

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 463*

Judiciary III Committee Substitute Adopted 4/26/89
Judiciary III Committee Substitute #2 Adopted 6/19/89

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:

a. Neither advertises directly for, or solicits, any athlete by representing to any person that he has special experience or qualifications with regard to representing athletes; and

1 b. Represents no more than two athletes as defined in G.S. 78C-
2 71(5).

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

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

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

15 a. Seeks to be employed as a professional athlete; and

16 b. Has never signed a contract for employment with a professional
17 sports team; and

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

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

23 **"§ 78C-72. Registration requirements; renewal.**

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (f) The registration fee to be collected by the Secretary of State for the
31 administration of this Article shall be five hundred dollars (\$500.00).

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

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

1 two years after the date on which the athlete agent ceases to engage in the provision of
2 financial services for an athlete. This subsection does not limit the recovery of damages
3 to the amount of the surety bond.

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

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

12 **"§ 78C-73. Disciplinary actions, investigations and subpoenas.**

13 (a) (1) The Secretary of State may suspend or revoke a certificate
14 of registration issued under this Article for a violation of this Article
15 or rule adopted under this Article or may take other disciplinary
16 action.

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

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

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

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

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

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

43 (4) May designate employees of the Office of Secretary of State as
44 investigators to implement the provisions of this Chapter.

1 Investigators may serve and execute notices, orders, or demands issued
2 by the Secretary of State for the surrender of registrations or relating to
3 any administrative proceeding.

4 (c) For the purpose of any investigation or proceeding under this Chapter, the
5 Secretary of State or any employee designated by him may administer oaths and
6 affirmations, subpoena witnesses, compel their attendance, take evidence and require
7 the production of any books, papers, correspondence, memoranda, agreements, or other
8 documents or records which the Secretary of State deems relevant or material to the
9 inquiry.

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

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

21 **"§ 78C-74. Disposition of fees.**

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

24 **"§ 78C-75. Contracts; cancellation option.**

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

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

30 **NOTICE TO CLIENT**

31 (1) THIS ATHLETE AGENT IS REGISTERED WITH THE SECRETARY
32 OF STATE OF THE STATE OF NORTH CAROLINA. REGISTRATION WITH THE
33 SECRETARY OF STATE DOES NOT IMPLY APPROVAL OR ENDORSEMENT
34 BY THE SECRETARY OF STATE OF THE COMPETENCE OF THE ATHLETE
35 AGENT OR OF THE SPECIFIC TERMS AND CONDITIONS OF THIS
36 CONTRACT.

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

39 (3) IF YOU DECIDE THAT YOU DO NOT WISH TO PURCHASE THE
40 SERVICES OF THE ATHLETE AGENT, YOU MAY CANCEL THIS CONTRACT
41 BY NOTIFYING THE ATHLETE AGENT IN WRITING OF YOUR DESIRE TO
42 CANCEL THE CONTRACT NOT LATER THAN THE 16TH DAY AFTER THE
43 DATE ON WHICH YOU SIGN THIS CONTRACT.

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

4 Such a memorandum of contract shall include the date of the contract, the name and
5 address of the athlete, the name and address of the athlete agent, the name and address
6 of the employer, the date of the memorandum of contract, the signature of the athlete
7 agent, and a schedule of fees that the agent may charge to and collect from an athlete
8 and a description of the various professional services to be rendered in return for each
9 fee. The athlete agent may impose charges only in accordance with the fee schedule.
10 Changes in the fee schedule may be made, but a change does not become effective until
11 the seventh day after the date on which an executed copy of the contract is provided to
12 the athlete and the memorandum of contract is filed with the Secretary of State,
13 whichever is later.

14 (d) If a single year professional sports contract is negotiated by a registered
15 athlete agent for an athlete, the athlete agent may not collect for the agent's services in
16 negotiating the contract a fee that exceeds one-fourth the amount the athlete will receive
17 under the contract, or five thousand dollars (\$5,000), whichever is greater.

18 The Secretary of State is authorized to promulgate rules concerning payment of fees
19 to athlete agents for negotiation of multiyear professional sports contracts.

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

26 (f) An athlete may cancel an agent contract or financial services contract before
27 the expiration of the 16th day after the contract is signed, or an executed copy of the
28 contract is delivered to the athlete and the memorandum of contract is filed with the
29 school, whichever is later, by notifying the 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 a high school or of an
42 institution of higher education located in this State in return for the
43 referral of any clients 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 to
6 discuss the athlete agent's representation of the athlete in the marketing
7 of the athlete's athletic ability or reputation or the provision of
8 financial services by the athlete agent, or enter into any agreement,
9 written or oral, by which the athlete agent will represent the athlete,
10 until after completion of the athlete's last high school or intercollegiate
11 contest, including postseason games, and may not enter into an
12 agreement before the athlete's last high school or intercollegiate
13 contest that purports to take effect at a time after that contest is
14 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 registered athlete agent must give prior written notice of his intention to contact an
26 athlete with respect to representing the athlete as an athlete agent to the athletic director
27 of the institution of higher education, or to the principal of the high school in which the
28 athlete is enrolled. All such contact shall strictly adhere to the rules of each separate
29 institution with regard to the time, place, and duration of the athlete agent's contact.

30 **"§ 78C-78. Remedies for violation; criminal penalty.**

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

- 33 (1) A civil penalty, as provided by G.S. 78C-79;
34 (2) Forfeiture of any right of repayment for anything of value either
35 received by an athlete as an inducement to enter into any agent
36 contract or financial services contract or received by an athlete before
37 completion of the athlete's last high school or intercollegiate contest;
38 (3) A refund of any consideration paid to the athlete agent on an athlete's
39 behalf; and
40 (4) Reasonable attorney's fees and court costs incurred by an athlete in
41 suing and recovering against an athlete agent for a violation of this
42 Article.

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

1 (c) An athlete agent commits an offense if the agent knowingly violates G.S.
2 78C-72(a) or G.S. 78C-76. An offense under this subsection shall be punished as a
3 Class J felony.

4 (d) The Secretary of State may refer such evidence as is available concerning
5 violations of this Chapter or of any rule or order hereunder to the Attorney General or
6 the proper district attorney, who may, with or without such a reference, institute the
7 appropriate criminal proceedings under this Chapter. Upon receipt of such reference,
8 the Attorney General or the district attorney may request that a duly employed attorney
9 of the Secretary of State prosecute or assist in the prosecution of such violation or
10 violations on behalf of the State. Upon approval of the Secretary of State, such
11 employee shall be appointed a special prosecutor for the Attorney General or the district
12 attorney to serve without compensation from the Attorney General or district attorney.
13 Such special prosecutor shall have all the powers and duties prescribed by law for
14 assistant attorneys general or district attorneys and such other powers and duties as are
15 lawfully delegated to such special prosecutor by the Attorney General or the district
16 attorney.

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

19 **"§ 78C-79. Civil penalty.**

20 (a) The Secretary of State may issue an order against an applicant, registered
21 person, or other person who willfully violates this Chapter or a rule or order of the
22 Secretary of State under this Chapter, imposing a civil penalty up to a maximum of one
23 hundred thousand dollars (\$100,000) for a single violation or of two hundred thousand
24 dollars (\$200,000) for multiple violations in a single proceeding or a series of related
25 proceedings.

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

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

31 **"§ 78C-80. Judicial review of orders.**

32 (a) Any person aggrieved by a final order of the Secretary of State under this
33 Article may obtain a review of the order in the Superior Court of Wake County by filing
34 in court, within 30 days after a written copy of the decision is served upon the person by
35 personal service or by registered or certified mail, a written petition praying that the
36 order be modified or set aside in whole or in part. A copy of the petition shall be
37 forthwith served upon the Secretary of State, and thereupon the Secretary of State shall
38 certify and file in court a copy of the filing and evidence upon which the order was
39 entered. When these have been filed, the court has exclusive jurisdiction to affirm,
40 modify, enforce, or set aside the order, in whole or in part. The findings of the Secretary
41 of State as to the facts, if supported by competent, material and substantial evidence, are
42 conclusive. If either party applies to the court for leave to adduce additional material
43 evidence, and shows to the satisfaction of the court that there were reasonable grounds
44 for failure to adduce the evidence in the hearing before the Secretary of State, the court

1 may order the additional evidence to be taken before the Secretary of State and to be
2 adduced upon the hearing in such manner and upon such conditions as the court
3 considers proper. The Secretary of State may modify his findings and order by reason
4 of the additional evidence and shall file in court the additional evidence together with
5 any modified or new findings or order. The judgment of the court is final, subject to
6 review by the Court of Appeals.

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

9 **"§ 78C-81. Records.**

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

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

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

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

22 (1) The nature of the expenditure;

23 (2) The dollar amount of the expenditure;

24 (3) The purpose of the expenditure;

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

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

27 **"§ 78C-82. Rules.**

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

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

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

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

35 (1) The names and addresses of all athletes for whom the applicant is
36 providing professional services for compensation on the date the
37 application is filed; and

38 (2) The names and addresses of all athletes not currently represented by
39 the athlete agent for whom the athlete agent has performed
40 professional services for compensation during the three years
41 preceding the date of the application.