

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 878

Short Title: Regulate Athlete Agents.

(Public)

Sponsors: Senator Murphy.

Referred to: Judiciary III.

April 17, 1989

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE REGULATION OF ATHLETE AGENTS.

The General Assembly of North Carolina enacts:

Section 1. The North Carolina General Statutes are amended by adding a new Chapter to read:

**“CHAPTER 84A.**

**“ATHLETE AGENTS REGULATORY ACT.**

**“§ 84A-1. Short title.**

This act shall be known and may be cited as the North Carolina Athlete Agents Regulatory Act.

**“§ 84A-2. Definitions.**

As used in this Article, unless the context requires otherwise:

- (1) ‘Agent contract’ means any contract or agreement pursuant to which an athlete authorizes or empowers an athlete agent to negotiate or 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, or to negotiate or solicit on behalf of the athlete for the employment of the athlete as a professional athlete.
- (2) ‘Athlete’ means any person who is employed or seeks to be employed under a professional sports services contract with a professional sports team or as a professional athlete.
- (3) ‘Athlete agent’ means any person who, as an independent contractor, directly or indirectly recruits or solicits any athlete to enter into any agent contract or professional sports services contract, or for a fee

1 procures, offers, promises, or attempts to obtain employment for any  
2 athlete with a professional sports team or as a professional athlete.  
3 Athlete agent shall include any member of the State Bar of North  
4 Carolina or other jurisdictions when advising athlete clients and when  
5 attempting to negotiate a professional sports services contract for a  
6 client. Athlete agent does not include any employee or other  
7 representative of a professional sports team.

8 (4) 'Commission' means the Athlete Agent Regulatory Commission.

9 (5) 'Person' means any individual, company, corporation, association,  
10 partnership, or their agents or employees.

11 (6) 'Player associations or organizations' means any contract or agreement  
12 pursuant to which an athlete is employed or agrees to render services  
13 as a player on a professional sports team or as a professional athlete.

14 **"§ 84A-3. Athlete Agent Regulatory Commission.**

15 (a) There is hereby created the Athlete Agent Regulatory Commission. The  
16 Commission shall consist of \_\_\_\_\_ members to be appointed as follows:

17 (1) The Governor shall appoint one Commission member;

18 (2) The President Pro Tempore of the Senate shall appoint one  
19 Commission member;

20 (3) The Speaker of the House of Representatives shall appoint one  
21 Commission member;

22 (4) One person shall be appointed by the Athletic Director at each North  
23 Carolina institution of higher education participating in the following  
24 conferences:

25 a. Atlantic Coast Conference

26 b. Colonial Athletic Association

27 c. Mid-Eastern Athletic Conference

28 d. Southern Conference

29 e. Sun Belt Conference

30 (5) The N.C. High School Athletic Association shall collectively appoint  
31 one Commission member.

32 All members of the Commission shall be citizens of the United States and residents  
33 of North Carolina. The term of each Commission member shall be three years and  
34 Commission members may be eligible for reappointment, subject to the provisions of  
35 this Chapter. If a vacancy occurs on the Commission, the one who originally appointed  
36 such member shall appoint a successor who shall take office immediately and serve the  
37 remainder of the unexpired term. The Commission members and their successors shall  
38 have and exercise all the powers and authority vested by law in the Commission.

39 (b) The effective date of initial appointments shall be October 1, 1989.

40 (c) No person who has served two successive complete terms on the Commission  
41 shall be eligible for reappointment until after the lapse of one year. Appointment to fill  
42 an unexpired term is not to be considered as a complete term.

1       (d) Within 15 days after their appointment, the members of the Commission shall  
2 take an oath before any person lawfully authorized to administer oaths in this State to  
3 faithfully and impartially perform their duties as members of the Commission.

4       (e) The Governor shall remove from the Commission any member for neglect of  
5 duty or other just cause.

6       (f) The Commission shall elect annually a chairman, a vice-chairman and a  
7 secretary-treasurer from its members.

8       (g) A majority of the Commission shall constitute a quorum for the transaction of  
9 business.

10       (h) Each member of the Commission shall receive travel and per diem expenses  
11 in accordance with G.S. 93B-5.

12 **"§ 84A-4. Powers and duties of Commission.**

13       (a) The Commission may adopt, amend, and repeal such rules and regulations as  
14 are reasonably necessary for the purpose of enforcing and administering this Chapter.

15       (b) The Commission shall keep records of its proceedings, and, in any civil or  
16 criminal court proceeding arising out of or based upon any provision of this Chapter;  
17 copies of the Commission's records certified as correct by the Commission shall be  
18 admissible in evidence as tending to prove the content of the records.

19       (c) The Commission shall have printed and published for distribution an annual  
20 register which shall contain the names, arranged alphabetically, of all persons registered  
21 under this Chapter.

22       (d) The Commission may employ such personnel and arrange for such assistance,  
23 service, and supplies as it may require for the performance of its duties.

24       (e) The Commission may promulgate and amend rules and standards of conduct  
25 for athlete agents appropriate for the protection of the residents of the State. At least 60  
26 days prior to the promulgation of any such rule or amendment, the Commission shall  
27 mail copies of the proposed rule or amendment to all persons registered under this  
28 Chapter, with a notice advising them of the proposed effective date of the rule or  
29 amendment and requesting that they submit their comments thereon at least 15 days  
30 prior to such effective date; such comments shall be advisory only. Failure to receive  
31 by mail such rule, amendment or notice by all persons registered under this Chapter  
32 shall not affect the validity of any such rule or amendment.

33       (f) The State Auditor shall have audit oversight of the Commission pursuant to  
34 Article 5A of Chapter 147 of the General Statutes.

35 **"§ 84A-5. Registration required.**

36 No person shall engage in or carry on the occupation of an athlete agent either  
37 within the State or with a resident of the State without first registering with the  
38 Commission.

39 **"§ 84A-6. Application for registration.**

40       (a) A written application for registration shall be made to the Commission on the  
41 form prescribed by the Commission and shall state the following:

42               (1) The name of the applicant and address of the applicant's residence.

43               (2) The address where the business of the athlete agent is to be conducted.

1           (3) The business or occupation engaged in by the applicant for at least two  
2 years immediately preceding the date of application.

3           (4) Such biographical information on the applicant as may be deemed  
4 necessary by the Commission.

5       (b) The application for registration shall be accompanied by affidavits or  
6 certificates of completion of any and all formal training or practical experience in any  
7 one of the following specific areas: contracts; contract negotiation; complaint  
8 resolution; arbitration or civil resolution of contract disputes. In evaluating the  
9 applicant's qualifications, the Commission may consider any other relevant training,  
10 education, or experience to satisfy this requirement.

11       (c) Upon receipt of an application for registration, the Commission may evaluate  
12 and investigate the education, training, experience, and character of the applicant, and  
13 may examine the premises designated in the application to verify it to be the principal  
14 place of business in which the applicant proposes to conduct business as an athlete  
15 agent.

16 **"§ 84A-7. Registration.**

17       (a) Each registration shall contain the following:

18           (1) The name of the registrant;

19           (2) A designation of the address of the place in which the registrant is  
20 authorized to carry on business as an athlete agent; and

21           (3) The registration number and date of issuance of the registration.

22       (b) No registration shall apply to anyone other than the athlete agent to whom it  
23 is issued nor to any places other than those designated in the registration.

24 **"§ 84A-8. Denial of registration.**

25       (a) The Commission, by a majority of its members present and voting, may  
26 refuse to grant a registration upon proof that the applicant or his or her representative:

27           (1) Has made false or misleading statements of a material nature in his  
28 application for registration;

29           (2) Has ever misappropriated funds, or engaged in other specific acts such  
30 as embezzlement, theft or fraud, which would render him unfit to serve  
31 in a fiduciary capacity;

32           (3) Has engaged in such other conduct that significantly impacts adversely  
33 on his credibility, integrity or competence to serve in a fiduciary  
34 capacity;

35           (4) Has engaged in conduct which violates or causes a student-athlete to  
36 violate any rule or regulation promulgated by the National Collegiate  
37 Athletic Association governing student-athletes and their relationship  
38 with athlete agents;

39           (5) Is unwilling to swear or affirm that he will comply with such rules and  
40 standards of conduct for athlete agents as may be promulgated by the  
41 Commission.

42       (b) Notice of refusal to grant a registration shall be sent by registered mail or  
43 personal service setting forth the particular reasons for the refusal and fixing a date not  
44 less than 30 days nor more than 60 days from the date of such mailing or such service,

1 at which time the applicant shall be given an opportunity for a prompt and fair hearing.  
2 The written notice shall be sent to the applicant's last known address, but the  
3 nonappearance of the applicant shall not prevent such a hearing. The hearing shall be  
4 conducted by the Commission in accordance with Chapter 150B of the General Statutes.

5 On the basis of any hearing or upon default of an applicant, the Commission shall  
6 make a determination specifying its findings of fact and conclusions. A copy of such  
7 determination shall be sent by registered mail or served personally upon the applicant.  
8 The decision of the Commission denying the registration shall become final 30 days  
9 after so mailed or served unless within the 30-day period the applicant appeals the  
10 decision to the courts of this State in the same manner and subject to the same powers  
11 and conditions as now provided by law in regard to ruling, orders and findings of other  
12 quasi-judicial bodies in North Carolina. Unless otherwise provided by law, no such  
13 pending appeal, shall supersede the denial. All proceedings and evidence, together with  
14 exhibits presented at such hearings before the Commission in the event of appeal, are  
15 admissible in evidence in court.

16 (c) Every order and judgment of the Commission shall take effect immediately  
17 on its promulgation unless the Commission in such order or judgment fixes a  
18 probationary period for the applicant. Such order and judgment shall continue in effect  
19 unless upon appeal the courts by proper order or decree terminate it earlier. The  
20 Commission may make public its orders and judgments in such manner and form as it  
21 deems proper.

22 **"§ 84A-9. Revocation, suspension of registration.**

23 (a) The Commission is authorized to revoke or suspend the registration of an  
24 athlete agent for any violation of those items set forth in G.S. 84A-8.

25 (b) Prior to the revocation or suspension of the registration, the Commission shall  
26 follow such standards and procedures as are set forth in G.S. 84A-8.

27 (c) An athlete agent whose registration has been suspended or revoked may  
28 apply for reinstatement after a period of not less than three years from the date such  
29 suspension or revocation becomes effective. The Commission may, upon favorable  
30 action by a majority of the Commission present and voting, recommend such  
31 reinstatement.

32 **"§ 84A-10. Registration renewal.**

33 A registration shall be valid from July 1 of one year through June 30 of the  
34 following year. Renewal of a registration shall require the filing of an application for  
35 renewal, and a renewal bond, if applicable. The annual renewal fee shall be paid by the  
36 athlete agent at the time of filing such application.

37 **"§ 84A-11. Temporary registration.**

38 Whenever an application for registration or renewal is made and application  
39 processing pursuant to this Chapter has not been completed, the Commission may issue  
40 a temporary or provisional registration valid for a period not exceeding 90 days, and  
41 subject, where appropriate, to the automatic and summary revocation by the  
42 Commission.

43 **"§ 84A-12. Interested parties.**

1 All applications for registration or renewal shall state the names and addresses of all  
2 persons, except bona fide employees on stated salaries, financially interested either as  
3 partners, associates, or profit sharers, in the operation of the business of the athlete  
4 agent.

5 **"§ 84A-13. Commission fees and expenditures.**

6 (a) A filing fee shall be paid to the Commission at the time the application for  
7 issuance of an athlete agent registration is filed.

8 (b) In addition to the filing fee required for application for issuance of an athlete  
9 agent registration, every athlete agent shall pay an annual registration fee to the  
10 Commission at the time registration is obtained or renewed.

11 (c) The Commission shall set the fees required by this Chapter in the amount  
12 necessary to generate sufficient revenue to cover the costs of administration and  
13 enforcement of this Chapter.

14 (d) All fees collected pursuant to this Chapter shall be paid to the Commission  
15 and shall be used exclusively for the implementation of this Chapter.

16 **"§ 84A-14. Bond required.**

17 (a) An athlete agent shall deposit with the Commission prior to the issuance of a  
18 registration or renewal of a registration, a surety bond in the sum of fifty thousand  
19 dollars (\$50,000).

20 (b) For the purposes of this Chapter, a certificate from an insurance carrier  
21 stating that malpractice coverage in the minimum amount of fifty thousand dollars  
22 (\$50,000) is in place shall be considered equivalent to a surety bond. Evidence that  
23 such coverage is in full force and effect must be presented to the Commission upon such  
24 terms and conditions as the Commission may prescribe.

25 (c) For the purposes of this Chapter, a certificate of deposit payable to the  
26 Commission, or a savings account assigned to the Commission, in the amount of fifty  
27 thousand dollars (\$50,000) shall be considered equivalent to a surety bond, and shall be  
28 acceptable to the Commission upon such terms and conditions as the Commission may  
29 prescribe.

30 (d) Surety bonds shall be payable to the State of North Carolina and shall be  
31 conditioned that the person applying for the registration will comply with this Chapter  
32 and will pay all sums due any athlete or group of athletes when the person or his or her  
33 representative or agent has received such sums, and will pay all damages occasioned to  
34 any athlete by reason of intentional or unintentional misstatement, misrepresentation,  
35 fraud, deceit, or any unlawful or negligent acts or commissions or omissions of the  
36 registered athlete agent, or his or her representatives or employees while acting within  
37 the scope of their employment.

38 (e) Nothing in this section shall be construed to limit the recovery of damages to  
39 the amount of the surety bond, malpractice coverage, certificate of deposit, or savings  
40 account.

41 (f) If any registrant fails to comply with this section, the registration issued to the  
42 athlete agent shall be suspended until such time as new coverage is obtained. An athlete  
43 agent whose registration is suspended pursuant to this section shall not carry on  
44 business as an athlete agent during the period of the suspension.

1 **"§ 84A-15. Certificate of convenience.**

2 (a) The Commission may issue to an eligible person a certificate of convenience  
3 to conduct business as an athlete agent where the person registered to conduct the  
4 athlete agent business has died, or has been declared incompetent by the judgment of a  
5 court of competent jurisdiction, or has had a conservator appointed for his or her estate  
6 by a court of competent jurisdiction. The certificate of convenience may be  
7 denominated an estate certificate of convenience.

8 (b) To be eligible for a certificate of convenience, a person must be one of the  
9 following:

10 (1) The executor or administrator of the estate of a deceased person  
11 registered to conduct the business of an athlete agent;

12 (2) If no executor or administrator has been appointed, the surviving  
13 spouse or heir otherwise entitled to conduct the business of the  
14 deceased registrant; or

15 (3) The guardian of the estate of an incompetent person registered as an  
16 athlete agent, or the conservator appointed for the conservation of the  
17 estate of a person registered to conduct the business of an athlete  
18 agent.

19 (c) The estate certificate of convenience shall continue in force for a period not to  
20 exceed 90 days, and shall be renewable for such period as the Commission may deem  
21 appropriate, pending the disposal of the athlete agent registration or the procurement of  
22 a new registration under the provisions of this Chapter.

23 **"§ 84A-16. Athlete agent contracts.**

24 (a) All contracts to be utilized by athlete agents shall be on a form approved by  
25 the Commission. This approval shall not be withheld as to any proposed form of agent  
26 contract unless the proposed form of agent contract is unfair, unjust, and oppressive to  
27 the athlete. Except as otherwise provided in this Chapter, each form of agent contract  
28 shall contain an agreement by the athlete agent to refer any controversy between the  
29 athlete and the athlete agent relating to the terms of the agent contract to the  
30 Commission for adjustment. There shall be printed on the face of the agent contract in  
31 prominent type the following: 'THIS ATHLETE AGENT IS REGISTERED WITH  
32 THE ATHLETE AGENT REGULATORY COMMISSION OF THE STATE OF  
33 NORTH CAROLINA. REGISTRATION DOES NOT IMPLY APPROVAL BY THE  
34 COMMISSION OF THE TERMS AND CONDITIONS OF THIS CONTRACT OR  
35 THE COMPETENCE OF THE ATHLETE AGENT.'

36 (b) The contract shall contain, in close proximity to the signature of the athlete, a  
37 notice in at least 10-point type stating that the athlete may jeopardize his or her standing  
38 as an amateur athlete by entering into the contract.

39 (c) Any agent contract which is negotiated by any athlete agent who has failed to  
40 comply with this Chapter is void and unenforceable.

41 **"§ 84A-17. Athlete agent fees.**

42 (a) Every person engaged in the occupation as an athlete agent shall file with the  
43 Commission a schedule of fees to be charged and collected in the conduct of that  
44 occupation. Changes in the schedule may be made from time to time, but no change

1 shall become effective until seven days after the date of filing thereof with the  
2 Commission.

3 (b) If a professional sports services contract is negotiated, no athlete agent shall  
4 collect a fee in any calendar year which exceeds ten percent (10%) of the total  
5 compensation the athlete is receiving in that calendar year under the contract, regardless  
6 of whether the compensation is direct or indirect, or from whom it is received.  
7 However, an athlete agent may require security that his or her future fees will be paid  
8 under the agreement with the athlete.

9 (c) Every agent contract shall describe the types of services to be performed and  
10 a schedule of the fees to be charged under the contract.

11 (d) In the event that an athlete agent collects a fee or expenses from an athlete for  
12 obtaining employment, and the athlete fails to procure such employment, or the athlete  
13 fails to be paid for such employment, the athlete agent shall be limited as to the fee  
14 he may lawfully collect from the athlete in the following manner:

15 (1) The athlete agent may receive reimbursement for all reasonable out-of-  
16 pocket expenses incurred by the athlete agent during the course of his  
17 representation of the athlete.

18 (2) If the athlete received a bonus for the signing of a professional sports  
19 services contract, the athlete agent shall be entitled to a fee in an  
20 amount no more than the greater of ten percent (10%) of such bonus,  
21 or one thousand dollars (\$1,000).

22 **"§ 84A-18. Athlete trust fund.**

23 When an athlete agent is the recipient of the athlete's salary, the athlete agent shall  
24 immediately establish a trust fund in the athlete's name. An athlete agent who receives  
25 any payment on behalf of the athlete shall immediately deposit such payment in the trust  
26 fund account or other recognized depository maintained by the athlete agent, as  
27 appropriate.

28 **"§ 84A-19. Athlete agent to keep records.**

29 Every athlete agent shall keep records approved by the Commission, in which shall  
30 be entered all of the following:

31 (1) The name and address of each athlete employing the athlete agent.

32 (2) The amount of fee received from such athlete.

33 (3) The contract entered into between the athlete agent and such athlete.

34 (4) Other information which the Commission may require.

35 No athlete agent, or his or her representatives or employees, may make a false entry  
36 in any such records. All records required by this section shall be kept for a period of  
37 seven years.

38 All books, records, and other papers kept pursuant to this Chapter by any athlete  
39 agent shall be open at all reasonable hours to the inspection of the Commission and its  
40 representatives. Every athlete agent shall furnish to the Commission upon request a true  
41 copy of the books, records, and papers, or any portion thereof, kept pursuant to this  
42 Chapter and shall make such reports as the Commission prescribes.

43 **"§ 84A-20. Prohibitions; duty to disclose.**

1 (a) No athlete agent may sell, transfer, or give away any interest in or the right to  
2 participate in the profits of the athlete agent without the written consent of the  
3 Commission.

4 (b) No athlete agent may have an ownership or financial interest in any entity  
5 which is directly involved in the same sport as an athlete with whom the athlete agent  
6 has entered an agent contract or for whom the athlete agent is attempting to negotiate a  
7 professional sports services contract.

8 (c) If an athlete agent also advises a client regarding the investment of funds, the  
9 athlete agent shall disclose to the client any ownership interest the athlete agent has in  
10 any entity used by the athlete agent in giving such advice and any commissions or fees  
11 which are being paid to the athlete agent as a result of investments which are made.

12 (d) No athlete agent may knowingly enter into a contract with an athlete  
13 containing any term or condition which, if complied with, would be in violation of law.

14 (e) No athlete agent may publish or cause to be published any false, fraudulent,  
15 or misleading information, representation, notice, or advertisement. All advertisements  
16 of an athlete agent by means of cards, circulars, or signs, and in newspapers and other  
17 publications, and all letterheads, receipts, and blanks shall be printed and contain the  
18 registered name and address of the athlete agent and a notation signifying that the  
19 athlete agent is either a licensed attorney engaged in the practice of law or, if the athlete  
20 agent is not an attorney, is involved in the representation of athletes. No athlete agent  
21 may give any false information or make any false promises or representations  
22 concerning any employment to any athlete.

23 (f) No athlete agent may divide fees with a professional sports league or  
24 franchise, its representatives or employees.

25 (g) No athlete agent may enter into any agreement whereby the athlete agent  
26 offers anything of value, including the rendering of free or reduced fees for legal  
27 services, to any employee of a university or educational institution in return for the  
28 referral of any clients by that employee.

29 (h) No full-time employee of a union or players association connected with  
30 professional sports leagues may own or participate in any of the revenues of an athlete  
31 agent.

32 **"§ 84A-21. Civil actions against athlete agents.**

33 (a) All actions brought in any court against any athlete agent may be brought in  
34 the name of the person damaged and the person damaged may name the surety,  
35 malpractice carrier, or holder of the savings account or certificate of deposit as an  
36 additional party. The action may be transferred and assigned as any other claim for  
37 damages. The amount of damages claimed by the person damaged, and not the penalty  
38 named in the bond, malpractice coverage, savings account or certificate of deposit,  
39 determines the jurisdiction of the court in which the action is to be brought.

40 (b) When an athlete agent has departed from the State with intent to defraud  
41 creditors or to avoid service of summons in an action brought under this Chapter,  
42 service shall be made upon the surety of an athlete agent or the Secretary of State. A  
43 copy of the summons shall be mailed to the athlete agent at the last known post office  
44 address of his or her residence and also at the place where the business of the athlete

1 agent was conducted as shown by the records of the Commission. Service is complete  
2 as to the athlete agent, after mailing, at the expiration of the time prescribed by the  
3 North Carolina Rules of Civil Procedure for service of summons in the particular court  
4 in which suit is brought.

5 (c) In cases of controversy arising under this Chapter, the parties involved shall  
6 refer the matters in dispute to the Commission, which shall hear and determine the same  
7 in accordance with the provisions of Chapter 150B of the General Statutes, subject to an  
8 appeal within 10 days after determination to a court of competent jurisdiction where the  
9 same shall be heard **de novo**.

10 The Commission may certify without a hearing that there is no controversy within  
11 the meaning of this section if the Commission has by investigation established that there  
12 is no dispute. Service of the certification shall be made upon all parties concerned by  
13 registered or certified mail with return receipt requested and the certification shall  
14 become conclusive 10 days after the date of mailing if no objection has been filed with  
15 the Commission during that period.

16 **"§ 84A-22. Arbitration provisions.**

17 Notwithstanding G.S. 84A-16, a provision in an agent contract providing for the  
18 decision by arbitration of any controversy under the contract or as to its existence,  
19 validity, construction, performance, nonperformance, breach, operation, continuance, or  
20 termination, shall be valid if all of the following occur:

- 21 (1) The provision is contained in a contract between an athlete agent and  
22 an athlete for whom the athlete agent under the contract undertakes to  
23 endeavor to secure employment.
- 24 (2) The provision is inserted in the contract pursuant to any rule,  
25 regulation or contract of a bona fide labor union regulating the  
26 relations of its members to an athlete agent.
- 27 (3) The contract provides for reasonable notice to the Commission of the  
28 time and place of all arbitration hearings.
- 29 (4) The contract provides that the Commission or its authorized  
30 representative has the right to attend all arbitration hearings.

31 If there is such an arbitration provision in the contract, the contract need not provide  
32 that the athlete agent agrees to refer any controversy between the person and the athlete  
33 agent regarding the terms of the contract to the Commission for adjustment, and G.S.  
34 84A-21(c) shall not apply to controversies pertaining to the contract.

35 **"§ 84A-23. Criminal penalties.**

36 Any person, or agent or officer thereof, who violates any provision of this act shall  
37 be guilty of a Class H felony, punishable by a fine of not more than five thousand  
38 dollars (\$5,000) or imprisonment for a period of not less than one year nor more than 10  
39 years, or both."

40 Sec. 2. This act shall become effective October 1, 1989, and shall apply to  
41 athlete agent contracts entered into, and actions brought, on or after that date.