

1 1952-S.E AMH HEAV H4836.1

2 ESHB 1952 - H AMD 0119

3 By Representatives Heavey and Forner

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5 Strike everything after the enacting clause and insert the  
6 following:

7 "Sec. 1. RCW 51.16.210 and 1989 c 385 s 1 are each amended to read  
8 as follows:

9 (1) APPLICABILITY. The department shall assess premiums, under the  
10 provisions of this section, for certain horse racing employments  
11 licensed in accordance with chapter 67.16 RCW. This premium assessment  
12 shall be for the purpose of providing industrial insurance coverage for  
13 employees ~~((of trainers))~~ licensed under chapter 67.16 RCW, including  
14 but not limited to exercise riders, pony riders, ~~((and))~~ grooms,  
15 jockeys, and apprentice jockeys, and including all on or off track  
16 employment. For the purposes of RCW 51.16.210, 67.16.300, 51.16.140,  
17 51.32.073, and 67.16.020 a hotwalker shall be considered a groom.  
18 ~~((The department may adopt rules under chapter 34.05 RCW to carry out  
19 the purposes of this section, including rules providing for alternative  
20 reporting periods and payment due dates for coverage under this  
21 section. The department rules shall ensure that no licensee licensed  
22 prior to May 13, 1989, shall pay more than the assessment fixed at the  
23 basic manual rate.))~~

24 (2) EMPLOYER STATUS. For the purposes of this section, trainers  
25 shall be considered the exclusive employer of grooms, pony riders, and  
26 exercise riders. Persons or racing associations licensed to hold race  
27 meets under chapter 67.16 RCW shall be considered the special employers  
28 of jockeys and apprentice jockeys.

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

15       ~~(3) For the purposes of paying premiums and assessments under this~~  
16 ~~section and making reports under this title, individuals licensed as~~  
17 ~~trainers by the Washington horse racing commission shall be considered~~  
18 ~~employers)). The premium assessment for a groom's license shall be~~  
19 paid by the trainer responsible for signing the groom's license  
20 application and shall be payable at the time of license issuance or  
21 renewal.

22       (4) OWNER'S FEE. The fee to be assessed on owner licenses as  
23 required by subsection (3) of this section shall be considered a fee  
24 and not premiums and shall not exceed one hundred fifty dollars  
25 annually. However, those owners having less than a full ownership in  
26 a horse or horses shall pay a (~~(percentage of the required license fee~~  
27 ~~that is equal to the total percentage of the ownership that the owner~~  
28 ~~has in the horse or horses)) one hundred dollar fee. In no event shall  
29 an owner having an ownership percentage in more than one horse pay more  
30 than a one hundred fifty-dollar license fee. This assessment shall be~~

1 used to fund the claims liabilities of covered horse racing employments  
2 other than jockeys and apprentice jockeys as required under subsection  
3 (5) of this section. The assessment on each owner's license shall not  
4 imply that an owner is an employer, but shall be required as part of  
5 the privilege of holding an owner's license.

6 (5) JOCKEYS AND APPRENTICE JOCKEYS PREMIUMS. For the purposes of  
7 this subsection, the premium obligation for the coverage of jockeys and  
8 apprentice jockeys licensed under chapter 67.16 RCW shall be paid by  
9 owners, trainers, racing associations, jockeys, and apprentice jockeys  
10 as follows:

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

15 (b) The premium assessment for trainers shall be on a per-license  
16 basis and shall be collected from the trainers by the Washington horse  
17 racing commission. The commission shall remit the premiums collected  
18 under this subsection (5)(b) from the trainers as provided under  
19 department rules.

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

25 (d) The premium assessment for jockeys and apprentice jockeys shall  
26 be paid on a per-start basis and collected from the jockeys and  
27 apprentice jockeys by the racing association operating the track that  
28 is holding the licensed event, but in no event shall the premium under  
29 this subsection (5)(d) be more than five dollars per start. The  
30 association shall remit all such premiums collected from the jockeys

1 and apprentice jockeys as provided under department rules. This  
2 remittance shall be separate from the remittance made by the  
3 association for their one-fourth share of the premium assessment under  
4 (c) of this subsection.

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

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

16 (8) EXCLUSIVE REMEDY. Owners, trainers, and associations who come  
17 under the jurisdiction of the Washington horse racing commission are  
18 considered to be special employers of jockeys and apprentice jockeys  
19 and the exclusive remedy provisions of RCW 51.04.010 apply for jockeys  
20 and apprentice jockeys."

21 **"Sec. 2.** RCW 67.16.300 and 1989 c 385 s 2 are each amended to read  
22 as follows:

23 In addition to the license fees authorized by this chapter, the  
24 commission shall collect the industrial insurance premium assessments  
25 required under RCW 51.16.210 from trainers, grooms, and owners. The  
26 industrial insurance premium assessments required under RCW 51.16.210  
27 shall be retroactive to January 1, ~~((1989))~~ 1992, and shall be  
28 collected from all licensees whose licenses were issued after that  
29 date. The commission shall deposit the industrial insurance premium

1 assessments in the industrial insurance trust fund as required by rules  
2 adopted by the department of labor and industries."

3 "Sec. 3. RCW 51.12.020 and 1991 c 324 s 18 and 1991 c 246 s 4 are  
4 each reenacted and amended to read as follows:

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

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

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

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

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

18 (5) Sole proprietors or partners.

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

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

24 ~~(8))~~(a) Except as otherwise provided in (b) of this subsection,  
25 any bona fide officer of a corporation voluntarily elected or  
26 voluntarily appointed in accordance with the articles of incorporation  
27 or bylaws of the corporation, who at all times during the period  
28 involved is also a bona fide director, and who is also a shareholder of  
29 the corporation. Only such officers who exercise substantial control

1 in the daily management of the corporation and whose primary  
2 responsibilities do not include the performance of manual labor are  
3 included within this subsection.

4 (b) Alternatively, a corporation that is not a "public company" as  
5 defined in RCW 23B.01.400(~~((+19+))~~) (20) may exempt eight or fewer bona  
6 fide officers, who are voluntarily elected or voluntarily appointed in  
7 accordance with the articles of incorporation or bylaws of the  
8 corporation and who exercise substantial control in the daily  
9 management of the corporation, from coverage under this title without  
10 regard to the officers' performance of manual labor if the exempted  
11 officer is a shareholder of the corporation, or may exempt any number  
12 of officers if all the exempted officers are related by blood within  
13 the third degree or marriage. If a corporation that is not a "public  
14 company" elects to be covered under subsection (~~((+8+))~~) (7)(a) of this  
15 section, the corporation's election must be made on a form prescribed  
16 by the department and under such reasonable rules as the department may  
17 adopt.

18 (c) Determinations respecting the status of persons performing  
19 services for a corporation shall be made, in part, by reference to  
20 Title 23B RCW and to compliance by the corporation with its own  
21 articles of incorporation and bylaws. For the purpose of determining  
22 coverage under this title, substance shall control over form, and  
23 mandatory coverage under this title shall extend to all workers of this  
24 state, regardless of honorary titles conferred upon those actually  
25 serving as workers.

26 (d) A corporation may elect to cover officers who are exempted by  
27 this subsection in the manner provided by RCW 51.12.110.

28 (~~((+9+))~~) (8) Services rendered by a musician or entertainer under a  
29 contract with a purchaser of the services, for a specific engagement or  
30 engagements when such musician or entertainer performs no other duties

1 for the purchaser and is not regularly and continuously employed by the  
2 purchaser. A purchaser does not include the leader of a group or  
3 recognized entity who employs other than on a casual basis musicians or  
4 entertainers.

5 ~~((10))~~ (9) Services performed by a newspaper carrier selling or  
6 distributing newspapers on the street or from house to house.

7 ~~((11))~~ (10) Services performed by an insurance agent, insurance  
8 broker, or insurance solicitor, as defined in RCW 48.17.010, 48.17.020,  
9 and 48.17.030, respectively.

10 ~~((12))~~ (11) Services performed by a booth renter as defined in  
11 RCW 18.16.020. However, a person exempted under this subsection may  
12 elect coverage under RCW 51.32.030."

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

15 (1) For the purposes of this title, the monthly wages the worker  
16 was receiving from all employment at the time of injury shall be the  
17 basis upon which compensation is computed unless otherwise provided  
18 specifically in the statute concerned. In cases where the worker's  
19 wages are not fixed by the month, they shall be determined by  
20 multiplying the daily wage the worker was receiving at the time of the  
21 injury:

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

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

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

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

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

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

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

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

16 (2) In cases where (a) the worker's employment is exclusively  
17 seasonal in nature or (b) the worker's current employment or his or her  
18 relation to his or her employment is essentially part-time or  
19 intermittent, the monthly wage shall be determined by dividing by  
20 twelve the total wages earned, including overtime, from all employment  
21 in any twelve successive calendar months preceding the injury which  
22 fairly represent the claimant's employment pattern.

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

27 (4) The average monthly wage of a jockey or apprentice jockey is  
28 based upon all earnings, including earnings from outside this state.  
29 Earnings from outside this state shall not be counted until a jockey or  
30 apprentice jockey has had twenty mounts in this state or is available



1 to ride twenty consecutive days in this state. The department shall  
2 adopt the rules necessary for gathering and computing the wage  
3 information required for compliance with this subsection.

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

8 "Sec. 5. RCW 51.16.140 and 1989 c 385 s 3 are each amended to read  
9 as follows:

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

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

27 "NEW SECTION. Sec. 6. This act is necessary for the immediate  
28 preservation of the public peace, health, or safety, or support of the

1 state government and its existing public institutions, and shall take  
2 effect immediately."

3 **ESHB 1952** - H AMD

4 By Representative Heavey

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6 On page 1, line 2 of the title, after "jockeys;" strike the  
7 remainder of the title and insert "amending RCW 51.16.210, 67.16.300,  
8 51.08.178, and 51.16.140; reenacting and amending RCW 51.12.020;  
9 prescribing penalties; and declaring an emergency."