

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 563
Judiciary II Committee Substitute Adopted 4/16/03
House Committee Substitute Favorable 6/18/03

Short Title: Uniform Athlete Agents Act.

(Public)

Sponsors:

Referred to:

March 27, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO REPEAL THE LAWS REGULATING ATHLETE AGENTS AND TO
3 ADOPT THE UNIFORM ATHLETE AGENTS ACT.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 8 of Chapter 78C of the General Statutes is repealed.

6 SECTION 2. Chapter 78C of the General Statutes is amended by adding a
7 new Article to read:

8 "Article 8A.

9 "Uniform Athlete Agents Act.

10 "§ 78C-85. Title.

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

12 "§ 78C-86. Definitions.

13 The following definitions apply in this Article:

14 (1) Agency contract. – An agreement in which a student-athlete authorizes
15 a person to negotiate or solicit on behalf of the student-athlete a
16 professional-sports-services contract or an endorsement contract.

17 (2) Athlete agent. – An individual who enters into an agency contract with
18 a student-athlete or, directly or indirectly, recruits or solicits a
19 student-athlete to enter into an agency contract. The term includes an
20 individual who represents to the public that the individual is an athlete
21 agent. The term does not include a spouse, parent, sibling, or guardian
22 of the student-athlete or an individual acting solely on behalf of a
23 professional sports team or professional sports organization.

24 (3) Athletic director. – An individual responsible for administering the
25 overall athletic program of an educational institution or, if an
26 educational institution has separately administered athletic programs
27 for male students and female students, the athletic program for males
28 or the athletic program for females, as appropriate.

- 1 (4) Contact. – A communication, direct or indirect, between an athlete
2 agent and a student-athlete to recruit or solicit the student-athlete to
3 enter into an agency contract.
- 4 (5) Endorsement contract. – An agreement under which a student-athlete
5 is employed or receives consideration to use on behalf of the other
6 party any value that the student-athlete may have because of publicity,
7 reputation, following, or fame obtained because of athletic ability or
8 performance.
- 9 (6) Intercollegiate sport. – A sport played at the collegiate level for which
10 eligibility requirements for participation by a student-athlete are
11 established by a national association for the promotion or regulation of
12 collegiate athletics.
- 13 (7) Person. – An individual, company, corporation, partnership,
14 association, or any other legal or commercial entity.
- 15 (8) Professional-sports-services contract. – An agreement under which an
16 individual is employed or agrees to render services as a player on a
17 professional sports team, with a professional sports organization, or as
18 a professional athlete.
- 19 (9) Record. – Information that is inscribed on a tangible medium or that is
20 stored in an electronic or other medium and is retrievable in
21 perceivable form.
- 22 (10) Registration. – A certificate issued by the Secretary of State
23 evidencing that a person has satisfied the requirements of an athlete
24 agent pursuant to this Article.
- 25 (11) Student-athlete. – An individual who engages in, is eligible to engage
26 in, or may be eligible in the future to engage in any intercollegiate
27 sport. If an individual is permanently ineligible to participate in a
28 particular intercollegiate sport, the individual is not a student-athlete
29 for purposes of that sport.

30 **§ 78C-87. Service of process; subpoenas.**

31 (a) By acting as an athlete agent in this State, a nonresident individual appoints
32 the Secretary of State as the individual's agent for service of process in any civil action
33 in this State related to the individual's acting as an athlete agent in this State.

34 (b) The Secretary of State may issue subpoenas for any material that is relevant
35 to the administration of this Article.

36 **§ 78C-88. Athlete agents; registration required; exceptions; void contracts.**

37 (a) Except as otherwise provided in this section, an individual may not act as an
38 athlete agent in this State without holding a certificate of registration under G.S. 78C-90
39 or G.S. 78C-92.

40 (b) Before being issued a certificate of registration, an individual may act as an
41 athlete agent in this State for all purposes except signing an agency contract if: (i) a
42 student-athlete or another person acting on behalf of the student-athlete initiates
43 communication with the individual; and (ii) within seven days after an initial act as an

1 athlete agent, the individual submits an application for registration as an athlete agent in
2 this State.

3 (c) A North Carolina licensed and resident attorney may act as an athlete agent in
4 this State for all purposes without registering pursuant to this section if the attorney
5 neither advertises directly for, nor solicits, any student-athlete by representing to any
6 person that the attorney has special experience or qualifications with regard to
7 representing student-athletes and represents no more than two student-athletes.

8 (d) An agency contract resulting from conduct in violation of this section is void,
9 and the athlete agent shall return any consideration received under the contract.

10 **"§ 78C-89. Registration as athlete agent; form; requirements.**

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

16 (1) The name of the applicant and the address of the applicant's principal
17 place of business.

18 (2) The name of the applicant's business or employer, if applicable.

19 (3) Any business or occupation engaged in by the applicant for the five
20 years immediately preceding the date of submission of the application.

21 (4) A description of the applicant's:

22 a. Formal training as an athlete agent.

23 b. Practical experience as an athlete agent.

24 c. Educational background relating to the applicant's activities as
25 an athlete agent.

26 (5) The names and addresses of three individuals not related to the
27 applicant who are willing to serve as references.

28 (6) The name, sport, and last known team for each individual for whom
29 the applicant acted as an athlete agent during the five years
30 immediately preceding the date of submission of the application.

31 (7) The names and addresses of all persons who are:

32 a. With respect to the athlete agent's business if it is not a
33 corporation, the partners, members, officers, managers,
34 associates, or profit-sharers of the business.

35 b. With respect to a corporation employing the athlete agent, the
36 officers, directors, and any shareholder of the corporation
37 having an interest of five percent (5%) or greater.

38 (8) Whether the applicant or any person named under subdivision (7) of
39 this subsection has been convicted of a crime that, if committed in this
40 State, would be a crime involving moral turpitude or a felony and
41 identify the crime.

42 (9) Whether there has been any administrative or judicial determination
43 that the applicant or any person named under subdivision (7) of this

1 subsection has made a false, misleading, deceptive, or fraudulent
2 representation.

3 (10) Any instance in which the conduct of the applicant or any person
4 named under subdivision (7) of this subsection resulted in the
5 imposition of a sanction, suspension, or declaration of ineligibility to
6 participate in an interscholastic or intercollegiate athletic event on a
7 student-athlete or educational institution.

8 (11) Any sanction, suspension, or disciplinary action taken against the
9 applicant or any person named under subdivision (7) of this subsection
10 arising out of occupational or professional conduct.

11 (12) Whether there has been any denial of an application for, suspension or
12 revocation of, or refusal to renew the registration or licensure of the
13 applicant or any person named under subdivision (7) of this subsection
14 as an athlete agent in any state.

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

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

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

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

29 (c) An application filed under this section is a 'public record' within the meaning
30 of Chapter 132 of the General Statutes.

31 **"§ 78C-90. Certificate of registration; issuance or denial; renewal.**

32 (a) Except as otherwise provided in subsection (b) of this section, the Secretary
33 of State shall issue a certificate of registration to an individual who complies with G.S.
34 78C-89(a) or whose application has been accepted under G.S. 78C-89(b).

35 (b) The Secretary of State may refuse to issue a certificate of registration if the
36 Secretary of State determines that the applicant has engaged in conduct that has a
37 significant adverse effect on the applicant's fitness to act as an athlete agent. In making
38 the determination, the Secretary of State may consider whether the applicant has:

39 (1) Been convicted of a crime that, if committed in this State, would be a
40 crime involving moral turpitude or a felony.

41 (2) Made a materially false, misleading, deceptive, or fraudulent
42 representation in the application or as an athlete agent.

43 (3) Engaged in conduct that would disqualify the applicant from serving in
44 a fiduciary capacity.

- 1 (4) Engaged in conduct prohibited by G.S. 78C-98.
2 (5) Had a registration or licensure as an athlete agent suspended, revoked,
3 or denied or been refused renewal of registration or licensure as an
4 athlete agent in any state.
5 (6) Engaged in conduct the consequence of which was that a sanction,
6 suspension, or declaration of ineligibility to participate in an
7 interscholastic or intercollegiate athletic event was imposed on a
8 student-athlete or educational institution.
9 (7) Engaged in conduct that significantly adversely reflects on the
10 applicant's credibility, honesty, or integrity.

11 (c) In making a determination under subsection (b) of this section, the Secretary
12 of State shall consider: (i) how recently the conduct occurred; (ii) the nature of the
13 conduct and the context in which it occurred; and (iii) any other relevant conduct of the
14 applicant.

15 (d) An athlete agent may apply to renew a registration by submitting an
16 application for renewal in a form prescribed by the Secretary of State. The application
17 for renewal must be signed by the applicant under penalty of perjury and must contain
18 current information on all matters required in an original registration.

19 (e) An individual who has submitted an application for renewal of registration or
20 licensure in another state, in lieu of submitting an application for renewal in the form
21 prescribed pursuant to subsection (d) of this section, may file a copy of the application
22 for renewal and a valid certificate of registration or licensure from the other state. The
23 Secretary of State shall accept the application for renewal from the other state as an
24 application for renewal in this State if the application to the other state satisfied the
25 following:

- 26 (1) Was submitted in the other state within six months immediately
27 preceding the filing in this State and the applicant certifies the
28 information contained in the application for renewal is current.
29 (2) Contains information substantially similar to or more comprehensive
30 than that required in an application for renewal submitted in this State.
31 (3) Was signed by the applicant under penalty of perjury.

32 (f) A certificate of registration or a renewal of a registration is valid for one year.

33 (g) An application filed under this section is a 'public record' within the meaning
34 of Chapter 132 of the General Statutes.

35 **"§ 78C-91. Suspension; revocation; refusal to renew registration.**

36 (a) The Secretary of State may suspend, revoke, or refuse to renew a registration
37 for conduct that would have justified denial of registration under G.S. 78C-90(b).

38 (b) The Secretary of State may deny, suspend, revoke, or refuse to renew a
39 certificate of registration or licensure only after proper notice and an opportunity for a
40 hearing in accordance with the Administrative Procedures Act pursuant to Article 3 of
41 Chapter 150B of the General Statutes.

42 **"§ 78C-92. Temporary registration.**

43 The Secretary of State may issue a temporary certificate of registration while an
44 application for registration or renewal of registration is pending.

1 "§ 78C-93. Registration; renewal of fees.

2 An application for registration or renewal of registration must be accompanied by a
3 fee in the following amount:

- 4 (1) Application for registration \$200.00
- 5 (2) Application for registration based upon a certificate of registration or
6 licensure issued by another state 200.00
- 7 (3) Application for renewal of registration 200.00
- 8 (4) Application for renewal of registration based upon an application for
9 renewal of registration or licensure submitted in another state... 200.00.

10 "§ 78C-94. Required form of contract.

11 (a) An agency contract must be in a record, signed or otherwise authenticated by
12 the parties.

13 (b) An agency contract must state or contain the following:

- 14 (1) The amount and method of calculating the consideration to be paid by
15 the student-athlete for services to be provided by the athlete agent
16 under the contract and any other consideration the athlete agent has
17 received or will receive from any other source for entering into the
18 contract or for providing the services.
- 19 (2) The name of any person not listed in the application for registration or
20 renewal of registration who will be compensated because the
21 student-athlete signed the agency contract.
- 22 (3) A description of any expenses that the student-athlete agrees to
23 reimburse.
- 24 (4) A description of the services to be provided to the student-athlete.
- 25 (5) The duration of the contract.
- 26 (6) The date of execution.

27 (c) An agency contract must contain, in close proximity to the signature of the
28 student-athlete, a conspicuous notice in boldface type in capital letters stating:

29 **WARNING TO STUDENT-ATHLETE**

30 **IF YOU SIGN THIS CONTRACT:**

31 **(1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A**
32 **STUDENT-ATHLETE IN YOUR SPORT;**

33 **(2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS**
34 **AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR**
35 **ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR;**

36 **(3) YOU WAIVE YOUR ATTORNEY-CLIENT PRIVILEGE WITH**
37 **RESPECT TO THIS CONTRACT AND CERTAIN INFORMATION RELATED**
38 **TO IT; AND**

39 **(4) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER**
40 **SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT**
41 **REINSTATE YOUR ELIGIBILITY.**

42 (d) An agency contract that does not conform to this section is voidable by the
43 student-athlete. If a student-athlete voids an agency contract, the student-athlete is not

1 required to pay any consideration under the contract or to return any consideration
2 received from the athlete agent to induce the student-athlete to enter into the contract.

3 (e) The athlete agent shall give a record of the signed or otherwise authenticated
4 agency contract to the student-athlete at the time of execution.

5 **"§ 78C-95. Notice to educational institution.**

6 (a) Within 72 hours after entering into an agency contract or before the next
7 scheduled athletic event in which the student-athlete may participate, whichever occurs
8 first, the athlete agent shall give notice in a record of the existence of the contract to the
9 athletic director of the educational institution at which the student-athlete is enrolled or
10 the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.

11 (b) Within 72 hours after entering into an agency contract or before the next
12 athletic event in which the student-athlete may participate, whichever occurs first, the
13 student-athlete shall inform the athletic director of the educational institution at which
14 the student-athlete is enrolled that he or she has entered into an agency contract.

15 **"§ 78C-96. Student-athlete's right to cancel.**

16 (a) A student-athlete may cancel an agency contract by giving notice of the
17 cancellation to the athlete agent in a record within 14 days after the contract is signed.

18 (b) A student-athlete may not waive the right to cancel an agency contract.

19 (c) If a student-athlete cancels an agency contract, the student-athlete is not
20 required to pay any consideration under the contract or to return any consideration
21 received from the athlete agent to induce the student-athlete to enter into the contract.

22 **"§ 78C-97. Required records; waiver of attorney-client privilege.**

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

24 (1) The name and address of each individual represented by the athlete
25 agent.

26 (2) Any agency contract entered into by the athlete agent.

27 (3) Any direct costs incurred by the athlete agent in the recruitment or
28 solicitation of a student-athlete to enter into an agency contract.

29 (b) Records required to be retained by subsection (a) of this section are open to
30 inspection by the Secretary of State during normal business hours.

31 (c) Where a student-athlete enters into an agency contract regulated under this
32 Article, the student-athlete will be deemed to waive the attorney-client privilege with
33 respect to records required to be retained by subsection (a) of this section.

34 **"§ 78C-98. Prohibited conduct.**

35 (a) An athlete agent, with the intent to induce a student-athlete to enter into an
36 agency contract, shall not:

37 (1) Give any materially false or misleading information or make a
38 materially false promise or representation.

39 (2) Furnish anything of value to a student-athlete before the
40 student-athlete enters into the agency contract.

41 (3) Furnish anything of value to any individual other than the
42 student-athlete or another registered athlete agent.

43 (b) An athlete agent shall not intentionally:

- 1 (1) Initiate contact with a student-athlete unless the athlete agent is
2 registered under this Article.
- 3 (2) Refuse or fail to retain or permit inspection of the records required to
4 be retained by G.S. 78C-97.
- 5 (3) Fail to register as required by G.S. 78C-88.
- 6 (4) Provide materially false or misleading information in an application
7 for registration or renewal of registration.
- 8 (5) Predate or postdate an agency contract.
- 9 (6) Fail to notify a student-athlete before the student-athlete signs or
10 otherwise authenticates an agency contract for a particular sport that
11 the signing or authentication may make the student-athlete ineligible to
12 participate as a student-athlete in that sport.

13 **"§ 78C-99. Criminal penalties.**

14 An athlete agent who violates any provision under G.S. 78C-98(a) is guilty of a
15 Class I felony.

16 **"§ 78C-100. Civil remedies.**

17 (a) An educational institution has a right of action against an athlete agent or a
18 former student-athlete for damages caused by a violation of this Article. In an action
19 under this section, the court may award costs and reasonable attorneys' fees to the
20 prevailing party.

21 (b) Damages suffered by an educational institution under subsection (a) of this
22 section include losses and expenses incurred because, as a result of the conduct of an
23 athlete agent or former student-athlete, the educational institution was injured by a
24 violation of this Article or was penalized, disqualified, or suspended from participation
25 in athletics by: (i) a national association for the promotion and regulation of athletics;
26 (ii) an athletic conference; or (iii) reasonable self-imposed disciplinary action taken to
27 mitigate sanctions likely to be imposed by an athletic organization.

28 (c) A right of action under this section does not accrue until the educational
29 institution discovers, or by the exercise of reasonable diligence would have discovered,
30 the violation by the athlete agent or former student-athlete.

31 (d) Any liability of the athlete agent or the former student-athlete under this
32 section is several and not joint.

33 (e) This Article does not restrict rights, remedies, or defenses of any person
34 under law or equity.

35 **"§ 78C-101. Administrative penalty.**

36 The Secretary of State may assess a civil penalty against an athlete agent not to
37 exceed twenty-five thousand dollars (\$25,000) for a violation of this Article.

38 **"§ 78C-102. Uniformity of application and construction.**

39 In applying and construing this Uniform Act, consideration must be given to the
40 need to promote uniformity of the law with respect to its subject matter among states
41 that enact it.

42 **"§ 78C-103. Electronic Signatures in Global and National Commerce Act.**

43 The provisions of this Article governing the legal effect, validity, or enforceability of
44 electronic records or signatures, and of contracts formed or performed with the use of

1 those records or signatures, conform to the requirements of section 102 of the Electronic
2 Signatures in Global and National Commerce Act, Pub. L. 106-229, 114 Stat. 464
3 (2000), and supersede, modify, and limit the Electronic Signatures in Global and
4 National Commerce Act.

5 **"§ 78C-104. Severability.**

6 If any provision of this Article or its application to any person or circumstance is
7 held invalid, the invalidity does not affect other provisions or applications of this Article
8 which can be given effect without the invalid provision or application, and to this end
9 the provisions of this Article are severable.

10 **"§ 78C-105. Rules.**

11 The Secretary of State may, in accordance with Chapter 150B of the General
12 Statutes, adopt rules necessary to carry out the provisions of this Article."

13 **SECTION 3.** G.S. 78C-99 becomes effective December 1, 2003, and applies
14 to acts committed on and after that date. The rest of the act is effective when it becomes
15 law.