

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 224
PROPOSED COMMITTEE SUBSTITUTE S224-PCS75176-RN-23

Short Title: Professional Sports Agents/College Athletes.

(Public)

Sponsors:

Referred to:

March 7, 2011

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE OUT-OF-STATE APPLICANTS AS ATHLETE AGENTS TO FILE
2 A NORTH CAROLINA APPLICATION; TO CHANGE BONDING REQUIREMENTS
3 FOR ATHLETE AGENTS; TO STRENGTHEN EXISTING ATHLETE SIGNATURE
4 REQUIREMENTS BY REQUIRING NOTARIZED SIGNATURES ON STUDENT-
5 ATHLETE CONTRACTS; TO CLARIFY RECORD-KEEPING REQUIREMENTS; TO
6 EXPAND REQUIREMENTS FOR RECORDS ACCESS FOR THE SECRETARY OF
7 STATE; TO REQUIRE ATHLETE AGENTS TO PROVIDE SIGNED CONTRACTS
8 FOR STUDENT-ATHLETES TO THE SECRETARY OF STATE WITHIN A CERTAIN
9 TIME PERIOD; TO REQUIRE ATHLETE AGENTS TO PROVIDE THE SECRETARY
10 OF STATE WITH NOTARIZED CONTRACTS REGARDING STUDENT-ATHLETES
11 BY A PERSON OTHER THAN AN EDUCATIONAL INSTITUTION EMPLOYEE,
12 FAMILY MEMBER, OR INDIVIDUAL ACTING SOLELY ON BEHALF OF A
13 PROFESSIONAL SPORTS TEAM OR ORGANIZATION WHERE THE
14 CONTRACTING PERSON MAY HAVE AN EXPECTATION OF BENEFIT; TO
15 CLARIFY THE PROHIBITION ON ATHLETE AGENTS PROVIDING THINGS OF
16 VALUE TO STUDENT-ATHLETES BEFORE THE STUDENT-ATHLETES HAVE
17 SIGNED CONTRACTS WITH THE ATHLETE AGENTS.

18 The General Assembly of North Carolina enacts:

19 **SECTION 1.** Article 9 of Chapter 78C of the General Statutes reads as rewritten:

20 "Article 9.

21 "Uniform Athlete Agents Act.

22 **"§ 78C-85. Title.**

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

24 ...

25 **"§ 78C-89. Registration as athlete agent; form; requirements.**

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

31 ...

32 (b) ~~An individual who has submitted an application for registration or licensure as an~~
33 ~~athlete agent in another state or who holds a certificate of registration or licensure as an athlete~~
34



1 agent in another state may submit a copy of the application and certificate in lieu of submitting
2 an application in the form prescribed pursuant to subsection (a) of this section. The Secretary of
3 State shall accept the application and the certificate from the other state as an application for
4 registration in this State if the application to the other state satisfied all of the following criteria:

- 5 (1) ~~Was submitted in the other state within six months immediately preceding~~
6 ~~the submission of the application in this State and the applicant certifies that~~
7 ~~the information contained in the application is current.~~
- 8 (2) ~~Contains information substantially similar to or more comprehensive than~~
9 ~~that required in an application submitted in this State.~~
- 10 (3) ~~Was signed by the applicant under penalty of perjury.~~

11 An applicant for registration as an athlete agent in North Carolina pursuant to G.S. 78C-88
12 shall submit with the application a satisfactory cash bond or proof of establishment of a trust
13 account in that amount with a licensed and insured bank or savings institution located in the
14 State of North Carolina. The bond or trust account shall be in favor of the State of North
15 Carolina. If a trust account is established, the applicant shall include with the application two
16 copies of the formal notification by the depository that the trust account is established. Any
17 bond shall be delivered by the Secretary of State to the Treasurer of the State of North Carolina
18 to be maintained in an interest-bearing special fund. The amount of the cash bond or trust
19 account shall be:

- 20 (1) Fifty thousand dollars (\$50,000) to be submitted with the applicant's initial
21 application for registration as an athlete agent in North Carolina;
- 22 (2) An additional twenty-five thousand dollars (\$25,000) to be submitted with
23 the applicant's first renewal application for registration as an athlete agent in
24 North Carolina; and
- 25 (3) An additional twenty-five thousand dollars (\$25,000) to be submitted with
26 the applicant's second renewal application for registration as an athlete agent
27 in North Carolina.

28 At no time shall the total cash bond or trust account principal exceed one hundred thousand
29 dollars (\$100,000) for an individual athlete agent.

30 (b1) The cash bond shall be returnable to the athlete agent six months after the athlete
31 agent ceases to be a registered North Carolina athlete agent or the Secretary of State has denied
32 the application for registration or renewal, unless the Secretary of State has been notified of
33 pending legal action against the agent by an educational institution pursuant to G.S. 78C-100.
34 The bond or trust account shall be available to satisfy any award or judgment to the educational
35 institution arising from the athlete agent's violation of this Article. The Treasurer of the State of
36 North Carolina or the bank or savings institution holding the trust account shall release the
37 principal and interest accrued on the cash bond or trust account only upon receipt of a court
38 order directing release or upon certification by the Secretary of State that no notice of pending
39 legal action has been received pursuant to this section from an educational institution.

40 (c) An application filed under this section is a "public record" within the meaning of
41 Chapter 132 of the General Statutes.

42 ...

43 **"§ 78C-94. Required form of contract.**

44 (a) An agency contract must be in a record, signed or otherwise authenticated by the
45 parties. The student-athlete's signature shall be acknowledged before a notary public.

46 ...

47 **"§ 78C-97. Required records; waiver of attorney-client privilege.**

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

- 49 (1) The name and address of each individual represented by the athlete agent.
- 50 (2) Any agency contract entered into by the athlete agent.

- 1 (3) Any ~~direct costs~~ expenses incurred by the athlete agent-agent, or any person
2 acting at the direction of the athlete agent, in the recruitment or solicitation
3 of a student-athlete to enter into an agency contract.
- 4 (4) A list of all other athlete agents affiliated with the athlete agent, employees
5 of the athlete agent, and all persons acting at the direction of the athlete
6 agent in the recruitment or solicitation of student-athletes to enter into
7 agency contracts.
- 8 (5) A list of all telephone numbers, including records for each number showing
9 all incoming and outgoing communications, used by the athlete agent, or any
10 person acting at the direction of the athlete agent, in the recruitment or
11 solicitation of a student-athlete to enter into an agency contract.
- 12 (6) All checkbooks, bank statements, canceled checks, and credit card
13 statements for all accounts used by the athlete agent, or any person acting at
14 the direction of the athlete agent, in the recruitment or solicitation of a
15 student-athlete to enter into an agency contract.
- 16 (7) Originals or copies of all written communications sent by the athlete agent,
17 or any person acting at the direction of the athlete agent, to a student-athlete
18 or to any other person to recruit or solicit a student-athlete to enter into an
19 agency contract.
- 20 (8) A record of all communications between an athlete agent, or any person
21 acting at the direction of the athlete agent, with a student-athlete or any
22 person for the purpose of recruiting or soliciting a student-athlete to enter
23 into an agency contract.
- 24 (9) Any other record the Secretary of State by rule prescribes.

25 For purposes of subdivisions (a)(7) and (8) of this subsection, "communication" includes all
26 oral communication and written communication. Written communications include handwritten
27 correspondence, printed correspondence, mailings, text messages, and electronic
28 communications, such as e-mails and communications through social and professional
29 networking sites.

30 (b) Records required to be retained by subsection (a) of this section are open to
31 inspection by the Secretary of State during normal business hours. An athlete agent shall
32 deliver within 10 business days any records required to be retained by subsection (a) of this
33 section if requested by the Secretary of State or the Secretary's designee.

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

37 (d) Within five business days after entering into an agency contract with an individual
38 who was a student-athlete at an educational institution located in this State, the athlete agent
39 shall provide a copy of the executed agency contract to the Secretary of State. This requirement
40 shall only apply to former student-athletes entering into their first agency contract.

41 (e) Within five business days after being contacted by a person, who may have an
42 expectation of direct gain or profit or reimbursement of expenses from the agency contract,
43 regarding a student-athlete at an educational institution located in this State, the athlete agent
44 shall notify the Secretary of State in writing. The notification shall state the person's name, the
45 person's contact information, the identity of the student-athlete, the method of communication,
46 and the date of the communication. This requirement shall not apply if the person contacting
47 the athlete agent is the student-athlete, spouse, parent, sibling, or guardian of the
48 student-athlete, or employed by the educational institution. Information provided to the
49 Secretary of State pursuant to this subsection is protected by G.S. 132-1.2(1) from disclosure as
50 a public record.

51 **"§ 78C-98. Prohibited ~~conduct~~conduct of athlete agents.**

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

17 **"§ 78C-98.1. Prohibited conduct of non-athlete agents.**

- 18 (a) A person shall not:
19 (1) Furnish anything of value to a student-athlete or a student-athlete's spouse,
20 parent, child, sibling, or guardian before the student-athlete enters into an
21 agency contract; and
22 (2) Advise, influence, guide, recommend, encourage, oppose, or discourage the
23 student-athlete's selection of a specific athlete agent with the expectation of
24 profit, compensation, salary, gratuity, or benefit in any form.
25 (b) Nothing in this section shall prevent a spouse, parent, sibling, grandparent, or
26 guardian of a student-athlete or an educational institution which the student-athlete attends
27 from furnishing anything of value to the student-athlete.

28 ...
29 **"§ 78C-101. Administrative penalty.**

30 The Secretary of State may assess a civil penalty against ~~an athlete agent~~ any person in an
31 amount not to exceed less than ten thousand dollars (\$10,000) nor more than twenty-five
32 thousand dollars (\$25,000) for a each violation of the provisions of this Article. The Secretary
33 of State may also seek injunctive relief or any other relief available by law to enforce the
34 provisions of this Article."

35 **SECTION 2.** This act becomes effective December 1, 2011, and applies to
36 contracts entered into or offenses committed on or after that date.