

AMENDED IN SENATE JULY 11, 2001

AMENDED IN SENATE JULY 2, 2001

AMENDED IN ASSEMBLY APRIL 30, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 856

Introduced by Assembly Member Wesson

February 22, 2001

An act to amend Sections 19461, ~~19481.5, and 19556~~ and 19481.5 of, to add Sections 19461.5, 19526, 19613.8, and 19641.2 to, and to add Article 2.5 (commencing with Section 19455) to Chapter 4 of Division 8 of, the Business and Professions Code, relating to horse racing.

LEGISLATIVE COUNSEL'S DIGEST

AB 856, as amended, Wesson. Horse racing.

(1) Existing law authorizes wagering on the result of live and simulcast horse races, subject to the regulation and oversight of the California Horse Racing Board, and requires the licensure of various persons and entities associated with this industry. Existing law also imposes specified requirements on the operation of racetracks, backstretch facilities, and stabling and vanning services, and establishes pension funds and welfare funds for the benefit of backstretch personnel and horsemen.

This bill would state findings and declarations of the Legislature regarding the employment rights of racetrack backstretch employees, and direct the California Horse Racing Board to oversee the conduct of a union and multiemployer collective bargaining agent recognition procedure subject to specified conditions and procedures, provide for

resultant labor agreements to be binding on the parties, and establish reasonable rules to regulate the time, place, and manner of representational meetings within the racetrack enclosure. This bill would also authorize individual trainers to opt out of the multiemployer bargaining process, subject to specified conditions, and require each trainer to keep accurate payroll records for all of his or her employees, subject to audit by the Labor Commissioner as specified, containing specified information which would be available for inspection by, or furnished to, the employee, his or her authorized representative, the board, the administrators of specified pension and health and welfare funds, or the Division of Labor Standards Enforcement of the Department of Industrial Relations.

(2) Existing law provides that every license granted under the Horse Racing Law is subject to suspension or revocation in any case where the board has reason to believe that any condition regarding the license has not been complied with, or that any provision of law or any rule or regulation of the board affecting it has been broken or violated.

This bill would expand this suspension and revocation authority to expressly include violations of the Labor Code and regulations adopted thereunder. This bill would also provide that upon a finding by the Labor Commissioner that a violation of any provision of the Labor Code under his or her jurisdiction has been committed by a person licensed under the Horse Racing Law, that upon expiration of the applicable period for appeal he or she shall notify the board of that finding.

(3) Existing law provides that no license to conduct a horse racing meeting shall be issued unless the track has been inspected and approved by the board as to specified racetrack safety standards within 30 days prior to the date of application.

This bill would additionally provide that the board shall, within 120 days of the effective date of this act, adopt emergency regulations, as specified, to establish employee housing standards at licensed racetracks, which shall be replaced by final, permanent regulations with 18 months thereafter, which racing associations shall be in compliance with by January 1, 2004, and as of that date would require the board, in conjunction with the Department of Housing and Community Development or a local housing authority in that jurisdiction, to annually inspect the living conditions of backstretch employee housing and submit these findings to the board. The bill would provide that no license to conduct a horse racing meeting shall be issued to a racing



association unless the board has inspected the housing conditions that exist on that track's backstretch and determined them to be in compliance with these standards.

(4) Existing law requires each licensed racing association to designate a certain number of racing days to be conducted as charity days for the purpose of the distribution of the net proceeds therefrom to beneficiaries, and requires that at least 20% of the distributions therefrom to be made to charities associated with the horse racing industry.

~~This bill would increase this distribution requirement to 50%. This bill would also specify that an existing specified backstretch employee welfare fund shall be a health and welfare trust fund administered without prejudice for the benefit of every eligible person, that the fund and benefits shall be administered in accordance with specified standards established in federal law, subject to oversight and regulation of the board, and that the welfare fund board be expanded, by March 1, 2002, to include 2 additional groom and stable employee licenses, also would be replaced by designees of a labor union with 60 days of that union having been chosen as the exclusive collective bargaining agent of a statewide majority of backstretch workers.~~

(5) Existing law provides that racing associations and fairs shall pay, from the portion deducted for purses, an amount equal to 1% of that portion for a pension plan for backstretch personnel to be administered by the respective trainers' organizations.

~~This bill would provide that within 60 days of a union having been chosen as the exclusive collective bargaining agent for a statewide majority of backstretch workers, the respective organization of horsemen or trainers shall submit a pension plan for backstretch personnel to the board. This bill would require that the plan be administered by a joint labor-management committee, made up of equal representatives of trainers and labor union representatives, consistent with specified provisions of federal law that shall include any representatives designated by the bargaining agent.~~

(6) This bill would provide that its provisions are severable as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.



The people of the State of California do enact as follows:

1 SECTION 1. Article 2.5 (commencing with Section 19455)
2 is added to Chapter 4 of Division 8 of the Business and Professions
3 Code, to read:

4

5 Article 2.5. Backstretch Worker Labor Relations

6

7 19455. (a) The Legislature finds and declares that Section
8 923 of the Labor Code recognizes that it is necessary that the
9 individual worker have full freedom of association,
10 self-organization, and designation of representatives of his or her
11 own choosing, to negotiate the terms and conditions of his or her
12 employment, and that he or she shall be free from the interference,
13 restraint, or coercion of employers of labor, or their agents, in the
14 designation of such representatives or in self-organization or in
15 other concerted activities for the purpose of collective bargaining.

16 (b) The Legislature finds that the National Labor Relations
17 Board has formally declined to assert jurisdiction over horse
18 racing because of extensive state control over the industry, the
19 dominant pattern of sporadic short-term employment which poses
20 problems for the effective enforcement of the National Labor
21 Relations Act, and a unique and special relationship that has
22 developed between the states and the industry.

23 (c) It is the intent of the Legislature to establish an orderly
24 procedure for backstretch employees to exercise their statutory
25 rights to organize a labor union, in order to reduce the prospect of
26 any strikes, disruptions, or economic action that would interfere
27 with the operation of horse racing meetings in California.

28 (d) Except as provided in subdivision (e), the board shall
29 oversee the conduct of a union recognition procedure for
30 backstretch employees under the following conditions:

31 (1) Employees shall have the right to join, or refuse to join, a
32 labor organization for purposes of collective bargaining and
33 mutual aid and protection. Existing state-recognized organizations
34 of trainers or horsemen established pursuant to the Horse Racing
35 Law shall not use funds derived or distributed from parimutuel
36 wagering pursuant to state law to advocate or advance any position
37 with respect to unionization of employees. Individual trainers and
38 horsemen, and their agents, shall not coerce or threaten any



1 employee of any trainer or horseman because of the exercise of
2 rights pursuant to this article. No employee shall be discharged or
3 discriminated against for expressing any opinion concerning the
4 selection of a labor union or collective bargaining agent for
5 employees under this article. No trainer or horseman, or group of
6 trainers or horsemen, shall dominate or interfere with the
7 formation or administration of any labor organization established
8 under this article nor contribute financial or other support to it.

9 (2) The labor union and its representatives shall not coerce or
10 threaten any employee of any trainer or horseman because of the
11 exercise of rights pursuant to this article.

12 (3) Notwithstanding any other provision of law, within 30 days
13 of a request by a bona fide labor organization representing workers
14 in the horse racing industry in California, accompanied by a
15 petition of 125 licensed backstretch workers, the board shall
16 provide the ~~bona fide~~ labor organization with a list of all
17 backstretch workers including the type of licenses they hold, their
18 employer, the location at which they are employed, and their
19 address and telephone number. The board may require of any
20 trainer licensee information in the licensee's possession necessary
21 to comply with this requirement. The labor union shall use this list
22 solely for the purposes of this article, and maintain it in a manner,
23 as the board may require, to preserve the integrity of horse racing.
24 The board may impose an appropriate penalty for any other use.

25 (4) Every licensed trainer who employs backstretch employees
26 shall file with the board, not later than February 1, 2002, and, ~~with~~
27 *within* seven days of the commencement of each race meeting
28 thereafter, a complete and accurate list of the names of its
29 backstretch workers. In addition, every trainer shall file with the
30 board a complete, accurate, and updated list within seven days of
31 any changes which occur to the most recently filed list. The lists
32 described in this section, together with any updates thereto, shall
33 be provided within 72 hours after receipt by the board, to any bona
34 fide labor organization which has requested copies thereof *and*
35 *submitted a petition containing the names of 125 backstretch*
36 *workers pursuant to paragraph (3)*. Any such request need only be
37 made one time and the board shall thereafter be required to provide
38 these lists and any updates thereto in accordance with the
39 provisions of this section so long as a bona fide labor organization
40 seeks to represent licensed backstretch workers.



1 (5) The labor union may obtain board recognition as the
 2 exclusive bargaining agent for employees of employers pursuant
 3 to the provisions and procedures described in paragraph ~~(7)~~(8).
 4 (6) For purposes of this article:
 5 (A) “Backstretch employee” or “backstretch worker” means
 6 a person licensed by the board pursuant to subdivision (c) of
 7 Section 1481 of Division 4 of Title 4 of the California Code of
 8 Regulations.
 9 (B) ~~“Appropriate bargaining unit”~~ “*Multiemployer*
 10 *bargaining unit*” means any bargaining unit created and
 11 recognized pursuant to the terms of clause (iii) of subparagraph
 12 (A) of paragraph ~~(6)~~(8).
 13 (C) “Approved election unit” means any election unit created
 14 and recognized pursuant to paragraph ~~(6)~~(7).
 15 (7) There are four election units created and recognized
 16 pursuant to this section, as follows:
 17 (A) Backstretch employees working for trainers of
 18 thoroughbred horses stabled at licensed racetracks, including fairs
 19 and approved auxiliary training facilities in the combined central
 20 and southern zones.
 21 (B) Backstretch employees working for trainers of
 22 thoroughbred horses stabled at licensed racetracks, including fairs
 23 and approved auxiliary training facilities in the northern zone.
 24 (C) Backstretch employees working for trainers of quarter
 25 horses stabled at licensed racetracks and approved auxiliary
 26 training facilities in the combined central and southern zones.
 27 (D) Backstretch employees working for trainers of harness
 28 horses stabled at licensed racetracks, including fairs and approved
 29 auxiliary training facilities in the northern zone.
 30 The board shall use the California State Mediation and
 31 Conciliation Service for all appropriate purposes of this act,
 32 including operations related to the conduct of recognition
 33 procedures and elections.
 34 (8) (A) With respect to backstretch workers, a labor
 35 organization seeking recognition as the collective bargaining
 36 agent for these workers shall collect signed cards indicating
 37 individual worker’s intent to be represented by that organization
 38 for collective bargaining purposes and submit those cards to the
 39 California State Mediation and Conciliation Service for review
 40 and validation. When the labor organization is in receipt of cards



1 signed by workers equaling at least 30 percent of the employees
2 in an election unit described in paragraph (4), the California State
3 Mediation and Conciliation Service shall conduct a secret ballot
4 election with respect to the election unit as soon as is practicable
5 thereafter, but in no event more than 30 calendar days after
6 validation by the service of the cards.

7 Those backstretch employees entitled to vote in the election
8 shall be those who appear on the licensed trainer's most recent list
9 described in paragraph (3). However, each employer may update
10 his or her list not more than 72 hours prior to the election. If it is
11 determined by the stewards pursuant to the provisions in paragraph
12 (11), that the employer filed an inaccurate or erroneous ~~updated~~
13 with a willful intention to manipulate the results of an election, and
14 that the inaccuracy or error may have affected the outcome of the
15 election, the stewards shall decree that the employer lost the
16 election, regardless of the actual outcome thereof, and the stewards
17 shall issue an order to the trainer to negotiate with the union.

18 (i) Any election shall be conducted by the California State
19 Mediation and Conciliation Service under rules established by the
20 service consistent with standard practice. The rules shall be
21 established no more than 60 days after the effective date of this
22 section, shall be made available to the bona fide labor union and
23 employers of backstretch employees, and shall be exempt from the
24 Administrative Procedure Act. The rules shall provide for a secret
25 ballot system for the conduct of the election pursuant to which
26 ballots cast by backstretch employees of individual employers
27 shall be cast by insertion into envelopes appropriately identified
28 with respect to each employer. The envelopes shall be collected
29 and tabulated in secret by the service, subject to observation by one
30 representative designated by the bona fide labor organization and
31 one representative designated by the organization representing
32 trainers pursuant to subdivision (a) of Section 19613.2. Upon
33 completion of the tabulation, the service shall issue a report
34 certifying those employers, the majority of whose employees who
35 participated in the election voted in favor of representation by the
36 union. Those employers so certified shall be required to bargain
37 with the labor union pursuant to this subdivision. All other
38 employers shall not be required to negotiate with the union and
39 there shall not be another election with respect to those employers
40 for at least one year from the date of the prior election. The service



1 shall not make public the numerical tabulation of votes by
2 employer.

3 (ii) Protests over challenged ballots shall be resolved by the
4 service in a consolidated hearing commencing no later than three
5 business days after the election.

6 (iii) Within 45 days of the certification of the results of the
7 election by the service to the board, those trainers who are required
8 to bargain pursuant to this subparagraph may form multiple
9 employer bargaining units in accordance with the provisions of
10 this subdivision. Further, the organization representing trainers
11 pursuant to subdivision (a) of Section 19613.2 shall conduct a
12 meeting regarding the formulation of multiple employer
13 bargaining units within five days of the certification of the results
14 of the election. For licensed trainers described in subparagraph (A)
15 of paragraph (7), the minimum number of backstretch ~~employees~~
16 ~~who must be employed by the licensed trainer~~ *employees*
17 *employed by licensed trainers* comprising the multiple employer
18 bargaining unit as of the date of the election shall be 100
19 employees or 10 percent of the total employees subject to
20 bargaining. For licensed trainers described in subparagraphs (B),
21 (C), and (D) of paragraph (7), the minimum number of backstretch
22 employees ~~who must be employed by the licensed trainers~~
23 comprising the multiple employer bargaining unit as of the date of
24 the election shall be 50 employees or 10 percent of the total
25 employees subject to bargaining. The minimum number of
26 backstretch employees ~~necessary to be employed by licensed~~
27 trainers in order to qualify as a multiple employer bargaining unit
28 pursuant to this subdivision may, with the consent of the
29 recognized labor union, be reduced. On or before the 45th day
30 following the certification of the results of the election, ~~a~~ *each*
31 representative of ~~the a~~ multiple employer bargaining ~~units~~ *unit*
32 formed pursuant to this subdivision shall notify the board and the
33 ~~recognized bargaining units~~ *exclusive collective bargaining agent*,
34 in writing, that a unit has been formed, disclose the names of the
35 licensed trainers which comprise the unit, and indicate the number
36 and names of the backstretch employees which are employed by
37 the licensed trainers comprising the unit. Except to join another
38 multiple employer bargaining unit, without the consent of the bona
39 fide labor organization, ~~the a~~ trainer who has elected to join a
40 multiple employer bargaining unit may not thereafter elect to



1 resign from the unit ~~until at least 30 days~~ *except within a 30-day*
2 *period* prior to the date of the expiration of the collective
3 bargaining agreement resulting from the negotiations. The
4 employees of a licensed trainer who has resigned from a multiple
5 employer bargaining unit and has not joined another unit, shall not
6 be entitled to petition to decertify the union for a period of one year
7 from the date of the expiration of the collective bargaining
8 agreement which resulted from the negotiation between the union
9 and the multiple employer bargaining unit of which he or she was
10 formerly a member and which was in effect at the time of the
11 trainer's resignation.

12 Upon completion and certification of the election results the
13 union shall be recognized as the exclusive collective bargaining
14 agent for those workers whose employers are required to bargain,
15 and the executive director of the board shall issue an order to
16 affected employers to begin good faith negotiations for approval
17 of employment agreements pursuant to the procedures set forth in
18 this section.

19 (B) If an individual employer of backstretch workers declines
20 to be represented in the multiemployer collective bargaining
21 procedure described in clause (iii), ~~the board shall certify the~~
22 ~~union as the collective bargaining agent of those workers and shall~~
23 issue an order to begin good faith negotiations for employment
24 agreements on an individual employer basis. The board may
25 provide mediation and conciliation services upon request of the
26 parties at any time. If an employer is required under this
27 subparagraph to collectively bargain with the union, and the
28 parties do not reach an agreement within 90 days, the board shall
29 require the parties to participate in mandatory mediation and
30 conciliation services for a period of 30 days. If no agreement
31 results from this mediation, either or both parties may declare an
32 impasse. Upon a party's declaration of an impasse, the executive
33 director of the board shall appoint an arbitrator in the manner
34 described in paragraph (11) to determine the issues and issue a
35 final and binding order establishing the terms of a collective
36 bargaining agreement.

37 (9) No labor agreement under this article shall apply to any
38 trainer or horseman with respect to employment associated with
39 fair meetings prior to January 1, 2003. After this date, employees
40 shall be added by accretion into an existing contract where



1 applicable. For racing meetings conducted in the central and
2 southern zones during the first three months of any calendar year
3 and for fair racing meetings, this section shall not apply to ~~trainer,~~
4 ~~backstretch workers, or both,~~ *trainers* who normally reside and
5 work outside of California and who are engaged in racing in this
6 state for a limited period of time, not exceeding 90 racing days in
7 any calendar year. For all other race meeting conducted during any
8 calendar year, this section shall not apply to trainers, backstretch
9 workers, or both who normally reside and work outside of
10 California and without are engaged in racing in this state for a
11 limited period of time, not exceeding 50 racing days in any
12 calendar year.

13 (10) Except as provided in subparagraph ~~(C)~~(A) of paragraph
14 ~~(5)~~(8), at any time subsequent to the expiration of an agreement
15 under paragraph ~~(5)~~(8), when the agreement is not in effect, the
16 board may recognize a majority interest, obtained during this
17 period in the same manner as union recognition of employees,
18 within a multiple employer bargaining unit who no longer desire
19 to be represented by the union, and withdraw the recognition
20 granted pursuant to this section from that union. An employer may
21 inform his or her employees that a process for decertification exists
22 and direct them to the board for information. However any card,
23 signature, vote, or other indicator obtained for this purpose by
24 means of coercion or threat or with the assistance or inducement
25 of any employer shall be invalid.

26 (11) Disputes, other than disputes concerning the operation and
27 application of ongoing contracts, disputes subject to binding
28 interest arbitration pursuant to subparagraph (B) of paragraph
29 ~~(5)~~(8), and economic disputes arising in the context of
30 multiemployer bargaining pursuant to subparagraph (A) of
31 paragraph ~~(5)~~(8), but including disputes concerning the rights
32 established in paragraphs (1) and (2), upon complaint shall be
33 adjudicated by the ~~board~~ and the stewards. The stewards shall have
34 the authority to order any remedy, including reinstatement of
35 employment, injunctive relief, damages, and attorney's fees. The
36 board is authorized to contract with the Agricultural Labor
37 Relations Board for the services of investigators or counsel to
38 investigate, make findings of fact, and issue recommendations to
39 the stewards with respect to disputes and any alleged unfair labor
40 practices. An investigation and adjudication by the stewards shall



1 be concluded as expeditiously as possible, consistent with
2 applicable standards of due process. In addition, the board may
3 require the parties to submit the issue to binding arbitration subject
4 to judicial review in the same manner as decisions of the board.
5 Disputes subject to this paragraph include disputes involving any
6 backstretch employee or group of employees, and any trainer or
7 group of trainers.

8 (12) Upon submission of a complaint to binding arbitration
9 under any provision of this article, the executive director of the
10 board shall select an arbitrator from a panel of professional
11 arbitrators with expertise in labor negotiations selected by the
12 California State Mediation and Conciliation Service *or from a*
13 *panel identified in collective bargaining agreements between*
14 *labor organizations and employers in the horse racing industry in*
15 *California, or both*, who shall hold a hearing within 72 hours of
16 written notice to all the parties. In all matters pertaining to the
17 rights established by this article, an arbitrator shall have the
18 authority to fashion an appropriate remedy, including
19 reinstatement of employment, injunctive relief, damages, and
20 attorney's fees, and issuance of a make-whole remedy in the event
21 of a persistent failure of a party to bargain in good faith. The board
22 may take any administrative action within its authority to ensure
23 compliance with decisions of arbitrators authorized by this
24 section. Either party may also bring an action in state court to
25 compel a party to go into arbitration or to enforce the decision of
26 an arbitrator. Costs of arbitration shall be shared equally by the
27 parties, and any party shall be entitled to recover any reasonable
28 fees or costs incurred in securing compliance with or enforcement
29 of an award or order of the arbitrator.

30 (e) Nothing in this section shall prevent a labor union and an
31 individual trainer, or any group of trainers, from entering into a
32 mutually acceptable agreement, which may substitute for the
33 requirements of subdivision (d), for union organizing of
34 employees of the horsemen or trainers. Nothing in this article shall
35 be interpreted to require representative parties in negotiation to
36 enter into any labor agreement, as long as each party is negotiating
37 in a good faith effort to reach an agreement.

38 19455.2. (a) The board shall provide for labor agreements
39 under this article to be binding upon every applicable licensee.



1 (b) No horseman or trainer who has a separate agreement with
2 the exclusive representative labor union shall be required to be a
3 party to a multiemployer collective bargaining agreement.

4 19455.4. The board may establish reasonable rules to regulate
5 the time, place, and manner for representatives of labor unions to
6 meet backstretch workers within the enclosure during working and
7 nonworking hours. Those rules shall provide that the union and its
8 representatives shall not interfere with the work of any employee,
9 but shall have reasonable access to backstretch employees within
10 the enclosure during working hours and nonworking hours, as
11 determined by the board. With the approval of the board, these
12 regulations may be superceded by collective bargaining
13 agreements between horsemen's organizations or trainers'
14 organizations and labor organizations.

15 SEC. 2. Section 19461 of the Business and Professions Code
16 is amended to read:

17 19461. Every license granted under this chapter is subject to
18 suspension or revocation by the board in any case where the board
19 has reason to believe that any condition regarding it has not been
20 complied with, or that any law, including the Labor Code and the
21 regulations adopted thereunder, or any rule or regulation of the
22 board affecting it has been broken or violated.

23 All proceedings to revoke a license shall be conducted in
24 accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the
25 Government Code.

26 SEC. 3. Section 19461.5 is added to the Business and
27 Professions Code, to read:

28 19461.5. Upon a finding by the Labor Commissioner that a
29 violation of any provision of the Labor Code, within the
30 jurisdiction of the Labor Commissioner, has been committed by a
31 person licensed pursuant to this chapter in the course of such
32 licensed activity, the Labor Commissioner shall, upon expiration
33 of the applicable period for appeal, notify the board of that finding.

34 SEC. 4. Section 19481.5 of the Business and Professions
35 Code is amended to read:

36 19481.5. (a) Notwithstanding any other provision of law, no
37 license shall be issued to conduct a horse racing meeting upon a
38 track unless the track has been inspected by the board within 30
39 days prior to the date of application for a license and the track has



1 been approved by the board as conforming to the racetrack safety
2 standards set forth in subdivision (a) of Section 19481.

3 (b) The board shall, within 120 days of the effective date of this
4 subdivision, adopt emergency regulations in accordance with the
5 Administrative Procedure Act (Chapter 3.5 (commencing with
6 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
7 Code) to establish standards governing the employee housing
8 provided to backstretch personnel at licensed racetracks. These
9 regulations shall be deemed to be an emergency and necessary for
10 the immediate preservation of the public peace, health and safety,
11 or general welfare, shall be commensurate with the housing
12 standards established in the Employee Housing Act (commencing
13 with Section 17000 of Division 13 of the Health and Safety Code),
14 and shall consider the following:

15 (1) The health and safety of the human and equine population
16 and the necessity for humans and horses to live in close proximity.

17 (2) The housing needs of state or county facilities with live
18 racing meeting of no more than 43 days in duration that do not
19 operate as year-round training facilities. The board shall
20 specifically consider the different needs of these facilities
21 compared to permanent facilities or other state and county
22 facilities that function on a year-round basis, including state and
23 county fair facilities that operate as a year-round training facilities
24 where horses are stabled and workers live.

25 (3) Compliance of facilities with racing meetings of 19 days or
26 less ~~to~~ *with this subdivision, even if they operate as a year-round*
27 *training facility*, shall be contingent on funding in the 2002–03
28 Budget Act.

29 These emergency regulations shall be submitted to the Office of
30 Administrative Law for filing with the Secretary of State and
31 publication in the California Code of Regulations and shall be
32 replaced by final, permanent regulations within 18 months of their
33 adoption. Every racing association shall be in compliance with
34 these housing standards by January 1, 2004.

35 (c) Commencing January 1, 2004, the board, with assistance
36 from the California Department of Housing and Community
37 Development or a local housing authority for the jurisdiction in
38 which the racetrack is located, shall annually inspect the living
39 conditions of backstretch employee housing to ensure compliance
40 with the housing standards established by the board, the findings



1 or results of which shall be submitted to the board. No license shall
2 be issued to a racing association to conduct a horse race meeting
3 unless the board has inspected the housing conditions that exist on
4 the racetrack's backstretch and determined the living conditions to
5 be in compliance with the standards established by the board in
6 subdivision (b).

7 (d) The board may assess a reasonable fee upon racing
8 associations to defray the costs associated with the inspections
9 provided for in subdivision (c).

10 SEC. 5. Section 19526 is added to the Business and
11 Professions Code, to read:

12 19526. (a) Each trainer shall keep accurate payroll records,
13 showing the name, address, social security number, work
14 classification, straight time and overtime hours worked each day
15 and week, paid to each of his or her employees.

16 (b) The payroll records enumerated under subdivision (a) shall
17 be available for inspection at all reasonable hours at the principal
18 office of the trainer on the following basis:

19 (1) A copy of an employee's payroll record shall be made
20 available for inspection or furnished to the employee or his or her
21 authorized representative upon request.

22 (2) A copy of all payroll records enumerated in subdivision (a)
23 shall be made available for inspection or furnished upon request
24 to the board and the Division of Labor Standards Enforcement of
25 the Department of Industrial Relations.

26 (3) On or before January 31 of each year, each trainer shall
27 provide copies of federal W-2 and 1099 tax forms for his or her
28 backstretch employees for the previous calendar year to the
29 administrator of the pension fund for backstretch employees.

30 (c) The payroll records described in this section shall be on
31 forms provided by the Division of Labor Standards Enforcement
32 or shall contain the same information as the forms provided by the
33 division.

34 (d) A trainer shall make the records enumerated in subdivision
35 (a) available to an employee or his or her authorized representative
36 within 10 days after receipt of a written request.

37 (e) The trainer shall inform the board of the location of the
38 records enumerated under subdivision (a), including the street
39 address, city and county, and shall, within five working days,
40 provide a notice of a change of location and address.



1 (f) In addition to any other penalty imposed by law, any trainer
2 who fails to provide access to the records enumerated in
3 subdivision (a) to the board, the employee or his or her authorized
4 representative, the administrator of the pension or welfare funds,
5 or to the Division of Labor Standards enforcement as required by
6 law shall be subject to suspension of his or her license.

7 (g) Except for trainers covered by an operative collective
8 bargaining agreement pursuant to Section 19613.7, the board may
9 require, as a condition of issuing or renewing a trainer's license,
10 that the trainer submit a declaration that they have maintained true
11 and correct payroll records and have complied with the
12 requirements of the Labor Code and applicable wage orders of the
13 Industrial Welfare Commission.

14 (h) The Labor Commissioner shall establish and maintain a
15 program to audit the payroll records of trainers who are not parties
16 to a collective bargaining agreement entered pursuant to Article
17 2.5 (commencing with Section 19455) and who operate in
18 California for 90 or more racing days in a calendar year, in a
19 manner to ensure that every subject licensee is audited at least once
20 prior to January 1, 2006. ~~This subdivision shall not apply to~~
21 ~~trainers who have been audited prior to January 1, 2002, provided~~
22 ~~that audit was not a result of a formal complaint.~~ Evidence of
23 substantial noncompliance with the Labor Code and applicable
24 wage orders of the Industrial Welfare Commission shall be
25 referred by the board to the Labor Commissioner.

26 SEC. 6. ~~Section 19556 of the Business and Professions Code~~
27 ~~is amended to read:~~

28 ~~19556. (a) The distribution shall be made by the distributing~~
29 ~~agent to beneficiaries qualified under this article. For the purposes~~
30 ~~of this article, a beneficiary shall be all of the following:~~

31 ~~(1) A nonprofit corporation or organization entitled by law to~~
32 ~~receive a distribution made by a distributing agent.~~

33 ~~(2) Exempt or entitled to an exemption from taxes measured by~~
34 ~~income imposed by this state and the United States.~~

35 ~~(3) Engaged in charitable, benevolent, civic, religious,~~
36 ~~educational, or veterans' work similar to that of agencies~~
37 ~~recognized by an organized community chest in the State of~~
38 ~~California, except that the funds so distributed may be used by the~~
39 ~~beneficiary for capital expenditures.~~

40 ~~(4) Approved by the board.~~



1 ~~(b) At least 50 percent of the distribution shall be made to~~
2 ~~charities associated with the horse racing industry. No beneficiary~~
3 ~~otherwise qualified under this section to receive charity day net~~
4 ~~proceeds shall be excluded on the basis that the beneficiary~~
5 ~~provides charitable benefits to persons connected with the care,~~
6 ~~training, and running of racehorses, except that type of beneficiary~~
7 ~~shall make an accounting to the board within one calendar year of~~
8 ~~the date of receipt of any distribution.~~

9 ~~SEC. 7.~~—Section 19613.8 is added to the Business and
10 Professions Code, to read:

11 19613.8. Within 60 days of a statewide majority of
12 backstretch workers having chosen to be represented by an
13 exclusive collective bargaining agent pursuant to Article 2.5
14 (commencing with Section 19455) or any other law, ~~the respective~~
15 ~~organization of horsemen, or in the case of the thoroughbred~~
16 ~~industry the organization of trainers, shall submit a plan to the~~
17 ~~board for the administration of the pension program by a joint~~
18 ~~labor-management committee made up of equal representatives of~~
19 ~~trainers and labor union representatives, consistent with the~~
20 ~~standards established by Section 302 of the Taft-Hartley Act (29~~
21 ~~U.S.C. Sec. 5186). Notwithstanding Section 19613, upon~~
22 ~~approval by the board, a joint labor-management committee shall~~
23 ~~administer the pension program. and so long as a majority~~
24 ~~continues to be represented by the agent, that agent shall designate~~
25 ~~two representatives to replace two of the members if the CHBPA~~
26 ~~Pension Administrative Committee and the plan document shall be~~
27 ~~amended to provide for this representation.~~

28 ~~SEC. 8.~~—

29 ~~SEC. 7.~~ Section 19641.2 is added to the Business and
30 Professions Code, to read:

31 19641.2. (a) The nonprofit foundation authorized to receive
32 funds pursuant to Section 19641 shall use those funds to
33 administer a health and welfare trust fund without prejudice and
34 for the benefit of every eligible person. The officers and directors
35 of the health and welfare trust fund shall have a fiduciary
36 responsibility to manage the fund for the benefit of the
37 beneficiaries.

38 (b) Every employer of backstretch workers shall, upon request,
39 submit or provide access to the administrator of the welfare
40 program for backstretch workers any employment records



1 necessary for prompt payment of benefits and proper
2 administration of the program.

3 (c) At least one member of the health and welfare fund board
4 shall be a member without financial interest in the horse racing
5 industry appointed from a list of nominees submitted jointly by the
6 California State Council of the Service Employees International
7 Union, the Jockey's Guild, and the California Teamsters Public
8 Affairs Council.

9 (d) Nothing in this section is intended to affect the status of the
10 welfare fund as a charity under Section 501(c)(3) of the federal
11 Internal Revenue Code or its compliance with the Charitable
12 Purposes Act (Article 7 (commencing with Section 12580) of
13 Chapter 6 of Part 2 of Division 3 of Title 2 of the Government
14 Code).

15 ~~SEC. 9.—~~

16 *SEC. 8.* The provisions of this act are severable. If any
17 provision of this act or its application is held invalid, that invalidity
18 shall not affect other provisions or applications that can be given
19 effect without the invalid provision or application.

