

IN SENATE

June 23, 2008

Introduced 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:

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

ARTICLE 6-G

INDEPENDENT LIVERY DRIVER BENEFIT FUND

5 Section 160-aaa. Definitions.

6 160-bbb. Independent livery driver benefit fund.

7 160-ccc. Contributions to the fund.

8 160-ddd. Use of the fund.

9 160-eee. Regulations.

10 160fff. Membership in the fund.

11 160-ggg. Plan of operation.

12 160-hhh. Violations; penalties; appeals.

13 160-iii. Insurance premiums.

14 § 160-aaa. Definitions. For the purposes of this article:

15 1. "Independent livery driver" means a livery driver that is
16 dispatched by an independent livery base.

17 2. "Annualized basis" means the product of the number of livery drivers
18 affiliated with a dispatching livery base and the number of months
19 each such driver is affiliated with the livery base, divided by twelve.

20 3. "Covered services" means all dispatches from a livery base regard-
21 less of where the pick-up or discharge occurs.

22 4. "Fund" means the independent livery driver benefit fund as estab-
23 lished in this article.

24 5. "Independent livery base" has the same meaning as set forth in
25 section eighteen-c of the workers' compensation law.

26 6. "Livery" means a for-hire vehicle licensed by a local taxi and
27 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.

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1 other limited number as set by a local taxi and limousine commission,
2 which charges for service on the basis of flat rate, time, mileage or
3 zones, and which is dispatched by a livery dispatch facility, but shall
4 not include a vehicle owned or driven by a black car operator, as
5 defined in article six-F of this chapter.

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

9 8. "Livery base" means a central facility that manages, organizes or
10 dispatches liveries, and is licensed to do so by a local taxi and limou-
11 sine commission.

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

14 10. "Local taxi and limousine commission" means a unit of local
15 government in New York city, Nassau county or Westchester county autho-
16 rized to license and regulate liveries.

17 § 160-bbb. Independent livery driver benefit fund. 1. There is hereby
18 created a not-for-profit corporation to be known as the New York inde-
19 pendent livery driver benefit fund. To the extent that the provisions of
20 the not-for-profit corporation law do not conflict with the provisions
21 of this article, or with the plan of operation established pursuant to
22 this article, the not-for-profit corporation law shall apply to the
23 fund, which shall be a type C corporation pursuant to such law. If an
24 applicable provision of this article or of the fund's plan of operation
25 relates to a matter embraced in a provision of the not-for-profit corpo-
26 ration law but is not in conflict therewith, both provisions shall
27 apply. The fund shall perform its functions in accordance with its plan
28 of operation, and shall exercise its powers through a board of directors
29 established pursuant to this article.

30 2. Within thirty days of the effective date of this article, there
31 shall be appointed a board of directors of the fund, consisting of nine
32 directors appointed by the governor, one of whom shall be chosen upon
33 nomination of the temporary president of the senate; one of whom shall
34 be chosen upon nomination of the speaker of the assembly; one of whom
35 shall be chosen upon nomination of the chair of the workers' compen-
36 sation board; one of whom shall be chosen on nomination of the super-
37 intendent of insurance; one of whom shall be chosen on nomination of the
38 American Federation of Labor-Congress of Industrial Organizations of New
39 York; and four of whom shall be chosen without prior nomination, at
40 least two of which shall be a livery registrant or owner, officer or
41 director of a livery base or livery registrant. The initial terms of
42 directors shall be staggered, the four directors appointed by the gover-
43 nor without prior nomination serving for initial terms of three years
44 from the effective date of this article, the two directors appointed
45 upon nomination of the speaker of the assembly and temporary president
46 of the senate serving for initial terms of two years from the effective
47 date of this article, and the three directors on nomination of the
48 superintendent of insurance, the chair of the workers' compensation
49 board and the American Federation of Labor-Congress of Industrial Orga-
50 nizations of New York serving for initial terms of one year from the
51 effective date of this article. The subsequent terms of all directors
52 shall be three years. The board of directors shall have the power to
53 remove for cause any director. The failure of any nominating authority
54 to appoint a director within the time set by this subdivision shall not
55 bar the fund from operating, so long as at least six directors have been
56 appointed.

1 3. The directors shall elect annually from among their number a chair
2 and a vice chair who shall act as chair in the chair's absence.
3 4. For their attendance at meetings, the directors of the fund shall
4 be entitled to compensation, as authorized by the directors, in an
5 amount not to exceed two hundred dollars per meeting per director and to
6 reimbursement of their actual and necessary expenses.
7 5. Directors of the fund, except as otherwise provided by law, may
8 engage in private or public employment or in a profession or business.
9 6. (a) All of the directors shall have equal voting rights and five or
10 more directors shall constitute a quorum. The affirmative vote of four
11 directors shall be necessary for the transaction of any business or the
12 exercise of any power or function of the fund.
13 (b) A vacancy occurring in a director position shall be filled in the
14 same manner as the initial appointment to that position, provided however
15 that no individual may serve as director for more than three successive terms.
16 (c) The board of directors may:
17 (i) delegate to one or more of its directors, officers, agents or
18 employees such powers and duties as it may deem proper;
19 (ii) establish the procedure by which the fund shall determine how to
20 provide the benefits due pursuant to this article;
21 (iii) establish accounting and record-keeping procedures for all
22 financial transactions of the fund, its agents and the board of directors;
23 (iv) establish a procedure for determining and collecting the appropriate amount of assessments under and as consistent with this article;
24 (v) set forth the procedures by which the fund may exercise the audit rights granted to it under this article;
25 (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;
26 (vii) recommend changes in the law or regulations governing workers' compensation benefits with livery drivers; and
27 (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.
28 § 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

1 amount of money in the fund to purchase the requisite coverage or to pay
2 administrative expenses in a given year, the board of directors may
3 require each independent livery base to make an additional payment to
4 the fund based on the amount of its affiliated drivers on an annualized
5 basis or such other criteria as shall be established by the chair of the
6 workers' compensation board, except that no such payments shall be
7 assessed, such that the fund will have funds greater than necessary to
8 provide compensation under the workers' compensation law, to the extent
9 set forth in section one hundred sixty-ddd of this article for eighteen
10 months.

11 § 160-ddd. Use of the fund. Moneys deposited into the fund shall be
12 used to provide benefits under the workers' compensation law, by
13 purchase of a policy from the state insurance fund, or from a carrier
14 licensed to write workers' compensation insurance to the extent permit-
15 ted by section three thousand four hundred fifty-one of the insurance
16 law, for livery drivers dispatched by independent livery bases, to
17 provide benefits under the workers' compensation law for deaths of
18 livery drivers arising out of and in the course of providing covered
19 services, and all injuries arising out of and in the course of providing
20 covered services either: (1) resulting from a crime against such livery
21 driver as evidenced by a police report or (2) for the following condi-
22 tions: (a) the amputation or loss of an arm, leg, hand, foot, multiple
23 fingers, index finger, multiple toes, ear, or nose, (b) paraplegia or
24 quadriplegia, or (c) total and permanent blindness or deafness. The
25 provisions of the workers' compensation law shall govern any application
26 for and the receipt of such benefits.

27 § 160-eee. Regulations. The chair of the workers' compensation board
28 may promulgate regulations necessary to effectuate the provisions of
29 this article.

30 § 160-fff. Membership in the fund. 1. The membership of the fund
31 shall be comprised of all independent livery bases. If the workers'
32 compensation board or local taxi and limousine commission revokes a
33 livery base's authorization to act as an independent livery base, it
34 shall cease to be a member of the fund within thirty days. Such revoca-
35 tion shall not entitle the livery base to the return of any moneys
36 deposited into the fund.

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

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

54 4. The fund shall, within seventy-five days of the appointment of the
55 fund's board of directors, provide to its members a copy of the proposed
56 plan of operation filed with the workers' compensation board and all

1 local taxi and limousine commissions and shall inform its members of
2 their rights and duties pursuant to this article.

3 § 160-ggg. Plan of operation. 1. Within seventy-five days of the
4 appointment of the fund's board of directors, the fund shall file with
5 the workers' compensation board and local taxi and limousine commissions
6 its plan of operation, which shall be designed to assure the fair,
7 reasonable and equitable administration of the fund. The plan of opera-
8 tion and any subsequent amendments thereto shall become effective upon
9 being filed with the workers' compensation board and all taxi and limou-
10 sine commissions.

11 2. The plan of operation shall constitute the by-laws of the fund and
12 shall, in addition to the requirements enumerated elsewhere in this
13 article:

14 (a) establish procedures for collecting and managing the assets of the
15 fund;

16 (b) establish regular places and times for meetings of the fund's
17 board of directors;

18 (c) establish accounting and record-keeping procedures for all finan-
19 cial transactions of the fund, its agents and the board of directors;

20 (d) establish a procedure for determining and collecting the appropri-
21 ate amount of assessments under this article; and

22 (e) contain such additional provisions as the board of directors of
23 the fund may deem necessary or proper for the execution of the powers
24 and duties of the fund.

25 § 160-hhh. Violations; penalties; appeals. 1. Any person that know-
26 ingly submits a materially false statement on the affirmation provided
27 for in section eighteen-c of the workers' compensation law shall be
28 guilty of a class A misdemeanor. Any person that commits a second or
29 subsequent offense under this subdivision shall be guilty of a class E
30 felony.

31 2. The workers' compensation board or local taxi and limousine commis-
32 sion may, upon its own motion or the application of a local taxi and
33 limousine commission or the independent livery fund, and upon notice to
34 the independent livery base, conduct a hearing as to the validity of any
35 affirmation filed under section eighteen-c of the workers' compensation
36 law, or to determine whether there has been any other violation of this
37 article. Should the workers' compensation board or local taxi and limou-
38 sine commission determine that the certification contains any materially
39 false statements, the workers' compensation board may:

40 (a) revoke the livery base's authorization as an independent livery
41 base for a period of up to five years;

42 (b) impose a civil penalty of up to ten thousand dollars; and/or

43 (c) refer the independent livery base to the local taxi and limousine
44 commission for such additional sanction as it may impose under its rules
45 and regulations.

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

50 4. If an independent livery base fails to submit to the independent
51 livery driver benefit fund any required charge, the workers' compen-
52 sation board or local taxi and limousine commission may order that it
53 pay into the fund, upon application of the fund and following notice to
54 the independent livery base (a) the amount overdue plus interest on such
55 amount, and/or (b) a penalty of up to five hundred dollars for each
56 thirty days after notice is given that the payment is overdue. The work-

1 ers' compensation board or local taxi and limousine commission may
2 suspend or revoke such livery base's authorization to act as an inde-
3 pendent livery base for failure to make such payment. The rate of inter-
4 est applicable to this subdivision shall be twelve percent per annum.
5 Any monetary penalty imposed pursuant to this subdivision shall be
6 retained by the workers' compensation board and be used to defray the
7 costs of administering this article.

8 5. If the workers' compensation board or local taxi and limousine
9 commission determines that any independent livery base has made any
10 material misrepresentations, or temporarily altered the affiliation of
11 any livery, livery driver or livery registrant, for the purpose of
12 reducing its payments into the fund, the workers' compensation board or
13 local taxi and limousine commission may suspend the livery base's
14 membership in the fund for a period of up to two years, and may impose a
15 penalty of up to five thousand dollars.

16 6. If the workers' compensation board or local taxi and limousine
17 commission determines that any independent livery base has coerced any
18 livery driver into making false statements or refraining from reporting
19 any violations of this article, the workers' compensation board or local
20 taxi and limousine commission may suspend the livery base's membership
21 in the fund for a period of up to two years, and may impose a penalty of
22 up to five thousand dollars.

23 7. Except as otherwise provided in this section, a livery base that is
24 found to have violated a provision of this article or a rule promulgated
25 by the workers' compensation board or local taxi and limousine commis-
26 sion pursuant to this article shall be liable for a fine in an amount
27 not to exceed five thousand dollars per violation.

28 8. If the fund has reason to believe a violation of this article by a
29 fund member may have occurred, the fund shall notify the workers'
30 compensation board. Upon receipt of such a referral, the workers'
31 compensation board shall hold a hearing to determine the validity of the
32 charge, or refer the matter to the local taxi and limousine commission
33 for such determination.

34 9. The responsible persons of an independent livery base shall be
35 personally liable for the amount of any monetary penalties awarded
36 pursuant to this subdivision. "Responsible persons," for purposes of
37 this subdivision, shall be: (a) the directors of a livery base that is a
38 corporation; (b) the managers of a livery base that is a limited liability
39 company or its members if management of a livery base is vested in
40 its members; (c) the general partner or partners of a livery base that
41 is a partnership; (d) all individuals who directly or indirectly own,
42 control or hold the power to vote ten percent or more of the voting
43 interests of any corporation, joint stock company, partnership, associa-
44 tion, trust, limited liability company or similar entity that manages a
45 livery base; and (e) the president, secretary and treasurer of a livery
46 base, regardless of its form of organization.

47 10. Failure of the independent livery base, or of its responsible
48 persons, to pay any charges or penalties awarded pursuant to this
49 section within twenty days of issuance of a valid order so to do, or in
50 the event an appeal has been taken from the determination of the work-
51 ers' compensation board, to deposit with the workers' compensation board
52 within twenty days of the issuance of the determination from which the
53 appeal is taken the total amount of the award as security for its
54 payment, shall entitle the workers' compensation board or local taxi and
55 limousine commission to file with the clerk of Albany county or the

56 county where the local taxi and limousine commission is located a certi-

1 fied copy of the determination of the workers' compensation board or the
2 local taxi and limousine commission, and thereupon judgment shall be
3 entered in the supreme court by the clerk of the county where the deter-
4 mination is filed immediately upon such filing. Such judgment shall be
5 entered in the same manner, have the same effect and be subject to the
6 same proceedings as though rendered in a suit duly heard and determined
7 by the supreme court, except that no appeal may be taken therefrom.

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

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

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

21 § 160-iii. Insurance premiums. Nothing in this article or in the
22 provisions of the workers' compensation law pertaining to coverage of
23 livery drivers under this article shall be construed as limiting the
24 discretion of the state insurance fund, in providing coverage to the New
25 York independent livery driver benefit fund, inc., in choosing a premium
26 basis, rating plan or setting a rate to cover the risk posed by insuring
27 such fund.

28 § 2. The workers' compensation law is amended by adding a new section
29 18-c to read as follows:

30 § 18-c. Independent livery bases. 1. For purposes of this section,
31 "covered services," "livery," "livery driver," "livery registrant,"
32 "livery base," "local taxi and limousine commission" and "responsible
33 person" shall have the meanings set forth in article six-G of the execu-
34 tive law.

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

37 (a) The base submits an affirmation sworn under penalty of perjury by
38 an officer or director and such other individuals as the chair may
39 direct, on such form as is provided by the board, which attests to the
40 truth of such criteria as are set by the chair by regulation, or in the
41 absence of such regulation attests to the truth of the following: (i)
42 the base is not, directly or indirectly, including through any director
43 or officer, the owner or registrant of any livery dispatched by the
44 base; (ii) all livery drivers dispatched by the base provide and select
45 their own clothing; (iii) all livery drivers dispatched by the base set
46 their own hours and days of work; (iv) all livery drivers choose which
47 dispatches or fares to accept, and no livery driver suffers any conse-
48 quence by the livery base for failing to respond to its dispatch; (v)
49 livery drivers dispatched by the base may enter into a contractual
50 relationship with one or more other bases; (vi) no livery driver
51 dispatched by the base receives an internal revenue service form W-2
52 from such base, or is subject to the withholding of any federal income
53 taxes by the base; (vii) the base does not pay for the fuel or mainte-
54 nance of any liveries; (viii) the base does not impose any fines
55 penalties on any livery drivers, except that it may decline to provide
56 further dispatches for misconduct during any dispatch; and (ix) no

1 livery driver is subject to being fired or discharged by the livery
2 base. The base shall agree to provide the board with immediate notice of
3 any inaccuracies in the affirmation, including any failure to adhere to
4 any of the matters set forth on its affirmation.

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

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

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

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

24 (f) The base shall maintain such records as are provided for by regu-
25 lation of the chair.

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

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

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

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

54 5. Any livery base that is not an independent livery base shall be
55 deemed an employer of any livery driver it dispatches for purposes of
56 this article.

1 6. A livery base's designation as an employer or independent livery
2 base in accordance with this section shall not be considered in any
3 determination as to whether a livery base is an employer or independent
4 contractor under any other provision of law. The livery base's desig-
5 nation under this section shall not be admissible in any court or admin-
6 istrative proceeding in this state, except any proceeding under this
7 article or article six-G of the executive law, to demonstrate the base's
8 status as an employer or independent contractor.

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

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

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

25 3. "Employer," except when otherwise expressly stated, means a person,
26 partnership, association, corporation, and the legal representatives of
27 a deceased employer, or the receiver or trustee of a person, partner-
28 ship, association or corporation, having one or more persons in employ-
29 ment, including the state, a municipal corporation, fire district or
30 other political subdivision of the state, and every authority or commis-
31 sion heretofore or hereafter continued or created by the public authori-
32 ties law. For the purposes of this chapter only "employer" shall also
33 mean a person, partnership, association, corporation, and the legal
34 representatives of a deceased employer, or the receiver or trustee of a
35 person, partnership, association or corporation who delivers or causes
36 to be delivered newspapers or periodicals for delivering or selling and
37 delivering by a newspaper carrier under the age of eighteen years as
38 defined in section thirty-two hundred twenty-eight of the education law.
39 For the purpose of this chapter only, "employer" shall also mean a
40 person, partnership, association, or corporation who leases or otherwise
41 contracts with an operator or lessee for the purpose of driving, operat-
42 ing or leasing a taxicab as so defined in section one hundred forty-
43 eight-a of the vehicle and traffic law, except where such person is an
44 owner-operator of such taxicab who personally regularly operates such
45 vehicle an average of forty or more hours per week and leases such taxi-
46 cab for some portion of the remaining time, and except if the taxicab is
47 a livery subject to section eighteen-c of this chapter, in which case
48 the livery driver's employer shall only be such employer as is defined
49 in that section. For the purposes of this section only, such an owner-
50 operator shall be deemed to be an employer if he controls, directs,
51 supervises, or has the power to hire or terminate such other person who
52 leases the vehicle.

53 Notwithstanding any other provision of this chapter and for purposes
54 of this chapter only, "employer" shall mean, with respect to a jockey,
55 apprentice jockey or exercise person licensed under article two or four
56 of the racing, pari-mutuel wagering and breeding law performing services

1 for an owner or trainer in connection with the training or racing of a
2 horse at a facility of a racing association or corporation subject to
3 article two or four of the racing, pari-mutuel wagering and breeding law
4 and subject to the jurisdiction of the New York state racing and wager-
5 ing board, The New York Jockey Injury Compensation Fund, Inc. and all
6 owners and trainers who are licensed or required to be licensed under
7 article two or four of the racing, pari-mutuel wagering and breeding law
8 at the time of any occurrence for which benefits are payable pursuant to
9 this chapter in respect to the injury or death of such jockey, appren-
10 tice jockey or exercise person.

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

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

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

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

28 § 5. The third undesignated paragraph of subdivision 4 of section 2 of
29 the workers' compensation law, as added by chapter 903 of the laws of
30 1986, is amended to read as follows:

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

43 § 6. The third undesignated paragraph of subdivision 5 of section 2 of
44 the workers' compensation law, as amended by chapter 169 of the laws of
45 2007, is amended to read as follows:

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

1 trainers who are licensed or required to be licensed under article two
2 or four of the racing, pari-mutuel wagering and breeding law, at the
3 time of any occurrence for which benefits are payable pursuant to this
4 chapter in respect of the injury or death of such jockey, apprentice
5 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.

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

13 (15) "Workers' compensation and employers' liability insurance," means
14 insurance against the legal liability, under common law or statute or
15 assumed by contract, of any employer for the death or disablement of, or
16 injury to, his employee, including volunteer firefighters' benefit
17 insurance provided pursuant to the volunteer firefighters' benefit law
18 [and] including volunteer ambulance workers' benefit insurance provided
19 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.

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

22 The wages of a livery driver, as defined in article six-G of the exec-
23 utive law, shall be calculated in accordance with this paragraph. The
24 chair shall promulgate regulations, in consultation with the independent
25 livery driver benefit fund, and all local taxi and limousine commis-
26 sions, as defined in article six-G of the executive law, establishing
27 amounts that livery drivers are presumptively deemed to receive in annu-
28 al wages, and may vary such presumptive wage by such geographic region
29 or political subdivision of the state as the chair may set. Such regu-
30 lations may establish other factors or criteria for determining the
31 presumptive wage. The presumptive wage shall be set based on the chair's
32 findings as to the amount earned by livery drivers, and their expenses.
33 A livery driver or the livery driver's employer, including the independ-
34 ent livery driver benefit fund, may rebut the presumptive wage by compe-
35 tent evidence that the driver's actual wages for covered services, as
36 defined in article six-G of the executive law, were different. The chair
37 shall promulgate such other rules as are necessary to compute livery
38 driver wages in accordance with this paragraph.

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

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

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

51 2-b. The purposes of the state insurance fund created in this section
52 are hereby enlarged to provide for the insurance by the state insurance

1 **fund of the payment of the benefits required by section one hundred**
2 **sixty-ddd of the executive law.**

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

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

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

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

32 **§ 3451. Regulations. Notwithstanding any other provision of this arti-**
33 **cle or article twenty-three of this chapter, and subject to the super-**
34 **intendent's approval of the rates and forms in accordance with such**
35 **article, the superintendent may promulgate regulations authorizing an**
36 **insurer licensed to write workers' compensation and employers' liability**
37 **insurance, as defined in paragraph fifteen of subsection (a) of section**
38 **one thousand one hundred thirteen of this chapter, to provide coverage**
39 **as afforded under article six-G of the executive law in a manner to**
40 **effectuate the intent and purposes of such article.**

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

42 (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

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