

AMENDED IN SENATE SEPTEMBER 4, 2013

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

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

An act to amend Section 3600.5 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 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 a professional athlete and his or her employer if the professional athlete has, over the course of his or her career, worked for 2 or more seasons for a California-based team or teams, as defined, or 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 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 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 working 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) An employee who has been hired outside of this state
9 and his or her employer shall be exempted from the provisions of
10 this division while the employee is temporarily within this state
11 doing work for his or her employer if the employer has furnished
12 workers' compensation insurance coverage under the workers'
13 compensation insurance or similar laws of a state other than
14 California, so as to cover the employee's work while in this state
15 if both of the following apply:

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

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

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

27 (c) (1) With respect to an occupational disease or cumulative
28 injury, a professional athlete who has been hired outside of this
29 state and his or her employer shall be exempted from the provisions
30 of this division while the professional athlete is temporarily within
31 this state doing work for his or her employer if both of the
32 following are satisfied:

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

36 (B) The employer's workers' compensation insurance or its
37 equivalent covers the professional athlete's work while in this
38 state.

1 (2) In any case in which paragraph (1) is satisfied, the benefits
2 under the workers' compensation insurance or similar laws of the
3 other state, and other remedies under those laws, shall be the
4 exclusive remedy against the employer for any occupational disease
5 or cumulative injury, whether resulting in death or not, received
6 by the employee while working for the employer in this state.

7 (3) A professional athlete shall be deemed, for purposes of this
8 subdivision, to be temporarily within this state doing work for his
9 or her employer if, during the 365 consecutive days immediately
10 preceding the professional athlete's last day of work for the
11 employer within the state, the professional athlete performs less
12 than 20 percent of his or her duty days in California during that
13 365-day period in California.

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

20 (A) The professional athlete has, over the course of his or her
21 professional athletic career, worked for two or more seasons for
22 a California-based team or teams, or the professional athlete has,
23 over the course of his or her professional athletic career, worked
24 20 percent or more of his or her duty days either in California or
25 for a California-based team. The percentage of a professional
26 athletic career worked either within California or for a
27 California-based team shall be determined solely by taking the
28 number of duty days the professional athlete worked for a
29 California-based team or teams, plus the number of duty days the
30 professional athlete worked as a professional athlete in California
31 for any team other than a California-based team, and dividing that
32 number by the total number of duty days the professional athlete
33 was employed anywhere as a professional athlete.

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

38 (2) When subparagraphs (A) and (B) of paragraph (1) are both
39 satisfied, liability for the professional athlete's occupational disease

1 or cumulative injury shall be determined in accordance with
2 Section 5500.5.

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

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

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

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

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

20 (3) The term "duty day" means ~~any a day during the course of~~
21 ~~a season the professional athlete works in which any services are~~
22 ~~performed by a professional athlete~~ under the direction and control
23 of his or her employer pursuant to a player contract.

24 (4) The term "season" means the period from the date of the
25 first preseason team activity for that contract year, through the
26 date of the last game the professional athlete's team played during
27 the same contract year.

28 (h) The amendments made to this section by the act adding this
29 subdivision apply to all claims for benefits pursuant to this division
30 filed on or after September 15, 2013, but do not apply to a case in
31 which a final adjudication has been rendered prior to January 1,
32 2014. The amendments made to this section by the act adding this
33 subdivision shall not constitute good cause to reopen any final
34 decision, order, or award.

35 (i) If any provision of this section or the application thereof to
36 any person or circumstances is held invalid, that invalidity shall
37 not affect other provisions or applications of this section that can
38 be given effect without the invalid provision or application, and
39 to this end the provisions of this section are severable.

1 SEC. 2. It is the intent of the Legislature that the changes made
2 to law by this act shall only affect specified professional athletes
3 and employers of specified professional athletes. The changes
4 made to law by this act shall not affect any other employer or
5 employee in the State of California.

6 SEC. 3. It is the intent of the Legislature that the changes made
7 to law by this act shall have no impact or alter in any way the
8 decision of the court in *Bowen v. Workers' Comp. Appeals Bd.*
9 (1999) 73 Cal.App.4th 15.

10 SEC. 4. It is the intent of the Legislature that the decision of
11 the Workers' Compensation Appeals Board in *Wesley Carroll v.*
12 *Cincinnati Bengals, et al.* (2013) 78 Cal.Comp.Cases ____
13 (ADJ2295331) (WCAB En Banc) be limited to professional
14 athletes, as defined in this act.

15 SEC. 5. It is the intent of the Legislature that the changes made
16 to law by this act have no impact or alter in any way the decision
17 of the Workers' Compensation Appeals Board in *Dennis McKinley*
18 *v. Arizona Cardinals et al.* (2013) 78 CCC 23 (ADJ7460656).