

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 712*

Short Title: Regulation of Athlete Agents.

(Public)

Sponsors: Representatives Hackney; Diamont and Hardaway.

Referred to: Judiciary.

March 20, 1989

1 A BILL TO BE ENTITLED
2 AN ACT PROVIDING FOR THE REGULATION OF ATHLETE AGENTS.
3 The General Assembly of North Carolina enacts:

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

6 **“ARTICLE 8.**
7 **“REGULATION OF ATHLETE AGENTS.**

8 **“§ 78C-71. Definitions.**

9 In this Article, unless the context requires otherwise:

- 10 (1) ‘Person’ means an individual, company, corporation, association,
11 partnership, or other legal entity.
12 (2) ‘Athlete agent’ means a person that, for compensation, directly or
13 indirectly recruits or solicits an athlete to enter into an agent contract,
14 professional sports services contract, or financial services contract with
15 that person or that for a fee procures, offers, promises, or attempts to
16 obtain employment for an athlete with a professional sports team.
17 (3) ‘Agent contract’ means any contract or agreement under which an
18 athlete authorizes an athlete agent to negotiate to solicit on behalf of
19 the athlete with one or more professional sports teams for the
20 employment of the athlete by one or more professional sports teams.
21 (4) ‘Financial services contract’ means any contract or agreement under
22 which an athlete authorizes an athlete agent to provide financial
23 services for the athlete, including the making and execution of

1 investment and other financial decisions by the agent on behalf of the
2 athlete.

3 (5) 'Athlete' means an individual who resides in this State or who is
4 enrolled in a North Carolina institution of higher education and who:

5 a. Is eligible to participate in intercollegiate sports contests as a
6 member of a sports team of an institution of higher education
7 located in this State that is a member of a national association
8 for the promotion and regulation of intercollegiate athletics;

9 b. Has participated as a member of such a sports team at an
10 institution of higher education and who has never signed a
11 contract of employment with a professional sports team; or

12 c. For purposes of this Article, execution by an athlete of a
13 personal service contract with the owner or prospective owner
14 of a professional sports team for the purpose of future athletic
15 services is equivalent to employment with a professional sports
16 team.

17 **"§ 78C-72. Registration requirements; renewal.**

18 (a) An athlete agent must register with the Secretary of State before the athlete
19 agent may contact an athlete, either directly or indirectly, while the athlete is located in
20 this State. A registered athlete agent may make those contacts only in accordance with
21 this Article.

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

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

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

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

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

35 (5) The names and addresses of all persons, except bona fide employees
36 on stated salaries, that are financially interested as partners, associates,
37 or profit sharers in the operation of the business of the athlete agent,
38 except that an application for registration or renewal by any member of
39 the North Carolina State Bar must state only the names and addresses
40 of those persons that are involved in the activities of the athlete agent
41 and is not required to state the names and addresses of all persons who
42 may be financially interested as members of a law firm or professional
43 corporation but who do not become involved in the business of the
44 athlete agent.

1 (c) If the applicant is a corporation, the information required by subsection (b) of
2 this section must be provided by each officer of the corporation. If the applicant is an
3 association or partnership, the information must be provided by each associate or
4 partner.

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

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

17 (1) The names and addresses of all athletes for whom the athlete agent is
18 providing professional services for compensation at the time of the
19 renewal; and

20 (2) The names and addresses of all athletes not currently represented by
21 the athlete agent for whom the athlete agent has performed
22 professional services for compensation during the three years
23 preceding the date of the application.

24 (f) The Secretary of State by rule shall set all fees required for the administration
25 of this Article. The Secretary shall set the fees in amounts that are reasonable and
26 necessary to cover the costs of administering this Article.

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

30 (h) Before the issuance or renewal of a certificate of registration, an athlete agent
31 that enters into a financial services contract with an athlete must deposit with the
32 Secretary of State a surety bond in the sum of one hundred thousand dollars (\$100,000),
33 payable to the State and conditioned that the person applying for the registration will
34 comply with this Article, will pay all amounts due any individual or group of
35 individuals when the person or the person's representative or agent has received those
36 amounts, and will pay all damages caused to any athlete by reason of the intentional
37 misrepresentation, fraud, deceit, or any unlawful or negligent act or omission by the
38 registered athlete agent or the agent's representative or employee while acting within the
39 scope of the financial services contract. The athlete agent shall maintain the bond until
40 two years after the date on which the athlete agent ceases to engage in the provision of
41 financial services for an athlete. This subsection does not limit the recovery of damages
42 to the amount of the surety bond.

43 (i) If an athlete agent that has entered into a financial services contract with an
44 athlete fails to file a new bond with the Secretary of State not later than the 30th day

1 after date of receipt of a notice of cancellation issued by the surety of the bond, the
2 Secretary of State shall suspend the certificate of registration issued to that athlete agent
3 under the bond until the athlete agent files a new surety bond with the Secretary of
4 State.

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

7 **"§ 78C-73. Disciplinary actions, investigations and subpoenas.**

8 (a) (1) The Secretary of State may suspend or revoke a certificate
9 of registration issued under this Article for a violation of this Article
10 or rule adopted under this Article or may take other disciplinary
11 action.

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

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

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

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

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

36 (3) May publish information concerning any violation of this Chapter or
37 any rule or order hereunder; and

38 (4) May appoint sports law enforcement agents and other enforcement
39 personnel.

40 a. Subject Matter Jurisdiction. – The primary responsibility of an
41 agent shall be enforcement of this Chapter and Chapter 78A of
42 the General Statutes; however, after taking the oath prescribed
43 for a peace officer, a sports law enforcement agent shall have

1 authority to arrest and take other investigatory and enforcement
2 actions for any criminal offense.

3 b. Territorial Jurisdiction. – A sports law enforcement agent is a
4 State officer with jurisdiction throughout the State.

5 c. Service of Orders of the Secretary of State. – Sports law
6 enforcement agents may serve and execute notices, orders, or
7 demands issued by the Secretary of State for the surrender of
8 registrations or relating to any administrative proceeding.
9 While serving and executing such notices, orders, or demands,
10 sports law enforcement agents shall have all the power and
11 authority possessed by law enforcement officers when
12 executing an arrest warrant.

13 (c) For the purpose of any investigation or proceeding under this Chapter, the
14 Secretary of State or any officer designated by him may administer oaths and
15 affirmations, subpoena witnesses, compel their attendance, take evidence and require
16 the production of any books, papers, correspondence, memoranda, agreements, or other
17 documents or records which the Secretary of State deems relevant or material to the
18 inquiry.

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

25 (e) The Secretary of State may act under subsection (c) or apply under subsection
26 (d) to enforce subpoenas in this State at the request of a sports law agency or
27 administrator of any state if the alleged activities constituting a violation for which the
28 information is sought would be a violation of this Chapter or any rule hereunder if the
29 alleged activities had occurred in this State.

30 **"§ 78C-74. Disposition of fees.**

31 Fees and other funds received under this Article by the Secretary of State shall be
32 deposited in the State Treasury to the credit of the General Fund.

33 **"§ 78C-75. Contracts; cancellation option.**

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

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

39 **NOTICE TO CLIENT**

40 (1) THIS ATHLETE AGENT IS REGISTERED WITH THE SECRETARY
41 OF STATE OF THE STATE OF NORTH CAROLINA. REGISTRATION WITH THE
42 SECRETARY OF STATE DOES NOT IMPLY APPROVAL OR ENDORSEMENT
43 BY THE SECRETARY OF STATE OF THE COMPETENCE OF THE ATHLETE

1 AGENT OR OF THE SPECIFIC TERMS AND CONDITIONS OF THIS
2 CONTRACT.

3 (2) DO NOT SIGN THIS CONTRACT UNTIL YOU HAVE READ IT OR
4 IF IT CONTAINS BLANK SPACES.

5 (3) IF YOU DECIDE THAT YOU DO NOT WISH TO PURCHASE THE
6 SERVICES OF THE ATHLETE AGENT, YOU MAY CANCEL THIS CONTRACT
7 BY NOTIFYING THE ATHLETE AGENT IN WRITING OF YOUR DESIRE TO
8 CANCEL THE CONTRACT NOT LATER THAN THE 16TH DAY AFTER THE
9 DATE ON WHICH YOU SIGN THIS CONTRACT.

10 (c) Each registered athlete agent shall file with the Secretary of State a copy of
11 each agent contract and financial services contract entered into with an athlete by the
12 athlete agent. Such a contract must include a schedule of fees that the agent may charge
13 to and collect from an athlete and a description of the various professional services to be
14 rendered in return for each fee. The athlete agent may impose charges only in
15 accordance with the fee schedule. Changes in the fee schedule may be made, but a
16 change does not become effective until the seventh day after the date on which a copy
17 of the contract as changed is filed with the Secretary of State.

18 (d) If a multiyear professional sport services contract is negotiated by a registered
19 athlete agent for an athlete, the athlete agent may not collect in any 12-month period for
20 the agent's services in negotiating the contract a fee that exceeds the amount the athlete
21 will receive under the contract in that 12-month period.

22 (e) In addition to filing with the Secretary of State a copy of each contract made
23 with an athlete, if the athlete is a student at an institution of higher education located in
24 this State, the athlete agent shall file a copy of the contract with the athletic director of
25 the institution. The athlete agent must file the contract not later than the fifth day after
26 the date on which the contract is signed by the athlete.

27 (f) An athlete may cancel an agent contract or financial services contract before
28 the expiration of the 15th day after the date the contract is signed by notifying the
29 athlete agent of the cancellation in writing.

30 **"§ 78C-76. Advertising requirement; prohibitions.**

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

33 (b) A registered athlete agent may not:

34 (1) Publish or cause to be published any false, fraudulent, or misleading
35 information, representation, notice, or advertisement or give any false
36 information or make any false promises or representations concerning
37 any employment to any person;

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

40 (3) Enter into any agreement, written or oral, by which the athlete agent
41 offers anything of value to any employee of an institution of higher
42 education located in this State in return for the referral of any clients
43 by that employee;

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

5 (5) Except as provided by G.S. 78C-77, directly contact an athlete who is
6 participating in a team sport at an institution of higher education
7 located in this State to discuss the athlete agent's representation of the
8 athlete in the marketing of the athlete's athletic ability or reputation or
9 the provision of financial services by the athlete agent, or enter into
10 any agreement, written or oral, by which the athlete agent will
11 represent the athlete, until after completion of the athlete's last
12 intercollegiate contest, including postseason games, and may not enter
13 into an agreement before the athlete's last intercollegiate contest that
14 purports to take effect at a time after that contest is completed.

15 (c) This Article does not prohibit or limit an athlete agent from sending to an
16 athlete written materials relating to the professional credentials of the agent or to
17 specific services offered by the agent relating to the representation of an athlete in the
18 marketing of an athlete's athletic ability or reputation or to the provision of financial
19 services by the agent to the athlete. This Article does not prohibit an athlete or the
20 athlete's parents, legal guardians, or other advisors from contacting and interviewing an
21 athlete agent to determine that agent's professional proficiency in the representation of
22 an athlete, in the marketing of the athlete's athletic ability or reputation, or the provision
23 of financial services by the agent on behalf of the athlete.

24 **"§ 78C-77. Permitted contacts with certain athletes.**

25 (a) All institutions of higher education located in this State shall sponsor athlete
26 agent interviews on their campuses before the athlete's final year of eligibility to
27 participate in intercollegiate athletics, and a registered athlete agent may interview the
28 athlete to discuss the athlete agent's provision of financial services and advice to the
29 athlete or the athlete agent's representation of the athlete in the marketing of the athlete's
30 athletic ability or reputation.

31 (b) All institutions sponsoring athlete agent interviews shall give public notice of
32 those interviews not later than the 30th day before the date on which the period in which
33 the interviews may be conducted begins. Institutions shall provide written notice of the
34 time, place, and duration of the athlete agent interview program to those registered
35 athlete agents who have previously furnished the athletic director of such institutions
36 with their addresses.

37 (c) The athlete agent shall strictly adhere to the specific rules of each separate
38 electing institution with regard to the time, place, and duration of the athlete agent
39 interviews. The interviews shall be conducted in the final year of eligibility during a
40 period not exceed 30 consecutive days.

41 **"§ 78C-78. Remedies for violation; criminal penalty.**

42 (a) A registered athlete agent who violates G.S. 78C-72(a) or G.S. 78C-76 may
43 be subject to:

44 (1) A civil penalty, as provided by G.S. 78C-79;

1 (2) Forfeiture of any right of repayment for anything of value either
2 received by an athlete as an inducement to enter into any agent
3 contract or financial services contract or received by an athlete before
4 completion of the athlete's last intercollegiate contest;

5 (3) A refund of any consideration paid to the athlete agent on an athlete's
6 behalf; and

7 (4) Reasonable attorney's fees and court costs incurred by an athlete in
8 suing and recovering against an athlete agent for a violation of this
9 Article.

10 (b) Any agent contract or financial services contract that is negotiated by an
11 athlete agent who has failed to comply with this Article is void.

12 (c) An athlete agent commits an offense if the agent knowingly violates G.S.
13 78C-72(a) or G.S. 78C-76. An offense under this subsection shall be punished as a
14 Class J Felony.

15 (d) The Secretary of State may refer such evidence as is available concerning
16 violations of this Chapter or of any rule or order hereunder to the Attorney General or
17 the proper district attorney, who may, with or without such a reference, institute the
18 appropriate criminal proceedings under this Chapter. Upon receipt of such reference,
19 the Attorney General or the district attorney may request that a duly employed attorney
20 of the Secretary of State prosecute or assist in the prosecution of such violation or
21 violations on behalf of the State. Upon approval of the Secretary of State, such
22 employee shall be appointed a special prosecutor for the Attorney General or the district
23 attorney to serve without compensation from the Attorney General or district attorney.
24 Such special prosecutor shall have all the powers and duties prescribed by law for
25 assistant attorneys general or district attorneys and such other powers and duties as are
26 lawfully delegated to such special prosecutor by the Attorney General or the district
27 attorney.

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

30 **"§ 78C-79. Civil penalty.**

31 (a) The Secretary of State may issue an order against an applicant, registered
32 person, or other person who willfully violates this Chapter or a rule or order of the
33 Secretary of State under this Chapter, imposing a civil penalty up to a maximum of two
34 thousand five hundred dollars (\$2,500) for a single violation or of twenty-five thousand
35 dollars (\$25,000) for multiple violations in a single proceeding or a series of related
36 proceedings.

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

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

42 **"§ 78C-80. Judicial review of orders.**

43 (a) Any person aggrieved by a final order of the Secretary of State under this
44 Article may obtain a review of the order in the Superior Court of Wake County by filing

1 in court, within 30 days after a written copy of the decision is served upon the person by
2 personal service or by registered or certified mail, a written petition praying that the
3 order be modified or set aside in whole or in part. A copy of the petition shall be
4 forthwith served upon the Secretary of State, and thereupon the Secretary of State shall
5 certify and file in court a copy of the filing and evidence upon which the order was
6 entered. When these have been filed, the court has exclusive jurisdiction to affirm,
7 modify, enforce, or set aside the order, in whole or in part. The findings of the Secretary
8 of State as to the facts, if supported by competent, material and substantial evidence, are
9 conclusive. If either party applies to the court for leave to adduce additional material
10 evidence, and shows to the satisfaction of the court that there were reasonable grounds
11 for failure to adduce the evidence in the hearing before the Secretary of State, the court
12 may order the additional evidence to be taken before the Secretary of State and to be
13 adduced upon the hearing in such manner and upon such conditions as the court
14 considers proper. The Secretary of State may modify his findings and order by reason
15 of the additional evidence and shall file in court the additional evidence together with
16 any modified or new findings or order. The judgment of the court is final, subject to
17 review by the Court of Appeals.

18 (b) The commencement of proceedings under subsection (a) does not, unless
19 specifically ordered by the court, operate as a stay of the Secretary of State's order.

20 **"§ 78C-81. Records.**

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

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

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

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

33 (1) The nature of the expenditure;

34 (2) The dollar amount of the expenditure;

35 (3) The purpose of the expenditure;

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

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

38 **"§ 78C-82. Rules.**

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

40 Sec. 2. (a) This act shall become effective September 1, 1989.

41 (b) An athlete agent is not required to be registered and is not required to comply
42 with this act until January 1, 1990.

- 1 (c) In addition to the information required under G.S. 78C-72(b) as enacted by
2 this act, a person who is engaged in business as an athlete agent on the effective date of
3 this act must include in the registration application:
- 4 (1) The names and addresses of all athletes for whom the applicant is
5 providing professional services for compensation on the date the
6 application is filed; and
- 7 (2) The names and addresses of all athletes not currently represented by
8 the athlete agent for whom the athlete agent has performed
9 professional services for compensation during the three years
10 preceding the date of the application.