

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  
Fourth Edition Engrossed 7/15/03

Short Title: Uniform Athlete Agents Act.

(Public)

Sponsors:

Referred to:

March 27, 2003

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE LAWS REGULATING ATHLETE AGENTS AND TO  
ADOPT THE UNIFORM ATHLETE AGENTS ACT.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 8 of Chapter 78C of the General Statutes is repealed.

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

"Article 8A.

"Uniform Athlete Agents Act.

**"§ 78C-85. Title.**

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

**"§ 78C-86. Definitions.**

The following definitions apply in this Article:

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

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

(3) Athletic director. – An individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs

1           for male students and female students, the athletic program for males  
2           or the athletic program for females, as appropriate.

3           (4) Contact. – A communication, direct or indirect, between an athlete  
4           agent and a student-athlete to recruit or solicit the student-athlete to  
5           enter into an agency contract.

6           (5) Endorsement contract. – An agreement under which a student-athlete  
7           is employed or receives consideration to use on behalf of the other  
8           party any value that the student-athlete may have because of publicity,  
9           reputation, following, or fame obtained because of athletic ability or  
10           performance.

11           (6) Intercollegiate sport. – A sport played at the collegiate level for which  
12           eligibility requirements for participation by a student-athlete are  
13           established by a national association for the promotion or regulation of  
14           collegiate athletics.

15           (7) Person. – An individual, company, corporation, partnership,  
16           association, or any other legal or commercial entity.

17           (8) Professional-sports-services contract. – An agreement under which an  
18           individual is employed or agrees to render services as a player on a  
19           professional sports team, with a professional sports organization, or as  
20           a professional athlete.

21           (9) Record. – Information that is inscribed on a tangible medium or that is  
22           stored in an electronic or other medium and is retrievable in  
23           perceivable form.

24           (10) Registration. – A certificate issued by the Secretary of State  
25           evidencing that a person has satisfied the requirements of an athlete  
26           agent pursuant to this Article.

27           (11) Student-athlete. – An individual who engages in, is eligible to engage  
28           in, or may be eligible in the future to engage in any intercollegiate  
29           sport. If an individual is permanently ineligible to participate in a  
30           particular intercollegiate sport, the individual is not a student-athlete  
31           for purposes of that sport.

32 **"§ 78C-87. Service of process; subpoenas.**

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

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

38 **"§ 78C-88. Athlete agents; registration required; exceptions; void contracts.**

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

42           (b) Before being issued a certificate of registration, an individual may act as an  
43           athlete agent in this State for all purposes except signing an agency contract if: (i) a  
44           student-athlete or another person acting on behalf of the student-athlete initiates

1 communication with the individual; and (ii) within seven days after an initial act as an  
2 athlete agent, the individual submits an application for registration as an athlete agent in  
3 this State.

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

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

11 **"§ 78C-89. Registration as athlete agent; form; requirements.**

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

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

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

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

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

23 a. Formal training as an athlete agent.

24 b. Practical experience as an athlete agent.

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

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

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

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

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

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

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

43 (9) Whether there has been any administrative or judicial determination  
44 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 SHALL 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 SHALL 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 (f) The waiver of attorney-client privilege does not affect those privileges  
6 between client and attorney when the attorney is not an athlete agent.

7 **"§ 78C-95. Notice to educational institution.**

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

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

17 **"§ 78C-96. Student-athlete's right to cancel.**

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

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

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

24 **"§ 78C-97. Required records; waiver of attorney-client privilege.**

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

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

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

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

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

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

37 **"§ 78C-98. Prohibited conduct.**

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

40 (1) Give any materially false or misleading information or make a  
41 materially false promise or representation.

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

- 1           (3) Furnish anything of value to any individual other than the  
2           student-athlete or another registered athlete agent.
- 3       (b) An athlete agent shall not intentionally:
- 4           (1) Initiate contact with a student-athlete unless the athlete agent is  
5           registered under this Article.
- 6           (2) Refuse or fail to retain or permit inspection of the records required to  
7           be retained by G.S. 78C-97.
- 8           (3) Fail to register as required by G.S. 78C-88.
- 9           (4) Provide materially false or misleading information in an application  
10           for registration or renewal of registration.
- 11           (5) Predate or postdate an agency contract.
- 12           (6) Fail to notify a student-athlete before the student-athlete signs or  
13           otherwise authenticates an agency contract for a particular sport that  
14           the signing or authentication shall make the student-athlete ineligible  
15           to participate as a student-athlete in that sport.

16 **"§ 78C-99. Criminal penalties.**

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

19 **"§ 78C-100. Civil remedies.**

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

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

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

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

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

38 **"§ 78C-101. Administrative penalty.**

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

41 **"§ 78C-102. Uniformity of application and construction.**

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



1 **"§ 78C-103. Electronic Signatures in Global and National Commerce Act.**

2 The provisions of this Article governing the legal effect, validity, or enforceability of  
3 electronic records or signatures, and of contracts formed or performed with the use of  
4 those records or signatures, conform to the requirements of section 102 of the Electronic  
5 Signatures in Global and National Commerce Act, Pub. L. 106-229, 114 Stat. 464  
6 (2000), and supersede, modify, and limit the Electronic Signatures in Global and  
7 National Commerce Act.

8 **"§ 78C-104. Severability.**

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

13 **"§ 78C-105. Rules.**

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

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