

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

3

HOUSE BILL 334
Second Edition Engrossed 3/23/11
Senate Rules and Operations of the Senate Committee Substitute Adopted 6/28/12

Short Title: Sports Agents/DMV Police Authority.

(Public)

Sponsors:

Referred to:

March 14, 2011

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE UNIFORM ATHLETE AGENTS ACT, TO AMEND THE LAWS DEALING WITH LICENSURE OF PERSONS ENGAGING IN THE PRACTICE OF NATURAL HAIR CARE, AND TO AMEND THE SUPPLEMENTAL LAW ENFORCEMENT AUTHORITY OF DIVISION OF MOTOR VEHICLE OFFICERS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 78C of the General Statutes reads as rewritten:

"Article 9.

"Uniform Athlete Agents Act.

"§ 78C-85. Title.

This Article may be cited as the "Uniform Athlete Agents Act".

...

"§ 78C-89. Registration as athlete agent; form; requirements.

(a) An individual seeking registration as an athlete agent shall submit an application for registration to the Secretary of State in a form prescribed by the Secretary of State. The application must be in the name of an individual and, ~~except as otherwise provided in subsection (b) of this section, and~~ signed or otherwise authenticated by the applicant under penalty of perjury and must state or contain the following:

...

(b) ~~An individual who has submitted an application for registration or licensure as an athlete agent in another state or who holds a certificate of registration or licensure as an athlete agent in another state may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subsection (a) of this section. The Secretary of State shall accept the application and the certificate from the other state as an application for registration in this State if the application to the other state satisfied all of the following criteria:~~

(1) ~~Was submitted in the other state within six months immediately preceding the submission of the application in this State and the applicant certifies that the information contained in the application is current.~~

(2) ~~Contains information substantially similar to or more comprehensive than that required in an application submitted in this State.~~

(3) ~~Was signed by the applicant under penalty of perjury.~~

An applicant for registration as an athlete agent in North Carolina pursuant to G.S. 78C-88 shall submit with the application a satisfactory cash bond or proof of establishment of a trust account in that amount with a licensed and insured bank or savings institution located in the State of North Carolina. The bond or trust account shall be in favor of the State of North



* H 3 3 4 - V - 3 *

1 Carolina. If a trust account is established, the applicant shall include with the application two
2 copies of the formal notification by the depository that the trust account is established. Any
3 bond shall be delivered by the Secretary of State to the Treasurer of the State of North Carolina
4 to be maintained in an interest-bearing special fund. The amount of the cash bond or trust
5 account shall be:

- 6 (1) Fifty thousand dollars (\$50,000) to be submitted with the applicant's initial
7 application for registration as an athlete agent in North Carolina;
8 (2) An additional twenty-five thousand dollars (\$25,000) to be submitted with
9 the applicant's first renewal application for registration as an athlete agent in
10 North Carolina; and
11 (3) An additional twenty-five thousand dollars (\$25,000) to be submitted with
12 the applicant's second renewal application for registration as an athlete agent
13 in North Carolina.

14 At no time shall the total cash bond or trust account principal exceed one hundred thousand
15 dollars (\$100,000) for an individual athlete agent.

16 (b1) The cash bond shall be returnable to the athlete agent six months after the athlete
17 agent ceases to be a registered North Carolina athlete agent or the Secretary of State has denied
18 the application for registration or renewal, unless the Secretary of State has been notified of
19 pending legal action against the agent by an educational institution pursuant to G.S. 78C-100.
20 The bond or trust account shall be available to satisfy any award or judgment to the educational
21 institution arising from the athlete agent's violation of this Article. The Treasurer of the State of
22 North Carolina or the bank or savings institution holding the trust account shall release the
23 principal and interest accrued on the cash bond or trust account only upon receipt of a court
24 order directing release or upon certification by the Secretary of State that no notice of pending
25 legal action has been received pursuant to this section from an educational institution.

26 (c) An application filed under this section is a "public record" within the meaning of
27 Chapter 132 of the General Statutes.

28 ...

29 **"§ 78C-94. Required form of contract.**

30 (a) An agency contract must be in a record, signed or otherwise authenticated by the
31 parties. The student-athlete's signature shall be acknowledged before a notary public.

32 ...

33 **"§ 78C-97. Required records; waiver of attorney-client privilege.**

34 (a) An athlete agent shall retain the following records for a period of five years:

- 35 (1) The name and address of each individual represented by the athlete agent.
36 (2) Any agency contract entered into by the athlete agent.
37 (3) Any ~~direct cost~~ expenses incurred by the athlete agent, or any person
38 acting at the direction of the athlete agent, in the recruitment or solicitation
39 of a student-athlete to enter into an agency contract.
40 (4) A list of all other athlete agents affiliated with the athlete agent, employees
41 of the athlete agent, and all persons acting at the direction of the athlete
42 agent in the recruitment or solicitation of student-athletes to enter into
43 agency contracts.
44 (5) A list of all telephone numbers, including records for each number showing
45 all incoming and outgoing communications, used by the athlete agent, or any
46 person acting at the direction of the athlete agent, in the recruitment or
47 solicitation of a student-athlete to enter into an agency contract.
48 (6) All checkbooks, bank statements, canceled checks, and credit card
49 statements for all accounts used by the athlete agent, or any person acting at
50 the direction of the athlete agent, in the recruitment or solicitation of a
51 student-athlete to enter into an agency contract.

1 (7) Originals or copies of all written communications sent by the athlete agent,
2 or any person acting at the direction of the athlete agent, to a student-athlete
3 or to any other person to recruit or solicit a student-athlete to enter into an
4 agency contract.

5 (8) A record of all communications between an athlete agent, or any person
6 acting at the direction of the athlete agent, with a student-athlete or any
7 person for the purpose of recruiting or soliciting a student-athlete to enter
8 into an agency contract.

9 (9) Any other record the Secretary of State by rule prescribes.

10 For purposes of subdivisions (7) and (8) of this subsection, "communication" includes all
11 oral communication and written communication. Written communications include handwritten
12 correspondence, printed correspondence, mailings, text messages, and electronic
13 communications, such as e-mails and communications through social and professional
14 networking sites.

15 (b) Records required to be retained by subsection (a) of this section are open to
16 inspection by the Secretary of State during normal business hours. An athlete agent shall
17 deliver within 10 business days any records required to be retained by subsection (a) of this
18 section if requested by the Secretary of State or the Secretary's designee.

19 (c) Where a student-athlete enters into an agency contract regulated under this Article,
20 the student-athlete will be deemed to waive the attorney-client privilege with respect to records
21 required to be retained by subsection (a) of this section, subject to G.S. 78C-94(f).

22 (d) Within five business days after entering into an agency contract with an individual
23 who was a student-athlete at an educational institution located in this State, the athlete agent
24 shall provide a copy of the executed agency contract to the Secretary of State. This requirement
25 shall only apply to former student-athletes entering into their first agency contract.

26 (e) Within five business days after being contacted by a person who may have an
27 expectation of direct gain or profit or reimbursement of expenses from the agency contract
28 regarding a student-athlete at an educational institution located in this State, the athlete agent
29 shall notify the Secretary of State in writing. The notification shall state the person's name, the
30 person's contact information, the identity of the student-athlete, the method of communication,
31 and the date of the communication. This requirement shall not apply if the person contacting
32 the athlete agent is the student-athlete, spouse, parent, sibling, or guardian of the
33 student-athlete, or employed by the educational institution. Information provided to the
34 Secretary of State pursuant to this subsection is protected by G.S. 132-1.2(1) from disclosure as
35 a public record.

36 "**§ 78C-98. Prohibited conduct.**"

37 ...

38 (b) An athlete agent shall not intentionally:

39 (1) Initiate contact with a student-athlete unless the athlete agent is registered
40 under this Article.

41 (2) Refuse or fail to retain or permit inspection of the records required to be
42 retained by G.S. 78C-97.

43 (3) Fail to register as required by G.S. 78C-88.

44 (4) Provide materially false or misleading information in an application for
45 registration or renewal of registration.

46 (5) Predate or postdate an agency contract.

47 (6) Fail to notify a student-athlete before the student-athlete signs or otherwise
48 authenticates an agency contract for a particular sport that the signing or
49 authentication shall make the student-athlete ineligible to participate as a
50 student-athlete in that sport.

(7) Furnish anything of value to a student-athlete before the student-athlete enters into an agency contract.

"§ 78C-98.1. Prohibited conduct of non-athlete agents.

(a) A person shall not:

(1) Furnish anything of value to a student-athlete or a student-athlete's spouse, parent, child, sibling, or guardian before the student-athlete enters into an agency contract; and

(2) Advise, influence, guide, recommend, encourage, oppose, or discourage the student-athlete's selection of a specific athlete agent with the expectation of profit, compensation, salary, gratuity, or benefit in any form.

(b) Nothing in this section shall prevent a spouse, parent, sibling, grandparent, or guardian of a student-athlete or an educational institution which the student-athlete attends from furnishing anything of value to the student-athlete.

...

"§ 78C-101. Administrative penalty.

The Secretary of State may assess a civil penalty against ~~an athlete agent~~any person in an amount not to exceed less than ten thousand dollars (\$10,000) nor more than twenty-five thousand dollars (\$25,000) for a each violation of the provisions of this Article. The Secretary of State may also seek injunctive relief or any other relief available by law to enforce the provisions of this Article."

SECTION 2. Section 13 of S.L. 2009-251, as amended by Section 24 of S.L. 2011-26, reads as rewritten:

"SECTION 13. Any natural hair care specialist who submits proof to the Board that the natural hair care specialist is actively engaged in the practice of a natural hair care specialist on the effective date of this act, passes an examination conducted by the Board and pays the required fee under G.S. 88B-20 shall be licensed without having to satisfy the requirements of G.S. 88B-10.1, enacted by Section 2 of this act. A cosmetic art shop that practices natural hair care only and that submits proof to the Board that the shop is actively engaged in the practice of natural hair care on the effective date of this act shall have ~~two~~three years from the date of this act to comply with the requirements of G.S. 88B-14. All persons who do not make application to the Board within ~~two~~three years of the effective date of this act shall be required to complete all training and examination requirements prescribed by the Board and to otherwise comply with the provisions of Chapter 88B of the General Statutes."

SECTION 3. G.S. 20-49.1 reads as rewritten:

"§ 20-49.1. Supplemental police authority of Division officers.

(a) In addition to the law enforcement authority granted in G.S. 20-49 or elsewhere, the Commissioner and the officers and inspectors of the Division whom the Commissioner designates have the authority to enforce criminal laws under any of the following circumstances:

(1) When they have probable cause to believe that a person has committed a criminal act in their presence ~~and at the time of the violation they are engaged in the enforcement of laws otherwise within their jurisdiction.~~presence.

(2) When they are asked to provide temporary assistance by the head of a State or local law enforcement agency or his designee and the request is within the scope of the agency's subject matter jurisdiction.

While acting pursuant to this subsection, the Division officers shall have the same powers vested in law enforcement officers by statute or common law. When acting pursuant to subdivision (2) of this subsection, the Division officers shall not be considered an officer, employee, or agent of the State or local law enforcement agency or designee asking for temporary assistance. Nothing in this section shall be construed to expand the Division officers'

1 authority to initiate or conduct an independent investigation into violations of criminal laws
2 outside the scope of their subject matter or territorial jurisdiction.

3 (b) In addition to the law enforcement authority granted in G.S. 20-49 or elsewhere, the
4 Commissioner and the officers and inspectors of the Division whom the Commissioner
5 designates have the authority ~~to investigate to~~:

6 (1) Investigate drivers license fraud and identity thefts related to drivers license
7 fraud and to make arrests for these offenses.

8 (2) Perform additional duties as peace officers as may from time to time be
9 directed by the Governor.

10 (3) Either upon their own motion or at the request of any sheriff or local police
11 authority, investigate crimes occurring on property, equipment, or materials
12 owned or leased by the Department of Transportation and to make arrests for
13 these offenses."

14 **SECTION 4.** Section 1 of this act becomes effective December 1, 2012, and
15 applies to contracts entered into or offenses committed on or after that date. Sections 2 and 3
16 of this act are effective when they become law. The remainder of this act is effective when it
17 becomes law.