

[SECOND REPRINT]

SENATE, No. 1562

STATE OF NEW JERSEY

INTRODUCED OCTOBER 27, 1994

By Senators PALAIA and CODEY

1 AN ACT establishing the New Jersey Horse Racing Injury
2 Compensation Board and supplementing chapter 15 of Title 34
3 of the Revised Statutes.

4

5 BE IT ENACTED *by the Senate and General Assembly of the*
6 *State of New Jersey:*

7 1. This act shall be known and may be cited as the "New
8 Jersey Horse Racing Injury Compensation Board Act."

9 2. The Legislature finds and declares that, whereas current
10 law already requires virtually all employers to provide for the
11 payment of workers' compensation benefits to injured employees,
12 because of the unique nature of the horse racing industry,
13 difficulties have arisen in ensuring that coverage is provided to
14 ¹[all its]¹ employees. For example, out-of-State horse owners
15 are sometimes unaware of their obligation to provide such
16 coverage, or because a jockey may ride the horses of more than
17 one owner, there may be confusion as to ²[whom] who² the
18 responsible employer is. As a result, serious injuries have been
19 sustained for which there is no coverage.

20 It is, therefore, in the public interest to ensure that workers'
21 compensation coverage is available to persons employed in the
22 thoroughbred and standardbred horse racing industries in New
23 Jersey by collectively securing workers' compensation insurance
24 coverage¹ for such persons, the costs of which shall be funded
25 by the horse racing industry, and the ¹[premiums for which]
26 assessments for funding that coverage¹ shall be calculated
27 separately for the thoroughbred and standardbred industries,
28 based on their respective experience.

29 3. As used in this act:

30 "Board" means the New Jersey Horse Racing Injury
31 Compensation Board established by section 4 of this act.

32 "Commission" means the New Jersey Racing Commission
33 established pursuant to section 1 of P.L.1940, c.17 (C.5:5-22).

34 "Horse racing industry employee" means a jockey, jockey
35 apprentice, ¹[stable-employee, standardbred trainer, assistant
36 trainer] exercise rider¹, driver, and driver-trainer performing
37 services for an owner ¹[or trainer]¹ in connection with the
38 ¹[training] exercising¹ or racing of a horse ¹[at a facility of a
39 racing association or corporation subject to the jurisdiction of the
40 commission and during horse vanning whenever such persons are
41 required to be licensed by the commission] in New Jersey¹. ²In
42 addition, a trainer who otherwise would be considered an

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SSV committee amendments adopted June 1, 1995.

² Assembly ATG committee amendments adopted November 20, 1995.

1 employee of the owner pursuant to R.S.34:15-1 et seq. is a horse
 2 racing industry employee, for the purposes of this act.²

3 4. There is hereby established the "New Jersey Horse Racing
 4 Injury Compensation Board," which shall be in, but not of, the
 5 Department of Law and Public Safety.

6 a. The board shall consist of six members as follows: the
 7 Commissioner of Insurance, or his designee; the Attorney
 8 General^{2,2} or his designee; one member of the New Jersey
 9 Racing Commission elected by the members of the commission²,
 10 or his designee²; and three members of the horse racing industry
 11 appointed by the ¹[Governor with the advice and consent of the
 12 Senate] ²[commission¹] Governor², one of whom shall represent
 13 the thoroughbred industry, one of whom shall represent the
 14 standardbred industry and one of whom shall represent the
 15 racetrack owners. In making these appointments, the ¹[Governor]
 16 ²[commission¹] Governor² shall take into consideration the
 17 recommendations of the thoroughbred and standardbred industries
 18 and the racetrack owners, respectively.

19 b. Members of the board shall serve without compensation but
 20 may be reimbursed for their expenses out of the administrative
 21 funds of the board.

22 c. The affirmative vote of at least four members shall
 23 constitute a majority for the transaction of any business and a
 24 quorum shall consist of a simple majority.

25 5. The board shall have the power to:

26 a. purchase and serve as the master policyholder for any
 27 insurance^{2,2} ¹or²[,]² self-insure pursuant to R.S.34:15-77, for
 28 the² purposes of this act¹;

29 b. enter into contracts with other persons, entities or public
 30 bodies for any professional, administrative or other services,
 31 including legal counsel if approved by the Attorney General, as
 32 may be necessary to carry out the duties of the board and the
 33 purposes of this act;

34 c. assess, collect and disburse all money due or payable to or by
 35 the board, or authorize such collection and disbursement;

36 d. invest moneys held in trust under any fund in investments
 37 which are approved by the State Investment Council for the
 38 investment of surplus moneys of the State;

39 e. approve assessments, ¹[rates, loss reserves,]¹ surplus, limits
 40 of coverage, limits of excess or reinsurance, coverage documents
 41 and other financial and operating policies of the board;

42 f. promulgate rules and regulations, pursuant to the
 43 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
 44 seq.), necessary to effectuate the purposes of this act; and

45 g. take all actions necessary to carry out the provisions of this
 46 act.

47 6. a. The board shall secure workers' compensation insurance
 48 coverage ¹[, which may include, but is not limited to, coverage
 49 secured on a blanket basis,]¹ for ¹[the benefit of all]¹ horse
 50 racing industry employees.

51 b. The board shall assess and collect sufficient funds to pay the
 52 costs of the insurance ¹or self insurance coverage¹ required by
 53 this act and by the workers' compensation laws of this State and
 54 to pay any additional costs necessary to carry out its other

1 duties. The board shall ascertain the total funding necessary,
2 establish the sums that are to be paid and establish by regulation
3 the method of assessing and collecting these moneys.
4 Assessments shall include, but shall not be limited to, deductions
5 from gross ¹[racing] overnight¹ purses ²paid to owners², so long
6 as such deductions do not exceed 3% of such purses, and
7 additional assessments may be collected from horse owners ¹[and
8 trainers,]¹ as needed. Track owners shall not be assessed for such
9 costs.

10 c. ¹[Premiums] Assessments¹ for workers' compensation
11 insurance ¹coverage¹ pursuant to this act shall be calculated and
12 allocated separately for the thoroughbred and standardbred
13 industries, based on their respective loss experience, and any
14 assessments pursuant to subsection b. of this section shall be
15 allocated accordingly. ²No public funds, other than the monies
16 collected pursuant to subsection b. of this section, shall be used
17 for the purpose of self insurance or for paying the costs of
18 workers' compensation insurance or workers' compensation
19 benefits pursuant to this act.²

20 7. a. For the purposes of this act and R.S.34:15-36, a horse
21 racing industry employee shall be deemed to be in the
22 employment of the New Jersey Horse Racing Injury
23 Compensation Board ¹[and in the employment of all owners and
24 trainers who are licensed or required to be licensed by the
25 commission]¹ ²and in the employment of all owners who are
26 licensed or required to be licensed by the commission² at the
27 time of any occurrence for which workers' compensation benefits
28 are payable pursuant to R.S.34:15-1 et seq. as supplemented by
29 this act, and not solely in the employment of a particular owner
30 ¹[or trainer]¹. ²A horse racing industry employee shall not be
31 deemed to be in the employment of the New Jersey Horse Racing
32 Injury Compensation Board for any other purpose.²

33 b. For the purposes of this act and R.S.34:15-36, the New
34 Jersey Horse Racing Injury Compensation Board ¹[and all owners
35 and trainers who are licensed or required to be licensed by the
36 commission]¹ ²and all owners who are licensed or required to be
37 licensed by the commission² shall be deemed the employer of a
38 horse racing industry employee at the time ¹of¹ any event for
39 which workers' compensation benefits are payable pursuant to
40 R.S.34:15-1 et seq. as supplemented by this act. ²The New
41 Jersey Racing Injury Compensation Board shall not be deemed the
42 employer of a horse racing industry employee for any other
43 purpose.²

44 c. With respect to horse racing industry employees, the
45 requirements of R.S.34:15-1 et seq. regarding the provision of
46 workers' compensation insurance by employers are satisfied in
47 full by compliance with the requirements imposed upon owners
48 ¹[and trainers]¹ by this act and any rules or regulations
49 promulgated hereunder. ¹[If the responsible owner or trainer
50 fails to comply with the requirements of this act or any rules or
51 regulations promulgated hereunder and if the board is still
52 required to pay the award on behalf of that owner or trainer who
53 has been found to have violated this act or any rule or regulation
54 promulgated hereunder, then] ²An owner who fails to comply

1 with this act shall be liable under the provisions of R.S.34:15-1 et
2 seq. and neither the board nor any other owner shall be
3 responsible for any amount owed by or awarded against an owner
4 who has not complied with the provisions of this act and any rule
5 or regulation promulgated hereunder and¹] If the responsible
6 owner fails to comply with the requirements of this act or any
7 rules or regulations promulgated hereunder and if the board is
8 still required to pay the award on behalf of that owner who has
9 been found to have violated this act or any rule or regulation
10 promulgated hereunder, then² the board shall be entitled to
11 collect from that owner ¹[or trainer]¹ any assessment which was
12 not paid but which should have been paid by that owner ¹[or
13 trainer]¹ as provided by this act.

14 d. The provisions of this act shall not apply to employees of an
15 owner ¹[or trainer]¹ who are not horse racing industry
16 employees. To the extent that a horse racing industry employee
17 is also covered by duplicate coverage procured pursuant to
18 another policy of workers' compensation insurance, the coverage
19 procured by the board pursuant to this act shall ¹[not]¹ be
20 considered primary.

21 8. Notwithstanding the provision of any other law, in
22 determining workers' compensation benefits pursuant to
23 R.S.34:15-1 et seq., the wages of a horse racing industry
24 employee shall be computed in the manner provided under
25 R.S.34:15-37.

26 9. Nothing in this act shall affect any existing contract or
27 policy of employers' liability insurance or the liability of any
28 insurance company or provider, or any arrangement now existing
29 between employers and employees, providing for the payment to
30 such employees, their families, dependents or representatives of
31 sick, accident or death benefits in addition to the workers'
32 compensation coverage provided pursuant to this act; but the
33 liability for such compensation shall not be reduced or affected
34 by any insurance, contribution or other benefit whatsoever, due
35 to or received by the person entitled to such compensation, and
36 the person so entitled shall, irrespective of any such insurance or
37 other contract, have the right to recover the compensation
38 directly from the employer under an existing contract or policy
39 of employers' liability insurance. The board shall have the same
40 rights provided other employers under R.S.34:15-40.

41 10. a. The board shall create a plan of operation to ensure fair,
42 reasonable, and equitable administration. The plan of operation
43 and any amendments thereto shall become effective upon
44 approval in writing by the board.

45 b. The plan of operation shall constitute the by-laws of the
46 board and shall in addition to the requirements enumerated
47 elsewhere in this act:

- 48 (1) establish procedures for handling the assets of the board;
- 49 (2) establish regular places and times for meetings of the board;
- 50 (3) establish procedures for records to be kept of all financial
51 transactions of the board and its agents;
- 52 (4) contain such additional provisions as the board may
53 designate necessary or proper for the execution of the powers and
54 duties of the board.

1 11. The board shall be subject to examination by the
2 commission. The board shall submit to the commission no later
3 than March 31 of each year, a financial report for the preceding
4 calendar year in a form approved by the commission, and a report
5 of its activities during the preceding calendar year.

6 12. The board shall be exempt from payment of all fees and all
7 taxes levied by this State or any of its subdivisions.

8 13. a. The liability of the board and the State with respect to
9 payment of any compensation, benefits, expenses, fees or
10 disbursements properly chargeable against the board shall be
11 limited to the assets held by the board and the board and the
12 State shall not otherwise in any way or manner be liable for the
13 making of any such payment.

14 b. The liability of the board under this act is limited to the
15 provision of workers' compensation insurance coverage and any
16 sanctions resulting from the failure to so provide. The board may
17 purchase such insurance as necessary to protect any director,
18 officer, agent or other representative from liability.

19 14. The provisions of R.S.34:15-1 et seq. shall apply to the
20 provision of workers' compensation insurance under this act in all
21 respects, except as otherwise specifically provided herein.

22 15. This act shall take effect immediately, except that
23 sections 7 and 8 shall remain inoperative until the January 1st
24 next following enactment.

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29 The "New Jersey Horse Racing Injury Compensation Board Act."

1 by any insurance, contribution or other benefit whatsoever, due
2 to or received by the person entitled to such compensation, and
3 the person so entitled shall, irrespective of any such insurance or
4 other contract, have the right to recover the compensation
5 directly from the employer under an existing contract or policy
6 of employers' liability insurance. The board shall have the same
7 rights provided other employers under R.S.34:15-40.

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34 making of any such payment.

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44 sections 7 and 8 shall remain inoperative until the January 1st
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STATEMENT

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50 This bill creates the New Jersey Horse Racing Injury
51 Compensation Board to ensure that workers' compensation
52 insurance is secured for the benefit of persons employed in the
53 thoroughbred and standardbred horse racing industries.

54 The board is placed in, but not of, the Department of Law and

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1 Public Safety and would have a total of six members. Three
2 members would represent State Government: the Commissioner
3 of Insurance or his designee; the Attorney General or his
4 designee; and a member of the New Jersey Racing Commission
5 elected from among its membership; and three would represent
6 the horse racing industry, one each appointed by the Governor
7 from the thoroughbred industry, the standardbred industry and
8 the race track owners, respectively. The board is authorized to
9 take all action necessary to implement the bill's provisions,
10 including creating a plan of operation; purchasing workers'
11 compensation insurance and assessing and collecting funds from
12 industry employers for that insurance. Premiums for the
13 thoroughbred and standardbred industries would be calculated and
14 allocated separately, based on their respective experience, as
15 would assessments to fund those premiums.

16 The board is deemed the employer for the purpose of securing
17 workers' compensation insurance for employees of the industry.
18 Racing industry employees are defined to include jockeys, jockey
19 apprentices, stable employees, standardbred trainers, assistant
20 trainers, drivers, and driver-trainers who are required to be
21 licensed by the New Jersey Horse Racing Commission.

22 Current workers' compensation law requires every employer
23 subject to its provisions to make sufficient provision for the
24 payment of benefits to an injured employee. Because of the
25 unique nature of the horse racing industry, difficulties have
26 arisen in ensuring that workers' compensation insurance coverage
27 is provided to all its employees. Out-of-State horse owners are
28 sometimes unaware of their obligation to provide such coverage
29 and as a result, serious injuries have been sustained for which
30 there is no coverage. This bill is intended to resolve such
31 problems by facilitating the securing of a blanket insurance
32 funded by contributions from employers within the industry.

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37 The "New Jersey Horse Racing Injury Compensation Board Act."

ASSEMBLY TOURISM AND GAMING COMMITTEE

STATEMENT TO

[FIRST REPRINT]

SENATE, No. 1562

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 20, 1995

The Assembly Tourism and Gaming Committee reports favorably and with committee amendments Senate, No. 1562(1R).

This bill creates the New Jersey Horse Racing Injury Compensation Board to ensure that workers' compensation insurance is secured for the benefit of persons employed in the thoroughbred and standardbred horse racing industries.

The board is placed in, but not of, the Department of Law and Public Safety and would have a total of six members. Three members would represent State Government: the Commissioner of Insurance or his designee; the Attorney General or his designee; and a member of the New Jersey Racing Commission elected from among its membership, or his designee; and three would represent the horse racing industry, one each appointed by the Governor from the thoroughbred industry, the standardbred industry and the race track owners, respectively. The board is authorized to take all action necessary to implement the bill's provisions, including creating a plan of operation, purchasing workers' compensation insurance, and assessing and collecting funds from industry employers for that insurance. Assessments would include, but not be limited to, deductions of not more than 3% from gross overnight purses paid to owners. Additional assessments may be collected from horse owners. The board is authorized to self-insure for the purposes of workers' compensation insurance upon approval of the Commissioner of Insurance. Assessments for the thoroughbred and standardbred industries would be calculated and allocated separately, based on their respective experiences.

The board and all owners who are licensed or required to be licensed by the commission are deemed the employer for the purpose of securing workers' compensation insurance for employees of the industry. Racing industry employees are defined to include jockeys, jockey apprentices, exercise riders, drivers, and driver-trainers. In addition, trainers who otherwise would be considered an employee of an owner under the workers' compensation law, R.S.34:15-1 et seq., are racing industry employees, for the purposes of the bill.

Current workers' compensation law requires every employer subject to its provisions to make sufficient provision for the payment of benefits to an injured employee. Because of the unique nature of the horse racing industry, difficulties have arisen in ensuring that workers' compensation insurance coverage is provided to employees. Out-of-State horse owners are sometimes unaware of their obligation to provide such coverage and as a result, serious

injuries have been sustained for which there is no coverage. This bill is intended to resolve such problems by facilitating the securing of insurance coverage funded by assessments from owners within the industry.

COMMITTEE AMENDMENTS

The committee amended the bill to:

1) add to the definition of "horse racing industry employee" a trainer, usually employed by a private stable owner, who otherwise would be considered an employee of the owner under the workers' compensation law;

2) provide that the member of the board elected by the members of the New Jersey Racing Commission may be represented by a designee;

3) provide that the appointed members of the New Jersey Horse Racing Injury Compensation Board will be appointed by the Governor, instead of by the New Jersey Racing Commission;

4) clarify that assessments to fund insurance coverage for the thoroughbred and standardbred industries shall include a deduction from the gross overnight purses paid to owners, as opposed to the general gross overnight purses;

5) provide that no public funds, other than the monies collected pursuant to this act, shall be used for the purpose of self insurance or for paying the costs of workers' compensation insurance or workers' compensation benefits pursuant to this act;

6) provide that for the purposes of this act and R.S.34:15-36, a horse racing industry employee shall be deemed to be in the employment of the New Jersey Horse Racing Injury Compensation Board and all owners who are licensed or required to be licensed by the commission, and reciprocally they shall be deemed to be the employer, as opposed to just the board, at the time of any occurrence or event for which workers' compensation benefits are payable pursuant to R.S.34:15-1 et seq. as supplemented by this act, and not solely in the employment of a particular owner;

7) provide that the New Jersey Horse Racing Injury Compensation Board shall not be deemed to be the employer of a horse racing industry employee for any other purpose; and

8) provide that if a responsible owner fails to comply with the requirements of the act and if the board is still required to pay the award on behalf of that owner, the board shall be entitled to collect any assessment which was not paid by such owner. The bill had provided that such an owner would be liable under the provisions of the workers' compensation law with neither the board nor any other owner responsible for any amount owed or awarded and that the board would still be entitled to collect from that owner any assessment which should have been paid.

SENATE SENIOR CITIZENS VETERANS AFFAIRS
AND AGRICULTURE COMMITTEE

STATEMENT TO

SENATE, No. 1562

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 1, 1995

The Senate Senior Citizens, Veterans Affairs and Agriculture Committee reports favorably and with committee amendments Senate, No. 1562.

This bill creates the New Jersey Horse Racing Injury Compensation Board to ensure that workers' compensation insurance is secured for the benefit of persons employed in the thoroughbred and standardbred horse racing industries.

The board is placed in, but not of, the Department of Law and Public Safety and would have a total of six members. Three members would represent State Government: the Commissioner of Insurance or his designee; the Attorney General or his designee; and a member of the New Jersey Racing Commission elected from among its membership; and three would represent the horse racing industry, one each appointed by the New Jersey Racing Commission from the thoroughbred industry, the standardbred industry and the race track owners, respectively. The board is authorized to take all action necessary to implement the bill's provisions, including creating a plan of operation; purchasing workers' compensation insurance and assessing and collecting funds from industry employers for that insurance. The board is authorized to self-insure for the purposes of workers' compensation insurance upon approval of the Commissioner of Insurance. Assessments for the thoroughbred and standardbred industries would be calculated and allocated separately, based on their respective experience.

The board is deemed the employer for the purpose of securing workers' compensation insurance for employees of the industry. Racing industry employees are defined to include jockeys, jockey apprentices, exercise riders, drivers, and driver-trainers who are required to be licensed by the New Jersey Horse Racing Commission.

Current workers' compensation law requires every employer subject to its provisions to make sufficient provision for the payment of benefits to an injured employee. Because of the unique nature of the horse racing industry, difficulties have arisen in ensuring that workers' compensation insurance coverage is provided to all its employees. Out-of-State horse owners are sometimes unaware of their obligation to provide such coverage and as a result, serious injuries have been sustained for which there is no coverage. This bill is intended to resolve such problems by facilitating the securing of a blanket insurance funded by contributions from employers within the industry.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

- 1) provide that the appointed members of the New Jersey Horse

Racing Injury Compensation Board established by the bill will be appointed by the New Jersey Racing Commission, instead of by the Governor as provided in the bill;

2) allow the board to self-insure for purposes of workers' compensation insurance coverage, upon approval of the Commissioner of Insurance pursuant to R.S.34:15-77;

3) eliminate stable employees and trainers from the definition of "horse racing industry employee" and, thus, exempt them from workers' compensation coverage as provided by the board; but add exercise riders to the definition and, thus, coverage by the board; and

4) clarify that assessments to fund premiums for the thoroughbred and standardbred industries will be calculated separately under the bill.

FISCAL NOTE TO

[FIRST REPRINT]

SENATE, No. 1562

STATE OF NEW JERSEY

DATED: October 26, 1995

Senate Bill No. 1562 (1R) of 1994 establishes a six-member New Jersey Horse Racing Injury Compensation Board to secure workers' compensation insurance for employees of the thoroughbred and standardbred horse racing industries. The board would be an independent body in, but not of, the Department of Law and Public Safety. Members of the board would serve without compensation but would be reimbursed for expenses.

The bill authorizes the board to create a plan of operation, purchase workers' compensation insurance and assess and collect funds from gross racing purses and horse racing industry employers to pay for that insurance and additional expenses incurred by the board.

The Departments of Law and Public Safety and Labor estimates that enactment of this bill would have no fiscal impact on State or local governments because all costs incurred by the board would be borne by the horse racing industry.

The Office of Legislative Services concurs with these estimates.

This fiscal note has been prepared pursuant to P.L.1980, c.67.