

GENERAL ASSEMBLY OF NORTH CAROLINA

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SENATE BILL 463*
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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.

In this Article, unless the context requires otherwise:

- (1) ‘Person’ means an individual, company, corporation, association, partnership, or other legal entity.
- (2) ‘Athlete agent’ means a person that, for compensation, directly or indirectly recruits or solicits an athlete to enter into an agent contract, professional sports services contract, or financial services contract with that person or that for a fee procures, offers, promises, or attempts to obtain employment for an athlete with a professional sports team. Provided that the registration provisions of G.S. 78C-72 shall not apply to a North Carolina licensed and resident attorney who:

- 1 a. Neither advertises directly for, or solicits, any athlete by
2 representing to any person that he has special experience or
3 qualifications with regard to representing athletes; and
4 b. Represents no more than two athletes as defined in G.S. 78C-
5 71(5).

6 (3) 'Agent contract' means any contract or agreement under which an
7 athlete authorizes an athlete agent to negotiate to solicit on behalf of
8 the athlete with one or more professional sports teams for the
9 employment of the athlete by one or more professional sports teams.

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

17 (5) 'Athlete' means an individual who:

- 18 a. Seeks to be employed as a professional athlete; and
19 b. Has never signed a contract for employment with a professional
20 sports team; and
21 c. Is enrolled in a high school, or has been admitted to an
22 institution of higher education located within this State.

23 For purposes of this Article, execution by an athlete of a personal service contract with
24 the owner or prospective owner of a professional sports team for the purpose of future
25 athletic services is equivalent to employment with a professional sports team.

26 **"§ 78C-72. Registration requirements; renewal.**

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

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

- 35 (1) The name of the applicant and the address of the applicant's principal
36 place of business;
37 (2) The business or occupation engaged in by the applicant for the five
38 years immediately preceding the date of application;
39 (3) A description of the applicant's formal training, practical experience,
40 and educational background relating to the applicant's professional
41 activities as an athlete agent;
42 (4) If requested by the Secretary of State, the names and addresses of five
43 professional references; and

1 (5) The names and addresses of all persons, except bona fide employees
2 on stated salaries, that are financially interested as partners, associates,
3 or profit sharers in the operation of the business of the athlete agent,
4 except that an application for registration or renewal by any member of
5 the North Carolina State Bar must state only the names and addresses
6 of those persons that are involved in the activities of the athlete agent
7 and is not required to state the names and addresses of all persons who
8 may be financially interested as members of a law firm or professional
9 corporation but who do not become involved in the business of the
10 athlete agent.

11 (c) If the applicant is a corporation, the information required by subsection (b) of
12 this section must be provided by each officer of the corporation. If the applicant is an
13 association or partnership, the information must be provided by each associate or
14 partner.

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

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

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

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

34 (f) The registration fee to be collected by the Secretary of State for the
35 administration of this Article shall be two hundred dollars (\$200.00).

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

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

1 amounts, and will pay all damages caused to any athlete by reason of the intentional
2 misrepresentation, fraud, deceit, or any unlawful or negligent act or omission by the
3 registered athlete agent or the agent's representative or employee while acting within the
4 scope of the financial services contract. The athlete agent shall maintain the bond until
5 two years after the date on which the athlete agent ceases to engage in the provision of
6 financial services for an athlete. This subsection does not limit the recovery of damages
7 to the amount of the surety bond.

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

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

16 **"§ 78C-73. Disciplinary actions, investigations and subpoenas.**

17 (a) (1) The Secretary of State may suspend or revoke a certificate
18 of registration issued under this Article for a violation of this Article
19 or rule adopted under this Article or may take other disciplinary
20 action.

21 (2) The Secretary of State may by order summarily postpone or suspend
22 registration pending final determination of any proceeding under this
23 section. Upon the entry of the order, the Secretary of State shall
24 promptly notify the registrant that it has been entered and of the
25 reasons therefor and that within 15 days after the receipt of a written
26 request the matter will be set down for hearing. If no hearing is
27 requested and none is ordered by the Secretary of State, the order will
28 remain in effect until it is modified or vacated by the Secretary of
29 State. If a hearing is requested or ordered, the Secretary of State, after
30 notice of and opportunity for hearing, may modify or vacate the order
31 or extend it until final determination.

32 (3) No order may be entered under any part of this subsection except the
33 first sentence of subdivision (2) without (i) appropriate prior notice to
34 the applicant or registrant, (ii) opportunity for hearing, and (iii) written
35 finding of fact and conclusions of law.

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

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

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

1 BY NOTIFYING THE ATHLETE AGENT IN WRITING OF YOUR DESIRE TO
2 CANCEL THE CONTRACT NOT LATER THAN THE 16TH DAY AFTER THE
3 DATE ON WHICH YOU SIGN THIS CONTRACT.

4 (c) Each registered athlete agent shall file with the Secretary of State a
5 memorandum of contract for each agent contract and financial service contract entered
6 into with an athlete by the athlete agent.

7 Such a memorandum of contract shall include the date of the contract, the name and
8 address of the athlete, the name and address of the athlete agent, the name and address
9 of the employer, the date of the memorandum of contract, and the signature of the
10 athlete agent.

11 (d) In addition to filing with the Secretary of State a memorandum of contract for
12 each agent contract made with an athlete, if the athlete is a student at a high school or an
13 institution of higher education located in this State, the athlete agent shall file a
14 memorandum of contract with the high school principal or the athletic director of the
15 institution. The athlete agent must file the memorandum of contract not later than the
16 fifth day after the date on which the contract is signed by the athlete.

17 (e) An athlete may cancel an agent contract or financial services contract before
18 the expiration of the 16th day after the contract is signed, or an executed copy of the
19 contract is delivered to the athlete and the memorandum of contract is filed with the
20 school, whichever is later, by notifying the athlete agent of the cancellation in writing.

21 **"§ 78C-76. Advertising requirement; prohibitions.**

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

24 (b) An athlete agent may not:

- 25 (1) Publish or cause to be published any false, fraudulent, or misleading
26 information, representation, notice, or advertisement or give any false
27 information or make any false promises or representations concerning
28 any employment to any person;
- 29 (2) Divide fees with or receive compensation from a professional sports
30 league or franchise or its representative or employee;
- 31 (3) Enter into any agreement, written or oral, by which the athlete agent
32 offers anything of value to any employee of a high school or of an
33 institution of higher education located in this State in return for the
34 referral of any clients by that employee;
- 35 (4) Offer anything of value, excluding reasonable entertainment expenses
36 and transportation expenses to and from the athlete agent's registered
37 principal place of business, to induce an athlete to enter into an
38 agreement by which the athlete agent will represent the athlete; or
- 39 (5) Except as provided by G.S. 78C-77, directly contact an athlete to
40 discuss the athlete agent's representation of the athlete in the marketing
41 of the athlete's athletic ability or reputation or the provision of
42 financial services by the athlete agent, or enter into any agreement,
43 written or oral, by which the athlete agent will represent the athlete,
44 until after completion of the athlete's last high school or intercollegiate

1 contest, including postseason games, and may not enter into an
2 agreement before the athlete's last high school or intercollegiate
3 contest that purports to take effect at a time after that contest is
4 completed.

5 (c) This Article does not prohibit or limit an athlete agent from sending to an
6 athlete written materials relating to the professional credentials of the agent or to
7 specific services offered by the agent relating to the representation of an athlete in the
8 marketing of an athlete's athletic ability or reputation or to the provision of financial
9 services by the agent to the athlete. This Article does not prohibit an athlete or the
10 athlete's parents, legal guardians, or other advisors from contacting and interviewing an
11 athlete agent to determine that agent's professional proficiency in the representation of
12 an athlete, in the marketing of the athlete's athletic ability or reputation, or the provision
13 of financial services by the agent on behalf of the athlete.

14 **"§ 78C-77. Permitted contacts with certain athletes.**

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

20 **"§ 78C-78. Remedies for violation; criminal penalty.**

21 (a) In any civil action brought based upon a violation of G.S. 78C-72(a) or G.S.
22 78C-76, the relief granted by the court may include the following:

- 23 (1) Forfeiture of any right of repayment the athlete agent may otherwise
24 have for anything of value either received by an athlete as an
25 inducement to enter into any agent contract or financial services
26 contract or received by an athlete before completion of the athlete's
27 last high school or intercollegiate contest;
28 (2) A refund of any consideration paid to the athlete agent on an athlete's
29 behalf; or
30 (3) Reasonable attorney's fees and court costs incurred by an injured party.

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

34 (c) An athlete agent commits an offense if the agent knowingly violates G.S.
35 78C-72(a) or G.S. 78C-76. An offense under this subsection shall be punished as a
36 Class J felony.

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

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

1 **"§ 78C-79. Civil penalty.**

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

12 (b) No order may be entered under this section without (i) appropriate prior
13 notice to the applicant or registrant, (ii) opportunity for hearing, and (iii) written
14 findings of fact and conclusions of law.

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

17 **"§ 78C-80. Records.**

18 (a) An athlete agent shall keep records as provided by this section and shall
19 provide the Secretary of State with the information contained in the records on request.
20 The records must contain:

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

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

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

30 (1) The nature of the expenditure;

31 (2) The dollar amount of the expenditure;

32 (3) The purpose of the expenditure;

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

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

35 **"§ 78C-81. Rules.**

36 The Secretary of State may adopt rules necessary to carry out this Article."

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

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

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

- 1 (1) The names and addresses of all athletes for whom the applicant is
2 providing professional services regulated under this Article for
3 compensation on the date the application is filed; and
4 (2) The names and addresses of all athletes not currently represented by
5 the athlete agent for whom the athlete agent has performed
6 professional services for compensation during the three years
7 preceding the date of the application.