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Short Title: Regulation of Athlete Agents.

(Public)

Sponsors:

Referred to:

March 16, 1989

A BILL TO BE ENTITLED

AN ACT PROVIDING FOR THE REGULATION OF ATHLETE AGENTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 78C of the General Statutes is amended by adding a new Article to read:

“ARTICLE 8.

“REGULATION OF ATHLETE AGENTS.

“§ 78C-71. Definitions.

The following definitions apply in this Article:

- (1) ‘Agent contract’ means any contract or agreement under which an athlete authorizes an athlete agent to negotiate to solicit on behalf of the athlete with one or more professional sports teams for the employment of the athlete by one or more professional sports teams.
- (2) ‘Athlete’ means an individual who:
 - a. Seeks to be employed as a professional athlete;
 - b. Has never signed a contract for employment with a professional sports team; and

1 c. Is enrolled in a high school located within this State, or has
2 been admitted to an institution of higher education located
3 within this State.

4 Execution of a personal service contract with the owner or prospective
5 owner of a professional sports team for the purpose of future athletic
6 services is equivalent to signing a contract for employment with a
7 professional sports team.

8 (3) 'Athlete agent' means a person that, for compensation, directly or
9 indirectly recruits or solicits an athlete to enter into an agent contract,
10 professional sports services contract, or financial services contract with
11 that person or that for a fee procures, offers, promises, or attempts to
12 obtain employment for an athlete with a professional sports team.

13 (4) 'Financial services contract' means any contract or agreement under
14 which an athlete authorizes an athlete agent to provide financial
15 services for the athlete, including the making and execution of
16 investment and other financial decisions by the agent on behalf of the
17 athlete. Excluded from this definition are financial services contracted
18 for by the athlete directly with banks, securities dealers, and other
19 financial institutions.

20 (5) 'Person' means an individual, a company, a corporation, an
21 association, a partnership, or another legal entity.

22 **"§ 78C-72. Registration requirements; renewal.**

23 (a) An athlete agent must register with the Secretary of State before the athlete
24 agent may contact an athlete, either directly or indirectly, while the athlete is located in
25 this State. An athlete agent may make those contacts only in accordance with this
26 Article.

27 (b) An applicant for registration as an athlete agent must submit a written
28 application for registration to the Secretary of State on a form prescribed by the
29 Secretary of State. The applicant must provide the information required by the
30 Secretary of State, which shall include:

31 (1) The name of the applicant and the address of the applicant's principal
32 place of business;

33 (2) The business or occupation engaged in by the applicant for the five
34 years immediately preceding the date of application;

35 (3) A description of the applicant's formal training, practical experience,
36 and educational background relating to the applicant's professional
37 activities as an athlete agent;

38 (4) If requested by the Secretary of State, the names and addresses of five
39 professional references; and

40 (5) The names and addresses of all persons, except bona fide employees
41 on stated salaries, that are financially interested as partners, associates,
42 or profit sharers in the operation of the business of the athlete agent,
43 except that an application for registration or renewal by any member of
44 the North Carolina State Bar must state only the names and addresses

1 of those persons that are involved in the activities of the athlete agent
2 and is not required to state the names and addresses of all persons who
3 may be financially interested as members of a law firm or professional
4 corporation but who do not become involved in the business of the
5 athlete agent.

6 (c) If the applicant is a corporation, the information required by subsection (b) of
7 this section must be provided by each officer of the corporation. If the applicant is an
8 association or a partnership, the information must be provided by each associate or
9 partner.

10 (d) A certificate of registration issued under this Article is valid for one year
11 from the date of issuance. The Secretary of State by rule may adopt a system under
12 which certificates of registration expire on various dates during the year. For the year in
13 which the registration expiration date is changed, the renewal fee payable on the
14 anniversary of the date of issuance shall be prorated so that each registrant pays only
15 that portion of the fee that is allocable to the number of months during which the
16 registration is valid. On the renewal of the certificate of registration on the new
17 expiration date, the total registration renewal fee is payable.

18 (e) A registered athlete agent may renew the registration by filing a renewal
19 application in the form prescribed by the Secretary of State, accompanied by the
20 renewal fee. The renewal application must include the information prescribed by the
21 Secretary of State, which shall include:

22 (1) The names and addresses of all athletes for whom the athlete agent is
23 providing professional services as an athlete agent for compensation at
24 the time of the renewal; and

25 (2) The names and addresses of all athletes not currently represented by
26 the athlete agent for whom the athlete agent has performed
27 professional services as an athlete agent for compensation during the
28 three years preceding the date of the application.

29 (f) The fee for issuing a certificate of registration or renewing a registration is
30 two hundred dollars (\$200.00). The fee is payable when an application for a certificate
31 or the renewal of a certificate is filed and is not refundable to the applicant if the
32 certificate or renewal is denied. No fee is imposed for a temporary certificate of
33 registration.

34 (g) When an application for registration or renewal is made and the registration
35 process has not been completed, the Secretary of State may issue a temporary or
36 provisional registration certificate that is valid for no more than 90 days.

37 (h) Before the issuance or renewal of a certificate of registration, an athlete agent
38 that enters into a financial services contract with an athlete must deposit with the
39 Secretary of State a surety bond in the sum of one hundred thousand dollars (\$100,000),
40 payable to the State and conditioned that the person applying for the registration will
41 comply with this Article, will pay all amounts due any individual or group of
42 individuals when the person or the person's representative or agent has received those
43 amounts, and will pay all damages caused to any athlete by reason of the intentional
44 misrepresentation, fraud, deceit, or any unlawful or negligent act or omission by the

1 registered athlete agent or the agent's representative or employee while acting within the
2 scope of the financial services contract. The athlete agent shall maintain the bond until
3 two years after the date on which the athlete agent ceases to engage in the provision of
4 financial services for an athlete. This subsection does not limit the recovery of damages
5 to the amount of the surety bond.

6 (i) If an athlete agent that has entered into a financial services contract with an
7 athlete fails to file a new bond with the Secretary of State not later than the 30th day
8 after date of receipt of a notice of cancellation issued by the surety of the bond, the
9 Secretary of State shall suspend the certificate of registration issued to that athlete agent
10 under the bond until the athlete agent files a new surety bond with the Secretary of
11 State.

12 (j) An athlete agent that enters into an agent contract only is not required to meet
13 the bond requirements of this section.

14 (k) The registration requirements of this section do not apply to a North Carolina
15 licensed and resident attorney who:

16 a. Neither advertises directly for, nor solicits, any athlete by
17 representing to any person that he has special experience or
18 qualifications with regard to representing athletes; and

19 b. Represents no more than two athletes.

20 **"§ 78C-73. Disciplinary actions, investigations and subpoenas.**

21 (a) The Secretary of State may suspend, deny, or revoke a certificate of
22 registration issued under this Article for a violation of this Article or rule adopted under
23 this Article or may take other disciplinary action. Chapter 150B of the General Statutes
24 governs the denial, suspension, or revocation of a certificate of registration.

25 (b) The Secretary of State in his discretion:

26 (1) May make such public or private investigations within or outside of
27 this State as he deems necessary to determine whether any person has
28 violated or is about to violate any provision of this Article or any rule
29 or order hereunder, or to aid in the enforcement of this Article or in the
30 prescribing of rules and forms hereunder;

31 (2) May require or permit any person to file a statement in writing, under
32 oath or otherwise as the Secretary of State determines, as to all the
33 facts and circumstances concerning the matter to be investigated;

34 (3) May publish information concerning any violation of this Article or
35 any rule or order hereunder; and

36 (4) May designate employees of the Office of Secretary of State as
37 investigators to implement the provisions of this Article. Investigators
38 may serve and execute notices, orders, or demands issued by the
39 Secretary of State for the surrender of registrations or relating to any
40 administrative proceeding.

41 (c) For the purpose of any investigation or proceeding under this Article, the
42 Secretary of State or any employee designated by him may administer oaths and
43 affirmations, subpoena witnesses, compel their attendance, take evidence and require
44 the production of any books, papers, correspondence, memoranda, agreements, or other

1 documents or records which the Secretary of State deems relevant or material to the
2 inquiry.

3 (d) In case of contumacy by, or refusal to obey a subpoena issued to any person,
4 any court of competent jurisdiction, upon application by the Secretary of State, may
5 issue to the person an order requiring him to appear before the Secretary of State, or the
6 officer designated by him, there to produce documentary evidence if so ordered or to
7 give evidence touching the matter under investigation or in question. Failure to obey
8 the order of the court may be punished by the court as a contempt of court.

9 (e) The Secretary of State may act under subsection (c) or apply under subsection
10 (d) to enforce subpoenas in this State at the request of a governmental agency of another
11 state that administers sports law if the alleged activities constituting a violation for
12 which the information is sought would be a violation of this Article or any rule
13 hereunder if the alleged activities had occurred in this State.

14 **"§ 78C-74. Disposition of fees.**

15 Fees and other funds received under this Article by the Secretary of State shall be
16 deposited in the State treasury to the credit of the General Fund.

17 **"§ 78C-75. Contracts; cancellation option.**

18 (a) Any agent contract or financial services contract to be used by a registered
19 athlete agent with an athlete must be on a form approved by the Secretary of State.

20 (b) Each contract must state the fees and percentages to be paid by the athlete to
21 the athlete agent and must include the following statements printed in at least 10-point
22 boldface type:

23 **NOTICE TO CLIENT**

24 (1) THIS ATHLETE AGENT IS REGISTERED WITH THE SECRETARY
25 OF STATE OF THE STATE OF NORTH CAROLINA. REGISTRATION WITH THE
26 SECRETARY OF STATE DOES NOT IMPLY APPROVAL OR ENDORSEMENT
27 BY THE SECRETARY OF STATE OF THE COMPETENCE OF THE ATHLETE
28 AGENT OR OF THE SPECIFIC TERMS AND CONDITIONS OF THIS
29 CONTRACT.

30 (2) DO NOT SIGN THIS CONTRACT IF YOU HAVE NOT READ IT OR
31 IF IT CONTAINS BLANK SPACES.

32 (3) IF YOU DECIDE THAT YOU DO NOT WISH TO PURCHASE THE
33 SERVICES OF THE ATHLETE AGENT, YOU MAY CANCEL THIS CONTRACT
34 BY NOTIFYING THE ATHLETE AGENT IN WRITING OF YOUR DESIRE TO
35 CANCEL THE CONTRACT NOT LATER THAN THE 16TH DAY AFTER THE
36 DATE ON WHICH YOU SIGN THIS CONTRACT.

37 (c) Each athlete agent shall file a memorandum of contract for each agent
38 contract and financial services contract with the Secretary of State and the athlete's high
39 school principal or the athletic director of the institution of higher learning to which the
40 athlete is admitted. A memorandum of contract shall include the date of the contract,
41 the name and address of the athlete, the name and address of the athlete agent, the name
42 and address of the employer, the date of the memorandum of contract, and the signature
43 of the athlete agent. The athlete agent must file the memorandum of contract with the

1 Secretary of State and the educational institution within five days after the date the
2 contract is signed by the athlete.

3 (d) An athlete may cancel an agent contract or a financial services contract before
4 the expiration of the 16th day after the contract is signed, or an executed copy of the
5 contract is delivered to the athlete and the memorandum of contract is filed with the
6 school, whichever is later, by notifying the athlete agent of the cancellation in writing.

7 **"§ 78C-76. Advertising requirement; prohibitions.**

8 (a) In all forms of advertising used by the athlete agent, the agent shall disclose
9 the name and address of the agent.

10 (b) An athlete agent may not:

11 (1) Publish or cause to be published any false, fraudulent, or misleading
12 information, representation, notice, or advertisement or give any false
13 information or make any false promises or representations concerning
14 any employment to any person;

15 (2) Divide fees with or receive compensation from a professional sports
16 league or franchise or its representative or employee;

17 (3) Enter into any agreement, written or oral, by which the athlete agent
18 offers anything of value to any employee of a high school or of an
19 institution of higher education located in this State in return for the
20 referral of any clients by that employee;

21 (4) Offer anything of value, excluding reasonable entertainment expenses
22 and transportation expenses to and from the athlete agent's registered
23 principal place of business, to induce an athlete to enter into an
24 agreement by which the athlete agent will represent the athlete; or

25 (5) Except as provided by G.S. 78C-77, directly contact an athlete to
26 discuss the athlete agent's representation of the athlete in the marketing
27 of the athlete's athletic ability or reputation or the provision of
28 financial services by the athlete agent, or enter into any agreement,
29 written or oral, by which the athlete agent will represent the athlete,
30 until after completion of the athlete's last high school or intercollegiate
31 contest, including postseason games, and may not enter into an
32 agreement before the athlete's last high school or intercollegiate
33 contest that purports to take effect at a time after that contest is
34 completed.

35 (c) This Article does not prohibit or limit an athlete agent from sending to an
36 athlete written materials relating to the professional credentials of the agent or to
37 specific services offered by the agent relating to the representation of an athlete in the
38 marketing of an athlete's athletic ability or reputation or to the provision of financial
39 services by the agent to the athlete. This Article does not prohibit an athlete or the
40 athlete's parents, legal guardians, or other advisors from contacting and interviewing an
41 athlete agent to determine that agent's professional proficiency in the representation of
42 an athlete, in the marketing of the athlete's athletic ability or reputation, or the provision
43 of financial services by the agent on behalf of the athlete.

44 **"§ 78C-77. Permitted contacts with certain athletes.**

1 An athlete agent must give prior written notice of his intention to contact an athlete
2 with respect to representing the athlete as an athlete agent to the athletic director of the
3 institution of higher education, or to the principal of the high school in which the athlete
4 is enrolled. All such contact shall strictly adhere to the rules of each separate institution
5 with regard to the time, place, and duration of the athlete agent's contact.

6 **"§ 78C-78. Remedies for violation; criminal penalty.**

7 (a) In any civil action brought based upon a violation of G.S. 78C-72(a) or G.S.
8 78C-76, the relief granted by the court may include the following:

9 (1) Forfeiture of any right of repayment the athlete agent may otherwise
10 have for anything of value either received by an athlete as an
11 inducement to enter into any agent contract or financial services
12 contract or received by an athlete before completion of the athlete's
13 last high school or intercollegiate contest;

14 (2) A refund of any consideration paid to the athlete agent on an athlete's
15 behalf; or

16 (3) Reasonable attorney's fees and court costs incurred by an injured party.

17 (b) Any agent contract or financial services contract that is negotiated by an
18 athlete agent who has failed to comply with this Article is voidable at the option of the
19 injured party.

20 (c) An athlete agent commits an offense if the agent knowingly violates G.S.
21 78C-72(a) or G.S. 78C-76. An offense under this subsection shall be punished as a
22 Class J felony.

23 (d) The Secretary of State may refer such evidence as is available concerning
24 violations of this Article or of any rule or order hereunder to the proper district attorney,
25 who may, with or without such a reference, institute the appropriate criminal
26 proceedings under this Article. Upon receipt of such reference, the district attorney may
27 request that a duly employed attorney of the Secretary of State assist in the prosecution
28 of such violation or violations on behalf of the State.

29 (e) Nothing in this Article limits the power of the State to punish any person for
30 any conduct which constitutes a crime by statute or at common law.

31 **"§ 78C-79. Civil penalty.**

32 (a) The Secretary of State may issue an order against an applicant, registered
33 person, or other person who willfully violates this Article or a rule or order of the
34 Secretary of State under this Article, imposing a civil penalty up to a maximum of two
35 thousand five hundred dollars (\$2,500) for a single violation or of twenty-five thousand
36 dollars (\$25,000) for multiple violations in a single proceeding or a series of related
37 proceedings. In determining the amount of penalty to be imposed, the Secretary shall
38 consider, among other factors, the egregiousness of the violation, the degree and extent
39 of any harm caused by the violation, the prior record of the violator in complying or
40 failing to comply with this Article or similar laws of other states, and the amount of any
41 monetary gain received as a result of the violation.

42 (b) Chapter 150B of the General Statutes governs the imposition of a civil
43 penalty under this section.

1 (c) A civil penalty owed under this section may be recovered in a civil action
2 brought by either the Secretary of State or the Attorney General.

3 **"§ 78C-80. Records.**

4 (a) An athlete agent shall keep records as provided by this section and shall
5 provide the Secretary of State with the information contained in the records on request.

6 The records must contain:

7 (1) The name and address of each athlete employing the athlete agent, the
8 amount of any fees received from the athlete, and the specific services
9 performed on behalf of the athlete; and

10 (2) All travel and entertainment expenditures incurred by the athlete agent,
11 including food, beverages, maintenance of a hospitality room, sporting
12 events, theatrical and musical events, and any transportation, lodging,
13 or admission expenses incurred in connection with the entertainment.

14 (b) The records kept by the athlete agent under subdivision (2) of subsection (a)
15 of this section must adequately describe:

16 (1) The nature of the expenditure;

17 (2) The dollar amount of the expenditure;

18 (3) The purpose of the expenditure;

19 (4) The date and place of the expenditure; and

20 (5) Each person on whose behalf the expenditure was made.

21 **"§ 78C-81. Rules.**

22 The Secretary of State may, in accordance with Chapter 150B of the General
23 Statutes, adopt rules necessary to carry out this Article."

24 Sec. 2. (a) This act shall become effective September 1, 1990.

25 (b) An athlete agent is not required to be registered and is not required to comply
26 with this act until January 1, 1991.

27 (c) In addition to the information required under G.S. 78C-72(b) as enacted by
28 this act, a person who is engaged in business as an athlete agent on the effective date of
29 this act must include in the registration application:

30 (1) The names and addresses of all athletes for whom the applicant is
31 providing professional services regulated under this Article for
32 compensation on the date the application is filed; and

33 (2) The names and addresses of all athletes not currently represented by
34 the athlete agent for whom the athlete agent has performed
35 professional services for compensation during the three years
36 preceding the date of the application.