

Senate Bill 540

By: Senator Haines of the 46th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 43 of the Official Code of Georgia Annotated, relating to professions and
2 businesses, so as to extensively revise certain provisions relating to athlete agents; to enact
3 the Uniform Athlete Agents Act; to provide for a short title; to provide for definitions; to
4 provide for service of process and subpoenas; to provide for athlete agents' registration
5 requirements and void contracts; to provide for registration as athlete agent, form, and
6 requirements; to provide for certificate of registration issuance, denial, and renewal; to
7 provide for suspension, revocation, or refusal to renew registration; to provide for temporary
8 registration; to provide for registration and renewal fees; to provide for required form of
9 contract; to provide for notice to educational institution; to provide for a student athlete's
10 right to cancel; to provide required records; to provide for prohibited conduct; to provide for
11 criminal penalties; to provide for civil remedies; to provide for administrative penalty; to
12 provide for uniformity of application and construction; to provide for the effect of the
13 Electronic Signatures in Global and National Commerce Act; to repeal conflicting laws; and
14 for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 **SECTION 1.**

17 Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses,
18 is amended by striking Chapter 4A, relating to athlete agents, and inserting in lieu thereof the
19 following:

20 "CHAPTER 4A

21 43-4A-1.

22 This chapter shall be known and may be cited as the 'Uniform Athlete Agents Act.'

1 43-4A-2.

2 As used in this chapter, the term:

3 (1) 'Agency contract' means an agreement in which a student athlete authorizes a person
4 to negotiate or solicit on behalf of the student athlete a professional sports services
5 contract or an endorsement contract.

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

12 (3) 'Athletic director' means an individual responsible for administering the overall
13 athletic program of an educational institution or, if an educational institution has
14 separately administered athletic programs for male students and female students, the
15 athletic program for males or the athletic program for females, as appropriate.

16 (4) 'Contact' means a communication, direct or indirect, between an athlete agent and a
17 student athlete to recruit or solicit the student athlete to enter into an agency contract.

18 (5) 'Endorsement contract' means an agreement under which a student athlete is
19 employed or receives consideration to use on behalf of the other party any value that the
20 student athlete may have because of publicity, reputation, following, or fame obtained
21 because of athletic ability or performance.

22 (6) 'Intercollegiate sport' means a sport played at the collegiate level for which eligibility
23 requirements for participation by a student athlete are established by a national
24 association for the promotion or regulation of collegiate athletics.

25 (7) 'Person' means an individual, corporation, business trust, estate, trust, partnership,
26 limited liability company, association, joint venture, government; governmental
27 subdivision, agency, or instrumentality; public corporation, or any other legal or
28 commercial entity.

29 (8) 'Professional sports services contract' means an agreement under which an individual
30 is employed, or agrees to render services, as a player on a professional sports team, with
31 a professional sports organization, or as a professional athlete.

32 (9) 'Record' means information that is inscribed on a tangible medium or that is stored
33 in an electronic or other medium and is retrievable in perceivable form.

34 (10) 'Registration' means registration as an athlete agent pursuant to this chapter.

35 (11) 'State' means a state of the United States, the District of Columbia, Puerto Rico, the
36 United States Virgin Islands, or any territory or insular possession subject to the
37 jurisdiction of the United States.

1 (12) 'Student athlete' means an individual who engages in, is eligible to engage in, or
2 may be eligible in the future to engage in any intercollegiate sport. If an individual is
3 permanently ineligible to participate in a particular intercollegiate sport, the individual
4 is not a student athlete for purposes of that sport.

5 43-4A-3.

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

9 (b) The Secretary of State may issue subpoenas for any material that is relevant to the
10 administration of this chapter.

11 43-4A-4.

12 (a) Except as otherwise provided in subsection (b) of this Code section, an individual may
13 not act as an athlete agent in this state without holding a certificate of registration under
14 Code Section 43-4A-6 or Code Section 43-4A-8.

15 (b) Before being issued a certificate of registration, an individual may act as an athlete
16 agent in this state for all purposes, except signing an agency contract, if:

17 (1) A student athlete or another person acting on behalf of the student athlete initiates
18 communication with the individual; and

19 (2) Within seven days after an initial act as an athlete agent, the individual submits an
20 application for registration as an athlete agent in this state.

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

23 43-4A-5.

24 (a) An applicant for registration shall submit an application for registration to the Secretary
25 of State in a form prescribed by the Secretary of State. An application filed under this
26 Code section is a public record. The application must be in the name of an individual and,
27 except as otherwise provided in subsection (b) of this Code section, signed or otherwise
28 authenticated by the applicant under penalty of perjury and state or contain:

29 (1) The name of the applicant and the address of the applicant's principal place of
30 business;

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

32 (3) Any business or occupation engaged in by the applicant for the five years next
33 preceding the date of submission of the application;

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

- 1 (A) Formal training as an athlete agent;
- 2 (B) Practical experience as an athlete agent; and
- 3 (C) Educational background relating to the applicant's activities as an athlete agent;
- 4 (5) The names and addresses of three individuals not related to the applicant who are
- 5 willing to serve as references;
- 6 (6) The name, sport, and last known team for each individual for whom the applicant
- 7 acted as an athlete agent during the five years next preceding the date of submission of
- 8 the application;
- 9 (7) The names and addresses of all persons who are:
- 10 (A) With respect to the athlete agent's business if it is not a corporation, the partners,
- 11 members, officers, managers, associates, or profit sharers of the business; and
- 12 (B) With respect to a corporation employing the athlete agent, the officers, directors,
- 13 and any shareholder of the corporation having an interest of 5 percent or greater;
- 14 (8) Whether the applicant or any person named pursuant to paragraph (7) of this
- 15 subsection has been convicted of a crime that, if committed in this state, would be a crime
- 16 involving moral turpitude or a felony, and identify the crime;
- 17 (9) Whether there has been any administrative or judicial determination that the applicant
- 18 or any person named pursuant to paragraph (7) of this subsection has made a false,
- 19 misleading, deceptive, or fraudulent representation;
- 20 (10) Any instance in which the conduct of the applicant or any person named pursuant
- 21 to paragraph (7) of this subsection resulted in the imposition of a sanction, suspension,
- 22 or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic
- 23 event on a student athlete or educational institution;
- 24 (11) Any sanction, suspension, or disciplinary action taken against the applicant or any
- 25 person named pursuant to paragraph (7) of this subsection arising out of occupational or
- 26 professional conduct; and
- 27 (12) Whether there has been any denial of an application for, suspension or revocation
- 28 of, or refusal to renew the registration or licensure of the applicant or any person named
- 29 pursuant to paragraph (7) of this subsection as an athlete agent in any state.
- 30 (b) An individual who has submitted an application for and holds a certificate of
- 31 registration or licensure as an athlete agent in another state may submit a copy of the
- 32 application and certificate in lieu of submitting an application in the form prescribed
- 33 pursuant to subsection (a) of this Code section. The Secretary of State shall accept the
- 34 application and the certificate from the other state as an application for registration in this
- 35 state if the application to the other state:
- 36 (1) Was submitted in the other state within six months next preceding the submission of
- 37 the application in this state and the applicant certifies that the information contained in

1 the application is current;

2 (2) Contains information substantially similar to or more comprehensive than that
3 required in an application submitted in this state; and

4 (3) Was signed by the applicant under penalty of perjury.

5 43-4A-6.

6 (a) Except as otherwise provided in subsection (b) of this Code section, the Secretary of
7 State shall issue a certificate of registration to an individual who complies with
8 subsection (a) of Code Section 43-4A-5 or whose application has been accepted under
9 subsection (b) of Code Section 43-4A-5.

10 (b) The Secretary of State may refuse to issue a certificate of registration if the Secretary
11 of State determines that the applicant has engaged in conduct that has a significant adverse
12 effect on the applicant's fitness to act as an athlete agent. In making the determination, the
13 Secretary of State may consider whether the applicant has:

14 (1) Been convicted of a crime that, if committed in this state, would be a crime
15 involving moral turpitude or a felony;

16 (2) Made a materially false, misleading, deceptive, or fraudulent representation in the
17 application or as an athlete agent;

18 (3) Engaged in conduct that would disqualify the applicant from serving in a fiduciary
19 capacity;

20 (4) Engaged in conduct prohibited by Code Section 43-4A-14;

21 (5) Had a registration or licensure as an athlete agent suspended, revoked, or denied or
22 been refused renewal of registration or licensure as an athlete agent in any state;

23 (6) Engaged in conduct the consequence of which was that a sanction, suspension, or
24 declaration of ineligibility to participate in an interscholastic or intercollegiate athletic
25 event was imposed on a student athlete or educational institution; or

26 (7) Engaged in conduct that significantly adversely reflects on the applicant's credibility,
27 honesty, or integrity.

28 (c) In making a determination under subsection (b) of this Code section, the Secretary of
29 State shall consider:

30 (1) How recently the conduct occurred;

31 (2) The nature of the conduct and the context in which it occurred; and

32 (3) Any other relevant conduct of the applicant.

33 (d) An athlete agent may apply to renew a registration by submitting an application for
34 renewal in a form prescribed by the Secretary of State. An application filed under this
35 subsection is a public record. The application for renewal must be signed by the applicant
36 under penalty of perjury and must contain current information on all matters required in an

1 original registration.

2 (e) An individual who has submitted an application for renewal of registration or licensure
3 in another state, in lieu of submitting an application for renewal in the form prescribed
4 pursuant to subsection (d) of this Code section, may file a copy of the application for
5 renewal and a valid certificate of registration or licensure from the other state. The
6 Secretary of State shall accept the application for renewal from the other state as an
7 application for renewal in this state if the application to the other state:

8 (1) Was submitted in the other state within six months next preceding the filing in this
9 state and the applicant certifies the information contained in the application for renewal
10 is current;

11 (2) Contains information substantially similar to or more comprehensive than that
12 required in an application for renewal submitted in this state; and

13 (3) Was signed by the applicant under penalty of perjury.

14 (f) A certificate of registration or a renewal of a registration is valid for two years.

15 43-4A-7.

16 (a) The Secretary of State may suspend, revoke, or refuse to renew a registration for
17 conduct that would have justified denial of registration under subsection (b) of Code
18 Section 43-4A-6.

19 (b) The Secretary of State may deny, suspend, revoke, or refuse to renew a certificate of
20 registration or licensure only after proper notice and an opportunity for a hearing. The
21 provisions of Chapter 13 of Title 50, the 'Georgia Administrative Procedures Act' apply
22 to this chapter.

23 43-4A-8.

24 The Secretary of State may issue a temporary certificate of registration while an application
25 for registration or renewal of registration is pending.

26 43-4A-9.

27 An application for registration or renewal of registration must be accompanied by such fee
28 as shall be prescribed by the Secretary of State in an amount sufficient to cover the
29 necessary and reasonable costs of administration.

30 43-4A-10.

31 (a) An agency contract must be in a record that is signed or otherwise authenticated by the
32 parties.

33 (b) An agency contract must state or contain:

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

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

8 (3) A description of any expenses that the student athlete agrees to reimburse;

9 (4) A description of the services to be provided to the student athlete;

10 (5) The duration of the contract; and

11 (6) The date of execution.

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

14 **WARNING TO STUDENT ATHLETE**

15 **IF YOU SIGN THIS CONTRACT:**

16 **(1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT**
 17 **ATHLETE IN YOUR SPORT;**

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

21 **(3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER**
 22 **SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT**
 23 **REINSTATE YOUR ELIGIBILITY.**

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

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

30 43-4A-11.

31 (a) Within 72 hours after entering into an agency contract or before the next scheduled
 32 athletic event in which the student athlete may participate, whichever occurs first, the
 33 athlete agent shall give notice in a record of the existence of the contract to the athletic

1 director of the educational institution at which the student athlete is enrolled or the athlete
2 agent has reasonable grounds to believe the student athlete intends to enroll.

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

7 43-4A-12.

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

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

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

14 43-4A-13.

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

16 (1) The name and address of each individual represented by the athlete agent;

17 (2) Any agency contract entered into by the athlete agent; and

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

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

22 43-4A-14.

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

25 (1) Give any materially false or misleading information or make a materially false
26 promise or representation;

27 (2) Furnish anything of value to a student athlete before the student athlete enters into
28 the agency contract; or

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

31 (b) An athlete agent may not intentionally:

32 (1) Initiate contact with a student athlete unless registered under this chapter;

33 (2) Refuse or fail to retain or permit inspection of the records required to be retained by
34 Code Section 43-4A-13;

1 (3) Fail to register when required by Code Section 43-4A-4;

2 (4) Provide materially false or misleading information in an application for registration
3 or renewal of registration;

4 (5) Predate or postdate an agency contract; or

5 (6) Fail to notify a student athlete before the student athlete signs or otherwise
6 authenticates an agency contract for a particular sport that such signing or authentication
7 may make the student athlete ineligible to participate as a student athlete in that sport.

8 43-4A-15.

9 An athlete agent who violates Code Section 43-4A-14 is guilty of a felony and, upon
10 conviction, shall be punished by a fine of not less than \$5,000.00 nor more than
11 \$100,000.00, by imprisonment of one to five years, or both such fine and imprisonment.

12 43-4A-16.

13 (a) An educational institution has a right of action against an athlete agent or a former
14 student athlete for damages caused by a violation of this chapter. In an action under this
15 Code section, the court may award to the prevailing party costs and reasonable attorney's
16 fees.

17 (b) Damages of an educational institution under subsection (a) of this Code section include
18 losses and expenses incurred because, as a result of the conduct of an athlete agent or
19 former student athlete, the educational institution was injured by a violation of this chapter
20 or was penalized, disqualified, or suspended from participation in athletics by a national
21 association for the promotion and regulation of athletics, by an athletic conference, or by
22 reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed
23 by such an organization.

24 (c) A right of action under this Code section does not accrue until the educational
25 institution discovers or by the exercise of reasonable diligence would have discovered the
26 violation by the athlete agent or former student athlete.

27 (d) Any liability of the athlete agent or the former student athlete under this Code section
28 is several and not joint.

29 (e) This chapter does not restrict rights, remedies, or defenses of any person under law or
30 equity.

31 43-4A-17.

32 The Secretary of State may assess a civil penalty against an athlete agent not to exceed
33 \$25,000.00 for a violation of this chapter.

1 43-4A-18.

2 In applying and construing this chapter, consideration must be given to the need to promote
3 uniformity of the law with respect to its subject matter among states that enact it.

4 43-4A-19.

5 The provisions of this chapter governing the legal effect, validity, or enforceability of
6 electronic records or signatures and of contracts formed or performed with the use of such
7 records or signatures conform to the requirements of Section 102 of the Electronic
8 Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464
9 (2000), and supersede, modify, and limit the Electronic Signatures in Global and National
10 Commerce Act."

11 **SECTION 2.**

12 All laws and parts of laws in conflict with this Act are repealed.