

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 10-0154.01 Christy Chase

HOUSE BILL 10-1108

HOUSE SPONSORSHIP

McCann,

SENATE SPONSORSHIP

Johnston,

House Committees

Business Affairs and Labor

Senate Committees

A BILL FOR AN ACT

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

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
Am ended 2nd Reading
February 17, 2010

The bill establishes that a written contract between a coach and a nonprofit youth sports organization, declaring that the coach is an independent contractor and not an employee of the organization, is conclusive evidence of the independent contractor relationship between the coach and the organization. The bill requires the written contract to contain a conspicuous declaration, acknowledged by the coach and organization, indicating that the coach is an independent contractor, is not entitled to unemployment insurance and workers' compensation benefits, and is obligated to pay income taxes on any moneys paid to the coach under the contract for services performed for the organization.

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

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

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

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

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

16 (d) These part-time coaches satisfy many of the characteristics of
17 an independent contractor under the "Colorado Employment Security
18 Act" and the "Workers' Compensation Act of Colorado" in that they
19 frequently have obtained a coaching license or qualifications on their
20 own, they may coach for multiple clubs or schools, they may operate their

1 own coaching or training business, and, frequently, they are employed on
2 a full-time basis by a traditional employer;

3 (e) Traditionally, these part-time coaches have understood that
4 they are independent contractors with, and not employees of, the
5 nonprofit youth sports organization, have not expected to be and have not
6 been covered under the "Colorado Employment Security Act" or the
7 "Workers' Compensation Act of Colorado", and have not been entitled to
8 unemployment insurance or workers' compensation benefits under those
9 acts;

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

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

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

24 (i) Therefore, it is important to clarify that the relationship
25 between nonprofit youth sports organizations and part-time, independent
26 coaches, when evidenced by a valid, written agreement between the coach
27 and the organization, detailing the nature, scope, and consequences of the

1 independent contractor relationship and specifying that the organization
2 is not the employer of the part-time coach, is an independent contractor
3 relationship for purposes of the "Colorado Employment Security Act" and
4 the "Workers' Compensation Act of Colorado".

5 **SECTION 2.** 8-70-115 (1), Colorado Revised Statutes, is
6 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

7 **8-70-115. Employment - "Federal Unemployment Tax Act".**

8 (1) (e) (I) NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS
9 SUBSECTION (1), SECTION 8-80-101, OR ANY OTHER PROVISION OF THE
10 "COLORADO EMPLOYMENT SECURITY ACT", A WRITTEN AGREEMENT
11 BETWEEN A NONPROFIT YOUTH SPORTS ORGANIZATION AND A COACH,
12 SPECIFYING THAT THE COACH IS AN INDEPENDENT CONTRACTOR AND NOT
13 AN EMPLOYEE OF THE NONPROFIT YOUTH SPORTS ORGANIZATION AND
14 OTHERWISE SATISFYING THE REQUIREMENTS OF THIS PARAGRAPH (e),
15 SHALL BE CONCLUSIVE EVIDENCE THAT THE RELATIONSHIP BETWEEN THE
16 NONPROFIT YOUTH SPORTS ORGANIZATION AND THE COACH IS AN
17 INDEPENDENT CONTRACTOR RELATIONSHIP RATHER THAN AN
18 EMPLOYMENT RELATIONSHIP AND THAT THE NONPROFIT YOUTH SPORTS
19 ORGANIZATION IS NOT OBLIGATED TO PAY PREMIUMS IN CONNECTION WITH
20 ANY MONEYS PAID TO THE COACH FOR PROVIDING SERVICES UNDER THE
21 CONTRACT.

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

27 (A) IS AN INDEPENDENT CONTRACTOR AND NOT AN EMPLOYEE OF

1 THE NONPROFIT YOUTH SPORTS ORGANIZATION;

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

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

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

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

21 **SECTION 3.** 8-40-202 (2), Colorado Revised Statutes, is
22 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

23 **8-40-202. Employee.** (2) (e) (I) NOTWITHSTANDING ANY OTHER
24 PROVISION OF THIS SECTION, A WRITTEN AGREEMENT BETWEEN A
25 NONPROFIT YOUTH SPORTS ORGANIZATION AND A COACH, SPECIFYING
26 THAT THE COACH IS AN INDEPENDENT CONTRACTOR AND NOT AN
27 EMPLOYEE OF THE NONPROFIT YOUTH SPORTS ORGANIZATION AND

1 OTHERWISE SATISFYING THE REQUIREMENTS OF THIS PARAGRAPH (e),
2 SHALL BE CONCLUSIVE EVIDENCE THAT THE RELATIONSHIP BETWEEN THE
3 NONPROFIT YOUTH SPORTS ORGANIZATION AND THE COACH IS AN
4 INDEPENDENT CONTRACTOR RELATIONSHIP RATHER THAN AN
5 EMPLOYMENT RELATIONSHIP AND THAT THE NONPROFIT YOUTH SPORTS
6 ORGANIZATION IS NOT OBLIGATED TO SECURE COMPENSATION FOR THE
7 COACH IN ACCORDANCE WITH THE "WORKERS' COMPENSATION ACT OF
8 COLORADO".

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

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

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

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

24 (III) A WRITTEN AGREEMENT BETWEEN A NONPROFIT YOUTH
25 SPORTS ORGANIZATION AND A COACH IN ACCORDANCE WITH THIS
26 PARAGRAPH (e) SHALL NOT BE CONCLUSIVE EVIDENCE OF AN
27 INDEPENDENT CONTRACTOR RELATIONSHIP FOR PURPOSES OF ANY CIVIL

1 ACTION INSTITUTED BY A THIRD PARTY.

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

8 **SECTION 4. Safety clause.** The general assembly hereby finds,
9 determines, and declares that this act is necessary for the immediate
10 preservation of the public peace, health, and safety.