



General Statutes Commission

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MEMORANDUM

To: House Finance
From: General Statutes Commission
Re: HB 125 (GSC Revised Uniform Athlete Agents Act)
Date: March 12, 2019

General Comments

This bill expands and enhances the current protections for student athletes under Article 9 of Chapter 78C of the General Statutes ("Article 9"). Under Article 9, athlete agents seeking to represent student athletes are currently required to register with the Secretary of State, similar to investment advisers. Article 9 was enacted in S.L. 2003-375 and was based on the Uniform Athlete Agents Act (UAAA). This bill is based on the Revised Uniform Athlete Agents Act (RUAAA) that was approved in 2015 by the Uniform Law Commission; the General Statutes Commission modified RUAAA as further detailed in this memorandum.

Like UAAA, RUAAA is designed to protect student athletes and educational institutions from the predatory practices of some athlete agents who are drawn to the large amount of money at stake and deceive student athletes into entering into agency contracts with very unfavorable terms. Some athlete agents engage in the practice of giving large financial gifts to student athletes or the student athletes' friends or relatives to induce the student athletes to enter into agency contracts.¹ Many student athletes have been harmed by these athlete agents' dishonest practices.

These practices also harm educational institutions and the student athlete's teammates. Generally, when a student athlete (i) enters into an agency contract, (ii) promises to do so in the future, or (iii) accepts anything of value from an athlete agent, the student athlete loses his or her eligibility to play in an interscholastic or intercollegiate sport. If an educational institution even 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 fines and sanctions from a national association that promotes or regulates collegiate athletics. These sanctions may include being banned from bowl games and forfeiting victories.²

Current Article 9 provides some transparency and oversight to athlete agents' interactions with student athletes by (i) requiring that all athlete agents register with the Secretary of State before seeking to represent student athletes, (ii) requiring that an agency contract be in writing and include a conspicuous notice warning the student athlete that signing the agency contract will cause the student athlete to lose his or her eligibility to compete as a student athlete, (iii) providing a student athlete with a statutory right to cancel an agency contract within 14 days of signing the contract, (iv) requiring the athlete agent and the student athlete to give notice of an agency contract to the educational institution, (v) providing an educational institution with a statutory right of action against an athlete agent, (vi) establishing a civil penalty, and (vii) criminalizing the practice

¹ *Here's a master guide to the college basketball corruption scandal and FBI investigation*, The News and Observer, Aaron Moody, October 4, 2018, available at: <https://www.newsobserver.com/sports/article208880939.html>

² *Agent pleads guilty to giving money to UNC football players*, The News and Observer, Anne Blythe, April 17, 2017, available at: <http://www.newsobserver.com/sports/college/acc/unc/article145007249.html>

of an athlete agent deceiving a student athlete or offering an improper inducement to a student athlete to enter into an agency contract.

This bill expands and enhances these protections for student athletes and educational institutions by replacing Article 9 with a new Article 10 based on RUAAA. This new Article (i) extends these protections to former student athletes who have exhausted their eligibility to compete as student athletes within the past six months, (ii) requires an athlete agent to notify the educational institution before contacting a student athlete, (iii) adds a cause of action by a student athlete against an athlete agent, (iv) adds new criminal penalties and increases existing criminal penalties, and (v) increases the maximum amount of the existing civil penalty and provides guidance to the Secretary of State in assessing the amount. This bill repeals the current cause of action by an educational institution against a former student athlete.

RUAAA offers two alternative registration processes for a state to enact: (i) an in-state registration process or (ii) an interstate compact for registration. After consultation with interested parties, the General Statutes Commission recommends that this State continue the in-state registration process. This bill does not retain the reciprocal registration process in current law; all athlete agents seeking to represent student athletes in North Carolina would be required to use North Carolina's registration application.

This bill expressly allows a lawyer, a certified financial advisor, or any other licensed, registered, or certified professional to advise a student athlete without needing to register, unless the professional (i) recruits or solicits the student athlete to enter into an agency contract, (ii) for compensation, attempts to obtain employment for the student athlete as a professional athlete, or (iii) receives consideration for providing the services calculated using a different method than the method used for an individual who is not a student athlete.

Neither current law nor this bill prohibits a student athlete from entering into an agency contract with an athlete agent or any other agreement for professional services. Regardless of what athletic eligibility rules may provide, neither current law nor this bill penalizes a student athlete for entering into these agreements.

The University of North Carolina Athletic Director's Office and the Department of the Secretary of State participated in drafting this bill. A previous draft was circulated to the North Carolina High School Athletic Association and the Sports and Entertainment Law Section of the N.C. Bar Association. Drafts were published on the General Statutes Commission's website.

At its January 10, 2019 meeting, the Legislative Commission on the Fair Treatment of College Student-Athletes heard an overview of a draft substantially similar to this bill. In its report to the General Assembly, the Commission states that it "supports the principles" of the draft and recommends that the draft "be considered through the committee process during the 2019 Session of the General Assembly[.]"

South Carolina, Tennessee, Alabama, and Kentucky, as well as eight other states, have enacted RUAAA. Nine other states, including West Virginia, have introduced RUAAA this year.

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 that elaborates on the current UAAA definition of "athlete agent," which is very broad. The Uniform Law Commission revised the definition to provide additional specificity. 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 defined term added by the General Statutes Commission that includes a student athlete or a former student athlete.
- "Former student athlete" is a new defined term added by the General Statutes Commission that includes (i) an individual who entered into an agency contract but 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 enters into 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 (i) the requirement that an athlete agent register with the Secretary of State and (ii) 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. Current law allows the Secretary of State to take these actions only for conduct that would have justified denial of registration; § 78C-117, however, allows 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 does not bring forward the existing fees for applications pursuant to the reciprocal registration process, because this bill does not retain the reciprocal registration process in current law.

§ 78C-120 continues to require that an agency contract be in writing, whether in print or electronic form, and 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 a relationship or an agency contract 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 nonwaivable 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 as Class 1 misdemeanors 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, (v) failing to notify a covered athlete before the covered athlete enters into an agency contract that the agency contract may render the covered athlete ineligible to compete as a student athlete, and (vi) failing to notify a covered athlete before seeking or accepting from a covered athlete a commitment to enter into an agency contract in the future that the commitment may render the covered athlete ineligible to compete as a student athlete. The North Carolina Sentencing and Policy Advisory Commission reviewed an earlier draft of this bill and determined that the classifications of the offenses were consistent with the Offense Classification Criteria.

§§ 78C-124 and 78C-125 prohibit, but do not criminalize, an athlete agent's entering into an agency contract that does not conform to §§ 78C-114 and 78C-120 and an athlete agent's seeking or accepting from a covered athlete a commitment to enter into an agency contract in the future.

§ **78C-126** continues the statutory right of action by an educational institution against an athlete agent. § 78C-126 does not bring forward the current right of action by an educational institution 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 or deceptive trade 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, 2019, and applies to acts and omissions occurring on or after that date.