

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 463\*  
Judiciary III Committee Substitute Adopted 4/26/89

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

- 1           (3) 'Agent contract' means any contract or agreement under which an  
2 athlete authorizes an athlete agent to negotiate to solicit on behalf of  
3 the athlete with one or more professional sports teams for the  
4 employment of the athlete by one or more professional sports teams.
- 5           (4) 'Financial services contract' means any contract or agreement under  
6 which an athlete authorizes an athlete agent to provide financial  
7 services for the athlete, including the making and execution of  
8 investment and other financial decisions by the agent on behalf of the  
9 athlete. Excluded from this definition are financial services contracted  
10 for by the athlete directly with banks, securities dealers, and other  
11 financial institutions.
- 12          (5) 'Athlete' means an individual who:
- 13           a. Seeks to be employed as a professional athlete; and
- 14           b. Has never signed a contract for employment with a professional  
15 sports team; and
- 16           c. Is enrolled in a high school, or has been admitted to an  
17 institution of higher education located within this State.

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

21 **"§ 78C-72. Registration requirements; renewal.**

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

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

- 30           (1) The name of the applicant and the address of the applicant's principal  
31 place of business;
- 32           (2) The business or occupation engaged in by the applicant for the five  
33 years immediately preceding the date of application;
- 34           (3) A description of the applicant's formal training, practical experience,  
35 and educational background relating to the applicant's professional  
36 activities as an athlete agent;
- 37           (4) If requested by the Secretary of State, the names and addresses of five  
38 professional references; and
- 39           (5) The names and addresses of all persons, except bona fide employees  
40 on stated salaries, that are financially interested as partners, associates,  
41 or profit sharers in the operation of the business of the athlete agent,  
42 except that an application for registration or renewal by any member of  
43 the North Carolina State Bar must state only the names and addresses  
44 of those persons that are involved in the activities of the athlete agent

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

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

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

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

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

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

28           (f)   The Secretary of State by rule shall set all fees required for the administration  
29           of this Article. The Secretary of State shall set the fees in amounts that are reasonable  
30           and necessary to cover the costs of administering this Article, not to exceed five  
31           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 employ enforcement agents.

- 1           a.     Subject Matter Jurisdiction. – The law enforcement  
2                 responsibility of an agent shall be limited to enforcement of this  
3                 Chapter.  
4           b.     Territorial Jurisdiction. – An enforcement agent is a State  
5                 officer with jurisdiction throughout the State.  
6           c.     Service of Orders of the Secretary of State. – Enforcement  
7                 agents may serve and execute notices, orders, or demands  
8                 issued by the Secretary of State for the surrender of  
9                 registrations or relating to any administrative proceeding.  
10                While serving and executing such notices, orders, or demands,  
11                enforcement agents shall have all the power and authority  
12                possessed by law enforcement officers when executing an arrest  
13                warrant.

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

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

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

31     **"§ 78C-74. Disposition of fees.**

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

34     **"§ 78C-75. Contracts; cancellation option.**

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

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

40                                   **NOTICE TO CLIENT**

41             (1) THIS ATHLETE AGENT IS REGISTERED WITH THE SECRETARY  
42     OF STATE OF THE STATE OF NORTH CAROLINA. REGISTRATION WITH THE  
43     SECRETARY OF STATE DOES NOT IMPLY APPROVAL OR ENDORSEMENT  
44     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 one-half the amount  
21 the athlete 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 agent contract  
23 made with an athlete, if the athlete is a student at a high school or an institution of  
24 higher education located in this State, the athlete agent shall file a copy of the contract  
25 with the high school principal or the athletic director of the institution. The athlete  
26 agent must file the contract not later than the fifth day after the date on which the  
27 contract is signed by the athlete.

28 (f) An athlete may cancel an agent contract or financial services contract before  
29 the expiration of the 16th day after the date the contract is signed by notifying the  
30 athlete agent of the cancellation in writing.

31 **"§ 78C-76. Advertising requirement; prohibitions.**

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

34 (b) A registered athlete agent may not:

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

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

41 (3) Enter into any agreement, written or oral, by which the athlete agent  
42 offers anything of value to any employee of a high school or of an  
43 institution of higher education located in this State in return for the  
44 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 two  
23 thousand five hundred dollars (\$2,500) for a single violation or of twenty-five thousand  
24 dollars (\$25,000) 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.