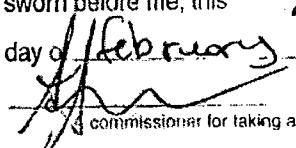


HOUSE BILL 1930

State of Washington 64th Legislature 2015 Regular Session

By Representatives MacEwen, Riccelli, Parker, Tharinger, McCaslin, Ormsby, Sells, and Robinson

Read first time 02/03/15. Referred to Committee on Labor.

This is Exhibit SS referred to in the affidavit of Andrew S. Eckert sworn before me, this 20th day of February, 2015

Commissioner for taking affidavits

1 AN ACT Relating to the nonemployee status of athletes in amateur
2 sports; amending RCW 49.12.005 and 49.17.020; and reenacting and
3 amending RCW 49.46.010.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 49.12.005 and 2003 c 401 s 2 are each amended to
6 read as follows:

7 For the purposes of this chapter:

8 (1) "Athlete" means a person who meets the eligibility standards
9 established by the national governing body or Paralympic sports
10 organization for the sport in which the athlete competes.

11 (2) "Amateur sports league, club, or association" means a
12 not-for-profit corporation, limited liability company, association,
13 or other group that sponsors or arranges amateur athletic contests,
14 games, meets, matches, tournaments, regattas, or other events in
15 which amateur athletes compete, and which supports or develops
16 amateur athletes for national or international competition in sports.
17 "Amateur sports league, club, or association" does not include
18 private or public educational institutions.

19 (3) "Department" means the department of labor and industries.

20 ((2)) (4) "Director" means the director of the department of
21 labor and industries, or the director's designated representative.

1 (~~(3)~~) (5) (a) Before May 20, 2003, "employer" means any person,
2 firm, corporation, partnership, business trust, legal representative,
3 or other business entity which engages in any business, industry,
4 profession, or activity in this state and employs one or more
5 employees but does not include the state, any state institution, any
6 state agency, political subdivision of the state, or any municipal
7 corporation or quasi-municipal corporation. However, for the purposes
8 of RCW 49.12.265 through 49.12.295, 49.12.350 through 49.12.370,
9 49.12.450, and 49.12.460 only, "employer" also includes the state,
10 any state institution, any state agency, political subdivisions of
11 the state, and any municipal corporation or quasi-municipal
12 corporation.

13 (b) On and after May 20, 2003, "employer" means any person, firm,
14 corporation, partnership, business trust, legal representative, or
15 other business entity which engages in any business, industry,
16 profession, or activity in this state and employs one or more
17 employees, and includes the state, any state institution, state
18 agency, political subdivisions of the state, and any municipal
19 corporation or quasi-municipal corporation. However, this chapter and
20 the rules adopted thereunder apply to these public employers only to
21 the extent that this chapter and the rules adopted thereunder do not
22 conflict with: (i) Any state statute or rule; and (ii) respect to
23 political subdivisions of the state and any municipal or quasi-
24 municipal corporation, any local resolution, ordinance, or rule
25 adopted under the authority of the local legislative authority before
26 April 1, 2003.

27 (~~(4)~~) (6) "Employee" means an employee who is employed in the
28 business of the employee's employer whether by way of manual labor or
29 otherwise. "Employee" does not include an individual who is an
30 athlete playing in an amateur sports league, club, or association,
31 whether or not the individual receives a stipend, educational
32 scholarship, or other benefits for playing.

33 (~~(5)~~) (7) "Conditions of labor" means and includes the
34 conditions of rest and meal periods for employees including
35 provisions for personal privacy, practices, methods and means by or
36 through which labor or services are performed by employees and
37 includes bona fide physical qualifications in employment, but shall
38 not include conditions of labor otherwise governed by statutes and
39 rules and regulations relating to industrial safety and health
40 administered by the department.

1 (~~(6)~~) (8) For the purpose of chapter 16, Laws of 1973 2nd ex.
2 sess. a minor is defined to be a person of either sex under the age
3 of eighteen years.

4 **Sec. 2.** RCW 49.17.020 and 2010 c 8 s 12005 are each amended to
5 read as follows:

6 For the purposes of this chapter:

7 (1) The term "agriculture" means farming and includes, but is not
8 limited to:

9 (a) The cultivation and tillage of the soil;

10 (b) Dairying;

11 (c) The production, cultivation, growing, and harvesting of any
12 agricultural or horticultural commodity;

13 (d) The raising of livestock, bees, fur-bearing animals, or
14 poultry; and

15 (e) Any practices performed by a farmer or on a farm, incident to
16 or in connection with such farming operations, including but not
17 limited to preparation for market and delivery to:

18 (i) Storage;

19 (ii) Market; or

20 (iii) Carriers for transportation to market.

21 The term "agriculture" does not mean a farmer's processing for
22 sale or handling for sale a commodity or product grown or produced by
23 a person other than the farmer or the farmer's employees.

24 (2) The term "director" means the director of the department of
25 labor and industries, or his or her designated representative.

26 (3) The term "department" means the department of labor and
27 industries.

28 (4) The term "employer" means any person, firm, corporation,
29 partnership, business trust, legal representative, or other business
30 entity which engages in any business, industry, profession, or
31 activity in this state and employs one or more employees or who
32 contracts with one or more persons, the essence of which is the
33 personal labor of such person or persons and includes the state,
34 counties, cities, and all municipal corporations, public
35 corporations, political subdivisions of the state, and charitable
36 organizations: PROVIDED, That any person, partnership, or business
37 entity not having employees, and who is covered by the industrial
38 insurance act shall be considered both an employer and an employee.

1 (5) The term "employee" means an employee of an employer who is
2 employed in the business of his or her employer whether by way of
3 manual labor or otherwise and every person in this state who is
4 engaged in the employment of or who is working under an independent
5 contract the essence of which is his or her personal labor for an
6 employer under this chapter whether by way of manual labor or
7 otherwise. "Employee" does not include an individual who is an
8 athlete playing in an amateur sports league, club, or association,
9 whether or not the individual receives a stipend, educational
10 scholarship, or other benefits for playing.

11 (6) The term "person" means one or more individuals,
12 partnerships, associations, corporations, business trusts, legal
13 representatives, or any organized group of persons.

14 (7) The term "safety and health standard" means a standard which
15 requires the adoption or use of one or more practices, means,
16 methods, operations, or processes reasonably necessary or appropriate
17 to provide safe or healthful employment and places of employment.

18 (8) The term "workplace" means any plant, yard, premises, room,
19 or other place where an employee or employees are employed for the
20 performance of labor or service over which the employer has the right
21 of access or control, and includes, but is not limited to, all
22 workplaces covered by industrial insurance under Title 51 RCW, as now
23 or hereafter amended.

24 (9) The term "working day" means a calendar day, except
25 Saturdays, Sundays, and all legal holidays as set forth in RCW
26 1.16.050, as now or hereafter amended, and for the purposes of the
27 computation of time within which an act is to be done under the
28 provisions of this chapter, shall be computed by excluding the first
29 working day and including the last working day.

30 (10) "Athlete" means a person who meets the eligibility standards
31 established by the national governing body or Paralympic sports
32 organization for the sport in which the athlete competes.

33 (11) "Amateur sports league, club, or association" means a
34 not-for-profit corporation, limited liability company, association,
35 or other group that sponsors or arranges amateur athletic contests,
36 games, meets, matches, tournaments, regattas, or other events in
37 which amateur athletes compete, and which supports or develops
38 amateur athletes for national or international competition in sports.
39 "Amateur sports league, club, or association" does not include
40 private or public educational institutions.

1 **Sec. 3.** RCW 49.46.010 and 2014 c 131 s 2 and 2013 c 141 s 1 are
2 each reenacted amended to read as follows:

3 As used in this chapter:

4 (1) "Athlete" means a person who meets the eligibility standards
5 established by the national governing body or Paralympic sports
6 organization for the sport in which the athlete competes;

7 (2) "Amateur sports league, club, or association" means a
8 not-for-profit corporation, limited liability company, association,
9 or other group that sponsors or arranges amateur athletic contests,
10 games, meets, matches, tournaments, regattas, or other events in
11 which amateur athletes compete, and which supports or develops
12 amateur athletes for national or international competition in sports.
13 "Amateur sports league, club, or association" does not include
14 private or public educational institutions;

15 (3) "Director" means the director of labor and industries;

16 (~~(2)~~) (4) "Employ" includes to permit to work;

17 (~~(3)~~) (5) "Employee" includes any individual employed by an
18 employer but shall not include:

19 (a) Any individual (i) employed as a hand harvest laborer and
20 paid on a piece rate basis in an operation which has been, and is
21 generally and customarily recognized as having been, paid on a piece
22 rate basis in the region of employment; (ii) who commutes daily from
23 his or her permanent residence to the farm on which he or she is
24 employed; and (iii) who has been employed in agriculture less than
25 thirteen weeks during the preceding calendar year;

26 (b) Any individual employed in casual labor in or about a private
27 home, unless performed in the course of the employer's trade,
28 business, or profession;

29 (c) Any individual employed in a bona fide executive,
30 administrative, or professional capacity or in the capacity of
31 outside salesperson as those terms are defined and delimited by rules
32 of the director. However, those terms shall be defined and delimited
33 by the human resources director pursuant to chapter 41.06 RCW for
34 employees employed under the director of personnel's jurisdiction;

35 (d) Any individual engaged in the activities of an educational,
36 charitable, religious, state or local governmental body or agency, or
37 nonprofit organization where the employer-employee relationship does
38 not in fact exist or where the services are rendered to such
39 organizations gratuitously. If the individual receives reimbursement
40 in lieu of compensation for normally incurred out-of-pocket expenses

1 or receives a nominal amount of compensation per unit of voluntary
2 service rendered, an employer-employee relationship is deemed not to
3 exist for the purpose of this section or for purposes of membership
4 or qualification in any state, local government, or publicly
5 supported retirement system other than that provided under chapter
6 41.24 RCW;

7 (e) Any individual employed full time by any state or local
8 governmental body or agency who provides voluntary services but only
9 with regard to the provision of the voluntary services. The voluntary
10 services and any compensation therefor shall not affect or add to
11 qualification, entitlement, or benefit rights under any state, local
12 government, or publicly supported retirement system other than that
13 provided under chapter 41.24 RCW;

14 (f) Any newspaper vendor, carrier, or delivery person selling or
15 distributing newspapers on the street, to offices, to businesses, or
16 from house to house and any freelance news correspondent or
17 "stringer" who, using his or her own equipment, chooses to submit
18 material for publication for free or a fee when such material is
19 published;

20 (g) Any carrier subject to regulation by Part 1 of the Interstate
21 Commerce Act;

22 (h) Any individual engaged in forest protection and fire
23 prevention activities;

24 (i) Any individual employed by any charitable institution charged
25 with child care responsibilities engaged primarily in the development
26 of character or citizenship or promoting health or physical fitness
27 or providing or sponsoring recreational opportunities or facilities
28 for young people or members of the armed forces of the United States;

29 (j) Any individual whose duties require that he or she reside or
30 sleep at the place of his or her employment or who otherwise spends a
31 substantial portion of his or her work time subject to call, and not
32 engaged in the performance of active duties;

33 (k) Any resident, inmate, or patient of a state, county, or
34 municipal correctional, detention, treatment or rehabilitative
35 institution;

36 (l) Any individual who holds a public elective or appointive
37 office of the state, any county, city, town, municipal corporation or
38 quasi municipal corporation, political subdivision, or any
39 instrumentality thereof, or any employee of the state legislature;

1 (m) All vessel operating crews of the Washington state ferries
2 operated by the department of transportation;

3 (n) Any individual employed as a seaman on a vessel other than an
4 American vessel;

5 (o) Any farm intern providing his or her services to a small farm
6 which has a special certificate issued under RCW 49.12.470;

7 (p) Any individual who is an athlete playing in an amateur sports
8 league, club, or association, whether or not the individual receives
9 a stipend, educational scholarship, or other benefits for playing;

10 ((+4)) (6) "Employer" includes any individual, partnership,
11 association, corporation, business trust, or any person or group of
12 persons acting directly or indirectly in the interest of an employer
13 in relation to an employee;

14 ((+5)) (7) "Occupation" means any occupation, service, trade,
15 business, industry, or branch or group of industries or employment or
16 class of employment in which employees are gainfully employed;

17 ((+6)) (8) "Retail or service establishment" means an
18 establishment seventy-five percent of whose annual dollar volume of
19 sales of goods or services, or both, is not for resale and is
20 recognized as retail sales or services in the particular industry;

21 ((+7)) (9) "Wage" means compensation due to an employee by
22 reason of employment, payable in legal tender of the United States or
23 checks on banks convertible into cash on demand at full face value,
24 subject to such deductions, charges, or allowances as may be
25 permitted by rules of the director.

--- END ---

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By Representative Manweller

HB 1930 - H COMM AMD

By Committee on Labor

1 On page 1, beginning on line 8, after "(1)" strike all material
2 through "institutions." on line 18

3

4 Renumber the remaining sections consecutively.

5

6 On page 2, beginning on line 29, after "include" strike all
7 material through "playing" on line 32 and insert "any individual for
8 the purposes of training or playing as an athlete for a team
9 affiliated with the Western Hockey League"

10

11 On page 4, beginning on line 7, after "include" strike all
12 material through "playing" on line 10 and insert "any individual for
13 the purposes of training or playing as an athlete for a team
14 affiliated with the Western Hockey League"

15

16 On page 4, beginning on line 30, strike all material through
17 "institutions." on line 40

18

19 On page 5, beginning on line 4, after "(1)" strike all material
20 through "institutions;" on line 14

21

22 Renumber the remaining subsections consecutively.

23

24 On page 7, beginning on line 7, after "(p)" strike all material
25 through "playing" and insert "Any individual for the purposes of
26 training or playing as an athlete for a team affiliated with the
27 Western Hockey League"

1

EFFECT: Provides that an employee does not include any individual for the purposes of training or playing as an athlete for a team affiliated with the Western Hockey League (rather than an individual who is an athlete playing in an amateur sports league, club, or association). Removes definitions of "athlete" and "amateur sports league, club, or association."

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SAMEUL BERG

-and- CANADIAN HOCKEY LEAGUE

Plaintiffs

Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceedings commenced in TORONTO

AFFIDAVIT OF ANDREW J. ECKART
(Sworn February 20, 2015)

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