

Assembly Bill No. 1309

CHAPTER 653

An act to amend Section 3600.5 of the Labor Code, relating to workers' compensation.

[Approved by Governor October 8, 2013. Filed with
Secretary of State October 8, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1309, 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 bill would also exempt a professional athlete and his or her employer from the occupational disease or cumulative injury provisions of this state's workers' compensation laws when all of the professional athlete's employers in his or her last year of work as a

professional athlete are exempt from these provisions unless the professional athlete has, over the course of his or her professional athletic career, (1) 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, (2) 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.

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

SECTION 1. Section 3600.5 of the Labor Code is amended to read:

3600.5. (a) If an employee who has been hired or is regularly working in the state receives personal injury by accident arising out of and in the course of employment outside of this state, he or she, or his or her dependents, in the case of his or her death, shall be entitled to compensation according to the law of this state.

(b) (1) An employee who has been hired outside of this state and his or her employer shall be exempted from the provisions of this division 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, so as to cover the employee's work while in this state if both of the following apply:

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

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

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

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

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

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

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

(3) A professional athlete shall be deemed, for purposes of this subdivision, to be temporarily within this 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 percent of his or her duty days in California during that 365-day period in California.

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

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

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

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

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

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

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

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

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

(3) The term “duty day” means a day in which any services are performed by a professional athlete under the direction and control of his or her employer pursuant to a player contract.

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

(h) The amendments made to this section by the act adding this subdivision apply to all claims for benefits pursuant to this division filed on or after September 15, 2013. The amendments made to this section by the act adding this subdivision shall not constitute good cause to reopen any final decision, order, or award.

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

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

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

SEC. 4. 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, as defined in this act.

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