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ENGROSSED SENATE BILL 5893

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State of Washington                      64th Legislature                      2015 Regular Session

By Senators Fain, Mullet, Litzow, Liiias, and Hargrove

Read first time 02/09/15. Referred to Committee on Commerce & Labor.

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) "Department" means the department of labor and industries.

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

11            (3)(a) Before May 20, 2003, "employer" means any person, firm,  
12 corporation, partnership, business trust, legal representative, or  
13 other business entity which engages in any business, industry,  
14 profession, or activity in this state and employs one or more  
15 employees but does not include the state, any state institution, any  
16 state agency, political subdivision of the state, or any municipal  
17 corporation or quasi-municipal corporation. However, for the purposes  
18 of RCW 49.12.265 through 49.12.295, 49.12.350 through 49.12.370,  
19 49.12.450, and 49.12.460 only, "employer" also includes the state,  
20 any state institution, any state agency, political subdivisions of

1 the state, and any municipal corporation or quasi-municipal  
2 corporation.

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

17 (4) "Employee" means an employee who is employed in the business  
18 of the employee's employer whether by way of manual labor or  
19 otherwise. "Employee" does not include any individual for the  
20 purposes of training or playing as an athlete for a team affiliated  
21 with the Western Hockey League.

22 (5) "Conditions of labor" means and includes the conditions of  
23 rest and meal periods for employees including provisions for personal  
24 privacy, practices, methods and means by or through which labor or  
25 services are performed by employees and includes bona fide physical  
26 qualifications in employment, but shall not include conditions of  
27 labor otherwise governed by statutes and rules and regulations  
28 relating to industrial safety and health administered by the  
29 department.

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

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

35 For the purposes of this chapter:

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

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

39 (b) Dairying;

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

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

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

8 (i) Storage;

9 (ii) Market; or

10 (iii) Carriers for transportation to market.

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

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

16 (3) The term "department" means the department of labor and  
17 industries.

18 (4) The term "employer" means any person, firm, corporation,  
19 partnership, business trust, legal representative, or other business  
20 entity which engages in any business, industry, profession, or  
21 activity in this state and employs one or more employees or who  
22 contracts with one or more persons, the essence of which is the  
23 personal labor of such person or persons and includes the state,  
24 counties, cities, and all municipal corporations, public  
25 corporations, political subdivisions of the state, and charitable  
26 organizations: PROVIDED, That any person, partnership, or business  
27 entity not having employees, and who is covered by the industrial  
28 insurance act shall be considered both an employer and an employee.

29 (5) The term "employee" means an employee of an employer who is  
30 employed in the business of his or her employer whether by way of  
31 manual labor or otherwise and every person in this state who is  
32 engaged in the employment of or who is working under an independent  
33 contract the essence of which is his or her personal labor for an  
34 employer under this chapter whether by way of manual labor or  
35 otherwise. "Employee" does not include any individual for the  
36 purposes of training or playing as an athlete for a team affiliated  
37 with the Western Hockey League.

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

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

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

11 (9) The term "working day" means a calendar day, except  
12 Saturdays, Sundays, and all legal holidays as set forth in RCW  
13 1.16.050, as now or hereafter amended, and for the purposes of the  
14 computation of time within which an act is to be done under the  
15 provisions of this chapter, shall be computed by excluding the first  
16 working day and including the last working day.

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

19 As used in this chapter:

20 (1) "Director" means the director of labor and industries;

21 (2) "Employ" includes to permit to work;

22 (3) "Employee" includes any individual employed by an employer  
23 but shall not include:

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

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

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

1 (d) Any individual engaged in the activities of an educational,  
2 charitable, religious, state or local governmental body or agency, or  
3 nonprofit organization where the employer-employee relationship does  
4 not in fact exist or where the services are rendered to such  
5 organizations gratuitously. If the individual receives reimbursement  
6 in lieu of compensation for normally incurred out-of-pocket expenses  
7 or receives a nominal amount of compensation per unit of voluntary  
8 service rendered, an employer-employee relationship is deemed not to  
9 exist for the purpose of this section or for purposes of membership  
10 or qualification in any state, local government, or publicly  
11 supported retirement system other than that provided under chapter  
12 41.24 RCW;

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

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

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

28 (h) Any individual engaged in forest protection and fire  
29 prevention activities;

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

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

1 (k) Any resident, inmate, or patient of a state, county, or  
2 municipal correctional, detention, treatment or rehabilitative  
3 institution;

4 (l) Any individual who holds a public elective or appointive  
5 office of the state, any county, city, town, municipal corporation or  
6 quasi municipal corporation, political subdivision, or any  
7 instrumentality thereof, or any employee of the state legislature;

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

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

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

14 (p) Any individual for the purposes of training or playing as an  
15 athlete for a team affiliated with the Western Hockey League;

16 (4) "Employer" includes any individual, partnership, association,  
17 corporation, business trust, or any person or group of persons acting  
18 directly or indirectly in the interest of an employer in relation to  
19 an employee;

20 (5) "Occupation" means any occupation, service, trade, business,  
21 industry, or branch or group of industries or employment or class of  
22 employment in which employees are gainfully employed;

23 (6) "Retail or service establishment" means an establishment  
24 seventy-five percent of whose annual dollar volume of sales of goods  
25 or services, or both, is not for resale and is recognized as retail  
26 sales or services in the particular industry;

27 (7) "Wage" means compensation due to an employee by reason of  
28 employment, payable in legal tender of the United States or checks on  
29 banks convertible into cash on demand at full face value, subject to  
30 such deductions, charges, or allowances as may be permitted by rules  
31 of the director.

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