

CHAPTER 73

**WORKERS' COMPENSATION INSURANCE
COVERAGE FOR HORSE RACING
INDUSTRY EMPLOYEES**

Authority

N.J.S.A. 34:15-129 et seq., specifically 34:15-133f.

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R.1999 d.443, effective December 20, 1999.
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Chapter 73, Workers' Compensation Insurance Coverage for Horse Racing Industry Employees, expires on December 20, 2004.

Chapter Historical Note

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SUBCHAPTER 1. GENERAL RULES

13:73-1.1 Scope

This chapter applies to all owners and trainers licensed or required to be licensed by the New Jersey Racing Commission who employ horse racing industry employees as well as their horse racing industry employees. These rules shall not apply to employees of an owner or trainer who are not horse racing industry employees. To the extent that a horse racing industry employee is also covered by duplicate coverage within this State procured pursuant to another policy of workers' compensation insurance, the coverage procured by the Board shall be considered primary.

13:73-1.2 Purpose

The Legislature has determined that it is in the public interest to ensure that workers' compensation insurance or self-insurance coverage is available to persons employed in the thoroughbred and standardbred horse racing industries in New Jersey by collectively securing coverage for all horse racing industry employees. Pursuant to N.J.S.A. 34:15-129 et seq., the purpose of this chapter is to effectuate that legislative objective.

SUBCHAPTER 2. DEFINITIONS

13:73-2.1 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the New Jersey Horse Racing Injury Compensation Board Act, N.J.S.A. 34:15-129 et seq.

"Assistant trainer" means a person who assumes the duties and responsibilities of a trainer while assisting the trainer or acting on behalf of the trainer in the training of the horses under his or her charge.

"Board" means the New Jersey Horse Racing Injury Compensation Board established by the New Jersey Horse Racing Injury Compensation Board act, N.J.S.A. 34:15-129 et seq.

"Driver" means a person who drives horses in any race at a track, matinee fair or other non-extended pari-mutuel meeting.

"Driver-trainer" means a person who is licensed as a trainer of horses who also drives horses in any race at a track, matinee fair or other non-extended pari-mutuel meeting.

"Exercise personnel" means any person who is conducting a jogging or a work-out of a horse for the purposes of conditioning during training hours.

“Horse” means a filly, mare, colt, horse and gelding.

“Horse racing industry employee” means a jockey, jockey apprentice, exercise personnel, driver, driver-trainer, assistant trainer, stable employee, or any other person licensed by the New Jersey Racing Commission, who is an employee of an owner or a trainer licensed or required to be licensed and engaged in performing services for an owner or a trainer in connection with the exercising or racing of a horse in New Jersey. A trainer who otherwise would be considered an employee of the owner pursuant to N.J.S.A. 34:15-1 et seq. is a horse racing industry employee as defined in N.J.S.A. 34:15-131. For the purposes of this chapter, exercise personnel shall be considered an employee of the owner of the horse being exercised, a jockey shall be considered an employee of the owner of the horse being ridden in a race and a driver or driver-trainer shall be considered an employee of the owner of the horse being driven in a race.

“Jockey” means a race rider, whether jockey or apprentice.

“Owner” means sole owner, part owner or lessee of a horse. An interest only in the winnings of a horse does not constitute part ownership.

“Stable employee” means a person who is employed by the trainer to perform duties such as hot walker or groom.

“State” means the State of New Jersey.

“Trainer” means a person licensed by the New Jersey Racing Commission to condition horses for races.

SUBCHAPTER 3. ASSESSMENT AND COLLECTION

13:73-3.1 Powers of the Board

(a) The Board shall secure workers' compensation insurance or self-insurance coverage for horse racing industry employees. Pursuant to N.J.S.A. 34:15-133, the Board shall have the power to:

1. Purchase and serve as the master policyholder for any insurance or self-insurance coverage pursuant to N.J.S.A. 34:15-77;

i. Pursuant to N.J.S.A. 34:15-135 and 34:15-36, a horse racing industry employee shall be deemed to be in the employment of the Board and in the employment of all owners or of all trainers, as appropriate, who are licensed or required to be licensed by the New Jersey Racing Commission at the time of any occurrence for which workers' compensation benefits are payable, pursuant to N.J.S.A. 34:15-1 et seq. as supplemented by the Act, and not solely in the employment of a particular owner or of a particular trainer, and a horse racing industry employee shall not be deemed to be in the employment of the Board for any other purpose; and

ii. Pursuant to N.J.S.A. 34:15-135 and 34:15-36, the Board and all owners or all trainers, as appropriate, who are licensed or required to be licensed by the New Jersey Racing Commission shall be deemed the employer of a horse racing industry employee at the time of any event for which workers' compensation benefits are payable, pursuant to N.J.S.A. 34:15-1 et seq. as supplemented by the Act, and the Board shall not be deemed the employer of a horse racing industry employee for any other purpose;

2. Enter into contracts with other persons, entities or public bodies for any professional, administrative or other services, including legal counsel if approved by the Attorney General, as may be necessary to carry out the duties of the Board and the purposes of the Act;

3. Assess, collect and disburse all money due or payable to or by the Board, or authorize such collection and disbursement;

4. Invest moneys held in trust under any fund in investments which are approved by the State Investment Council for the investment of surplus moneys of the State;

5. Approve assessments, surplus, limits of coverage, limits of excess or reinsurance, coverage documents and other financial and operating policies of the Board;

6. Promulgate rules and regulations, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., necessary to effectuate the purposes of the Act; and

7. Take all actions necessary to carry out the provisions of the Act.

13:73-3.2 Assessment; general

(a) Pursuant to N.J.S.A. 34:15-134, the Board shall assess and collect sufficient funds to pay the costs of the workers' compensation insurance or self-insurance coverage required by the Act and by the workers' compensation laws of this State. This assessment may also include sufficient funds to pay any additional costs necessary to carry out the Board's other duties. The Board shall ascertain the total funding necessary, establish the sums that are to be paid and determine the method of assessing and collecting these funds.

(b) Owners shall be assessed separately from trainers for the cost of workers' compensation insurance or self-insurance coverage of their respective horse racing industry employees.

1. Assessments to pay the cost of insurance or self-insurance coverage for horse racing industry employees employed by owners may include, but shall not be limited to, deductions from that portion of gross overnight purses paid to owners, so long as such deductions do not exceed three percent of the owners' portion of such purses. Additional assessments may be collected from owners as needed.

2. Assessments to pay the cost of insurance or self-insurance coverage for horse racing industry employees employed by trainers may include, but shall not be limited to, deductions from that portion of gross overnight purses paid to trainers, so long as such deductions do not exceed three percent of the trainer's portion of such purses. Additional assessments may be collected from trainers as needed.

3. Track owners shall not be included in the assessment by the Board for the cost of workers' compensation insurance or self-insurance coverage or for the benefits provided pursuant to the Act.

(c) Assessments for workers' compensation insurance or self-insurance coverage pursuant to the Act shall be calculated, allocated and collected separately for the thoroughbred and standardbred industries, based on their respective loss experience.

(d) No public funds, other than the moneys collected pursuant to N.J.S.A. 34:15-134(b), shall be used for the purpose of self-insurance or for paying the costs of workers' compensation insurance or workers' compensation benefits pursuant to the Act.

13:73-3.3 Calculation of cost of workers' compensation insurance or self-insurance coverage for horse racing industry employees of owners

(a) The cost of workers' compensation insurance or self-insurance coverage is based upon the total payroll of the horse racing industry employees of owners of thoroughbred and standardbred horses plus all additional costs necessary for the Board to carry out its duties pursuant to this chapter.

(b) In calculating the total payroll of horse racing industry employees of owners, the Board shall ascertain, to the extent possible, the number of horse racing industry employees of owners and the total salaries of these employees. The Board shall use information regarding the number of horse racing industry employees of owners and the total of their salaries from the 12 months prior to the date on which the assessment is being calculated.

1. In ascertaining the number of horse racing industry employees of owners, the Board may collect and utilize information from:

i. Information submitted to the Board by the New Jersey Racing Commission, including information regarding the number of licensed thoroughbred jockeys and standardbred drivers; and

ii. Any other information relevant to the number or salaries or horse racing industry employees of owners.

2. In estimating the salaries of owner employees, the Board may utilize, to the extent necessary, information regarding the average or actual annual salaries of thoroughbred jockeys and standardbred drivers or any other person licensed or required to be licensed by the New

Jersey Racing Commission who is an employee of an owner or who is engaged in performing services for an owner in connection with the exercising or racing of a horse in New Jersey within the meaning of the definition of "horse racing industry employee" set forth in N.J.S.A. 34:15-131 and N.J.A.C. 13:73-2.1.

i. In estimating the average or actual annual salaries, the Board may utilize information obtained from the horsemen's bookkeeper at each racetrack concerning the actual payroll earned by jockeys and drivers pursuant to N.J.A.C. 13:70-3.46 and 13:71-6.31.

ii. In estimating the average or actual annual salaries, the Board may utilize information provided to the Board by the representative of the thoroughbred industry serving on the Board and by the representative of the standardbred industry serving on the Board regarding the thoroughbred and standardbred industry pay scales for horse racing industry employees of owners.

iii. The representatives of the thoroughbred and of the standardbred industries serving on the Board shall collect information regarding the industry pay scale for horse racing industry employees of owners from horsemen and horsemen associations within the horse racing industry, including the horsemen associations recognized by the New Jersey Racing Commission pursuant to N.J.A.C. 13:70-1.30 and 13:71-1.25.

3. The Board may compel production of any information, including Internal Revenue Service documents, regarding the payroll of owner employees from any person, licensed or required to be licensed by the New Jersey Racing Commission.

4. The Board shall utilize procedures established by the Department of the Treasury pursuant to N.J.S.A. 52:27B-62 for the collection of premium quotations from insurers.

13:73-3.4 Assessment of cost for horse racing industry employees of owners

(a) The cost of workers' compensation insurance or self-insurance coverage for horse racing industry employees employed by owners of horses shall be assessed upon owners through a percentage deduction from that portion of gross overnight purses paid to owners which shall not exceed three percent. In calculating the amount of money which must be deducted from that portion of gross overnight purses paid to owners in order to ensure the collection of sufficient funds to pay the total cost of workers' compensation insurance or self-insurance coverage as well as any additional costs necessary to carry out the Board's duties pursuant to the Act, the Board shall base the assessment upon the amount of gross overnight purses paid to owners for any race, which falls under the jurisdiction and authority of the New Jersey Racing Commission, during the 12 months preceding the date on which the assessment is being calculated.

(b) Information regarding the actual gross overnight purses paid to owners shall be obtained from the New Jersey Racing Commission.

(c) Information regarding the method of calculating the cost which is assessed upon owners shall be provided at an Open Public Meeting of the Board.

13:73-3.5 Collection of assessment of cost for horse racing industry employees of owners

(a) Pursuant to N.J.A.C. 13:70-3.29 and 13:71-6.1, every owner of horses shall establish a horsemen's bookkeeper account at each track association where horses owned by him or her have been or will be entered to race.

(b) The Board shall collect the assessment calculated in N.J.A.C. 13:73-3.4 from the horsemen's bookkeeper at each racetrack.

(c) Pursuant to N.J.A.C. 13:70-3.29 and 13:71-21.8, the horsemen's bookkeepers shall transmit on a weekly basis all monies collected pursuant to this chapter for the cost of workers' compensation insurance or self-insurance coverage to the New Jersey Racing Commission, which shall then deposit those monies in a separate account for the use of the Board.

13:73-3.6 Calculation of cost of workers' compensation insurance or self-insurance coverage for horse racing industry employees of trainers

(a) The cost of workers' compensation insurance or self-insurance coverage is based upon an estimate of the total payroll of the horse racing industry employees of trainers of thoroughbred and standardbred horses plus all additional costs necessary for the Board to carry out its duties pursuant to this chapter.

(b) In calculating the estimated total payroll of horse racing industry employees of trainers, the Board shall ascertain, to the extent possible, the number of horse racing industry employees of trainers and an estimate of the total salaries of these employees. The Board shall use information regarding the number of horse racing industry employees of trainers and an estimate of their salaries from the 12 months preceding the date on which the assessment is being calculated.

1. In ascertaining the number of horse racing industry employees of trainers, the Board may collect and utilize the following:

i. The badge list of each trainer which is submitted upon entrance to any track under the jurisdiction of the New Jersey Racing Commission pursuant to N.J.A.C. 13:70-20.9 and 13:71-11.7;

ii. The number of persons listed by trainers as employees for the purpose of receiving health insurance benefits provided by the thoroughbred horsemen associations recognized by the New Jersey Racing Commission pursuant to N.J.A.C. 13:70-1.30 and the standardbred horsemen associations recognized by the New Jersey Racing Commission pursuant to N.J.A.C. 13:71-1.25;

iii. Information submitted to the Board by the New Jersey Racing Commission, including information regarding the number of licensed trainers, assistant trainers and stable employees; and

iv. Any other information relevant to the number and salaries of horse racing industry employees of trainers.

2. In estimating the salaries of trainers, the Board may utilize, to the extent necessary, information regarding the average or actual annual salaries of assistant trainers, stable employees or any other person licensed or required to be licensed by the New Jersey Racing Commission who is an employee of a trainer or who is engaged in performing services for a trainer in connection with the exercising or racing of a horse in New Jersey within the meaning of the definition of "horse racing industry employee" set forth in N.J.S.A. 34:15-131 and N.J.A.C. 13:73-2.1.

i. In estimating the average or actual annual salaries, the Board may utilize information provided to the Board by the representative of the thoroughbred industry serving on the Board and by the representative of the standardbred industry serving on the Board regarding the standard industry pay scale for horse racing industry employees of trainers.

ii. The representatives of the thoroughbred and of the standardbred industries shall collect information regarding the standard industry pay scale for horse racing industry employees of trainers from horsemen and horsemen associations within the horse racing industry, including the horsemen associations recognized by the New Jersey Racing Commission pursuant to N.J.A.C. 13:70-1.30 and 13:71-1.25.

3. The Board may compel the production of any information, including Internal Revenue Service documents, regarding the payroll of trainer employees from any person, licensed or required to be licensed by the New Jersey Racing Commission.

4. The Board shall utilize the procedures established by the Department of the Treasury pursuant to N.J.S.A. 52:27B-62 for the collection of premium quotations from insurers.

13:73-3.7 Assessment of cost for horse racing industry employees of trainers

(a) The cost of workers' compensation insurance or self-insurance coverage for horse racing industry employees employed by trainers shall be based upon the number of horses which started in each horse race in the 12 months preceding the date on which the assessment is being calculated according to the following formula:

$$\frac{\text{premium} + \text{the Board's cost of performing its duties}}{\text{total number of starts within the State}} = \frac{\text{amount paid for each start of each horse}}{\text{trained by each trainer}}$$

Each trainer must pay the "amount paid for each start of each horse" trained by him or her to the horsemen's bookkeeper prior to entering each horse into a race as set forth in N.J.A.C. 13:73-3.8. The Board may choose to offer trainers the option of paying for multiple starts, for example, 50 starts, at a reduced rate if payment for all of the starts is made to the horsemen's bookkeeper prior to entering the first horse trained by him or her to start in the calendar year for which the workers' compensation insurance or self-insurance coverage has been purchased.

(b) The Board shall then collect the "amount paid for each start of each horse" or the payment for multiple starts, if that option is available, calculated in (a) above from each trainer prior to the start of each horse trained by him or her in the calendar year for which the workers' compensation insurance or self-insurance coverage has been purchased. The Board shall have the discretion to calculate and collect this assessment based upon multiple starts or upon a per-start basis.

(c) Information regarding the number of starts may be obtained from the New Jersey Racing Commission.

(d) Information regarding the method of calculating the assessment upon trainers shall be provided at an Open Public Meeting of the Board.

13:73-3.8 Collection of assessment of cost for horse racing industry employees of trainers

(a) Pursuant to N.J.A.C. 13:70-3.46 and 13:71-6.1, every trainer shall establish a horsemen's bookkeeper account at each track association where horses trained by him or her have been or will be entered to race.

(b) Every trainer shall deposit sufficient funds in his or her horsemen's bookkeeper account to be used exclusively to pay the amount assessed by the Board prior to its due date.

1. The payment for multiple starts shall be paid into the horsemen's bookkeeper account prior to the first start.

2. The "amount paid for each start of each horse" shall be paid into the horsemen's bookkeeper account prior to each start.

(c) Pursuant to N.J.A.C. 13:70-3.46 and 13:71-6.31, the horsemen's bookkeepers shall record the number of starts at each racetrack in New Jersey for every horse of each trainer and provide this information to the New Jersey Racing Commission to be forwarded to the Board.

(d) Pursuant to N.J.A.C. 13:70-3.29 and 13:71-21.8, the horsemen's bookkeepers shall transmit on a weekly basis all monies collected pursuant to this chapter for the cost of workmens' compensation insurance or self-insurance coverage to the New Jersey Racing Commission, which shall deposit these monies in a separate account for the use of the Board.

(e) Pursuant to N.J.A.C. 13:70-3.41 and 13:71-6.1, no trainer shall be allowed to enter a horse without first paying the cost of assessment pursuant to this chapter into the horsemen's bookkeeper account.

SUBCHAPTER 4. PURCHASE**13:73-4.1 Purchase of workers' compensation insurance for horse racing industry employees of owners and trainers**

The Board shall review the quotations of premiums provided through the Department of Treasury for workers' compensation insurance coverage submitted by insurers and shall, within its discretion, select the type of coverage and insurer, pursuant to applicable State law.

SUBCHAPTER 5. PENALTIES**13:73-5.1 Penalties for failure to pay assessed costs**

(a) Pursuant to N.J.A.C. 13:70-3.41 and 13:71-6.1, no owner or trainer shall be allowed to enter a horse without first paying the cost of assessment into the horsemen's bookkeeper account.

(b) The Board authorizes the New Jersey Racing Commission to take appropriate action consistent with its rules against any owner or trainer who fails to pay the cost of assessment including the imposition of a fine and/or suspension.

(c) If an owner or trainer fails to comply with the requirements of this chapter and the Board is required to pay the award on behalf of that owner or trainer who has been found to have violated the Act or any rule or regulation

promulgated thereunder, then the Board shall be entitled to collect from that owner or trainer any assessment which was not paid but which should have been paid by that owner or trainer.

SUBCHAPTER 6. APPEALS

13:73-6.1 Appeal procedure

(a) Any trainer who has paid the cost of assessment based upon starts pursuant to N.J.A.C. 13:73-3.8, who contests the number of starts for which he or she has been assessed, may request information from the Board regarding the calculation of the number of starts. Within three days after receipt of the requested information, the owner or trainer may appeal to the Board and submit written documentation of an error in the calculation of the number of starts. The Board, which may act through its Director or other designated staff, shall review the written submissions and determine if the calculation was in error and notify the trainer of its decision.

(b) Any owner who has paid the cost of assessment pursuant to N.J.A.C. 13:73-3.5, who contests the calculation of the amount of gross overnight purses deducted from his or her horsemen's bookkeeper account, may request information from the Board regarding the calculation of the amount deducted. Within three days after receipt of the requested information, the owner or trainer may appeal to the Board and submit written documentation of an error in the calculation of the gross overnight purses. The Board, which may act through its Director or other designated staff, shall review the written submissions and determine if the calculation was in error and notify the owner of its decision.

13:73-6.2 Hearing

Within 10 days after receipt of the Board's decision, the owner or trainer may request a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and seek reimbursement for any assessment paid in error.

13:73-6.3 No stay pending appeal

All assessments pursuant to this chapter shall be paid when due. No owner or trainer shall be granted a stay of the payment of any assessment.