

AMENDED IN SENATE SEPTEMBER 10, 2001

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

Introduced by Assembly Member Wesson

February 22, 2001

An act to amend ~~Section~~ *Sections 19455 and 19481.5* 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. *They also provide that within 120 days of the effective date of those sections the board shall also adopt emergency regulations to establish standards governing the employee housing provided to backstretch personnel at licensed racetracks. No license shall be issued to a racing association to conduct a horse race meeting unless the board has inspected the housing conditions that exist on the*

racetrack's backstretch and determined the living conditions to be in compliance with the standards established by the board.

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. *This bill would also amend provisions relating to inspection of the living conditions of backstretch workers by providing that the board may be assisted by a local building department or other local entity designated by the jurisdiction in which the racetrack is located in conducting these annual inspections to ensure compliance with the standards it has established.*

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. Section 19455 of the Business and Professions
2 Code, as added by Chapter 198 of the Statutes of 2001, is amended
3 to read:

4 19455. (a) The Legislature finds and declares that Section
5 923 of the Labor Code recognizes that it is necessary that the
6 individual worker have full freedom of association,
7 self-organization, and designation of representatives of his or her
8 own choosing, to negotiate the terms and conditions of his or her
9 employment, and that he or she shall be free from the interference,
10 restraint, or coercion of employers of labor, or their agents, in the
11 designation of such representatives or in self-organization or in
12 other concerted activities for the purpose of collective bargaining.

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

20 (c) It is the intent of the Legislature to establish an orderly
21 procedure for backstretch employees to exercise their statutory
22 rights to organize a labor union, in order to reduce the prospect of



1 any strikes, disruptions, or economic action that would interfere
2 with the operation of horse racing meetings in California.

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

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

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

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

38 (4) Every licensed trainer who employs backstretch employees
39 shall file with the board, not later than February 1, 2002, and,
40 within seven days of the commencement of each race meeting

1 thereafter, a complete and accurate list of the names of its
2 backstretch workers. In addition, every trainer shall file with the
3 board a complete, accurate, and updated list within seven days of
4 any changes which occur to the most recently filed list. The lists
5 described in this section, together with any updates thereto, shall
6 be provided within 72 hours after receipt by the board, to any bona
7 fide labor organization which has requested copies thereof and
8 submitted a petition containing the names of 125 backstretch
9 workers pursuant to paragraph (3). Any such request need only be
10 made one time and the board shall thereafter be required to provide
11 these lists and any updates thereto in accordance with the
12 provisions of this section so long as a bona fide labor organization
13 seeks to represent licensed backstretch workers.

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

17 (6) For the purposes of this article:

18 (A) “Backstretch employee” or “backstretch worker” means
19 a person licensed by the board pursuant to subdivision (c) of
20 Section 1481 of Division 4 of Title 4 of the California Code of
21 Regulations.

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

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

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

29 (A) Backstretch employees working for trainers of
30 thoroughbred horses stabled at licensed racetracks, including fairs
31 and approved auxiliary training facilities in the combined central
32 and southern zones.

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

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



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

4 The board shall use the California State Mediation and
5 Conciliation Service for all appropriate purposes of this act,
6 including operations related to the conduct of recognition
7 procedures and elections.

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

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

32 (i) Any election shall be conducted by the California State
33 Mediation and Conciliation Service under rules established by the
34 service consistent with standard practice. The rules shall be
35 established no more than 60 days after the effective date of this
36 section, shall be made available to the bona fide labor union and
37 employers of backstretch employees, and shall be exempt from the
38 Administrative Procedure Act. The rules shall provide for a secret
39 ballot system for the conduct of the election pursuant to which
40 ballots cast by backstretch employees of individual employers

1 shall be cast by insertion into envelopes appropriately identified
2 with respect to each employer. The envelopes shall be collected
3 and tabulated in secret by the service, subject to observation by one
4 representative designated by the bona fide labor organization and
5 one representative designated by the organization representing
6 trainers pursuant to subdivision (a) of Section 19613.2. Upon
7 completion of the tabulation, the service shall issue a report
8 certifying those employers, the majority of whose employees who
9 participated in the election voted in favor of representation by the
10 union. Those employers so certified shall be required to bargain
11 with the labor union pursuant to this subdivision. All other
12 employers shall not be required to negotiate with the union and
13 there shall not be another election with respect to those employers
14 for at least one year from the date of the prior election. The service
15 shall not make public the numerical tabulation of votes by
16 employer.

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

20 (iii) Within 45 days of the certification of the results of the
21 election by the service to the board, those trainers who are required
22 to bargain pursuant to this subparagraph may form multiple
23 employer bargaining units in accordance with the provisions of
24 this subdivision. Further, the organization representing trainers
25 pursuant to subdivision (a) of Section 19613.2 shall conduct a
26 meeting regarding the formulation of multiple employer
27 bargaining units within five days of the certification of the results
28 of the election. For licensed trainers described in subparagraph (A)
29 of paragraph (7), the minimum number of backstretch employees
30 employed by licensed trainers comprising the multiple employer
31 bargaining unit as of the date of the election shall be the lesser of
32 100 employees or 10 percent of the total employees subject to
33 bargaining. For licensed trainers described in subparagraphs (B),
34 (C), and (D), of paragraph (7), the minimum number of
35 backstretch employees employed by licensed trainers comprising
36 the multiple employer bargaining unit as of the date of the election
37 shall be the lesser of 50 employees or 10 percent of the total
38 employees subject to bargaining. The minimum number of
39 backstretch employees employed by licensed trainers in order to
40 qualify as a multiple employer bargaining unit pursuant to this

1 subdivision may, with the consent of the recognized labor union,
 2 be reduced. On or before the 45th day following the certification
 3 of the results of the election, each representative of a multiple
 4 employer bargaining unit formed pursuant to this subdivision shall
 5 notify the board and the exclusive collective bargaining agent, in
 6 writing, that a unit has been formed, disclose the names of the
 7 licensed trainers which comprise the unit, and indicate the number
 8 and names of the backstretch employees which are employed by
 9 the licensed trainers comprising the unit. Except to join another
 10 multiple employer bargaining unit, without the consent of the bona
 11 fide labor organization, a trainer who has elected to join a multiple
 12 employer bargaining unit may not thereafter elect to resign from
 13 the unit except within a 30-day period prior to the date of the
 14 expiration of the collective bargaining agreement resulting from
 15 the negotiations. The employees of a licensed trainer who has
 16 resigned from a multiple employer bargaining unit and has not
 17 joined another unit, shall not be entitled to petition to decertify the
 18 union for a period of one year from the date of the expiration of the
 19 collective bargaining agreement which resulted from the
 20 negotiation between the union and the multiple employer
 21 bargaining unit of which he or she was formerly a member and
 22 which was in effect at the time of the trainer's resignation. Upon
 23 completion and certification of the election results the union shall
 24 be recognized as the exclusive collective bargaining agent for
 25 those workers whose employers are required to bargain, and the
 26 executive director of the board shall issue an order to affected
 27 employers to begin good faith negotiations for approval of
 28 employment agreements pursuant to the procedures set forth in
 29 this section.

30 (B) If an individual employer of backstretch workers declines
 31 to be represented in the multiemployer collective bargaining
 32 procedure described in clause (iii), the board shall issue an order
 33 to begin good faith negotiations for employment agreements on an
 34 individual employer basis. The board may provide mediation and
 35 conciliation services upon request of the parties at any time. If an
 36 employer is required under this subparagraph to collectively
 37 bargain with the union, and the parties do not reach an agreement
 38 within 90 days of the order, the board shall require the parties to
 39 participate in mandatory mediation and conciliation services for a
 40 period of 30 days. If no agreement results from this mediation,



1 either or both parties may declare an impasse. Upon a party's
2 declaration of an impasse, the executive director of the board shall
3 appoint an arbitrator in the manner described in paragraph (11) to
4 determine the issues and issue a final and binding order
5 establishing the terms of a collective bargaining agreement.

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

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

34 (11) Disputes, other than disputes concerning the operation and
35 application of ongoing contracts, disputes subject to binding
36 interest arbitration pursuant to subparagraph (B) of paragraph (8),
37 and economic disputes arising in the context of multiemployer
38 bargaining pursuant to subparagraph (A) of paragraph (8), but
39 including disputes concerning the rights established in paragraphs
40 (1) and (2), upon complaint shall be adjudicated by the stewards.

The stewards shall have the authority to order any remedy, including reinstatement of employment, injunctive relief, damages, and attorney's fees. An investigation and adjudication by the stewards shall be concluded as expeditiously as possible, consistent with applicable standards of due process. In addition, the board may require the parties to submit the issue to binding arbitration subject to judicial review in the same manner as decisions of the board. Disputes subject to this paragraph include disputes involving any backstretch employee or group of employees, and any trainer or group of trainers.

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

(e) Nothing in this section shall prevent a labor union and an individual trainer, or any group of trainers, from entering into a mutually acceptable agreement, which may substitute for the 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.

5 *SEC. 2. Section 19481.5 of the Business and Professions*
6 *Code, as added by Chapter 198 of the Statutes of 2001, is amended*
7 *to read:*

8 19481.5. (a) Notwithstanding any other provision of law, no
9 license shall be issued to conduct a horse racing meeting upon a
10 track unless the track has been inspected by the board within 30
11 days prior to the date of application for a license and the track has
12 been approved by the board as conforming to the racetrack safety
13 standards set forth in subdivision (a) of Section 19481.

14 (b) The board shall, within 120 days of the effective date of this
15 subdivision, adopt emergency regulations in accordance with the
16 Administrative Procedure Act (Chapter 3.5 (commencing with
17 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
18 Code) to establish standards governing the employee housing
19 provided to backstretch personnel at licensed racetracks. These
20 regulations shall be deemed to be an emergency and necessary for
21 the immediate preservation of the public peace, health and safety,
22 or general welfare, shall be commensurate with the housing
23 standards established in the Employee Housing Act (commencing
24 with Section 17000 of Division 13 of the Health and Safety Code),
25 and shall consider the following:

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

28 (2) The housing needs of state or county facilities with live
29 racing meeting of no more than 43 days in duration that do not
30 operate as year-round training facilities. The board shall
31 specifically consider the different needs of these facilities
32 compared to permanent facilities or other state and county
33 facilities that function on a year-round basis, including state and
34 county fair facilities that operate as a year-round training facilities
35 where horses are stabled and workers live.

36 (3) Compliance of facilities with racing meetings of 19 days or
37 less, even if they operate as a year-round training facility, with this
38 subdivision shall be contingent on funding in the 2002–03 Budget
39 Act.

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

7 (c) Commencing January 1, 2004, the board, with assistance
8 from the California Department of Housing and Community
9 Development or a local ~~housing authority~~ *for building department*
10 *or other local entity designated by* the jurisdiction in which the
11 racetrack is located, shall annually inspect the living conditions of
12 backstretch employee housing to ensure compliance with the
13 housing standards established by the board, the findings or results
14 of which shall be submitted to the board. No license shall be issued
15 to a racing association to conduct a horse race meeting unless the
16 board has inspected the housing conditions that exist on the
17 racetrack's backstretch and determined the living conditions to be
18 in compliance with the standards established by the board in
19 subdivision (b).

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

