

AMENDED IN SENATE AUGUST 28, 2013

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~~ *Section* 3600.5 and 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 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 exempt an employee hired outside of this state, ~~his or her dependents~~, and his or her employer 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, *ice* hockey, or soccer, (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 20% of his or her duty days, as defined, in the state. The exemption would not apply to ~~an employer of a professional athlete and his or her employer~~ if the professional athlete has, over the course of his or her career, ~~been employed worked for 2 or more seasons or longer by for a California~~ *California-based team or teams, as defined, or performed worked 20% or more of his or her duty days in California or for a California-based team, and, over the course of his or her professional career, worked for fewer than 7 seasons for any team other than a California-based team.* ~~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 these changes apply to all pending claims for benefits filed on or after ~~January 1, 2014~~, *September 15, 2013*, 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~~ *working* in the state receives personal injury by accident  
5 arising out of and in the course of employment outside of this state,  
6 he or she, or his or her dependents, in the case of his or her death,  
7 shall be entitled to compensation according to the law of this state.

8 (b) (1) ~~Except as provided in subdivision (c), an~~ *An* employee  
9 who has been hired outside of this state and his or her employer  
10 shall be exempted from the provisions of this division while the  
11 employee is temporarily within this state doing work for his or her  
12 employer if the employer has furnished workers' compensation  
13 insurance coverage under the workers' compensation insurance  
14 or similar laws of a state other than California, so as to cover the  
15 employee's ~~employment~~ *work* while in this state if both of the  
16 following apply:

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

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

22 (2) In any case in which paragraph (1) is ~~applicable~~, *satisfied*,  
23 the benefits under the workers' compensation insurance or similar  
24 laws of the other state, and other remedies under those laws, shall  
25 be the exclusive remedy against the employer for any injury,  
26 whether resulting in death or not, received by the employee while  
27 working for the employer in this state.

28 (c) (1) With respect to an occupational disease or cumulative  
29 injury, a professional athlete who has been hired outside of this  
30 state and his or her ~~dependents and his or her~~ employer shall be

1 exempted from the provisions of this division while the  
2 professional athlete is temporarily within this state doing work for  
3 his or her employer if both of the following ~~apply~~: *are satisfied*:

4 (A) The employer has furnished workers’ compensation  
5 insurance coverage or its equivalent under the laws of a state other  
6 than California.

7 (B) The employer’s workers’ compensation insurance or its  
8 equivalent covers the professional athlete’s ~~employment work~~  
9 while in this state.

10 (2) ~~If the conditions described in~~ *In any case in which* paragraph  
11 (1) ~~are~~ *is* satisfied, the benefits under the *workers’ compensation*  
12 *insurance or similar* laws of the other state, and other remedies  
13 under those laws, ~~are shall be~~ the exclusive remedy against the  
14 employer for any occupational disease or cumulative injury,  
15 whether resulting in death or not, received by the employee while  
16 working for the employer in this state, ~~except as described in~~  
17 ~~subdivision (d)~~ *state*.

18 (3) ~~For purposes of this subdivision, a~~ A professional athlete ~~is~~  
19 ~~shall be deemed, for purposes of this subdivision, to be~~ temporarily  
20 within this state doing work for his or her employer if, during the  
21 365 consecutive days immediately preceding the professional  
22 athlete’s last day of work for the employer within the state, the  
23 professional athlete performs less than 20 percent of his or her  
24 duty days ~~in the State of California~~ *during that 365-day period in*  
25 *California*. ~~For the purposes of this section, a “duty day” means~~  
26 ~~a day in which any services are performed by an employee under~~  
27 ~~the direction and control of his or her employer pursuant to a player~~  
28 ~~contract.~~

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

33 (d) (1) ~~Subdivision (c) does not apply to any employer of a~~  
34 ~~professional athlete if either of the following is applicable:~~

35 (A) ~~The professional athlete has, over the course of his or her~~  
36 ~~professional career, been employed for two or more seasons by a~~  
37 ~~California team or teams.~~

38 (B) ~~The professional athlete has, over the course of his or her~~  
39 ~~career, performed 20 percent or more of his or her duty days in~~  
40 ~~California. The percentage of a career performing duty days in~~

1 California shall be determined solely by taking the number of duty  
2 days the professional athlete was employed by a California team  
3 or teams, plus the number of duty days the professional athlete  
4 was employed as a professional athlete in California by a  
5 non-California team or teams, and dividing that number by the  
6 total number of duty days the professional athlete was employed  
7 anywhere as a professional athlete.

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

10 (3) For purposes of this subdivision, a season is defined as the  
11 total number of days from the date of the first preseason game by  
12 the team for whom the professional athlete played through the date  
13 of the last game the professional team played during his or her  
14 contract year.

15 (4) If either of the conditions specified in paragraph (1) is  
16 applicable, the benefits under the laws of California shall be the  
17 exclusive remedy against the employer subject to this division  
18 pursuant to Section 5500.5 for any occupational disease or  
19 cumulative injury claim brought under the laws of the State of  
20 California against the employer, whether resulting in death or not,  
21 received by the employee while working for the employer in this  
22 state.

23 (5) An employer that would be exempted from the provisions  
24 of this division by subdivision (c), but for this subdivision, is  
25 exempt from Article 4 (commencing with Section 3550) of Chapter  
26 2 of this division.

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

34 (d) (1) *With respect to an occupational disease or cumulative*  
35 *injury, a professional athlete and his or her employer shall be*  
36 *exempt from this division when all of the professional athlete's*  
37 *employers in his or her last year of work as a professional athlete*  
38 *are exempt from this division pursuant to subdivision (c) or any*  
39 *other law, unless both of the following conditions are satisfied:*

1 (A) *The professional athlete has, over the course of his or her*  
2 *professional athletic career, worked for two or more seasons for*  
3 *a California-based team or teams, or the professional athlete has,*  
4 *over the course of his or her professional athletic career, worked*  
5 *20 percent or more of his or her duty days either in California or*  
6 *for a California-based team. The percentage of a professional*  
7 *athletic career worked either within California or for a*  
8 *California-based team shall be determined solely by taking the*  
9 *number of duty days the professional athlete worked for a*  
10 *California-based team or teams, plus the number of duty days the*  
11 *professional athlete worked as a professional athlete in California*  
12 *for any team other than a California-based team, and dividing*  
13 *that number by the total number of duty days the professional*  
14 *athlete was employed anywhere as a professional athlete.*

15 (B) *The professional athlete has, over the course of his or her*  
16 *professional athletic career, worked for fewer than seven seasons*  
17 *for any team or teams other than a California-based team or teams*  
18 *as defined in this section.*

19 (2) *When subparagraphs (A) and (B) of paragraph (1) are both*  
20 *satisfied, liability for the professional athlete's occupational*  
21 *disease or cumulative injury shall be determined in accordance*  
22 *with Section 5500.5.*

23 (e) *An employer of professional athletes, other than a*  
24 *California-based team, shall be exempt from Article 4 (commencing*  
25 *with Section 3550) of Chapter 2, and subdivisions (a) to (c),*  
26 *inclusive, of Section 5401.*

27 (e)

28 (f) *For purposes of this section, a certificate from the duly*  
29 *authorized officer of the appeals board or similar department of*  
30 *another state certifying that the employer of the other state is*  
31 *insured in that state and has provided extraterritorial coverage*  
32 *insuring his or her employees while working within this state shall*  
33 *be prima facie evidence that the employer carries workers'*  
34 *compensation insurance.*

35 (g) *For purposes of this section, the following definitions apply:*

36 (1) *The term "professional athlete" means an athlete who is*  
37 *employed at either a minor or major league level in the sport of*  
38 *baseball, basketball, football, ice hockey, or soccer.*

39 (2) *The term "California-based team" means a team that plays*  
40 *a majority of its home games in California.*

1 (3) The term “duty day” means any day during the course of a  
2 season the professional athlete works under the direction and  
3 control of his or her employer pursuant to a player contract.

4 (4) The term “season” means the period from the date of the  
5 first preseason team activity for that contract year, through the  
6 date of the last game the professional athlete’s team played during  
7 the same contract year.

8 (h) The amendments made to this section by the act adding this  
9 subdivision apply to all claims for benefits pursuant to this division  
10 filed on or after September 15, 2013, but do not apply to a case in  
11 which a final adjudication has been rendered prior to January 1,  
12 2014. The amendments made to this section by the act adding this  
13 subdivision shall not constitute good cause to reopen any final  
14 decision, order, or award.

15 (i) If any provision of this section or the application thereof to  
16 any person or circumstances is held invalid, that invalidity shall  
17 not affect other provisions or applications of this section that can  
18 be given effect without the invalid provision or application, and  
19 to this end the provisions of this section are severable.

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

21 ~~5500.6. (a) Liability for occupational disease or cumulative~~  
22 ~~injury which results from exposure solely during employment as~~  
23 ~~an employee, as defined in subdivision (d) of Section 3351, shall~~  
24 ~~be limited to those employers in whose employment the employee~~  
25 ~~was exposed to the hazards of the occupational disease or~~  
26 ~~cumulative injury during the last day on which the employee was~~  
27 ~~employed in an occupation exposing the employee to the hazards~~  
28 ~~of the disease or injury. In the event that none of the employers of~~  
29 ~~the last day of hazardous employment is insured for workers’~~  
30 ~~compensation liability, that liability, shall be imposed upon the~~  
31 ~~last employer exposing the employee to the hazards of the~~  
32 ~~occupational disease or cumulative injury who has secured~~  
33 ~~workers’ compensation insurance coverage or an approved~~  
34 ~~alternative thereto. If, based upon all the evidence presented, the~~  
35 ~~appeals board or the workers’ compensation judge finds the~~  
36 ~~existence of cumulative injury or occupational disease, liability~~  
37 ~~for the cumulative injury or occupational disease shall not be~~  
38 ~~apportioned to prior employers. However, in determining liability,~~  
39 ~~evidence of disability due to specific injury, disability due to~~  
40 ~~non-work-related causes, or disability previously compensated for~~

1 by way of a findings and award or order approving compromise  
2 and release, or a voluntary payment of disability, may be admissible  
3 for purposes of apportionment.

4 (b) (1) An employer shall be liable for occupational disease or  
5 cumulative injury to a professional athlete, as defined in Section  
6 3600.5, only if the employer employed the professional athlete  
7 within the last seven nonconsecutive years of the professional  
8 athlete's occupational exposure to the hazards of the occupational  
9 disease or cumulative injury. If more than one employer that is  
10 subject to this division employed the professional athlete within  
11 the last five years of injurious exposure, liability shall be limited  
12 to employers as provided by Section 5500.5.

13 (2) The amendments made to this section by the act adding this  
14 paragraph shall apply to all claims for benefits pursuant to this  
15 division filed on or after January 1, 2014. The amendments made  
16 to this section by the act adding this paragraph shall not constitute  
17 good cause to reopen any final decision, order, or award.

18 ~~SEC. 3.~~

19 SEC. 2. It is the intent of the Legislature that the changes made  
20 to law by this act shall only affect covered *specified* professional  
21 athletes and covered employers of *specified* professional athletes.  
22 The changes made to law by this act shall not affect any other  
23 employer or employee in the State of California.

24 ~~SEC. 4.~~

25 SEC. 3. It is the intent of the Legislature that the changes made  
26 to law by this act shall have no impact or alter in any way the  
27 decision of the court in *Bowen v. Workers' Comp. Appeals Bd.*  
28 (1999) 73 Cal.App.4th 15.

29 ~~SEC. 5.~~

30 SEC. 4. It is the intent of the Legislature that the decision of  
31 the Workers' Compensation Appeals Board in *Wesley Carroll v.*  
32 *Cincinnati Bengals, et al.* (2013) 78 Cal.Comp.Cases \_\_\_\_  
33 (ADJ2295331) (WCAB En Banc) be limited to professional  
34 athletes, as defined in this act.

35 ~~SEC. 6.~~

36 SEC. 5. It is the intent of the Legislature that the changes made  
37 to law by this act have no impact or alter in any way the decision

- 1 of the Workers' Compensation Appeals Board in Dennis McKinley
- 2 v. Arizona Cardinals et al. (2013) 78 CCC 23 (ADJ7460656).

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