

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 865
SENATE BILL 463

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.

The following definitions apply in this Article:

- (1) 'Agent contract' means any contract or agreement under which an athlete authorizes an athlete agent to negotiate to solicit on behalf of the athlete with one or more professional sports teams for the employment of the athlete by one or more professional sports teams.
- (2) 'Athlete' means an individual who:
 - a. Seeks to be employed as a professional athlete;
 - b. Has never signed a contract for employment with a professional sports team; and
 - c. Is enrolled in a high school located within this State, or has been admitted to an institution of higher education located within this State.

Execution of a personal service contract with the owner or prospective owner of a professional sports team for the purpose of future athletic services is equivalent to signing a contract for employment with a professional sports team.
- (3) '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.
- (4) 'Financial services contract' means any contract or agreement under which an athlete authorizes an athlete agent to provide financial services for the athlete, including the making and execution of investment and other financial decisions by the agent on behalf of the athlete. Excluded from this definition are financial services contracted for by the athlete directly with banks, securities dealers, and other financial institutions.

- (5) 'Person' means an individual, a company, a corporation, an association, a partnership, or another legal entity.

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

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

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

- (1) The name of the applicant and the address of the applicant's principal place of business;
- (2) The business or occupation engaged in by the applicant for the five years immediately preceding the date of application;
- (3) A description of the applicant's formal training, practical experience, and educational background relating to the applicant's professional activities as an athlete agent;
- (4) If requested by the Secretary of State, the names and addresses of five professional references; and
- (5) The names and addresses of all persons, except bona fide employees on stated salaries, that are financially interested as partners, associates, or profit sharers in the operation of the business of the athlete agent, except that an application for registration or renewal by any member of the North Carolina State Bar must state only the names and addresses of those persons that are involved in the activities of the athlete agent and is not required to state the names and addresses of all persons who may be financially interested as members of a law firm or professional corporation but who do not become involved in the business of the athlete agent.

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

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

(e) A registered athlete agent may renew the registration by filing a renewal application in the form prescribed by the Secretary of State, accompanied by the

renewal fee. The renewal application must include the information prescribed by the Secretary of State, which shall include:

- (1) The names and addresses of all athletes for whom the athlete agent is providing professional services as an athlete agent for compensation at the time of the renewal; and
- (2) The names and addresses of all athletes not currently represented by the athlete agent for whom the athlete agent has performed professional services as an athlete agent for compensation during the three years preceding the date of the application.

(f) The fee for issuing a certificate of registration or renewing a registration is two hundred dollars (\$200.00). The fee is payable when an application for a certificate or the renewal of a certificate is filed and is not refundable to the applicant if the certificate or renewal is denied. No fee is imposed for a temporary certificate of registration.

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

(h) Before the issuance or renewal of a certificate of registration, an athlete agent that enters into a financial services contract with an athlete must deposit with the Secretary of State a surety bond in the sum of one hundred thousand dollars (\$100,000), payable to the State and conditioned that the person applying for the registration will comply with this Article, will pay all amounts due any individual or group of individuals when the person or the person's representative or agent has received those amounts, and will pay all damages caused to any athlete by reason of the intentional misrepresentation, fraud, deceit, or any unlawful or negligent act or omission by the registered athlete agent or the agent's representative or employee while acting within the scope of the financial services contract. The athlete agent shall maintain the bond until two years after the date on which the athlete agent ceases to engage in the provision of financial services for an athlete. This subsection does not limit the recovery of damages to the amount of the surety bond.

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

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

(k) The registration requirements of this section do not apply to a North Carolina licensed and resident attorney who:

- a. Neither advertises directly for, nor 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 two athletes.

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

(a) The Secretary of State may suspend, deny, or revoke a certificate of registration issued under this Article for a violation of this Article or rule adopted under this Article or may take other disciplinary action. Chapter 150B of the General Statutes governs the denial, suspension, or revocation of a certificate of registration.

(b) The Secretary of State in his discretion:

- (1) May make such public or private investigations within or outside of this State as he deems necessary to determine whether any person has violated or is about to violate any provision of this Article or any rule or order hereunder, or to aid in the enforcement of this Article or in the prescribing of rules and forms hereunder;
- (2) May require or permit any person to file a statement in writing, under oath or otherwise as the Secretary of State determines, as to all the facts and circumstances concerning the matter to be investigated;
- (3) May publish information concerning any violation of this Article or any rule or order hereunder; and
- (4) May designate employees of the Office of Secretary of State as investigators to implement the provisions of this Article. Investigators may serve and execute notices, orders, or demands issued by the Secretary of State for the surrender of registrations or relating to any administrative proceeding.

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

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

(e) The Secretary of State may act under subsection (c) or apply under subsection (d) to enforce subpoenas in this State at the request of a governmental agency of another state that administers sports law if the alleged activities constituting a violation for which the information is sought would be a violation of this Article or any rule hereunder if the alleged activities had occurred in this State.

"§ 78C-74. Disposition of fees.

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

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

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

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

NOTICE TO CLIENT

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

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

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

(c) Each athlete agent shall file a memorandum of contract for each agent contract and financial services contract with the Secretary of State and the athlete's high school principal or the athletic director of the institution of higher learning to which the athlete is admitted. A memorandum of contract shall include the date of the contract, the name and address of the athlete, the name and address of the athlete agent, the name and address of the employer, the date of the memorandum of contract, and the signature of the athlete agent. The athlete agent must file the memorandum of contract with the Secretary of State and the educational institution within five days after the date the contract is signed by the athlete.

(d) An athlete may cancel an agent contract or a financial services contract before the expiration of the 16th day after the contract is signed, or an executed copy of the contract is delivered to the athlete and the memorandum of contract is filed with the school, whichever is later, by notifying the athlete agent of the cancellation in writing.

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

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

(b) An athlete agent may not:

- (1) Publish or cause to be published any false, fraudulent, or misleading information, representation, notice, or advertisement or give any false information or make any false promises or representations concerning any employment to any person;
- (2) Divide fees with or receive compensation from a professional sports league or franchise or its representative or employee;
- (3) Enter into any agreement, written or oral, by which the athlete agent offers anything of value to any employee of a high school or of an institution of higher education located in this State in return for the referral of any clients by that employee;

- (4) Offer anything of value, excluding reasonable entertainment expenses and transportation expenses to and from the athlete agent's registered principal place of business, to induce an athlete to enter into an agreement by which the athlete agent will represent the athlete; or
- (5) Except as provided by G.S. 78C-77, directly contact an athlete to discuss the athlete agent's representation of the athlete in the marketing of the athlete's athletic ability or reputation or the provision of financial services by the athlete agent, or enter into any agreement, written or oral, by which the athlete agent will represent the athlete, until after completion of the athlete's last high school or intercollegiate contest, including postseason games, and may not enter into an agreement before the athlete's last high school or intercollegiate contest that purports to take effect at a time after that contest is completed.

(c) This Article does not prohibit or limit an athlete agent from sending to an athlete written materials relating to the professional credentials of the agent or to specific services offered by the agent relating to the representation of an athlete in the marketing of an athlete's athletic ability or reputation or to the provision of financial services by the agent to the athlete. This Article does not prohibit an athlete or the athlete's parents, legal guardians, or other advisors from contacting and interviewing an athlete agent to determine that agent's professional proficiency in the representation of an athlete, in the marketing of the athlete's athletic ability or reputation, or the provision of financial services by the agent on behalf of the athlete.

"§ 78C-77. Permitted contacts with certain athletes.

An athlete agent must give prior written notice of his intention to contact an athlete with respect to representing the athlete as an athlete agent to the athletic director of the institution of higher education, or to the principal of the high school in which the athlete is enrolled. All such contact shall strictly adhere to the rules of each separate institution with regard to the time, place, and duration of the athlete agent's contact.

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

(a) In any civil action brought based upon a violation of G.S. 78C-72(a) or G.S. 78C-76, the relief granted by the court may include the following:

- (1) Forfeiture of any right of repayment the athlete agent may otherwise have for anything of value either received by an athlete as an inducement to enter into any agent contract or financial services contract or received by an athlete before completion of the athlete's last high school or intercollegiate contest;
- (2) A refund of any consideration paid to the athlete agent on an athlete's behalf; or
- (3) Reasonable attorney's fees and court costs incurred by an injured party.

(b) Any agent contract or financial services contract that is negotiated by an athlete agent who has failed to comply with this Article is voidable at the option of the injured party.

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

(d) The Secretary of State may refer such evidence as is available concerning violations of this Article or of any rule or order hereunder to the proper district attorney, who may, with or without such a reference, institute the appropriate criminal proceedings under this Article. Upon receipt of such reference, the district attorney may request that a duly employed attorney of the Secretary of State assist in the prosecution of such violation or violations on behalf of the State.

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

"§ 78C-79. Civil penalty.

(a) The Secretary of State may issue an order against an applicant, registered person, or other person who willfully violates this Article or a rule or order of the Secretary of State under this Article, imposing a civil penalty up to a maximum of two thousand five hundred dollars (\$2,500) for a single violation or of twenty-five thousand dollars (\$25,000) for multiple violations in a single proceeding or a series of related proceedings. In determining the amount of penalty to be imposed, the Secretary shall consider, among other factors, the egregiousness of the violation, the degree and extent of any harm caused by the violation, the prior record of the violator in complying or failing to comply with this Article or similar laws of other states, and the amount of any monetary gain received as a result of the violation.

(b) Chapter 150B of the General Statutes governs the imposition of a civil penalty under this section.

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

"§ 78C-80. Records.

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

- (1) The name and address of each athlete employing the athlete agent, the amount of any fees received from the athlete, and the specific services performed on behalf of the athlete; and
- (2) All travel and entertainment expenditures incurred by the athlete agent, including food, beverages, maintenance of a hospitality room, sporting events, theatrical and musical events, and any transportation, lodging, or admission expenses incurred in connection with the entertainment.

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

- (1) The nature of the expenditure;
- (2) The dollar amount of the expenditure;
- (3) The purpose of the expenditure;
- (4) The date and place of the expenditure; and
- (5) Each person on whose behalf the expenditure was made.

"§ 78C-81. Rules.

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

Sec. 2. (a) This act shall become effective September 1, 1990.

(b) An athlete agent is not required to be registered and is not required to comply with this act until January 1, 1991.

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

- (1) The names and addresses of all athletes for whom the applicant is providing professional services regulated under this Article for compensation on the date the application is filed; and
- (2) The names and addresses of all athletes not currently represented by the athlete agent for whom the athlete agent has performed professional services for compensation during the three years preceding the date of the application.

In the General Assembly read three times and ratified this the 9th day of July, 1990.