

AMENDED IN SENATE AUGUST 29, 2001

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**

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**Introduced by Assembly Member Wesson**

February 22, 2001

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An act to amend Sections ~~19461, 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, Section 19455 of the Business and Professions Code, relating to horse racing.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 856, as amended, Wesson. Horse racing.

*Provisions adopted in the 2001 portion of the 2001–02 Regular Session, which becomes effective January 1, 2002, direct the California Horse Racing Board to oversee the conduct of a union and multiemployer collective bargaining agent recognition procedure for backstretch employees.*

*This bill would amend these provision by deleting a provision that authorizes the board to contract with the Agricultural Labor Relations Board and by adding specifics concerning the authority of arbitrators used to resolve disputes between parties to the collective bargaining agreements created under these provisions.*

~~(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 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 committee 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 *SECTION 1. Section 19455 of the Business and Professions*  
3 *Code, as added by Chapter 198 of the Statutes of 2001, is amended*  
4 *to read:*

5 19455. (a) The Legislature finds and declares that Section  
6 923 of the Labor Code recognizes that it is necessary that the  
7 individual worker have full freedom of association,  
8 self-organization, and designation of representatives of his or her  
9 own choosing, to negotiate the terms and conditions of his or her  
10 employment, and that he or she shall be free from the interference,  
11 restraint, or coercion of employers of labor, or their agents, in the  
12 designation of such representatives or in self-organization or in  
13 other concerted activities for the purpose of collective bargaining.

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

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

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

29 (1) Employees shall have the right to join, or refuse to join, a  
30 labor organization for purposes of collective bargaining and



1 mutual aid and protection. Existing state-recognized organizations  
2 of trainers or horsemen established pursuant to the Horse Racing  
3 Law shall not use funds derived or distributed from parimutuel  
4 wagering pursuant to state law to advocate or advance any position  
5 with respect to unionization of employees. Individual trainers and  
6 horsemen, and their agents, shall not coerce or threaten any  
7 employee of any trainer or horseman because of the exercise of  
8 rights pursuant to this article. No employee shall be discharged or  
9 discriminated against for expressing any opinion concerning the  
10 selection of a labor union or collective bargaining agent for  
11 employees under this article. No trainer or horseman, or group of  
12 trainers or horsemen, shall dominate or interfere with the  
13 formation or administration of any labor organization established  
14 under this article nor contribute financial or other support to it.

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

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

31 (4) Every licensed trainer who employs backstretch employees  
32 shall file with the board, not later than February 1, 2002, and,  
33 within seven days of the commencement of each race meeting  
34 thereafter, a complete and accurate list of the names of its  
35 backstretch workers. In addition, every trainer shall file with the  
36 board a complete, accurate, and updated list within seven days of  
37 any changes which occur to the most recently filed list. The lists  
38 described in this section, together with any updates thereto, shall  
39 be provided within 72 hours after receipt by the board, to any bona  
40 fide labor organization which has requested copies thereof and



1 submitted a petition containing the names of 125 backstretch  
2 workers pursuant to paragraph (3). Any such request need only be  
3 made one time and the board shall thereafter be required to provide  
4 these lists and any updates thereto in accordance with the  
5 provisions of this section so long as a bona fide labor organization  
6 seeks to represent licensed backstretch workers.

7 (5) The labor union may obtain board recognition as the  
8 exclusive bargaining agent for employees of employers pursuant  
9 to *the* provisions and procedures described in paragraph (8).

10 (6) For the purposes of this article:

11 (A) “Backstretch employee” or “backstretch worker” means  
12 a person licensed by the board pursuant to subdivision (c) of  
13 Section 1481 of Division 4 of Title 4 of the California Code of  
14 Regulations.

15 (B) “Multiemployer bargaining unit” means any bargaining  
16 unit created and recognized pursuant to the terms of clause (iii) of  
17 subparagraph (A) of paragraph (8).

18 ~~(E)~~

19 (C) “Approved election unit” means any election unit created  
20 and recognized pursuant to paragraph (7).

21 (7) There are four election units created and recognized  
22 pursuant to this section, as follows:

23 (A) Backstretch employees working for trainers of  
24 thoroughbred horses stabled at licensed racetracks, including fairs  
25 and approved auxiliary training facilities in the combined central  
26 and southern zones.

27 (B) Backstretch employees working for trainers of  
28 thoroughbred horses stabled at licensed racetracks, including fairs  
29 and approved auxiliary training facilities in the northern zone.

30 (C) Backstretch employees working for trainers of quarter  
31 horses stabled at licensed racetracks and approved auxiliary  
32 training facilities in the combined central and southern zones.

33 (D) Backstretch employees working for trainers of harness  
34 horses stabled at licensed racetracks, including fairs and approved  
35 auxiliary training facilities in the northern zone.

36 The board shall use the California State Mediation and  
37 Conciliation Service for all appropriate purposes of this act,  
38 including operations related to the conduct of recognition  
39 procedures and elections.



1 (8) (A) With respect to backstretch workers, a labor  
2 organization seeking recognition as the collective bargaining  
3 agent for these workers shall collect signed cards indicating  
4 individual worker's intent to be represented by that organization  
5 for collective bargaining purposes and submit those cards to the  
6 California State Mediation and Conciliation Service for review  
7 and validation. When the labor organization is in receipt of cards  
8 signed by workers equaling at least 30 percent of the employees  
9 in an election unit described in paragraph (4), the California State  
10 Mediation and Conciliation Service shall conduct a secret ballot  
11 election with respect to the election unit as soon as is practicable  
12 thereafter, but in no event more than 30 calendar days after  
13 validation by the service of the cards.

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

25 (i) Any election shall be conducted by the California State  
26 Mediation and Conciliation Service under rules established by the  
27 ~~Service~~ *service* consistent with standard practice. The rules shall  
28 be established no more than 60 days after the effective date of this  
29 section, shall be made available to the bona fide labor union and  
30 employers of backstretch employees, and shall be exempt from the  
31 Administrative Procedure Act. The rules shall provide for a secret  
32 ballot system for the conduct of the election pursuant to which  
33 ballots cast by backstretch employees of individual employers  
34 shall be cast by insertion into envelopes appropriately identified  
35 with respect to each employer. The envelopes shall be collected  
36 and tabulated in secret by the service, subject to observation by one  
37 representative designated by the bona fide labor organization and  
38 one representative designated by the organization representing  
39 trainers pursuant to subdivision (a) of Section 19613.2. Upon  
40 completion of the tabulation, the service shall issue a report



1 certifying those employers, the majority of whose employees who  
2 participated in the election voted in favor of representation by the  
3 union. Those employers so certified shall be required to bargain  
4 with the labor union pursuant to this subdivision. All other  
5 employers shall not be required to negotiate with the union and  
6 there shall not be another election with respect to those employers  
7 for at least one year from the date of the prior election. The service  
8 shall not make public the numerical tabulation of votes by  
9 employer.

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

13 (iii) Within 45 days of the certification of the results of the  
14 election by the service to the board, those trainers who are required  
15 to bargain pursuant to this subparagraph may form multiple  
16 employer bargaining units in accordance with the provisions of  
17 this subdivision. Further, the organization representing trainers  
18 pursuant to subdivision (a) of Section 19613.2 shall conduct a  
19 meeting regarding the formulation of multiple employer  
20 bargaining units within five days of the certification of the results  
21 of the election. For licensed trainers described in subparagraph (A)  
22 of paragraph (7), the minimum number of backstretch employees  
23 employed by licensed trainers comprising the multiple employer  
24 bargaining unit as of the date of the election shall be *the lesser of*  
25 100 employees or 10 percent of the total employees subject to  
26 bargaining. For licensed trainers described in subparagraphs (B),  
27 (C), and (D), of paragraph (7), the minimum number of  
28 backstretch employees employed by licensed trainers comprising  
29 the multiple employer bargaining unit as of the date of the election  
30 shall be *the lesser of* 50 employees or 10 percent of the total  
31 employees subject to bargaining. The minimum number of  
32 backstretch employees employed by licensed trainers in order to  
33 qualify as a multiple employer bargaining unit pursuant to this  
34 subdivision may, with the consent of the recognized labor union,  
35 be reduced. On or before the 45th day following the certification  
36 of the results of the election, each representative of a multiple  
37 employer bargaining unit formed pursuant to this subdivision shall  
38 notify the board and the exclusive collective bargaining agent, in  
39 writing, that a unit has been formed, disclose the names of the  
40 licensed trainers which comprise the unit, and indicate the number



1 and names of the backstretch employees which are employed by  
2 the licensed trainers comprising the unit. Except to join another  
3 multiple employer bargaining unit, without the consent of the bona  
4 fide labor organization, a trainer who has elected to join a multiple  
5 employer bargaining unit may not thereafter elect to resign from  
6 the unit except within a 30-day period prior to the date of the  
7 expiration of the collective bargaining agreement resulting from  
8 the negotiations. The employees of a licensed trainer who has  
9 resigned from a multiple employer bargaining unit and has not  
10 joined another unit, shall not be entitled to petition to decertify the  
11 union for a period of one year from the date of the expiration of the  
12 collective bargaining agreement which resulted from the  
13 negotiation between the union and the multiple employer  
14 bargaining unit of which he or she was formerly a member and  
15 which was in effect at the time of the trainer's resignation. Upon  
16 completion and certification of the election results the union shall  
17 be recognized as the exclusive collective bargaining agent for  
18 those workers whose employers are required to bargain, and the  
19 executive director of the board shall issue an order to affected  
20 employers to begin good faith negotiations for approval of  
21 employment agreements pursuant to the procedures set forth in  
22 this section.

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



1 (9) No labor agreement under this article shall apply to any  
2 trainer or horseman with respect to employment associated with  
3 fair meetings prior to January 1, 2003. After this date, employees  
4 shall be added by accretion into an existing contract where  
5 applicable. For racing meetings conducted in the central and  
6 southern zones during the first three months of any calendar year  
7 and for fair racing meetings, this section shall not apply to trainers  
8 who normally reside and work outside of California and who are  
9 engaged in racing in this state for a limited period of time, not  
10 exceeding 90 racing days in any calendar year. For all other race  
11 meeting conducted during any calendar year, this section shall not  
12 apply to trainers, backstretch workers, or both who normally  
13 reside and work outside of California and without are engaged in  
14 racing in this state for a limited period of time, not exceeding 50  
15 racing days in any calendar year.

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

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



1 ~~issue recommendations to the stewards with respect to disputes~~  
2 ~~and any alleged unfair labor practices.~~ An investigation and  
3 adjudication by the stewards shall be concluded as expeditiously  
4 as possible, consistent with applicable standards of due process. In  
5 addition, the board may require the parties to submit the issue to  
6 binding arbitration subject to judicial review in the same manner  
7 as decisions of the board. Disputes subject to this paragraph  
8 include disputes involving any backstretch employee or group of  
9 employees, and any trainer or group of trainers.

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

37 (e) Nothing in this section shall prevent a labor union and an  
38 individual trainer, or any group of trainers, from entering into a  
39 mutually acceptable agreement, which may substitute for the  
40 requirements of subdivision (d), for union organizing of



1 employees of the horsemen or trainers. Nothing in this article shall  
2 be interpreted to require representative parties in negotiation to  
3 enter into any labor agreement, as long as each party is negotiating  
4 in a good faith effort to reach an agreement.

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**All matter omitted in this version of the  
bill appears in the bill as amended in the  
Senate, July 11, 2001 (JR 11)**

