

AMENDED IN SENATE AUGUST 13, 2013

AMENDED IN ASSEMBLY APRIL 25, 2013

AMENDED IN ASSEMBLY APRIL 10, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1309**

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**Introduced by Assembly Member Perea**

(Principal coauthor: Senator Lieu)

**(Coauthors: Assembly Members Buchanan, Conway, Hagman, and Hall)**

(Coauthors: Senators Correa, Hill, Huff, Lara, and Wyland)

February 22, 2013

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An act to amend Sections 3600.5 and ~~5412~~ 5500.6 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1309, as amended, Perea. Workers' compensation: professional athletes.

Existing workers' compensation law requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment.

Existing law provides that an injury may be either "specific," occurring as the result of one incident or exposure that causes disability or need for medical treatment, or "cumulative," occurring as repetitive mentally or physically traumatic activities extending over a period of time, the combined effect of which causes any disability or need for medical treatment. ~~Existing law provides that the date of injury in cases of occupational diseases or cumulative injuries is that date upon which~~

~~the employee first suffered disability therefrom and either knew, or in the exercise of reasonable diligence should have known, that the disability was caused by his or her present or prior employment.~~

Existing law provides that an employee who has been hired outside of this state and his or her employer are exempt from these provisions while the employee is temporarily within this state doing work for his or her employer if the employer has furnished workers' compensation insurance coverage under the workers' compensation insurance or similar laws of a state other than California, as specified.

This bill would ~~provide that~~ *exempt* an employee hired outside of this state, his or her dependents, and his or her employer ~~shall be exempt~~ from *the occupational disease and cumulative injury provisions of this state's workers' compensation laws* if (1) the employee is a professional athlete, defined, for purposes of these provisions, to include an athlete who is employed at the minor or major league level in the sport of baseball, basketball, football, hockey, or soccer, ~~and~~ (2) that professional athlete is temporarily within this state doing work for his or her employer, *and* (3) *the employer has furnished workers' compensation insurance under the laws of the state other than California that covers the professional athlete's employment while in this state, except as specified.* This bill would deem a professional athlete to be temporarily within the state doing work for his or her employer if, during the 365 consecutive days immediately preceding the professional athlete's last day of work *for the employer* within the state, the professional athlete performs less than ~~90 total~~ 20% of his or her duty days ~~of required services within the state under the direction and control of the employer,~~ *as defined, in the state. The exemption would not apply to an employer of a professional athlete if the professional athlete has, over the course of his or her career, been employed for 2 seasons or longer by a California team or teams or performed 20% or more of his or her duty days in California. The bill would make an employer liable for occupational disease or cumulative injury to a professional athlete only if the employer employed the professional athlete within the last 7 nonconsecutive years of the professional athlete's occupational exposure to the hazards of the occupational disease or cumulative injury. The bill would also state that it is the intent of the Legislature that the decision of the Workers' Compensation Appeals Board in Wesley Carroll v. Cincinnati Bengals, et al. (2013) 78 Cal.Comp.Cases \_\_\_\_\_ (ADJ2295331) (WCAB En Banc) be limited to professional athletes, and would include other specified statements of legislative intent. The*

~~bill would provide that if the employee is a professional athlete, the date of injury in cases of occupational diseases or cumulative injuries is the date of the employee’s last injurious exposure while employed anywhere as a professional athlete, or the date of diagnosis, as defined, by a licensed physician, whichever occurs later.~~

~~The bill would also provide that an employer of a professional athlete that is subject to California’s workers’ compensation laws is not liable for occupational disease or cumulative injury if at the time application for benefits is made the professional athlete performed his or her last year of work in an occupation that exposed him or her to the occupational disease or cumulative injury as an employee of one or more other employers that are exempt from California’s workers’ compensation laws pursuant to the above provisions or any other law. The bill would provide that this exception would apply to all occupational disease and cumulative injury claims filed against that employer of professional athletes, unless the professional athlete was employed for 8 or more consecutive years by the same California-based employer pursuant to a contract of hire entered into in California, and 80% or more of the professional athlete’s employment as a professional athlete occurred while employed by that California-based employer against whom the claim is filed. The~~

~~The bill would provide that these changes apply to all pending claims for benefits, as specified *benefits filed on or after January 1, 2014, as specified.*~~

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

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

- 1 SECTION 1. Section 3600.5 of the Labor Code is amended to
- 2 read:
- 3 3600.5. (a) If an employee who has been hired or is regularly
- 4 employed in the state receives personal injury by accident arising
- 5 out of and in the course of employment outside of this state, he or
- 6 she, or his or her dependents, in the case of his or her death, shall
- 7 be entitled to compensation according to the law of this state.
- 8 (b) (1) Except as provided in subdivision (c), an employee who
- 9 has been hired outside of this state and his or her employer shall
- 10 be exempted from the provisions of this division while the
- 11 employee is temporarily within this state doing work for his or her

1 employer if the employer has furnished workers' compensation  
 2 insurance coverage under the workers' compensation insurance  
 3 or similar laws of a state other than California, so as to cover the  
 4 employee's employment while in this state if both of the following  
 5 apply:

6 (A) The extraterritorial provisions of this division are recognized  
 7 in the other state.

8 (B) The employers and employees who are covered in this state  
 9 are likewise exempted from the application of the workers'  
 10 compensation insurance or similar laws of the other state.

11 (2) In any case in which paragraph (1) is applicable, the benefits  
 12 under the workers' compensation insurance or similar laws of the  
 13 other state, and other remedies under those laws, shall be the  
 14 exclusive remedy against the employer for any injury, whether  
 15 resulting in death or not, received by the employee while working  
 16 for the employer in this state.

17 (c) (1) ~~Any~~ *With respect to an occupational disease or*  
 18 *cumulative injury*, a professional athlete who has been hired outside  
 19 of this state and his or her dependents and his or her employer  
 20 shall be exempted from the provisions of this division while the  
 21 professional athlete is temporarily within this state doing work for  
 22 his or her employer if both of the following apply:

23 (A) The employer has furnished workers' compensation  
 24 insurance coverage or its equivalent under the laws of a state other  
 25 than California.

26 (B) The employer's workers' compensation insurance or its  
 27 equivalent covers the professional athlete's employment while in  
 28 this state.

29 (2) If the conditions described in paragraph (1) are satisfied,  
 30 ~~then~~ the benefits under the laws of the other state, and other  
 31 remedies under those laws, ~~shall be~~ *are* the exclusive remedy  
 32 against the employer for any *occupational disease or cumulative*  
 33 *injury*, whether resulting in death or not, received by the employee  
 34 while working for the employer in this state, *except as described*  
 35 *in subdivision (d)*.

36 ~~(3) A professional athlete shall be deemed, for purposes of this~~  
 37 ~~subdivision, to be temporarily within this state doing work for his~~  
 38 ~~or her employer if, during the 365 days immediately preceding the~~  
 39 ~~professional athlete's last day of work within the state, the~~  
 40 ~~professional athlete performs less than 90 total days of required~~

1 services within the state under the direction and control of the  
2 employer.

3 (4) (A) ~~An employer of a professional athlete that is subject to  
4 this division is not liable for occupational disease or cumulative  
5 injury pursuant to Section 5500.5 if at the time application for  
6 benefits is made the professional athlete performed his or her last  
7 year of work in an occupation that exposed him or her to the  
8 occupational disease or cumulative injury as an employee of one  
9 or more other employers that are exempt from this division  
10 pursuant to paragraph (1) or any other law.~~

11 ~~(B) This paragraph shall apply to all occupational disease and  
12 cumulative injury claims filed against an employer of professional  
13 athletes if the employer is subject to this division, unless the  
14 professional athlete was employed for eight or more consecutive  
15 years by the same California-based employer pursuant to a contract  
16 of hire entered into in California, and 80 percent or more of the  
17 professional athlete's employment as a professional athlete  
18 occurred while employed by that California-based employer against  
19 whom the claim is filed. For purposes of the paragraph, both of  
20 the following apply:~~

21 ~~(i) A California-based employer is one with a principal place  
22 of business in this state that also plays the majority of its home  
23 games in California.~~

24 ~~(ii) Whether 80 percent or more of a professional athlete's  
25 employment as a professional athlete occurred while employed by  
26 the same California-based employer shall be determined solely by  
27 taking the total number of days the professional athlete was  
28 employed by a California-based employer pursuant to a contract  
29 of hire entered into in California and dividing that number by the  
30 total number of days the professional athlete was employed as a  
31 professional athlete.~~

32 *(3) For purposes of this subdivision, a professional athlete is*  
33 *temporarily within this state doing work for his or her employer*  
34 *if, during the 365 consecutive days immediately preceding the*  
35 *professional athlete's last day of work for the employer within the*  
36 *state, the professional athlete performs less than 20 percent of his*  
37 *or her duty days in the State of California. For the purposes of*  
38 *this section, a "duty day" means a day in which any services are*  
39 *performed by an employee under the direction and control of his*  
40 *or her employer pursuant to a player contract.*

1     ~~(5)~~

2     (4) The term “professional athlete” for purposes of this  
3 subdivision *and subdivision (d)* means an athlete who is employed  
4 at either a minor or major league level in the sport of baseball,  
5 basketball, football, hockey, or soccer.

6     ~~(6) The amendments made to this section by the act adding this~~  
7 ~~paragraph apply to all pending claims for benefits pursuant to this~~  
8 ~~division that have not yet been adjudicated.~~

9     (d) (1) *Subdivision (c) does not apply to any employer of a*  
10 *professional athlete if either of the following is applicable:*

11     (A) *The professional athlete has, over the course of his or her*  
12 *professional career, been employed for two or more seasons by a*  
13 *California team or teams.*

14     (B) *The professional athlete has, over the course of his or her*  
15 *career, performed 20 percent or more of his or her duty days in*  
16 *California. The percentage of a career performing duty days in*  
17 *California shall be determined solely by taking the number of duty*  
18 *days the professional athlete was employed by a California team*  
19 *or teams, plus the number of duty days the professional athlete*  
20 *was employed as a professional athlete in California by a*  
21 *non-California team or teams, and dividing that number by the*  
22 *total number of duty days the professional athlete was employed*  
23 *anywhere as a professional athlete.*

24     (2) *For the purposes of this subdivision, a California team is*  
25 *one that plays a majority of its home games in California.*

26     (3) *For purposes of this subdivision, a season is defined as the*  
27 *total number of days from the date of the first preseason game by*  
28 *the team for whom the professional athlete played through the*  
29 *date of the last game the professional team played during his or*  
30 *her contract year.*

31     (4) *If either of the conditions specified in paragraph (1) is*  
32 *applicable, the benefits under the laws of California shall be the*  
33 *exclusive remedy against the employer subject to this division*  
34 *pursuant to Section 5500.5 for any occupational disease or*  
35 *cumulative injury claim brought under the laws of the State of*  
36 *California against the employer, whether resulting in death or not,*  
37 *received by the employee while working for the employer in this*  
38 *state.*

39     (5) *An employer that would be exempted from the provisions of*  
40 *this division by subdivision (c), but for this subdivision, is exempt*

1 from Article 4 (commencing with Section 3550) of Chapter 2 of  
2 this division.

3 (6) The amendments made to this section by the act adding this  
4 paragraph apply to all claims for benefits pursuant to this division  
5 filed on or after January 1, 2014, but do not apply to a case in  
6 which a final adjudication has been rendered prior to that date.  
7 The amendments made to this section by the act adding this  
8 paragraph shall not constitute good cause to reopen any final  
9 decision, order, or award.

10 (d)

11 (e) For purposes of this section, a certificate from the duly  
12 authorized officer of the appeals board or similar department of  
13 another state certifying that the employer of the other state is  
14 insured in that state and has provided extraterritorial coverage  
15 insuring his or her employees while working within this state shall  
16 be prima facie evidence that the employer carries workers'  
17 compensation insurance.

18 ~~SEC. 2. Section 5412 of the Labor Code is amended to read:~~

19 ~~5412. (a) The date of injury in cases of occupational diseases~~  
20 ~~or cumulative injuries is that date upon which the employee first~~  
21 ~~suffered disability therefrom and either knew, or in the exercise~~  
22 ~~of reasonable diligence should have known, that the disability was~~  
23 ~~caused by his or her present or prior employment.~~

24 ~~(b) In the event the employee is a professional athlete:~~

25 ~~(1) The date of injury in cases of occupational disease or~~  
26 ~~cumulative injuries is the date of the employee's last injurious~~  
27 ~~exposure while employed anywhere as a professional athlete, or~~  
28 ~~the date of diagnosis by a licensed physician, whichever occurs~~  
29 ~~later.~~

30 ~~(2) The date of diagnosis by a licensed physician is that date on~~  
31 ~~which the licensed physician informed the professional athlete of~~  
32 ~~his or her medical diagnosis.~~

33 ~~(3) The time limitation in subdivision (a) of Section 5405 may~~  
34 ~~be tolled only by reason of the employee's mental incompetence~~  
35 ~~during the time permitted to commence proceedings pursuant to~~  
36 ~~subdivision (a) of Section 5405.~~

37 ~~(4) The term "professional athlete" as used in this subdivision~~  
38 ~~shall have the same meaning as set forth in paragraph (5) of~~  
39 ~~subdivision (c) of Section 3600.5.~~

40 ~~SEC. 2. Section 5500.6 of the Labor Code is amended to read:~~

1 5500.6. (a) Liability for occupational disease or cumulative  
2 injury which results from exposure solely during employment as  
3 an employee, as defined in subdivision (d) of Section 3351, shall  
4 be limited to those employers in whose employment the employee  
5 was exposed to the hazards of the occupational disease or  
6 cumulative injury during the last day on which the employee was  
7 employed in an occupation exposing the employee to the hazards  
8 of the disease or injury. In the event that none of the employers of  
9 the last day of hazardous employment is insured for workers'  
10 compensation liability, that liability, shall be imposed upon the  
11 last employer exposing the employee to the hazards of the  
12 occupational disease or cumulative injury who has secured  
13 workers' compensation insurance coverage or an approved  
14 alternative thereto. If, based upon all the evidence presented, the  
15 appeals board or the workers' compensation judge finds the  
16 existence of cumulative injury or occupational disease, liability  
17 for the cumulative injury or occupational disease shall not be  
18 apportioned to prior employers. However, in determining liability,  
19 evidence of disability due to specific injury, disability due to  
20 non-work-related causes, or disability previously compensated for  
21 by way of a findings and award or order approving compromise  
22 and release, or a voluntary payment of disability, may be admissible  
23 for purposes of apportionment.

24 (b) (1) *An employer shall be liable for occupational disease or*  
25 *cumulative injury to a professional athlete, as defined in Section*  
26 *3600.5, only if the employer employed the professional athlete*  
27 *within the last seven nonconsecutive years of the professional*  
28 *athlete's occupational exposure to the hazards of the occupational*  
29 *disease or cumulative injury. If more than one employer that is*  
30 *subject to this division employed the professional athlete within*  
31 *the last five years of injurious exposure, liability shall be limited*  
32 *to employers as provided by Section 5500.5.*

33 (2) *The amendments made to this section by the act adding this*  
34 *paragraph shall apply to all claims for benefits pursuant to this*  
35 *division filed on or after January 1, 2014. The amendments made*  
36 *to this section by the act adding this paragraph shall not constitute*  
37 *good cause to reopen any final decision, order, or award.*

38 *SEC. 3. It is the intent of the Legislature that the changes made*  
39 *to law by this act shall only affect covered professional athletes*  
40 *and covered employers of professional athletes. The changes made*

1 *to law by this act shall not affect any other employer or employee*  
2 *in the State of California.*

3 *SEC. 4. It is the intent of the Legislature that the changes made*  
4 *to law by this act shall have no impact or alter in any way the*  
5 *decision of the court in Bowen v. Workers' Comp. Appeals Bd.*  
6 *(1999) 73 Cal.App.4th 15.*

7 *SEC. 5. It is the intent of the Legislature that the decision of*  
8 *the Workers' Compensation Appeals Board in Wesley Carroll v.*  
9 *Cincinnati Bengals, et al. (2013) 78 Cal.Comp.Cases \_\_\_\_*  
10 *(ADJ2295331) (WCAB En Banc) be limited to professional*  
11 *athletes, as defined in this act.*

12 *SEC. 6. It is the intent of the Legislature that the changes made*  
13 *to law by this act have no impact or alter in any way the decision*  
14 *of the Workers' Compensation Appeals Board in Dennis McKinley*  
15 *v. Arizona Cardinals et al. (2013) 78 CCC 23 (ADJ7460656).*

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