

ESB 5893 - H AMD 481  
By Representative Sells

ADOPTED 4/15/2015

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature recognizes that junior  
4 ice hockey teams that are members of regional, national, or  
5 internationally recognized leagues provide significant benefits to  
6 their players by teaching them valuable athletic skills and  
7 interpersonal life skills. These junior teams also provide  
8 significant financial support to their communities as tenants of  
9 arenas owned, operated, or managed by public facilities districts.  
10 The legislature seeks to assist in the financial stability of public  
11 facilities districts and to ensure the viability of junior ice hockey  
12 in the state by clarifying that these young athletes are not  
13 employees of their teams.

14 **Sec. 2.** RCW 49.12.005 and 2003 c 401 s 2 are each amended to  
15 read as follows:

16 For the purposes of this chapter:

17 (1) "Department" means the department of labor and industries.

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

20 (3)(a) Before May 20, 2003, "employer" means any person, firm,  
21 corporation, partnership, business trust, legal representative, or  
22 other business entity which engages in any business, industry,  
23 profession, or activity in this state and employs one or more  
24 employees but does not include the state, any state institution, any  
25 state agency, political subdivision of the state, or any municipal  
26 corporation or quasi-municipal corporation. However, for the purposes  
27 of RCW 49.12.265 through 49.12.295, 49.12.350 through 49.12.370,  
28 49.12.450, and 49.12.460 only, "employer" also includes the state,  
29 any state institution, any state agency, political subdivisions of  
30 the state, and any municipal corporation or quasi-municipal  
31 corporation.

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

15 (4) "Employee" means an employee who is employed in the business  
16 of the employee's employer whether by way of manual labor or  
17 otherwise. "Employee" does not include an individual who is at least  
18 sixteen years old but under twenty-one years old, in his or her  
19 capacity as a player for a junior ice hockey team that is a member of  
20 a regional, national, or international league and that contracts with  
21 an arena owned, operated, or managed by a public facilities district  
22 created under chapter 36.100 RCW.

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

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

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

36 As used in this chapter:

- 37 (1) "Director" means the director of labor and industries;  
38 (2) "Employ" includes to permit to work;

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

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

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

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

19 (d) Any individual engaged in the activities of an educational,  
20 charitable, religious, state or local governmental body or agency, or  
21 nonprofit organization where the employer-employee relationship does  
22 not in fact exist or where the services are rendered to such  
23 organizations gratuitously. If the individual receives reimbursement  
24 in lieu of compensation for normally incurred out-of-pocket expenses  
25 or receives a nominal amount of compensation per unit of voluntary  
26 service rendered, an employer-employee relationship is deemed not to  
27 exist for the purpose of this section or for purposes of membership  
28 or qualification in any state, local government, or publicly  
29 supported retirement system other than that provided under chapter  
30 41.24 RCW;

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

38 (f) Any newspaper vendor, carrier, or delivery person selling or  
39 distributing newspapers on the street, to offices, to businesses, or  
40 from house to house and any freelance news correspondent or

1 "stringer" who, using his or her own equipment, chooses to submit  
2 material for publication for free or a fee when such material is  
3 published;

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

6 (h) Any individual engaged in forest protection and fire  
7 prevention activities;

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

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

17 (k) Any resident, inmate, or patient of a state, county, or  
18 municipal correctional, detention, treatment or rehabilitative  
19 institution;

20 (l) Any individual who holds a public elective or appointive  
21 office of the state, any county, city, town, municipal corporation or  
22 quasi municipal corporation, political subdivision, or any  
23 instrumentality thereof, or any employee of the state legislature;

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

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

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

30 (p) An individual who is at least sixteen years old but under  
31 twenty-one years old, in his or her capacity as a player for a junior  
32 ice hockey team that is a member of a regional, national, or  
33 international league and that contracts with an arena owned,  
34 operated, or managed by a public facilities district created under  
35 chapter 36.100 RCW;

36 (4) "Employer" includes any individual, partnership, association,  
37 corporation, business trust, or any person or group of persons acting  
38 directly or indirectly in the interest of an employer in relation to  
39 an employee;

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

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

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

13           Correct the title.

EFFECT: Removes references to the Western Hockey League and  
removes the provision applying the exemption to the Industrial Safety  
and Health Act (WISHA). Instead, provides that, for purposes of the  
Minimum Wage Act and Industrial Welfare Act, "employee" does not  
include an individual who is at least 16 but under 21 years old, in  
his or her capacity as a player for a junior ice hockey team that is  
a member of a regional, national, or international league and that  
contracts with arenas owned, operated, or managed by public  
facilities districts.

      Adds an intent section.

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