



General Statutes Commission

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MEMORANDUM

To: House Judiciary I
From: General Statutes Commission
Re: HB 230 (Revised Uniform Athlete Agents Act)
Date: March 13, 2017

General Comments

This bill is based on the Revised Uniform Athlete Agents Act (RUAAA) that was approved in 2015 by the Uniform Law Commission; this bill modifies RUAAA by making some expansions and statutory drafting style changes. This bill replaces the Uniform Athlete Agents Act (UAAA), enacted by S.L. 2003-375 as Article 9 of Chapter 78C of the General Statutes, with a modified version of RUAAA.

Like UAAA, RUAAA is designed to protect student athletes and educational institutions from the unscrupulous practices of some athlete agents who seek to represent the student athletes in negotiating professional-sports-services contracts and endorsement contracts. Some athlete agents engage in the practice of giving large gifts to student athletes or the student athletes' friends or relatives to induce the student athletes to enter into agency contracts with very unfavorable terms. Consequently, many student athletes have been harmed by these athlete agents' dishonest practices.

These practices also harm educational institutions. When a student athlete enters into an agency contract, the student athlete loses his or her eligibility to play in an interscholastic or intercollegiate sport. If an educational institution unwittingly allows a student athlete to continue to play after he or she has entered into an agency contract, the educational institution may be subject to sanctions from the National Collegiate Athletic Association (NCAA) and significant reputational harm.

Current law based on the UAAA addresses these problems by (i) requiring that all athlete agents register with the State before seeking to represent student athletes, (ii) providing a student athlete with a statutory right to cancel an agency contract within 14 days of signing the contract, (iii) requiring the athlete agent and the student athlete to give notice of an agency contract to the educational institution, (iv) providing an educational institution with a statutory right of action against an athlete agent, (v) establishing a civil penalty, and (vi) criminalizing the practice of an athlete agent deceiving a student athlete or offering an improper inducement to a student athlete to enter into an agency contract.

RUAAA expands UAAA's protections by (i) requiring an athlete agent to notify the educational institution before contacting a student athlete, and (ii) providing a student athlete with a statutory right of action against an athlete agent. RUAAA also offers two alternative registration processes for a state to enact: (i) an in-state registration process, or (ii) an interstate compact for registration.

This bill expands RUAAA's protections by (i) extending the protections to former student athletes who have exhausted their eligibility to compete as student athletes within the past six months, (ii) requiring an athlete agent to notify the educational institution if the athlete agent knows or should have known of a violation of RUAAA that could render a student athlete ineligible to play in an interscholastic or intercollegiate sport, (iii) adding new criminal penalties and increasing the existing criminal penalties, (iv) and increasing the maximum amount of the existing civil penalty. After consultation with interested parties, the General Statutes Commission recommended that this State continue the in-state registration process, instead of the interstate compact for registration. This bill also removes the reciprocal registration process in current law; all athlete agents seeking to represent student athletes in North Carolina must use North Carolina's registration application.

The University of North Carolina Athletic Director's Office and the Department of the Secretary of State participated in the drafting of this bill. A draft of this bill was circulated to the North Carolina High School Athletic Association and the Sports and Entertainment Law Section of the N.C. Bar Association. Drafts of this bill were published on the General Statutes Commission's website. The General Statutes Commission is not aware of any opposition to this bill. Alabama, Idaho, and Washington have enacted RUAAA, and eight states, including South Carolina, have introduced legislation this year to enact RUAAA.

Specific Comments

Section 1 repeals UAAA, as codified in Article 9 of Chapter 78C of the General Statutes.

Section 2 adds a modified version of RUAAA as new Article 10 of Chapter 78C of the General Statutes, consisting of §§ 78C-111 through 78C-130:

§ 78C-111 provides a short title (Revised Uniform Athlete Agents Act).

§ 78C-112 defines terms used in the Article, including the following key terms:

- "Athlete agent" has a definition consistent with current law. The term includes, among other individuals, an individual, whether or not registered under the Article, who directly or indirectly recruits or solicits a covered athlete to enter into an agency contract.
- "Covered athlete" is a new definition added by the General Statutes Commission that includes a student athlete or a former student athlete. This definition extends RUAAA's protections to former student athletes.
- "Former student athlete" is a new definition added by the General Statutes Commission that includes (i) an individual who signed an agency contract who would otherwise be eligible to compete as a student athlete, and (ii) an individual who exhausted his or her eligibility within the past six months. The General Statutes Commission added the first category to clarify that this bill's protections do not immediately terminate once a student athlete signs an agency contract, a result RUAAA's drafters intended. The General Statutes Commission added the second category upon the recommendation of the University of North Carolina Athletic Director's Office.
- "Student athlete" has a definition consistent with current law. The term includes an individual who is eligible to attend an educational institution and engages in, is eligible to engage in, or may be eligible in the future to engage in, any interscholastic or intercollegiate sport.

§ 78C-113 continues the Secretary of State's authority to adopt rules and to issue a subpoena for material relevant to the administration of the Article.

§ 78C-114 continues the requirement that an athlete agent register with the Secretary of State and the provision that declares void an agency contract made by an athlete agent who fails to register.

§ 78C-115 expands the information that an athlete agent must disclose in a registration application, including, for example, (i) whether the athlete agent has been a defendant in a civil proceeding within the past 15 years, (ii) whether the athlete agent has an unsatisfied judgment or a judgment of continuing effect, and (iii) whether the athlete agent has filed bankruptcy within the past 10 years. The Secretary of State may also require additional information.

§ 78C-116 continues to allow the Secretary of State to refuse to issue a certificate of registration to an athlete agent who has engaged in misconduct. A certificate of registration is valid for one year; an athlete agent may apply to renew the athlete agent's registration.

§ 78C-117 continues to allow the Secretary of State to suspend, revoke, or refuse to renew an athlete agent's registration; § 78C-117, however, expands this authority by allowing the Secretary of State to take these actions for any violation of the Article or rules adopted under it.

§ 78C-118 continues to allow the Secretary of State to issue a temporary certificate of registration.

§ 78C-119 continues to provide for application fees and does not change the amounts in current law. § 78C-119 removes the existing fees for applications pursuant to the reciprocal registration process, because this bill removes the reciprocal registration process in current law.

§ 78C-120 continues to require that an agency contract contain the amount and method of calculating the consideration that the covered athlete will pay under the contract, the name of any person not listed in the athlete agent's application for registration that will be paid under the agency contract, and a conspicuous notice warning of possible loss of eligibility to compete as a student athlete. RUAAA adds the requirement that the agency contract contain a statement that the athlete agent is registered in this State and a list of any other states in which the athlete agent is registered or licensed. RUAAA continues to allow a covered athlete to void an agency contract that violates these requirements.

§ 78C-121 continues the requirement that the athlete agent and the covered athlete notify the educational institution of the existence of an agency contract within 72 hours of entering into the agency contract or before the next scheduled athletic event in which the covered athlete may participate, whichever occurs first. RUAAA adds the following notice requirements:

- If an athlete agent and a covered athlete have an agency contract or relationship before the covered athlete enrolls in an educational institution, the athlete agent must notify the educational institution.
- The athlete agent must notify the educational institution before attempting to contact a covered athlete or if a covered athlete attempts to contact the athlete agent.
- The educational institution must notify the Secretary of State when it becomes aware of a violation of the Article.

The General Statutes Commission added the requirement that the athlete agent notify the educational institution if the athlete agent knows or should have known of a violation of the Article that could render a covered athlete ineligible to compete as a student athlete.

§ 78C-122 continues for covered athletes the non-waivable right to cancel an agency contract within 14 days of signing the contract.

§ 78C-123 continues the requirement that an athlete agent retain the athlete agent's records for five years and allows the Secretary of State to inspect the records.

§§ 78C-124 and 78C-125 continue to criminally prohibit the following actions by an athlete agent intending to induce a covered athlete to enter into an agency contract:

- Giving materially false or misleading information or making a materially false promise or representation.
- Furnishing anything of value to the covered athlete or to an individual other than another registered athlete agent.

§§ 78C-124 and 78C-125 increase the punishment for these offenses from a Class I felony to a Class H felony, provide that an unregistered athlete agent's initiation of contact with a covered athlete is also a Class H felony, and add that an athlete agent's (i) failing to retain records, (ii) failing to register, (iii) providing false or misleading information in an application for registration, (iv) predating or postdating an agency contract, and (v) failing to notify a covered athlete that signing an agency contract may render the covered athlete ineligible to compete as a student athlete are Class 1 misdemeanors.

§ 78C-126 continues the statutory right of action by an educational institution against an athlete agent. § 78C-126 removes an educational institution's right of action against a former student athlete but gives to a covered athlete a right of action against an athlete agent. § 78C-126 provides that a violation of the Article is an unfair trade or deceptive practice and that a plaintiff may recover actual damages and costs and any other remedies, including attorneys' fees, provided under Chapter 75 of the General Statutes.

§ 78C-127 continues to allow the Secretary of State to assess a civil penalty but increases the maximum amount from \$25,000 to \$250,000 or the amount of consideration the athlete agent received, whichever is greater, and lists several factors for the Secretary of State to consider in making this assessment.

§ 78C-128 is reserved for future codification.

§§ 78C-129 and 78C-130 are standard Uniform Act provisions relating to uniformity of application and to the federal E-SIGN act.

Section 3 is a severability provision, and **Section 4** authorizes the printing of official and drafters' comments.

Section 5 provides that this act becomes effective December 1, 2017, and applies to acts and omissions occurring on or after that date.