Introduce by COMMITTEE ON RULES -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the executive law, the workers' compensation law, and the insurance law, in relation to livery driver benefit fund

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The executive law is amended by adding a new article 6-G to read as follows:

ARTICLE 6-G
INDEPENDENT LIVERY DRIVER BENEFIT FUND

Section 160-aaa. Definitions.
1. "Independent livery driver" means a livery driver that is dispatched by an independent livery base.
2. "Annualized basis" means the product of the number of livery drivers affiliated with a dispatching livery base and the number of months each such driver is affiliated with the livery base, divided by twelve.
3. "Covered services" means all dispatches from a livery base regardless of where the pick-up or discharge occurs.
4. "Fund" means the independent livery driver benefit fund as established in this article.
5. "Independent livery base" has the same meaning as set forth in section eighteen-c of the workers' compensation law.
6. "Livery" means a for-hire vehicle licensed by a local taxi and limousine commission, carrying no more than five passengers or such

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.
other limited number as set by a local taxi and limousine commission, which charges for service on the basis of flat rate, time, mileage or zones, and which is dispatched by a livery dispatch facility, but shall not include a vehicle owned or driven by a black car operator, as defined in article six-F of this chapter.

7. "Livery driver" means an individual that drives a livery, is dispatched by a livery base, receives compensation for such driving, and is licensed to do so by a local taxi and limousine commission.

8. "Livery base" means a central facility that manages, organizes or dispatches liveries, and is licensed to do so by a local taxi and limousine commission.

9. "Livery registrant" means a person in whose name a livery is licensed by a local taxi and limousine commission.

10. "Local taxi and limousine commission" means a unit of local government in New York city, Nassau county or Westchester county authorized to license and regulate liveries.

§ 160-bbb. Independent livery driver benefit fund. 1. There is hereby created a not-for-profit corporation to be known as the New York independent livery driver benefit fund. To the extent that the provisions of the not-for-profit corporation law do not conflict with the provisions of this article, or with the plan of operation established pursuant to this article, the not-for-profit corporation law shall apply to the fund, which shall be a type C corporation pursuant to such law. If an applicable provision of this article or of the fund's plan of operation relates to a matter embraced in a provision of the not-for-profit corporation law but is not in conflict therewith, both provisions shall apply. The fund shall perform its functions in accordance with its plan of operation, and shall exercise its powers through a board of directors established pursuant to this article.

2. Within thirty days of the effective date of this article, there shall be appointed a board of directors of the fund, consisting of nine directors appointed by the governor, one of whom shall be chosen upon nomination of the temporary president of the senate; one of whom shall be chosen upon nomination of the speaker of the assembly; one of whom shall be chosen upon nomination of the chair of the workers' compensation board; one of whom shall be chosen on nomination of the superintendent of insurance; one of whom shall be chosen on nomination of the American Federation of Labor-Congress of Industrial Organizations of New York; and four of whom shall be chosen without prior nomination, at least two of which shall be a livery registrant or owner, officer or director of a livery base or livery registrant. The initial terms of directors shall be staggered, the four directors appointed by the governor without prior nomination serving for initial terms of three years from the effective date of this article, the two directors appointed upon nomination of the speaker of the assembly and temporary president of the senate serving for initial terms of two years from the effective date of this article, and the three directors on nomination of the superintendent of insurance, the chair of the workers' compensation board and the American Federation of Labor-Congress of Industrial Organizations of New York serving for initial terms of one year from the effective date of this article. The subsequent terms of all directors shall be three years. The board of directors shall have the power to remove for cause any director. The failure of any nominating authority to appoint a director within the time set by this subdivision shall not bar the fund from operating, so long as at least six directors have been appointed.
3. The directors shall elect annually from among their number a chair and a vice chair who shall act as chair in the chair's absence.
4. For their attendance at meetings, the directors of the fund shall be entitled to compensation, as authorized by the directors, in an amount not to exceed two hundred dollars per meeting per director and to reimbursement of their actual and necessary expenses.
5. Directors of the fund, except as otherwise provided by law, may engage in private or public employment or in a profession or business.
6. (a) All of the directors shall have equal voting rights and five or more directors shall constitute a quorum. The affirmative vote of four directors shall be necessary for the transaction of any business or the exercise of any power or function of the fund.
   (b) A vacancy occurring in a director position shall be filled in the same manner as the initial appointment to that position, provided however that no individual may serve as director for more than three successive terms.
   (c) The board of directors may:
      (i) delegate to one or more of its directors, officers, agents or employees such powers and duties as it may deem proper;
      (ii) establish the procedure by which the fund shall determine how to provide the benefits due pursuant to this article;
      (iii) establish accounting and record-keeping procedures for all financial transactions of the fund, its agents and the board of directors;
      (iv) establish a procedure for determining and collecting the appropriate amount of assessments under and as consistent with this article;
      (v) set forth the procedures by which the fund may exercise the audit rights granted to it under this article;
      (vi) establish procedures to ensure prompt and accurate notification to the fund by independent livery bases of all deaths of independent livery drivers, and all injuries to livery drivers that resulted from a crime for which there is a police report, and provide for full reimbursement of the fund by any member whose failure to provide such notification results in the imposition of a penalty on the fund by the workers' compensation board;
      (vii) recommend changes in the law or regulations governing workers' compensation benefits with livery drivers; and
      (viii) engage in such additional actions as the board of directors may deem necessary or proper for the execution of the powers and duties of the fund.
§ 160-ccc. Contributions to the fund. Each independent livery base shall be assessed an annual payment to the fund, to be set by the board of directors no later than January first of each calendar year, or such other date as the board of directors may set consistent with, and as necessary to effectuate, this article. The total amount of the payment shall be determined by the fund as sufficient to provide it with total assets equal to one hundred fifty percent of the cost of an insurance policy issued under section one hundred sixty-ddd of this article, and to provide for any administrative expense of the fund. Each independent livery base's own share of such payments shall be determined by a formula set by the board of directors, to be based on the number of liveries affiliated with each livery base at the time the payments are calculated, or such other measure set by the chair of the workers' compensation board. Each independent livery base shall make the payments assessed against it annually within thirty days of assessment. If it is determined by the board of directors that there may be an insufficient
amount of money in the fund to purchase the requisite coverage or to pay
administrative expenses in a given year, the board of directors may
require each independent livery base to make an additional payment to
the fund based on the amount of its affiliated drivers on an annualized
basis or such other criteria as shall be established by the chair of the
workers' compensation board, except that no such payments shall be
assessed, such that the fund will have funds greater than necessary to
provide compensation under the workers' compensation law, to the extent
set forth in section one hundred sixty-ddd of this article for eighteen
months.

§ 160-ddd. Use of the fund. Moneys deposited into the fund shall be
used to provide benefits under the workers' compensation law, by
purchase of a policy from the state insurance fund, or from a carrier
licensed to write workers' compensation insurance to the extent permit-
ted by section three thousand four hundred fifty-one of the insurance
law, for livery drivers dispatched by independent livery bases, to
provide benefits under the workers' compensation law for deaths of
livery drivers arising out of and in the course of providing covered
services, and all injuries arising out of and in the course of providing
covered services either: (1) resulting from a crime against such livery
driver as evidenced by a police report or (2) for the following condi-
tions: (a) the amputation or loss of an arm, leg, hand, foot, multiple
fingers, index finger, multiple toes, ear, or nose, (b) paraplegia or
quadriplegia, or (c) total and permanent blindness or deafness. The
provisions of the workers' compensation law shall govern any application
for and the receipt of such benefits.

§ 160-eee. Regulations. The chair of the workers' compensation board
may promulgate regulations necessary to effectuate the provisions of
this article.

§ 160-fff. Membership in the fund. 1. The membership of the fund
shall be comprised of all independent livery bases. If the workers'
compensation board or local taxi and limousine commission revokes a
livery base's authorization to act as an independent livery base, it
shall cease to be a member of the fund within thirty days. Such revoca-
tion shall not entitle the livery base to the return of any moneys
deposited into the fund.

2. Each livery base shall be required, as a condition of obtaining or
retaining any license it receives to operate as a livery base from a
local taxi and limousine commission either: (a) to be a member of the
fund, to submit to the local taxi and limousine commission proof of such
membership and to maintain such records as the workers' compensation
board, state department of motor vehicles or local taxi and limousine
commission may direct in order to carry out the livery base's responsi-
bilities under this article, and as necessary to determine the appropri-
ate cost of compensation the fund must provide under the workers'
compensation law; or (b) to present proof to the local taxi and limou-
sine commission that it has secured compensation under the workers'
compensation law, to the extent required of employers, for all livery
drivers it dispatches.

3. Each local taxi and limousine commission shall supply the fund and
the workers' compensation board, at any such time as the fund or work-
ners' compensation board requests, a list of all liveries affiliated with
each livery base licensed by the commission.

4. The fund shall, within seventy-five days of the appointment of the
fund's board of directors, provide to its members a copy of the proposed
plan of operation filed with the workers' compensation board and all
local taxi and limousine commissions and shall inform its members of their rights and duties pursuant to this article.

§ 160-ggg. Plan of operation. 1. Within seventy-five days of the appointment of the fund's board of directors, the fund shall file with the workers' compensation board and local taxi and limousine commissions its plan of operation, which shall be designed to assure the fair, reasonable and equitable administration of the fund. The plan of operation and any subsequent amendments thereto shall become effective upon being filed with the workers' compensation board and all taxi and limousine commissions.

2. The plan of operation shall constitute the by-laws of the fund and shall, in addition to the requirements enumerated elsewhere in this article:
   (a) establish procedures for collecting and managing the assets of the fund;
   (b) establish regular places and times for meetings of the fund's board of directors;
   (c) establish accounting and record-keeping procedures for all financial transactions of the fund, its agents and the board of directors;
   (d) establish a procedure for determining and collecting the appropriate amount of assessments under this article; and
   (e) contain such additional provisions as the board of directors of the fund may deem necessary or proper for the execution of the powers and duties of the fund.

§ 160-hhh. Violations; penalties; appeals. 1. Any person that knowingly submits a materially false statement on the affirmation provided for in section eighteen-c of the workers' compensation law shall be guilty of a class A misdemeanor. Any person that commits a second or subsequent offense under this subdivision shall be guilty of a class E felony.

2. The workers' compensation board or local taxi and limousine commission may, upon its own motion or the application of a local taxi and limousine commission or the independent livery base, and upon notice to the independent livery base, conduct a hearing as to the validity of any affirmation filed under section eighteen-c of the workers' compensation law, or to determine whether there has been any other violation of this article. Should the workers' compensation board or local taxi and limousine commission determine that the certification contains any materially false statements, the workers' compensation board may:
   (a) revoke the livery base's authorization as an independent livery base for a period of up to five years;
   (b) impose a civil penalty of up to ten thousand dollars; and/or
   (c) refer the independent livery base to the local taxi and limousine commission for such additional sanction as it may impose under its rules and regulations.

3. Any independent livery base which has been found on two separate occasions, under subdivision two of this section, to have made a materially false statement in its certification shall be permanently barred from acting as an independent livery base.

4. If an independent livery base fails to submit to the independent livery driver benefit fund any required charge, the workers' compensation board or local taxi and limousine commission may order that it pay into the fund, upon application of the fund and following notice to the independent livery base (a) the amount overdue plus interest on such amount, and/or (b) a penalty of up to five hundred dollars for each thirty days after notice is given that the payment is overdue. The work-
ers' compensation board or local taxi and limousine commission may
suspend or revoke such livery base's authorization to act as an inde-
pendent livery base for failure to make such payment. The rate of inter-
est applicable to this subdivision shall be twelve percent per annum.
Any monetary penalty imposed pursuant to this subdivision shall be
retained by the workers' compensation board and be used to defray the
costs of administering this article.
5. If the workers' compensation board or local taxi and limousine
commission determines that any independent livery base has made any
material misrepresentations, or temporarily altered the affiliation of
any livery, livery driver or livery registrant, for the purpose of
reducing its payments into the fund, the workers' compensation board or
local taxi and limousine commission may suspend the livery base's
membership in the fund for a period of up to two years, and may impose a
penalty of up to five thousand dollars.
6. If the workers' compensation board or local taxi and limousine
commission determines that any independent livery base has coerced any
livery driver into making false statements or refraining from reporting
any violations of this article, the workers' compensation board or local
taxi and limousine commission may suspend the livery base's membership
in the fund for a period of up to two years, and may impose a penalty of
up to five thousand dollars.
7. Except as otherwise provided in this section, a livery base that is
found to have violated a provision of this article or a rule promulgated
by the workers' compensation board or local taxi and limousine com-
mission pursuant to this article shall be liable for a fine in an amount
not to exceed five thousand dollars per violation.
8. If the fund has reason to believe a violation of this article by a
fund member may have occurred, the fund shall notify the workers'
compensation board. Upon receipt of such a referral, the workers'
compensation board shall hold a hearing to determine the validity of the
charge, or refer the matter to the local taxi and limousine commission
for such determination.
9. The responsible persons of an independent livery base shall be
personally liable for the amount of any monetary penalties awarded
pursuant to this subdivision. "Responsible persons," for purposes of
this subdivision, shall be: (a) the directors of a livery base that is a
corporation; (b) the managers of a livery base that is a limited liabil-
ity company or its members if management of a livery base is vested in
its members; (c) the general partner or partners of a livery base that
is a partnership; (d) all individuals who directly or indirectly own,
control or hold the power to vote ten percent or more of the voting
interests of any corporation, joint stock company, partnership, associ-
ation, trust, limited liability company or similar entity that manages a
livery base; and (e) the president, secretary and treasurer of a livery
base, regardless of its form of organization.
10. Failure of the independent livery base, or of its responsible
persons, to pay any charges or penalties awarded pursuant to this
section within twenty days of issuance of a valid order so to do, or in
the event an appeal has been taken from the determination of the work-
ners' compensation board, to deposit with the workers' compensation board
within twenty days of the issuance of the determination from which the
appeal is taken the total amount of the award as security for its
payment, shall entitle the workers' compensation board or local taxi and
limousine commission to file with the clerk of Albany county or the
fied copy of the determination of the workers' compensation board or the
local taxi and limousine commission, and thereupon judgment shall be
entered in the supreme court by the clerk of the county where the deter-
mination is filed immediately upon such filing. Such judgment shall be
entered in the same manner, have the same effect and be subject to the
same proceedings as though rendered in a suit duly heard and determined
by the supreme court, except that no appeal may be taken therefrom.

11. Within twenty days after issuance by the workers' compensation
board of a determination adverse to a livery base pursuant to this
section, an appeal may be taken therefrom to the appellate division of
the supreme court, third department, by the aggrieved party.

12. If the membership of an independent livery base in the independent
livery fund is suspended for failure to pay assessments under this arti-
cle, the livery base may make application for reinstatement only upon
payment of such assessments and such penalties and interest as the local
taxi and limousine commission or workers' compensation board has
imposed, or upon the agreement by the base and fund to a schedule for
such payment.

13. Any sanction imposed under this section shall be after notice to
the independent livery base and an opportunity for a hearing.

§ 160-iii. Insurance premiums. Nothing in this article or in the
provisions of the workers' compensation law pertaining to coverage of
livery drivers under this article shall be construed as limiting the
discretion of the state insurance fund, in providing coverage to the New
York independent livery driver benefit fund, inc., in choosing a premium
basis, rating plan or setting a rate to cover the risk posed by insuring
such fund.

§ 2. The workers' compensation law is amended by adding a new section
18-c to read as follows:

§ 18-c. Independent livery bases. 1. For purposes of this section,
"covered services," "livery," "livery driver," "livery registrant,
"livery base," "local taxi and limousine commission" and "responsible
person" shall have the meanings set forth in article six-G of the execu-
tive law.

2. The board shall designate a livery base as an independent livery
base, only if the base meets each of the following criteria:

(a) The base submits an affirmation sworn under penalty of perjury by
an officer or director and such other individuals as the chair may
direct, on such form as is provided by the board, which attests to the
truth of such criteria as are set by the chair by regulation, or in the
absence of such regulation attests to the truth of the following: (i)
the base is not, directly or indirectly, including through any director
or officer, the owner or registrant of any livery dispatched by the
base; (ii) all livery drivers dispatched by the base provide and select
their own clothing; (iii) all livery drivers dispatched by the base set
their own hours and days of work; (iv) all livery drivers choose which
dispatches or fares to accept, and no livery driver suffers any conse-
quence by the livery base for failing to respond to its dispatch; (v)
livery drivers dispatched by the base may enter into a contractual
relationship with one or more other bases; (vi) no livery driver
dispatched by the base receives an internal revenue service form W-2
from such base, or is subject to the withholding of any federal income
taxes by the base; (vii) the base does not pay for the fuel or mainte-
nance of any liveries; (viii) the base does not impose any fines
penalties on any livery drivers, except that it may decline to provide
further dispatches for misconduct during any dispatch; and (ix) no
livery driver is subject to being fired or discharged by the livery base. The base shall agree to provide the board with immediate notice of any inaccuracies in the affirmation, including any failure to adhere to any of the matters set forth on its affirmation.

(b) The board shall alter the criteria set forth in paragraph (a) of this subdivision to conform to any statutory definition for employer or independent contractor applicable to livery drivers.

(c) The livery shall provide the board and local taxi and limousine commission, and all livery registrants or drivers whose liveries may be dispatched by the livery base, with a copy of a written policy in plain language, in the primary language spoken by each registrant or driver, setting forth all matters to which it has attested on the affirmation provided for in paragraph (a) of this subdivision. The failure to distribute such a policy shall not have any legal consequence except in accordance with section one hundred sixty-hhh of the executive law.

(d) The base shall pay into the independent livery fund such payments as are directed by the independent livery driver benefit fund pursuant to article six-G of the executive law.

(e) The base may not owe any payments into the fund established under section twenty-six-a of this article, or otherwise owe any moneys under this chapter, unless it has an agreement with the board to repay the money owed, or to relieve it of the obligation to make any such payments.

(f) The base shall maintain such records as are provided for by regulation of the chair.

(g) The base shall permit the local taxi and limousine commission, the independent livery fund and any carrier providing compensation under this title for the independent livery fund to audit its books and records during regular business hours solely as necessary to determine compliance with this section, or to determine the amount owed to the fund.

(h) No responsible persons of the livery base may have been a responsible person of a base whose status as an independent livery base was revoked within the previous five years, or which has no agreement on moneys owed in as required by paragraph (e) of this subdivision, unless such criteria are waived in the discretion of the board.

3. The board may revoke any livery base's status as an independent livery base if it determines that the base is in violation of any of the criteria set forth in subdivision one of this section, or may suspend the livery base's status as an independent livery base pending the base’s compliance with any such criteria.

4. An independent livery base’s obligations under this chapter regarding the securing and provision of workers’ compensation benefits for any livery driver it dispatches shall be satisfied in full by compliance with the requirements imposed upon an independent livery base by this section and article six-G of the executive law. Insurance coverage directly procured by any independent livery base for the purpose of satisfying the requirements of this chapter with respect to employees of the central livery dispatch facility shall not include coverage of any livery driver to the extent that the livery driver is covered under coverage secured by the New York livery drivers’ injury compensation fund pursuant to the requirements of article six-G of the executive law except as provided in that article.

5. Any livery base that is not an independent livery base shall be deemed an employer of any livery driver it dispatches for purposes of this article.
6. A livery base's designation as an employer or independent livery base in accordance with this section shall not be considered in any determination as to whether a livery base is an employer or independent contractor under any other provision of law. The livery base's designation under this section shall not be admissible in any court or administrative proceeding in this state, except any proceeding under this article or article six-G of the executive law, to demonstrate the base's status as an employer or independent contractor.

7. For all injuries or illnesses resulting to a livery driver arising out of covered services for an independent livery base, and for which compensation must be paid in accordance with section one hundred sixty-ddd of the executive law, the independent livery driver benefit fund shall be deemed the employer for all purposes of this chapter.

8. An independent livery driver that sustains injury as a result of the use or operation of an automobile during a dispatch by an independent livery base may obtain recovery in accordance with article fifty-one of the insurance law, and shall not be entitled to workers' compensation benefits except as set forth in section one hundred sixty-ddd of the executive law.

§ 3. Subdivision 3 of section 2 of the workers' compensation law, as amended by chapter 903 of the laws of 1986, the second undesignated paragraph as amended by chapter 169 of the laws of 2007 and the closing paragraph as added by chapter 49 of the laws of 1999, is amended to read as follows:

3. "Employer," except when otherwise expressly stated, means a person, partnership, association, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association or corporation, having one or more persons in employment, including the state, a municipal corporation, fire district or other political subdivision of the state, and every authority or commission heretofore or hereafter continued or created by the public authorities law. For the purposes of this chapter only "employer" shall also mean a person, partnership, association, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association or corporation who delivers or causes to be delivered newspapers or periodicals for delivering or selling and delivering by a newspaper carrier under the age of eighteen years as defined in section thirty-two hundred twenty-eight of the education law. For the purpose of this chapter only, "employer" shall also mean a person, partnership, association, or corporation who leases or otherwise contracts with an operator or lessee for the purpose of driving, operating or leasing a taxicab as so defined in section one hundred forty-eight-a of the vehicle and traffic law, except where such person is an owner-operator of such taxicab who personally regularly operates such vehicle an average of forty or more hours per week and leases such taxicab for some portion of the remaining time, and except if the taxicab is a livery subject to section eighteen-c of this chapter, in which case the livery driver's employer shall only be such employer as is defined in that section. For the purposes of this section only, such an owner-operator shall be deemed to be an employer if he controls, directs, supervises, or has the power to hire or terminate such other person who leases the vehicle.

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 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 wager-
ing 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, appren-
tice jockey or exercise person.

Notwithstanding any other provision of this chapter, and for purposes
of this chapter only, the employer of a black car operator, as defined
in article six-F of the executive law, shall, on and after the fund
liability date, as defined in such article, be the New York black car
operators' injury compensation fund, inc. created pursuant to such arti-
cle.

For the purpose of this chapter only, whether a livery base operating
in any locality where liveries must register with a local taxi and
limousine commission shall be deemed the "employer" of any livery driver
engaging in covered services shall be determined in accordance with
section eighteen-c of this chapter.

§ 4. Subdivision 4 of section 2 of the workers' compensation law is
amended by adding a new closing paragraph to read as follows:

For the purpose of this chapter only, whether a livery driver
dispatched by an independent livery base, as those terms are defined in
article six-G of the executive law, is an "employee" shall be determined
in accordance with section eighteen-c of this chapter.

§ 5. The third undesignated paragraph of subdivision 4 of section 2 of
the workers' compensation law, as added by chapter 903 of the laws of
1986, is amended to read as follows:

For the purpose of this chapter only, "employee" shall also mean a
driver, operator or lessee who contracts with an owner, operator or
lessor for the purpose of operating a taxicab as so defined in section
one hundred forty-eight-a of the vehicle and traffic law, except where
such person leases the taxicab from a person who personally, regularly
operates such vehicle an average of forty or more hours per week, and
except if the taxicab is a livery subject to section eighteen-c of this
chapter, in which case the livery driver's employer shall only be such
employer as is defined in that section. For the purposes of this
section only, such person shall be deemed to be an employee of the
owner-operator if the owner-operator controls, directs, supervises, or
has the power to hire or terminate such person.

§ 6. The third undesignated paragraph of subdivision 5 of section 2 of
the workers' compensation law, as amended 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 juris-
diction of the New York state racing and wagering board shall be
regarded as in the "employment" not solely of such owner and trainer,
but shall instead be conclusively presumed to be in the "employment" of
The New York Jockey Injury Compensation Fund, Inc. and of all owners and
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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 of the injury or death of such jockey, apprentice jockey or 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.

§ 7. Paragraph 15 of subsection (a) of section 1113 of the insurance law, as amended by chapter 481 of the laws of 1988, is amended to read as follows:

(15) "Workers' compensation and employers' liability insurance," means insurance against the legal liability, under common law or statute or assumed by contract, of any employer for the death or disablement of, or injury to, his employee, including volunteer firefighters' benefit insurance provided pursuant to the volunteer firefighters' benefit law [and] including volunteer ambulance workers' benefit insurance provided pursuant to the volunteer ambulance workers' benefit law and insurance for workers' compensation benefits for death and injuries arising out of crimes provided by the independent livery driver benefit fund pursuant to article six-G of the executive law.

§ 8. Subdivision 9 of section 2 of the workers' compensation law is amended by adding a new closing paragraph to read as follows:

The wages of a livery driver, as defined in article six-G of the executive law, shall be calculated in accordance with this paragraph. The chair shall promulgate regulations, in consultation with the independent livery driver benefit fund, and all local taxi and limousine commissions, as defined in article six-G of the executive law, establishing amounts that livery drivers are presumptively deemed to receive in annual wages, and may vary such presumptive wage by such geographic region or political subdivision of the state as the chair may set. Such regulations may establish other factors or criteria for determining the presumptive wage. The presumptive wage shall be set based on the chair's findings as to the amount earned by livery drivers, and their expenses. A livery driver or the livery driver's employer, including the independent livery driver benefit fund, may rebut the presumptive wage by competent evidence that the driver's actual wages for covered services, as defined in article six-G of the executive law, were different. The chair shall promulgate such other rules as are necessary to compute livery driver wages in accordance with this paragraph.

§ 9. Section 11 of the workers' compensation law is amended by adding a new closing paragraph to read as follows:

The liability under this chapter of the New York independent livery driver benefit fund, inc. shall be limited to: (i) securing the payment of workers' compensation coverage to cover those matters required by article six-G of the executive law for independent livery drivers, as defined in such article, whose injury arose out of and in the course of providing covered services for a livery base, as defined in such article, that is a registered member of such fund, and (ii) any statutory penalty resulting from the failure to secure such payment.

§ 10. Section 76 of the workers' compensation law is amended by adding a new subdivision 2-b to read as follows:

2-b. The purposes of the state insurance fund created in this section are hereby enlarged to provide for the insurance by the state insurance
fund of the payment of the benefits required by section one hundred sixty-ddd of the executive law.

§ 11. Paragraph 1 of subsection (d) of section 2339 of the insurance law, as amended by chapter 11 of the laws of 2008, is amended and a new paragraph 3 is added to read as follows:

(1) Notwithstanding any other provision of law, except as provided in paragraph three of this subsection, the state insurance fund shall not charge an insured any rate, or receive from an insured any rate in excess of the total of (i) the applicable loss cost approved by the superintendent, (ii) the applicable expense component of the state insurance fund and (iii) a fair and reasonable differential charge which takes into consideration the nature and hazards of the insured's business or operations, the insured's prior loss experience, the insured's prior and presently existing safety practices, the insured's prior premium payment history, the number of persons the insured employs in such business or operations and the specific type of work they perform, the insured's prior and current compliance with obligations imposed upon the insured by the workers' compensation law and other laws which require premium or other payments by the insured on the basis of earnings and other remuneration earned by persons engaged in the furtherance of the insured's enterprise or enterprises, the promptness and completeness of such reports as the insured has filed on accidents and claims, and such other factors as may be relevant to the appraisal of the insured or proposed insured as a risk in whole.

(3) The provisions of this section shall not apply to a policy sold by the state insurance fund under article six-G of the executive law. The rate which the state insurance fund may charge under such article shall be governed only by such regulations or guidelines as the superintendent may issue.

§ 12. The insurance law is amended by adding a new section 3451 to read as follows:

§ 3451. Regulations. Notwithstanding any other provision of this article or article twenty-three of this chapter, and subject to the superintendent's approval of the rates and forms in accordance with such article, the superintendent may promulgate regulations authorizing an insurer licensed to write workers' compensation and employers' liability insurance, as defined in paragraph fifteen of subsection (a) of section one thousand one hundred thirteen of this chapter, to provide coverage as afforded under article six-G of the executive law in a manner to effectuate the intent and purposes of such article.

§ 13. This act shall take effect immediately; provided, however that:

(a) the workers' compensation board may review and approve affirmations filed under section two of this act at any time after such effective date; and

(b) subdivision 2 of section 160-fff and section 160-hhh as added by section one of this act and sections two through twelve of this act shall take effect January 1, 2009 except that the provisions of subdivision 5 of section 18-c of the workers' compensation law, as added by section two of this act, shall take effect January 1, 2010.