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Via E-Mail [hbl.exhibits@oregonlegislature.gov]

Representative Paul Holvey
Chair, House Business and Labor Committee

Re: HB 4093
Our File No.: WES 158-1

Dear Representative Holvey and Members of the House Business and Labor Committee:

My name is Tim Bernasek and I am an attorney at Dunn Carney in Portland. I represent the Portland Winterhawks and the Western Hockey League and I am here to testify in support of HB 4093. You will notice that the provisions in HB 4093 are very similar to those contained in SB 901A that was considered during the 2017 Legislative Session.

As you may recall, Portland Winterhawks players are amateur athletes under rules established by USA Hockey and Hockey Canada, the governing bodies for amateur hockey (and Olympic hockey) in the United States and Canada. The Portland Winterhawks are members of the Western Hockey League (one of only five teams in the U.S.; the other 17 teams in the Western Hockey League are in Canada). The Western Hockey League is a member of the Canadian Hockey League (CHL).

As amateur athletes, Portland Winterhawks players have traditionally been exempted from Oregon's workers' compensation system. ORS 656.027(13) specifically provides that persons declared to be amateur athletes under the rules of the U.S. Olympic Committee or the Canadian Olympic Committee are exempt from workers' compensation coverage. Similarly, as amateur athletes, such players have not been considered employees for purposes of Oregon's employment laws.

However, class action lawsuits have commenced in Ontario and Alberta alleging that all CHL players (including Portland Winterhawks/WHL players) should be considered employees. In response, the states of Washington (2015 SB 5893 - Senate vote 47-1 and House vote 91-7) and Michigan, and Canadian provinces of British Columbia, Saskatchewan, Prince Edward Island, New Brunswick, Manitoba, and Nova Scotia have clarified that their respective employment laws/employment standards do not apply to such players. HB 4093 would do the same in Oregon.



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Last session, the Legislature considered SB 901A which would have taken existing exemption for amateur athletes in ORS 656.027(13) and applied the exemption to other Oregon employment statutes. Although SB 901A received unanimous support in the Senate, Representative Holvey indicated that he thought the Legislature should take a closer look at how best to deal with the amateur athlete exemption generally. SB 901A did not make it out of this committee.

During the interim, I met several times with Representative Holvey and his staff. In those meetings Representative Holvey and I discussed possible ways to address the amateur athlete issue in a general sense. I understand that an amendment is being drafted to address these issues, but the amendment is not yet available.

Given the need to immediately address this issue specifically for the Portland Winterhawks due to the uncertainty that has been created by the litigation in Canada, the current bill language provides a "Winterhawks Only" exemption. The language in HB 4093 is almost identical to the language adopted by the Washington Legislature in 2015.

Again, as discussed above, the applicable Worker's Compensation statute already has an exemption in ORS 657.027(13) that covers amateur athletes like the Portland Winterhawks. HB 4093 proposes to add an express exemption for amateur junior ice hockey players between the ages of 16 and 21 to the Worker's Compensation statute as well as other employment statutes. In practice, this addition will change nothing as far as how the Worker's Compensation statute and other employment statutes are applied.

I appreciate your consideration of this issue again and on behalf of the Portland Winterhawks and the Western Hockey League I urge you to support HB 4093

Very truly yours,

Timothy J. Bernasek

TJB:kah