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**SUBSTITUTE HOUSE BILL 1952**

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**State of Washington                      52nd Legislature                      1991 Regular Session**

**By** House Committee on Commerce & Labor (originally sponsored by Representatives Rasmussen, R. King, Cole, Ferguson, Leonard, Holland, G. Fisher, Winsley, Heavey, May, Phillips, R. Fisher, Fuhrman, Lisk and Sheldon).

Read first time March 6, 1991.

1            AN ACT Relating to industrial insurance coverage for jockeys and  
2 apprentice jockeys; amending RCW 51.16.210, 67.16.300, 51.12.020,  
3 51.08.178, and 51.16.140; and declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            **Sec. 1.** RCW 51.16.210 and 1989 c 385 s 1 are each amended to read  
6 as follows:

7            (1) APPLICABILITY. The department shall assess premiums, under the  
8 provisions of this section, for certain horse racing employments  
9 licensed in accordance with chapter 67.16 RCW. This premium assessment  
10 shall be for the purpose of providing industrial insurance coverage for  
11 employees (~~of trainers~~) licensed under chapter 67.16 RCW, including  
12 but not limited to exercise riders, pony riders, (~~and~~) grooms,  
13 jockeys, and apprentice jockeys, and including all on or off track  
14 employment. For the purposes of RCW 51.16.210, 67.16.300, 51.16.140,  
15 51.32.073, and 67.16.020 a hotwalker shall be considered a groom.

1 (~~The department may adopt rules under chapter 34.05 RCW to carry out~~  
2 ~~the purposes of this section, including rules providing for alternative~~  
3 ~~reporting periods and payment due dates for coverage under this~~  
4 ~~section. The department rules shall ensure that no licensee licensed~~  
5 ~~prior to May 13, 1989, shall pay more than the assessment fixed at the~~  
6 ~~basic manual rate.))~~

7 (2) EMPLOYER STATUS. For the purposes of this section, trainers  
8 shall be considered the exclusive employer of grooms, pony riders, and  
9 exercise riders. Persons or racing associations licensed to hold race  
10 meets under chapter 67.16 RCW, and race horse owners and trainers  
11 licensed under chapter 67.16 RCW shall be considered the special  
12 employers of jockeys and apprentice jockeys.

13 (3) TRAINER AND GROOM ASSESSMENT. The department shall compute  
14 industrial insurance premium rates on a per license basis(~~(, which~~  
15 ~~premiums shall be assessed)) to fund the claims liability for all  
16 covered horse racing employments except for jockeys and apprentice  
17 jockeys, which shall be computed as provided in subsection (5) of this  
18 section. The premium requirement needed to cover employments subject  
19 to this subsection shall be funded by assessments calculated by the  
20 department and paid at the time of each issuance or renewal of the  
21 license for owners, trainers, and grooms ((in amounts established by  
22 department rule for coverage under this section. Premium assessments  
23 shall be determined in accordance with the requirements of this title,  
24 except that assessments shall not be experience rated and shall be  
25 fixed at the basic manual rate. However, rates may vary according to  
26 differences in working conditions at major tracks and fair tracks.~~

27 (~~3) For the purposes of paying premiums and assessments under this~~  
28 ~~section and making reports under this title, individuals licensed as~~  
29 ~~trainers by the Washington horse racing commission shall be considered~~  
30 ~~employers)). The premium assessment for a groom's license shall be~~

1 paid by the trainer responsible for signing the groom's license  
2 application and shall be payable at the time of license issuance or  
3 renewal.

4 (4) OWNER'S FEE. The fee to be assessed on owner licenses as  
5 required by subsection (3) of this section shall be considered a fee  
6 and not premiums and shall not exceed one hundred fifty dollars  
7 annually. However, those owners having less than a full ownership in  
8 a horse or horses shall pay a percentage of the required license fee  
9 that is equal to the total percentage of the ownership that the owner  
10 has in the horse or horses. In no event shall an owner having an  
11 ownership percentage in more than one horse pay more than a one hundred  
12 fifty-dollar license fee. This assessment shall be used to fund the  
13 claims liabilities of covered horse racing employments other than  
14 jockeys and apprentice jockeys as required under subsection (5) of this  
15 section. The assessment on each owner's license shall not imply that  
16 an owner is an employer, but shall be required as part of the privilege  
17 of holding an owner's license.

18 (5) JOCKEYS AND APPRENTICE JOCKEYS PREMIUMS. For the purposes of  
19 this subsection, the premium obligation for the coverage of jockeys and  
20 apprentice jockeys licensed under chapter 67.16 RCW shall be paid in  
21 equal one-fourth shares by owners, trainers, the racing association,  
22 and jockeys and apprentice jockeys as follows:

23 (a) The premium assessment on owners is separate from the fee  
24 charged to owners under subsection (4) of this section and shall also  
25 be paid on a per license basis at the time of license issuance or  
26 renewal.

27 (b) The premium assessment for trainers, jockeys, and apprentice  
28 jockeys shall be paid on a per start basis and collected from the  
29 trainers, jockeys, and apprentice jockeys by the racing association  
30 operating the track that is holding the licensed event. The

1 association shall remit all such premiums collected from the trainers,  
2 jockeys, and apprentice jockeys collected on a per start basis as  
3 provided under department rules. This remittance shall be separate  
4 from the remittance made by the association for their one-fourth share  
5 of the premium assessment under (c) of this subsection.

6 (c) The racing association's premium assessment shall be on a per  
7 day basis and be paid at the intervals required under department rules  
8 for the actual number of race dates approved and set by the Washington  
9 horse racing commission for the respective association or track, as  
10 applicable.

11 (6) BASE RATED PREMIUMS. The premiums established by the  
12 department to cover employments subject to this section shall not be  
13 experience rated.

14 (7) RULE MAKING AUTHORITY. The department may adopt rules under  
15 chapter 34.05 RCW to carry out the purposes of this section, including  
16 rules providing for alternative premium bases, reporting periods, and  
17 payment due dates for coverage under this section. Premium assessments  
18 ((under this section)) or fees which are collected on a per license  
19 basis shall be collected by the Washington horse racing commission and  
20 deposited in the industrial insurance trust funds as provided under  
21 department rules.

22 (8) EXCLUSIVE REMEDY. Racing associations that operate a  
23 parimutuel racing facility licensed under chapter 67.16 RCW and owners  
24 and trainers who come under the jurisdiction of the Washington horse  
25 racing commission are considered to be special employers of jockeys and  
26 apprentice jockeys and the exclusive remedy provisions of RCW 51.04.010  
27 apply for jockeys and apprentice jockeys.

28 **Sec. 2.** RCW 67.16.300 and 1989 c 385 s 2 are each amended to read  
29 as follows:

1        In addition to the license fees authorized by this chapter, the  
2 commission shall collect the industrial insurance premium assessments  
3 required under RCW 51.16.210 from trainers, grooms, ~~((and))~~ owners,  
4 jockeys, apprentice jockeys, and any other person or entity required to  
5 be assessed premiums under rules adopted by the department of labor and  
6 industries under RCW 51.16.210. The industrial insurance premium  
7 assessments required under RCW 51.16.210 shall be retroactive to  
8 January 1, ~~((1989))~~ 1991, and shall be collected from all licensees  
9 whose licenses were issued after that date. The commission shall  
10 deposit the industrial insurance premium assessments in the industrial  
11 insurance trust fund as required by rules adopted by the department of  
12 labor and industries.

13        **Sec. 3.** RCW 51.12.020 and 1987 c 316 s 2 are each amended to read  
14 as follows:

15        The following are the only employments which shall not be included  
16 within the mandatory coverage of this title:

17        (1) Any person employed as a domestic servant in a private home by  
18 an employer who has less than two employees regularly employed forty or  
19 more hours a week in such employment.

20        (2) Any person employed to do gardening, maintenance, repair,  
21 remodeling, or similar work in or about the private home of the  
22 employer.

23        (3) A person whose employment is not in the course of the trade,  
24 business, or profession of his or her employer and is not in or about  
25 the private home of the employer.

26        (4) Any person performing services in return for aid or sustenance  
27 only, received from any religious or charitable organization.

28        (5) Sole proprietors or partners: PROVIDED, That after July 26,  
29 1981, sole proprietors or partners who for the first time register

1 under chapter 18.27 RCW or become licensed for the first time under  
2 chapter 19.28 RCW shall be included under the mandatory coverage  
3 provisions of this title subject to the provisions of RCW 51.32.030.  
4 These persons may elect to withdraw from coverage under RCW 51.12.115.

5 (6) Any child under eighteen years of age employed by his parent or  
6 parents in agricultural activities on the family farm.

7 ~~((Jockeys while participating in or preparing horses for race  
8 meets licensed by the Washington horse racing commission pursuant to  
9 chapter 67.16 RCW.~~

10 ~~(8))~~ Any officer of a corporation elected and empowered in  
11 accordance with the articles of incorporation or bylaws of a  
12 corporation who at all times during the period involved is also a  
13 director and shareholder of the corporation. However, any corporation  
14 may elect to cover such officers who are in fact employees of the  
15 corporation in the manner provided by RCW 51.12.110.

16 ~~((9))~~ (8) Services rendered by a musician or entertainer under a  
17 contract with a purchaser of the services, for a specific engagement or  
18 engagements when such musician or entertainer performs no other duties  
19 for the purchaser and is not regularly and continuously employed by the  
20 purchaser. A purchaser does not include the leader of a group or  
21 recognized entity who employs other than on a casual basis musicians or  
22 entertainers.

23 **Sec. 4.** RCW 51.08.178 and 1988 c 161 s 12 are each amended to read  
24 as follows:

25 (1) For the purposes of this title, the monthly wages the worker  
26 was receiving from all employment at the time of injury shall be the  
27 basis upon which compensation is computed unless otherwise provided  
28 specifically in the statute concerned. In cases where the worker's  
29 wages are not fixed by the month, they shall be determined by

1 multiplying the daily wage the worker was receiving at the time of the  
2 injury:

3 (a) By five, if the worker was normally employed one day a week;

4 (b) By nine, if the worker was normally employed two days a week;

5 (c) By thirteen, if the worker was normally employed three days a  
6 week;

7 (d) By eighteen, if the worker was normally employed four days a  
8 week;

9 (e) By twenty-two, if the worker was normally employed five days a  
10 week;

11 (f) By twenty-six, if the worker was normally employed six days a  
12 week;

13 (g) By thirty, if the worker was normally employed seven days a  
14 week.

15 The term "wages" shall include the reasonable value of board,  
16 housing, fuel, or other consideration of like nature received from the  
17 employer as part of the contract of hire, but shall not include  
18 overtime pay except in cases under subsection (2) of this section.  
19 However, tips shall also be considered wages only to the extent such  
20 tips are reported to the employer for federal income tax purposes. The  
21 daily wage shall be the hourly wage multiplied by the number of hours  
22 the worker is normally employed. The number of hours the worker is  
23 normally employed shall be determined by the department in a fair and  
24 reasonable manner, which may include averaging the number of hours  
25 worked per day.

26 (2) In cases where (a) the worker's employment is exclusively  
27 seasonal in nature or (b) the worker's current employment or his or her  
28 relation to his or her employment is essentially part-time or  
29 intermittent, the monthly wage shall be determined by dividing by  
30 twelve the total wages earned, including overtime, from all employment

1 in any twelve successive calendar months preceding the injury which  
2 fairly represent the claimant's employment pattern.

3 (3) If, within the twelve months immediately preceding the injury,  
4 the worker has received from the employer at the time of injury a bonus  
5 as part of the contract of hire, the average monthly value of such  
6 bonus shall be included in determining the worker's monthly wages.

7 (4) The average monthly wage of a jockey or apprentice jockey is  
8 based upon all earnings, including earnings from outside the state.  
9 The department shall adopt the rules necessary for gathering and  
10 computing the wage information required for compliance with this  
11 subsection.

12 (5) In cases where a wage has not been fixed or cannot be  
13 reasonably and fairly determined, the monthly wage shall be computed on  
14 the basis of the usual wage paid other employees engaged in like or  
15 similar occupations where the wages are fixed.

16 **Sec. 5.** RCW 51.16.140 and 1989 c 385 s 3 are each amended to read  
17 as follows:

18 (1) Every employer who is not a self-insurer shall deduct from the  
19 pay of each of his or her workers one-half of the amount he or she is  
20 required to pay, for medical benefits within each risk classification.  
21 Such amount shall be periodically determined by the director and  
22 reported by him or her to all employers under this title: PROVIDED,  
23 That the state governmental unit shall pay the entire amount into the  
24 medical aid fund for volunteers, as defined in RCW 51.12.035, and the  
25 state apprenticeship council shall pay the entire amount into the  
26 medical aid fund for registered apprentices or trainees, for the  
27 purposes of RCW 51.12.130. The deduction under this section is not  
28 authorized for premiums assessed under RCW 51.16.210, except as  
29 specifically authorized in RCW 51.16.210(5)(b).

1           (2) It shall be unlawful for the employer, unless specifically  
2 authorized by this title, to deduct or obtain any part of the premium  
3 or other costs required to be by him or her paid from the wages or  
4 earnings of any of his or her workers, and the making of or attempt to  
5 make any such deduction shall be a gross misdemeanor.

6           NEW SECTION.   **Sec. 6.**           This act is necessary for the immediate  
7 preservation of the public peace, health, or safety, or support of the  
8 state government and its existing public institutions, and shall take  
9 effect immediately.