

Senate Bill 149

By: Senators Shafer of the 48th, Pearson of the 51st, Hamrick of the 30th, Moody of the 56th, Chance of the 16th and others

A BILL TO BE ENTITLED
AN ACT

To amend Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses, so as to revise the "Uniform Athlete Agents Act"; to provide for the regulation of athlete agents; to provide a short title; to provide for definitions; to terminate the Georgia Athlete Agent Regulatory Commission; to provide for general powers and duties of the Secretary of State relating to the regulation of athlete agents; to require a certificate of registration to act as an athlete agent in this state; to require certain records to be kept; to provide for the issuance, renewal, and suspension of certificates of registration; to provide for hearings; to provide for registration with the Secretary of State; to prohibit certain activities by athlete agents; to provide for notice of existence of agency contracts to the athletic directors of educational institutions; to provide requirements for agency contracts; to provide for cancellation of agency contracts by student athletes; to provide for civil penalties and civil causes of action; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses, is amended by revising Chapter 4A, relating to athlete agents, as follows:

"CHAPTER 4A

43-4A-1.

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

43-4A-2.

As used in this chapter, the term:

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

(2) 'Athlete agent' means 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. This term includes an individual who represents to the public that the individual is an athlete agent. This term does not include a spouse, parent, sibling, grandparent, 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' means 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 ~~and~~ or the athletic program for females, as appropriate.

~~(4) 'Commission' means the Georgia Athlete Agent Regulatory Commission created in Code Section 43-4A-3.~~

~~(5)~~ 'Contact' means 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.

~~(6)~~(5) 'Endorsement contract' means 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.

~~(7)~~(6) 'Intercollegiate sport' means 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.

~~(8)~~(7) 'Person' means any individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

~~(9)~~(8) 'Professional sports services contract' means 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.

~~(10)~~(9) 'Record' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~(11)~~(10) 'Registration' means registration as an athlete agent pursuant to this chapter.

(11) 'Secretary of State' means the Secretary of State of the State of Georgia and his or her designee.

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

(13) 'Student athlete' means 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.

~~43-4A-3.~~

~~(a)(1) There shall be a commission for the regulation of athlete agents in the State of Georgia to be known as the Georgia Athlete Agent Regulatory Commission.~~

~~(2) Until July 1, 2003, the commission shall consist of six members with an interest in college athletics to be appointed as follows:~~

~~(A) The Governor shall appoint two commission members;~~

~~(B) The President of the Senate shall appoint two commission members; and~~

~~(C) The Speaker of the House of Representatives shall appoint two commission members.~~

~~(3) On and after July 1, 2003, the commission shall consist of five members with an interest in college athletics to be appointed as follows:~~

~~(A) The Governor shall appoint two commission members;~~

~~(B) The President of the Senate shall appoint one commission member; and~~

~~(C) The Speaker of the House of Representatives shall appoint two commission members.~~

~~(4) The terms of the members of the Georgia Athlete Agent Regulatory Commission serving on March 1, 2003, shall continue until June 30, 2003, at which time their terms shall end. Thereafter, successors to such board members shall be appointed in accordance with paragraph (3) of this subsection.~~

~~(5) All members of the commission shall be citizens of the United States and residents of Georgia. The term of each commission member shall be for a period of three years and commission members may be eligible for reappointment, subject to the provisions of this chapter. If a vacancy occurs on the commission, the officer who originally appointed such member shall appoint a successor who shall take office immediately and serve the remainder of the unexpired term. The commission members and their successors shall have and exercise all the powers and authority vested by law in said commission.~~

~~(b) The effective date of the appointments pursuant to paragraph (4) of subsection (a) of this Code section shall be July 1, 2003.~~

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

~~(d) The Governor shall remove from the commission any member for cause as provided in Code Section 43-1-17.~~

~~(e) The commission shall elect annually a chairperson and a vice chairperson.~~

~~(f) A majority of the commission shall constitute a quorum for the transaction of business.~~

~~(g) The commission may promulgate and from time to time amend rules and standards of conduct for athlete agents appropriate for the protection of the residents of the state.~~

~~(h) Members of the commission shall be reimbursed as provided in subsection (f) of Code Section 43-1-2.~~

~~(i) The division director shall be the secretary of the commission and provide all administrative services.~~

~~43-4A-4. 43-4A-3.~~

By acting as an athlete agent in this state, a nonresident individual appoints the ~~division director of the professional licensing board~~ Secretary of State as the individual's agent for service of process in any civil action in this state related to the individual's acting as an athlete agent in this state.

~~43-4A-4.1. 43-4A-4.~~

(a) Except as otherwise provided in subsection (b) of this Code section, an individual may not act as an athlete agent in this state without holding a certificate of registration under this chapter.

(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:

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

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

~~43-4A-5.~~

An applicant for registration shall submit an application for registration to the ~~commission~~ Secretary of State in a form prescribed by the ~~commission~~ Secretary of State. An application filed under this Code section is a public record. The application must be in the

name of an individual and state or contain the following and any other information required by the ~~commission~~ Secretary of State:

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

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

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

(4) A description of the applicant's:

(A) Formal training as an athlete agent;

(B) Practical experience as an athlete agent; and

(C) Educational background relating to the applicant's activities as an athlete agent;

(5) The names and addresses of three individuals not related to the applicant who are willing to serve as references;

(6) The name, sport, and last known team for each individual for whom the applicant acted as an athlete agent during the five years next preceding the date of submission of the application;

(7) The names and addresses of all persons who are:

(A) With respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates, or profit sharers of the business; and

(B) With respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of 5 percent or greater;

(8) Whether the applicant or any person named pursuant to paragraph (7) of this Code section has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and identify the crime;

(9) Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to paragraph (7) of this Code section has made a false, misleading, deceptive, or fraudulent representation;

(10) Any instance in which the conduct of the applicant or any person named pursuant to paragraph (7) of this Code section resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student athlete or educational institution;

(11) Any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to paragraph (7) of this Code section arising out of occupational or professional conduct; and

(12) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew the registration or licensure of the applicant or any person named pursuant to paragraph (7) of this Code section as an athlete agent in any state.

165 ~~43-4A-6.~~

166 ~~Reserved.~~

167 ~~43-4A-7.~~ 43-4A-6.

168 (a) Except as otherwise provided in subsection (b) of this Code section, the Secretary of
169 State shall issue a certificate of registration to an individual who complies with Code
170 Section 43-4A-5.

171 (b) ~~The commission~~ Secretary of State may refuse to issue a certificate of registration if
172 ~~the commission determines it is determined~~ that the applicant has engaged in conduct that
173 has a significant adverse effect on the applicant's fitness to act as an athlete agent. In
174 making the determination, the ~~commission~~ Secretary of State may consider whether the
175 applicant has:

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

178 (2) Made a material false, misleading, deceptive, or fraudulent representation in the
179 application or as an athlete agent;

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

182 (4) Engaged in conduct prohibited by this chapter;

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

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

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

190 ~~(b)(c)~~ In making a determination under subsection ~~(a)~~(b) of this Code section, the
191 ~~commission~~ Secretary of State shall consider:

192 (1) How recently the conduct occurred;

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

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

195 ~~(c)(d)~~ The refusal to grant a registration shall not be considered to be a contested case
196 within the meaning of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'
197 Notice and hearing within the meaning of such chapter shall not be required. Notice of
198 refusal to grant a registration shall be sent by registered mail or statutory overnight delivery
199 or personal service setting forth the particular reasons for the refusal. The written notice
200 shall be sent to the applicant's address of record with the ~~commission~~ Secretary of State and

the applicant shall be allowed to appear before the ~~commission~~ Secretary of State if the applicant requests to do so in writing.

~~(d)~~(e) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the ~~commission~~ Secretary of State. An application filed under this subsection is a public record.

~~(e)~~(f) A certificate of registration or a renewal of a registration is valid for a period of up to two years.

~~43-4A-8:~~ 43-4A-7.

(a) The ~~commission~~ Secretary of State may suspend, revoke, or refuse to renew a registration or may discipline a person registered by the ~~commission~~ Secretary of State for conduct that would have justified denial of registration under Code Section ~~43-4A-7~~ 43-4A-6.

(b) The ~~commission~~ Secretary of State may discipline, suspend, revoke, or refuse to renew a certificate of registration only after proper notice and an opportunity for a hearing.

(c) The provisions of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' shall be applicable to the ~~commission~~ Secretary of State and the provisions of this chapter.

~~43-4A-9:~~ 43-4A-8.

An application for registration or renewal of registration must be accompanied by such fee as shall be prescribed by the ~~commission~~ Secretary of State and a renewal bond, if applicable. The fee shall be the same for all applicants regardless of previous or current registrations or licenses in other states or jurisdictions as an athlete agent.

~~43-4A-10:~~ 43-4A-9.

The ~~commission~~ Secretary of State may issue a temporary certificate of registration while an application for registration or renewal of registration is pending, upon receipt by the ~~commission~~ Secretary of State of a completed application for registration, surety bond, and fee and after approval by the ~~chairperson of the commission~~ Secretary of State. The ~~division director~~ Secretary of State may in his or her discretion issue a temporary registration to the applicant, which registration shall have the same force and effect as a permanent registration ~~until the next regular meeting of the commission when~~ for such period of time prescribed by the Secretary of State, after which the temporary registration shall become void. A temporary registration may be voided by the Secretary of State at any time.

233 ~~43-4A-11.~~ 43-4A-10.

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

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

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

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

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

241 ~~43-4A-12.~~ 43-4A-11.

242 An athlete agent who violates Code Section ~~43-4A-16~~ 43-4A-14 shall be guilty of a felony
243 and, upon conviction, shall be punished by a fine of not less than \$5,000.00 nor more than
244 \$100,000.00, by imprisonment of one to five years, or both such fine and imprisonment.

245 ~~43-4A-13.~~ 43-4A-12.

246 (a) An athlete agent shall deposit or have deposited with the ~~commission~~ Secretary of
247 State, prior to the issuance of a registration or renewal of a registration, a surety bond in
248 the penal sum of not less than \$10,000.00, as established by the ~~commission~~ Secretary of
249 State. Such surety bond shall be executed in the favor of the state with a surety company
250 authorized to do business in this state and conditioned to pay damages in the amount of
251 such bond to any athletic department aggrieved by any act of the principal named in such
252 bond, which act is in violation of Code Section ~~43-4A-14~~ 43-4A-13 or would be grounds
253 for revocation of a license under this chapter. If more than one athletic department suffers
254 damages by the actions of an athlete agent, each athletic department shall receive a pro rata
255 share of the amount of the bond based on the entitlement of one share of such amount of
256 the bond for each student athlete who loses his or her eligibility to participate in
257 intercollegiate sports contests as a member of a sports team at an institution of higher
258 education as a result of actions of the athlete agent.

259 (b) If any registrant fails to maintain such bond so as to comply with the provisions of this
260 Code section, the registration issued to the athlete agent shall be suspended until such time
261 as a new bond is obtained. An athlete agent whose registration is suspended pursuant to this
262 Code section shall not carry on any business as an athlete agent during the period of
263 suspension.

264 ~~43-4A-14.~~ 43-4A-13.

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

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

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

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

(b) An athlete agent may not intentionally:

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

(2) Refuse or fail to retain or permit inspection of the records required to be retained by this chapter;

(3) Fail to register when required by this chapter;

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

(5) Predate or postdate an agency contract; or

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

~~43-4A-16.~~ 43-4A-14.

(a) Within 72 hours after entering into an agency contract or before the next scheduled athletic event in which the student athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution at which the student athlete is enrolled or the athlete agent has reasonable grounds to believe the student athlete intends to enroll.

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

~~43-4A-16.1.~~ 43-4A-15.

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

(b) An agency contract must state or contain:

(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; and

(6) The date of execution.

(c) An 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 MAY 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; AND

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

(d) An agency contract that does not conform to this Code 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.

~~43-4A-17.~~ 43-4A-16.

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

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

(c) If a student athlete cancels 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.

~~43-4A-15.~~ 43-4A-17.

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

~~43-4A-20.~~ 43-4A-18.

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

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

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

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

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

~~43-4A-18.~~ 43-4A-19.

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

~~43-4A-19.~~ 43-4A-20.

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

SECTION 2.

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