
55 the safety committee is only authorized to make non-binding recommenda-
56 tions.

1 **(b) The safety committee shall meet within ninety days following the**
2 **effective date of this subdivision to jointly review and discuss the**
3 **steps required to begin the process of implementing the recommendations**
4 **contained in the risk management report submitted to the gaming commis-**
5 **sion pursuant to gaming commission regulation 9 NYCRR § 4046.6 on or**
6 **about September thirtieth, two thousand sixteen. Starting in July two**
7 **thousand seventeen and at least annually thereafter, the safety commit-**
8 **tee shall meet to review the workers' compensation loss information and**
9 **the status of safety-related findings and recommendations and to develop**
10 **an annual strategic plan to address identified safety issues.**

11 **(c) Within one hundred eighty days following the effective date of**
12 **this subdivision, the two racing association or corporation members**
13 **shall, in consultation with the other members of the safety committee,**
14 **develop for their respective tracks, track-specific safety rules for**
15 **training activities to be documented and communicated (in both English**
16 **and Spanish) to jockeys, apprentice jockeys and exercise persons**
17 **licensed pursuant to this article or article four of this chapter who**
18 **are employees under section two of the workers' compensation law, and at**
19 **the election of the fund, with the approval of the gaming commission,**
20 **licensed employees of licensed trainers or owners. Without limiting the**
21 **generality of the foregoing, the safety rules shall include proper usage**
22 **of personal protective equipment, required response to loose horses,**
23 **prohibition of cell phone use while mounted on a horse, general require-**
24 **ments for jogging, galloping, breezing, ponying a horse and starting**
25 **gate safety protocols and refresher training related to these rules**
26 **would be required at the start of each meet.**

27 **(d) Prior to the start of each meet following the effective date of**
28 **this subdivision, each racing association or corporation shall meet with**
29 **trainers or their representatives to discuss and address identified**
30 **safety issues.**

31 **(e) Within one hundred eighty days following the effective date of**
32 **this subdivision, the two racing association or corporation members**
33 **shall, in consultation with the other members of the safety committee,**
34 **develop for their respective tracks, a track-specific written documented**
35 **emergency response plan ("ERP") to address response protocols to**
36 **on-track accidents and incidents, which at a minimum, shall include**
37 **detailed information regarding roles and responsibilities for individ-**
38 **uals who are responsible for track-related accidents and incidents,**
39 **including, without limitation, outriders, emergency medical**
40 **technicians/paramedics, ambulance drivers, security, veterinary staff**
41 **and clockers. Within two hundred ten days following the effective date**
42 **of this subdivision, the ERP shall be communicated to all on-track**
43 **personnel as part of their new hire orientation and job assignment.**

44 **(f) Within two hundred ten days following the effective date of this**
45 **subdivision, the two racing association or corporation members shall**
46 **conduct for their respective tracks a mock emergency response drill for**
47 **on-track accidents annually prior to the opening of each individual**
48 **racetrack meet. The emergency response drill shall be filmed and used**
49 **for education and training purposes for personnel, including in their**
50 **new hire orientation, and to assess the performance of the individuals**
51 **involved in the emergency response.**

52 **(g) Within one hundred eighty days following the effective date of**
53 **this subdivision, the two racing association or corporation members**
54 **shall, upgrade the current level of emergency medical responders from**
55 **emergency medical technicians to paramedics.**

14. The fund and the state [~~racetrack and wagering board~~] gaming commission shall have such power as is necessary to implement the provisions of this section.

§ 5. The opening paragraph of subdivision 7 of section 221 of the racing, pari-mutuel wagering and breeding law, as amended by section 1 of part PP of chapter 60 of the laws of 2016, is amended to read as follows:

In order to pay the costs of the insurance required by this section and by the workers' compensation law and to carry out its other powers and duties and to pay for any of its liabilities under section fourteen-a of the workers' compensation law, the New York Jockey Injury Compensation Fund, Inc. shall ascertain the total funding necessary and establish the sums that are to be paid by all owners and trainers licensed or required to be licensed under section two hundred twenty of this article, to obtain the total funding amount required annually. In order to provide that any sum required to be paid by an owner or trainer is equitable, the fund shall establish payment schedules which reflect such factors as are appropriate, including where applicable, the geographic location of the racing corporation at which the owner or trainer participates, the duration of such participation, the amount of any purse earnings, the number of horses involved, or such other factors as the fund shall determine to be fair, equitable and in the best interests of racing. In no event shall the amount deducted from an owner's share of purses exceed two per centum; provided, however, for two thousand [~~sixteen~~] seventeen the New York Jockey Injury Compensation Fund, Inc. may use up to two million dollars from the account established pursuant to subdivision nine of section two hundred eight of this article to pay the annual costs required by this section and the funds from such account shall not count against the two per centum of purses deducted from an owner's share of purses. The amount deducted from an owner's share of purses shall not exceed one per centum after April first, two thousand [~~seventeen~~] twenty. In the cases of multiple ownerships and limited racing appearances, the fund shall equitably adjust the sum required.

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

24. "Licensed employees of licensed trainers or owners" means assistant trainers, foreman, watchmen and stable employees, including grooms and hot walkers.

§ 7. 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, 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, licensed employees of licensed trainers or owners, 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 [~~racetrack and wagering board~~] gaming commission, 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

1 time of any occurrence for which benefits are payable pursuant to this
2 chapter in respect to the injury or death of such jockey, apprentice
3 jockey ~~[or]~~, exercise person or, if approved, a licensed employee of a
4 licensed trainer or owner.

5 § 8. The fifth undesignated paragraph of subdivision 4 of section 2 of
6 the workers' compensation law, as amended by chapter 169 of the laws of
7 2007, is amended to read as follows:

8 Notwithstanding any other provision of this chapter, and for purposes
9 of this chapter only, a jockey, apprentice jockey or exercise person
10 licensed under article two or four of the racing, pari-mutuel wagering
11 and breeding law and, at the election of the New York Jockey Injury
12 Compensation Fund, Inc. and with the approval of the gaming commission,
13 licensed employees of licensed trainers or owners, performing services
14 for an owner or trainer in connection with the training or racing of a
15 horse at a facility of a racing association or corporation subject to
16 article two or four of the racing, pari-mutuel wagering and breeding law
17 and subject to the jurisdiction of the New York state ~~[racing and wager-~~
18 ~~ing board]~~ gaming commission shall be regarded as the "employee" not
19 solely of such owner or trainer, but shall instead be conclusively
20 presumed to be the "employee" of The New York Jockey Injury Compensation
21 Fund, Inc. and also of all owners and trainers who are licensed or
22 required to be licensed under article two or four of the racing, pari-
23 mutuel wagering and breeding law at the time of any occurrence for which
24 benefits are payable pursuant to this chapter in respect of the injury
25 or death of such jockey, apprentice jockey ~~[or]~~, exercise person or, if
26 approved, a licensed employee of a licensed trainer or owner.

27 § 9. The third undesignated paragraph of subdivision 5 of section 2 of
28 the workers' compensation law, as amended by chapter 392 of the laws of
29 2008, is amended to read as follows:

30 Notwithstanding any other provision of this chapter, and for purposes
31 of this chapter only, a jockey, apprentice jockey or exercise person
32 licensed under article two or four of the racing, pari-mutuel wagering
33 and breeding law and, at the election of the New York Jockey Injury
34 Compensation Fund, Inc. and with the approval of the gaming commission,
35 licensed employees of licensed trainers or owners, performing services
36 for an owner or trainer in connection with the training or racing of a
37 horse at a facility of a racing association or corporation subject to
38 article two or four of the racing, pari-mutuel wagering and breeding law
39 and subject to the jurisdiction of the New York state ~~[racing and wager-~~
40 ~~ing board]~~ gaming commission shall be regarded as in the "employment"
41 not solely of such owner and trainer, but shall instead be conclusively
42 presumed to be in the "employment" of The New York Jockey Injury Compen-
43 sation Fund, Inc. and of all owners and trainers who are licensed or
44 required to be licensed under article two or four of the racing, pari-
45 mutuel wagering and breeding law, at the time of any occurrence for
46 which benefits are payable pursuant to this chapter in respect of the
47 injury or death of such jockey, apprentice jockey ~~[or]~~, exercise person
48 or, if approved, a licensed employee of a licensed trainer or owner.

49 For the purpose of this chapter only, whether a livery driver's perform-
50 ance of covered services, as those terms are defined in article six-G of
51 the executive law, constitutes "employment" shall be determined in
52 accordance with section eighteen-c of this chapter.

53 § 10. The opening paragraph of section 11 of the workers' compen-
54 sation law, as amended by chapter 169 of the laws of 2007, is amended to
55 read as follows:

1 The liability of an employer prescribed by the last preceding section
2 shall be exclusive and in place of any other liability whatsoever, to
3 such employee, his or her personal representatives, spouse, parents,
4 dependents, distributees, or any person otherwise entitled to recover
5 damages, contribution or indemnity, at common law or otherwise, on
6 account of such injury or death or liability arising therefrom, except
7 that if an employer fails to secure the payment of compensation for his
8 or her injured employees and their dependents as provided in section
9 fifty of this chapter, an injured employee, or his or her legal repre-
10 sentative in case of death results from the injury, may, at his or her
11 option, elect to claim compensation under this chapter, or to maintain
12 an action in the courts for damages on account of such injury; and in
13 such an action it shall not be necessary to plead or prove freedom from
14 contributory negligence nor may the defendant plead as a defense that
15 the injury was caused by the negligence of a fellow servant nor that the
16 employee assumed the risk of his or her employment, nor that the injury
17 was due to the contributory negligence of the employee. The liability
18 under this chapter of The New York Jockey Injury Compensation Fund, Inc.
19 created under section two hundred [~~thirteen-a~~] twenty-one of the racing,
20 pari-mutuel wagering and breeding law shall be limited to the provision
21 of workers' compensation coverage to jockeys, apprentice jockeys [~~and~~],
22 exercise persons and, at the election of the New York Jockey Injury
23 Compensation Fund, Inc. and with the approval of the gaming commission,
24 a licensed employee of a licensed trainer or owner licensed under arti-
25 cle two or four of the racing, pari-mutuel wagering and breeding law and
26 any statutory penalties resulting from the failure to provide such
27 coverage.

28 § 11. Subdivision 4 of section 14-a of the workers' compensation law,
29 as amended by chapter 169 of the laws of 2007, is amended to read as
30 follows:

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

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

§ 18-a. Notice: The New York Jockey Injury Compensation Fund, Inc. Wherever in this chapter it shall be required that notice be given to an employer, except for claims involving section fourteen-a of the workers' compensation law such notice requirement shall be deemed satisfied by giving notice to the New York Jockey Injury Compensation Fund, Inc., in connection with an injury to a 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 or owner, 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 of the fund. In a claim involving section fourteen-a of the workers' compensation law such required notice shall be given to the employing owner and/or trainer of the fund.

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

8. The requirements of section ten of this chapter regarding the 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 or owner, 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 or owner 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 or owner, to the extent that such jockey, apprentice jockey ~~[or]~~, exercise person or, if approved by the gaming commission, a licensed employee of a licensed trainer or

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