

CHAPTER 119

LABOR AND INDUSTRY

HOUSE BILL 10-1108

BY REPRESENTATIVE(S) McCann, Labuda, Schafer S., Stephens, Todd, Gardner B., Nikkel, Summers;
also SENATOR(S) Johnston.

AN ACT

CONCERNING AN EXCLUSION FROM THE EMPLOYMENT RELATIONSHIP FOR PURPOSES OF STATE EMPLOYMENT LAWS FOR CERTAIN COACHES WHO ENTER INTO INDEPENDENT CONTRACTOR RELATIONSHIPS WITH NONPROFIT YOUTH SPORTS ORGANIZATIONS THAT ARE EVIDENCED BY A WRITTEN AGREEMENT.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) Youth sports programs are a vital part of the culture of this state, encouraging young people to become active from an early age;

(b) Nonprofit youth sports organizations such as soccer clubs and youth basketball programs rely heavily on part-time, independent coaches to provide coaching services to the organizations and the various teams within the organizations so that the organizations can offer affordable programs to Colorado's youth;

(c) Part-time youth sports coaches for nonprofit youth sports organizations have traditionally worked as independent contractors for the organizations, earning a few thousand dollars per year for providing part-time coaching services for several hours a week during the season for the particular sport;

(d) These part-time coaches satisfy many of the characteristics of an independent contractor under the "Workers' Compensation Act of Colorado" in that they frequently have obtained a coaching license or qualifications on their own, they may coach for multiple clubs or schools, they may operate their own coaching or training business, and, frequently, they are employed on a full-time basis by a traditional

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

employer;

(e) Traditionally, these part-time coaches have understood that they are independent contractors with, and not employees of, the nonprofit youth sports organization, have not expected to be and have not been covered under the "Workers' Compensation Act of Colorado", and have not been entitled to workers' compensation benefits under that act;

(f) While these part-time coaches have been treated as independent contractors, because of their direct contact with young players, nonprofit youth sports organizations necessarily have to impose some guidelines and rules to create uniform standards for coaches' behavior across the organization;

(g) The nonprofit youth sports organization, as the organizer of the programs it offers, generally designates certain practice locations and times and may ask the part-time coaches to use a certain curriculum for players of certain ages;

(h) This imposition of limited, though necessary, direction to the part-time coaches may create the appearance of an employer-employee relationship rather than an independent contractor relationship, even though the organization and the coaches have agreed to an independent contractor relationship;

(i) Therefore, it is important to clarify that the relationship between nonprofit youth sports organizations and part-time, independent coaches, when evidenced by a valid, written agreement between the coach and the organization, detailing the nature, scope, and consequences of the independent contractor relationship and specifying that the organization is not the employer of the part-time coach, is an independent contractor relationship for purposes of the "Workers' Compensation Act of Colorado".

SECTION 2. 8-40-202 (2), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

8-40-202. Employee. (2) (e) (I) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A WRITTEN AGREEMENT BETWEEN A NONPROFIT YOUTH SPORTS ORGANIZATION AND A COACH, SPECIFYING THAT THE COACH IS AN INDEPENDENT CONTRACTOR AND NOT AN EMPLOYEE OF THE NONPROFIT YOUTH SPORTS ORGANIZATION AND OTHERWISE SATISFYING THE REQUIREMENTS OF THIS PARAGRAPH (e), SHALL BE CONCLUSIVE EVIDENCE THAT THE RELATIONSHIP BETWEEN THE NONPROFIT YOUTH SPORTS ORGANIZATION AND THE COACH IS AN INDEPENDENT CONTRACTOR RELATIONSHIP RATHER THAN AN EMPLOYMENT RELATIONSHIP AND THAT THE NONPROFIT YOUTH SPORTS ORGANIZATION IS NOT OBLIGATED TO SECURE COMPENSATION FOR THE COACH IN ACCORDANCE WITH THE "WORKERS' COMPENSATION ACT OF COLORADO".

(II) THE WRITTEN AGREEMENT SHALL CONTAIN A DISCLOSURE, IN BOLD-FACED, UNDERLINED, OR LARGE TYPE, IN A CONSPICUOUS LOCATION, AND ACKNOWLEDGED BY THE PARTIES BY SIGNATURE, INITIALS, OR OTHER MEANS DEMONSTRATING THAT THE PARTIES HAVE READ AND UNDERSTAND THE DISCLOSURE, INDICATING THAT THE COACH:

(A) IS AN INDEPENDENT CONTRACTOR AND NOT AN EMPLOYEE OF THE NONPROFIT YOUTH SPORTS ORGANIZATION;

(B) IS NOT ENTITLED TO WORKERS' COMPENSATION BENEFITS IN CONNECTION WITH HIS OR HER CONTRACT WITH THE NONPROFIT YOUTH SPORTS ORGANIZATION; AND

(C) IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS PAID PURSUANT TO THE CONTRACT FOR COACHING SERVICES AND THAT THE NONPROFIT YOUTH SPORTS ORGANIZATION WILL NOT WITHHOLD ANY AMOUNTS FROM THE COACH FOR PURPOSES OF SATISFYING THE COACH'S INCOME TAX LIABILITY.

(III) A WRITTEN AGREEMENT BETWEEN A NONPROFIT YOUTH SPORTS ORGANIZATION AND A COACH IN ACCORDANCE WITH THIS PARAGRAPH (e) SHALL NOT BE CONCLUSIVE EVIDENCE OF AN INDEPENDENT CONTRACTOR RELATIONSHIP FOR PURPOSES OF ANY CIVIL ACTION INSTITUTED BY A THIRD PARTY.

(IV) AS USED IN THIS PARAGRAPH (e), "NONPROFIT YOUTH SPORTS ORGANIZATION" MEANS AN ORGANIZATION THAT IS EXEMPT FROM FEDERAL TAXATION UNDER SECTION 501 (c) (3) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, AND IS PRIMARILY ENGAGED IN CONDUCTING ORGANIZED SPORTS PROGRAMS FOR PERSONS UNDER TWENTY-ONE YEARS OF AGE.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 15, 2010