COMMITTEE REPORT

February 25, 2015

**H. 3576**

Introduced by Reps. Bannister, Merrill, Murphy, Atwater, Collins, Gagnon, Hamilton, Hicks, Pitts, Sandifer, G.R. Smith, Tallon, Whitmire, Henderson and Herbkersman

S. Printed 2/25/15--H. [SEC 2/26/15 2:17 PM]

Read the first time February 11, 2015.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3576) to amend the Code of Laws of South Carolina, 1976, by adding Section 41‑1‑120 so as to provide that certain written agreements between nonprofit youth sports organizations, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by deleting all before and after the enacting words and inserting:

/ SECTION 1. Chapter 1, Title 41 of the 1976 Code is amended by adding:

“Section 41‑1‑120. (A) Notwithstanding another provision of law, a written agreement between a nonprofit youth sports organization and a coach which specifies that the coach is an independent contractor and not an employee of the nonprofit youth sports organization and also which otherwise satisfies the requirements of this subsection constitutes conclusive evidence that the relationship between the nonprofit youth sports organization and the coach is that of an independent contractor relationship rather than an employment relationship for the purposes of this section, and that the nonprofit youth sports organization consequently is not obligated to:

(1) secure compensation for the coach pursuant to the workers’ compensation law;

(2) secure unemployment insurance coverage for the coach according to the provisions of this chapter; and

(3) withhold federal and state income taxes from money paid to the coach for services he provides to the organization pursuant to the contract.

(B) A written agreement provided in subsection (A) must contain a conspicuously located disclosure appearing in bold‑faced, underlined, or large type. This agreement must be acknowledged by the parties as indicated by their signatures, initials, or other means to evince that the parties have read and understand the disclosure. This disclosure clearly must state that the coach is:

(1) an independent contractor and not an employee of the nonprofit youth sports organization;

(2) not entitled to workers’ compensation benefits or unemployment benefits in connection with his or her contract with the nonprofit youth sports organization; and

(3) obligated to pay federal and state income tax on any money paid pursuant to the contract for coaching services, and that as a consequence the nonprofit youth sports organization will not withhold any amounts from the coach for purposes of satisfying the coach’s income tax liability.

(C) A written agreement between a nonprofit youth sports organization and a coach formed pursuant to this subsection may not, in and of itself, be construed as conclusive evidence that an independent contractor relationship exists for purposes of any civil action instituted by a third party.

(D) As used in this section, ‘nonprofit youth sports organization’ means an organization that is exempt from federal taxation under Section 501(c)(3) of the 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 2. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

/ TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 41‑1‑120 SO AS TO PROVIDE THAT CERTAIN WRITTEN AGREEMENTS BETWEEN NONPROFIT YOUTH SPORTS ORGANIZATIONS AND COACHES PROVIDE CONCLUSIVE EVIDENCE THAT THE COACH IS AN INDEPENDENT CONTRACTOR RATHER THAN AN EMPLOYEE OF THE ORGANIZATION AND THAT THE ORGANIZATION IS EXEMPT FROM CERTAIN OBLIGATIONS CONCERNING WORKERS’ COMPENSATION COVERAGE, UNEMPLOYMENT INSURANCE COVERAGE, AND INCOME TAX WITHHOLDINGS, TO PROVIDE SPECIFIC REQUIREMENTS FOR THESE WRITTEN AGREEMENTS, TO PROVIDE THESE WRITTEN AGREEMENTS ARE NOT CONCLUSIVE PROOF OF THE EXISTENCE OF AN INDEPENDENT CONTRACTOR RELATIONSHIP FOR PURPOSES OF ANY CIVIL ACTIONS INSTITUTED BY THIRD PARTIES, AND TO DEFINE THE TERM “NONPROFIT YOUTH SPORTS ORGANIZATION”. /

F. GREGORY DELLENEY, JR. for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 41‑1‑120 SO AS TO PROVIDE THAT CERTAIN WRITTEN AGREEMENTS BETWEEN NONPROFIT YOUTH SPORTS ORGANIZATIONS AND COACHES PROVIDE CONCLUSIVE EVIDENCE THAT THE COACH IS AN INDEPENDENT CONTRACTOR RATHER THAN AN EMPLOYEE OF THE ORGANIZATION AND THAT THE ORGANIZATION IS EXEMPT FROM CERTAIN OBLIGATIONS CONCERNING WORKERS’ COMPENSATION COVERAGE, UNEMPLOYMENT INSURANCE COVERAGE, AND INCOME TAX WITHHOLDINGS, TO PROVIDE SPECIFIC REQUIREMENTS FOR THESE WRITTEN AGREEMENTS, TO PROVIDE THESE WRITTEN AGREEMENTS ARE NOT CONCLUSIVE PROOF OF THE EXISTENCE OF AN INDEPENDENT CONTRACTOR RELATIONSHIP FOR PURPOSES OF ANY CIVIL ACTIONS INSTITUTED BY THIRD PARTIES, AND TO DEFINE THE TERM “NONPROFIT YOUTH SPORTS ORGANIZATION”.

Whereas, the South Carolina General Assembly finds youth sports programs are a vital part of the culture of this State, encouraging young people to become active from an early age; and

Whereas, the South Carolina General Assembly finds 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 young South Carolinians; and

Whereas, the South Carolina General Assembly finds these 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 a particular sport; and

Whereas, the South Carolina General Assembly finds these part‑time coaches satisfy many of the characteristics of an independent contractor under the Workers’ Compensation Act of South Carolina in that they frequently have obtained a coaching license or qualifications on their own, they may coach for multiple clubs or schools, and they frequently are employed on a full‑time basis by a traditional employer; and

Whereas, the South Carolina General Assembly finds 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 South Carolina, and have not been entitled to workers’ compensation benefits under that act; and

Whereas, the South Carolina General Assembly finds 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; and

Whereas, the South Carolina General Assembly finds 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; and

Whereas, the South Carolina General Assembly finds 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; and

Whereas, the South Carolina General Assembly finds 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, the coach is an independent contractor for purposes of workers’ compensation coverage, unemployment insurance coverage, and state income tax withholding. Now, therefore,

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 1, Title 41 of the 1976 Code is amended by adding:

“Section 41‑1‑120. (A) Notwithstanding another provision of law, a written agreement between a nonprofit youth sports organization and a coach which specifies that the coach is an independent contractor and not an employee of the nonprofit youth sports organization and also which otherwise satisfies the requirements of this subsection constitutes conclusive evidence that the relationship between the nonprofit youth sports organization and the coach is that of an independent contractor relationship rather than an employment relationship for the purposes of this section, and that the nonprofit youth sports organization consequently is not obligated to:

(1) secure compensation for the coach pursuant to the workers’ compensation law;

(2) secure unemployment insurance coverage for the coach according to the provisions of this chapter; and

(3) withhold federal and state income taxes from money paid to the coach for services he provides to the organization pursuant to the contract.

(B) A written agreement provided in subsection (A) must contain a conspicuously located disclosure appearing in bold‑faced, underlined, or large type. This agreement must be acknowledged by the parties as indicated by their signatures, initials, or other means to evince that the parties have read and understand the disclosure. This disclosure clearly must state that the coach is:

(1) an independent contractor and not an employee of the nonprofit youth sports organization;

(2) not entitled to workers’ compensation benefits or unemployment benefits in connection with his or her contract with the nonprofit youth sports organization; and

(3) obligated to pay federal and state income tax on any money paid pursuant to the contract for coaching services, and that as a consequence the nonprofit youth sports organization will not withhold any amounts from the coach for purposes of satisfying the coach’s income tax liability.

(C) A written agreement between a nonprofit youth sports organization and a coach formed pursuant to this subsection may not, in and of itself, be construed as conclusive evidence that an independent contractor relationship exists for purposes of any civil action instituted by a third party.

(D) As used in this section, ‘nonprofit youth sports organization’ means an organization that is exempt from federal taxation under Section 501(c)(3) of the 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 2. This act takes effect upon approval by the Governor.

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