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SENATE BILL DRS35101-MT-66

Short Title: Authorize NIL Agency Contracts. (Public)

Sponsors: Senators Galey, Brinson, and Corbin (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED
AN ACT TO AUTHORIZE NAME, IMAGE, AND LIKENESS AGENCY CONTRACTS AND
TO EXEMPT CERTAIN NAME, IMAGE, AND LIKENESS CONTRACTS FROM
PUBLIC RECORDS REQUIREMENTS.

The General Assembly of North Carolina enacts:

**PART I. AUTHORIZATION FOR NAME, IMAGE, AND LIKENESS AGENCY
CONTRACTS**

SECTION 1.(a) Article 9 of Chapter 78C of the General Statutes reads as rewritten:

"Article 9.

"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 ~~at either of the following:~~
 - a. ~~A professional-sports-services contract or an endorsement contract.~~
 - b. ~~An NIL 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 for male students and female students, the athletic program for males or the athletic program for females, as appropriate.
- (4) Contact. – A communication, direct or indirect, between an athlete agent and a student-athlete to recruit or solicit the student-athlete to enter into an agency contract.



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- (5) ~~Endorsement contract. — An agreement under which a student-athlete is employed or receives consideration to use on behalf of the other party any value that the student-athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance.~~
- (6) Intercollegiate sport. — A sport played at the collegiate level for which eligibility requirements for participation by a student-athlete are established by a national association for the promotion or regulation of collegiate athletics.
- (6a) Name, image, and likeness (NIL) agency contract. — An agreement in which a student-athlete authorizes a person to negotiate or solicit an NIL contract on behalf of the student-athlete.
- (6b) Name, image, and likeness (NIL) contract. — A contract between a student-athlete and another entity in which the student-athlete receives consideration in exchange for use of the student-athlete's name, image, or likeness.
- (7) Person. — An individual, company, corporation, partnership, association, or any other legal or commercial entity.
- (7a) Professional-sports-services agency contract. — An agreement in which a student-athlete authorizes a person to negotiate or solicit a professional-sports-services contract on behalf of the student-athlete.
- (8) Professional-sports-services contract. — An agreement under which an individual is employed or agrees to render services as a player on a professional sports team, with a professional sports organization, or as a professional athlete.
- (9) Record. — Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (10) Registration. — A certificate issued by the Secretary of State evidencing that a person has satisfied the requirements of an athlete agent pursuant to this Article.
- (11) Student-athlete. — An individual who engages in, is eligible to engage in, or may be eligible in the future to engage in any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student-athlete for purposes of that sport.

...

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

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

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

(c) ~~A~~ Except as prohibited in G.S. 78C-98(c), a North Carolina licensed and resident attorney may act as an athlete agent in this State for all purposes without registering pursuant to this section if the attorney neither advertises directly for, nor solicits, any student-athlete by representing to any person that the attorney has special experience or qualifications with regard to representing student-athletes and represents no more than two student-athletes.

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

...

"§ 78C-94. Required form of contract.

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

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

(1) The amount and method of calculating the consideration to be paid by the student-athlete for services to be provided by the athlete agent under the contract and any other consideration the athlete agent has received or will receive from any other source for entering into the contract or for providing the services.

(2) The name of any person not listed in the application for registration or renewal of registration who will be compensated because the student-athlete signed the agency contract.

(3) A description of any expenses that the student-athlete agrees to reimburse.

(4) A description of the services to be provided to the student-athlete.

(5) The duration of the contract.

(6) The date of execution.

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

WARNING TO STUDENT-ATHLETE

IF YOU SIGN THIS CONTRACT:

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

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

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

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

(c1) An NIL agency contract must contain, in close proximity to the signature of the student-athlete, a conspicuous notice in boldface type in capital letters stating:

WARNING TO STUDENT-ATHLETE

CONSULT WITH YOUR INSTITUTION OF HIGHER EDUCATION PRIOR TO ENTERING INTO ANY NIL CONTRACT. ENTERING INTO AN NIL CONTRACT THAT CONFLICTS WITH STATE LAW OR YOUR INSTITUTION'S POLICIES MAY HAVE NEGATIVE CONSEQUENCES, SUCH AS LOSS OF ATHLETIC ELIGIBILITY. YOU MAY CANCEL THIS NIL AGENCY CONTRACT WITHIN 14 DAYS AFTER SIGNING IT.

(d) An agency contract that does not conform to this section is voidable by the student-athlete. If a student-athlete voids an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

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

(f) The waiver of attorney-client privilege does not affect those privileges between client and attorney when the attorney is not an athlete agent.

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

(a) Within 72 hours after entering into ~~an~~ a professional-sports-services agency contract or before the next scheduled athletic event in which the student-athlete may participate,

1 whichever occurs first, the athlete agent shall give notice in a record of the existence of the
2 professional-sports-services agency contract to the athletic director of the educational institution
3 at which the student-athlete is enrolled or the athlete agent has reasonable grounds to believe the
4 student-athlete intends to enroll.

5 (b) Within 72 hours after entering into ~~an~~ a professional-sports-services agency contract
6 or before the next athletic event in which the student-athlete may participate, whichever occurs
7 first, the student-athlete shall inform the athletic director of the educational institution at which
8 the student-athlete is enrolled that he or she has entered into ~~an~~ a professional-sports-services
9 agency contract.

10 ...

11 **"§ 78C-98. Prohibited conduct.**

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

14 (1) Give any materially false or misleading information or make a materially false
15 promise or representation.

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

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

20 (b) An athlete agent shall not intentionally:

21 (1) Initiate contact with a student-athlete unless the athlete agent is registered
22 under this Article.

23 (2) Refuse or fail to retain or permit inspection of the records required to be
24 retained by G.S. 78C-97.

25 (3) Fail to register as required by G.S. 78C-88.

26 (4) Provide materially false or misleading information in an application for
27 registration or renewal of registration.

28 (5) Predate or postdate an agency contract.

29 (6) Fail to notify a student-athlete before the student-athlete signs or otherwise
30 authenticates an agency contract for a particular sport that the signing or
31 authentication shall make the student-athlete ineligible to participate as a
32 student-athlete in that sport.

33 (c) If an athlete agent is currently or was within the prior two years employed or in a
34 contractual relationship with an educational institution, the following shall apply:

35 (1) The athlete agent shall not enter into an NIL agency contract with a
36 student-athlete who is enrolled in that educational institution.

37 (2) An NIL agency contract is void if, following entry into an NIL agency
38 contract, a student-athlete enrolls in that educational institution.

39"

40 **SECTION 1.(b)** This section is effective when it becomes law and applies to NIL
41 agency contracts entered into on or after that date.

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43 **PART II. PUBLIC RECORDS EXEMPTION FOR CERTAIN NAME, IMAGE, AND**
44 **LIKENESS CONTRACTS**

45 **SECTION 2.(a)** G.S. 132-1.2 reads as rewritten:

46 **"§ 132-1.2. Confidential information.**

47 Nothing in this Chapter shall be construed to require or authorize a public agency or its
48 subdivision to disclose any information that:

49 ...

50 (11) Reveals records related to a student-athlete's name, image, and likeness
51 contract, as defined by G.S. 78C-86(6b), with a third party that only came into

1 the possession of an institution of higher education, as defined by
2 G.S. 116-143.1(a)(3), for the purpose of reviewing for compliance with
3 federal law, State law, institutional policies, or policies of an intercollegiate
4 sports association, organization, or conference."

5 **SECTION 2.(b)** This section is effective when it becomes law and applies
6 retroactively to all records related to a student-athlete's name, image, and likeness contract ever
7 in the possession of the institution of higher education.

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9 **PART III. EFFECTIVE DATE**

10 **SECTION 3.** Except as otherwise provided, this act is effective when it becomes
11 law.