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## HB 3 – Education: Elementary and Secondary Education

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## EDUCATION

***Elementary and Secondary Education: Amend Sections 317 and 318 of Part 14 of Article 6 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated, Relating to Other Educational Programs, so as to Prohibit Persons from Entering into or Soliciting a Transaction with a Student-Athlete That Would Result in Sanctions to the Student-Athlete; Provide for a Right of Action by a Postsecondary Institution; Provide for Related Matters; Provide for an Effective Date; Repeal Conflicting Laws; and for Other Purposes***

CODE SECTIONS:	O.C.G.A. §§ 20-2-317, -318 (amended)
BILL NUMBER:	HB 3
ACT NUMBER:	101
GEORGIA LAWS:	2015 Ga. Laws 813
SUMMARY:	The Act prohibits offers of cash in return for autographs or other memorabilia to student athletes in the State of Georgia. The Act further gives the institution a right of action against a person causing a student-athlete to lose eligibility.
EFFECTIVE DATE:	May 6, 2015

### *History*

“I’m obviously very disappointed.”<sup>1</sup> Those were Coach Mark Richt’s words upon learning that Todd Gurley, a star tailback on his University of Georgia (UGA) football team, had allegedly accepted payment for autographed memorabilia in violation of National College Athletic Association (NCAA) Rules.<sup>2</sup> However, Todd Gurley is not the first to be accused of doing so; other collegiate stars

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1. Darren Rovell & Chris Low, *Gurley Banned for Alleged Violation*, ESPN.COM (Oct. 10, 2014), <http://espn.go.com/espn/print?id=11671378>.

2. *Id.*

have also allegedly accepted illicit payments.<sup>3</sup> Coach Richt was not alone in his disappointment—Bulldog fans throughout the State of Georgia shared this sentiment.<sup>4</sup> The fans' frustration was not directed at Mr. Gurley; it was aimed squarely at the person who had solicited his autographs, Bryan Allen.<sup>5</sup> Others, however, felt that blaming Mr. Allen or Mr. Gurley was unjust, focusing instead on the NCAA regulation as the problem—as one reporter asked, “[w]hat exactly is wrong with someone making money off his own name?”<sup>6</sup>

One purpose of the NCAA is “[t]o encourage its members to adopt eligibility rules to comply with satisfactory standards of scholarship, sportsmanship[,] and amateurism.”<sup>7</sup> The wrongdoing in Mr. Gurley’s case comes from the rule prohibiting NCAA athletes from receiving pay that may jeopardize a student’s status as an amateur athlete.<sup>8</sup> While Mr. Gurley broke NCAA rules, Mr. Allen violated no Georgia laws.<sup>9</sup> The only consequences Mr. Allen faced were issued from the court of public opinion.<sup>10</sup> As punishment for his violations, the NCAA suspended Mr. Gurley from four games, required him to serve forty hours of community service, and stipulated that he donate part of his autograph earnings to charity.<sup>11</sup>

Before House Bill (HB) 3 was enacted, two existing Georgia laws were in place to deter athletic boosters from improperly compensating athletes.<sup>12</sup> Code section 20-2-317 prohibits gifts to student-athletes or their immediate family and classifies a violation

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3. See George Schroeder, *Analysis: The Johnny Manziel Autograph Case*, USA TODAY (Aug. 16, 2013, 7:47 PM), <http://www.usatoday.com/story/sports/ncaaf/sec/2013/08/15/johnny-manziel-texas-am-ncaa-investigation-autographs-for-money/2662257/>. In 2013, Johnny Manziel, the star quarterback of Texas A&M, was accused of allegedly accepting money for signing autographs. *Id.*

4. Andy Staples, *Man at Center of UGA's Todd Gurley Autograph Scandal Shares His Story*, SI.COM (Dec. 2, 2014), <http://www.si.com/college-football/2014/12/02/todd-gurley-bryan-allen-georgia-bulldogs-autograph-signings>.

5. *Id.*

6. Jon Solomon, *When Will NCAA Tackle Main Issue with Todd Gurley—The Rule Itself?* CBSSPORTS.COM (Oct. 29, 2014, 6:13 PM), <http://www.cbssports.com/collegefootball/writer/jon-solomon/24774165/when-will-ncaa-tacklemain-issue-with-todd-gurley-the-rule-itself>.

7. *2014–15 NCAA Division I Manual*, NAT'L COLLEGIATE ATHLETIC ASS'N 1 (July 2014).

8. *Id.* at 71.

9. Staples, *supra* note 4. The transaction took place in Georgia. *Id.*

10. Telephone Interview with Rep. Barry Fleming (R-121st) (Apr. 15, 2015) [hereinafter Fleming Interview].

11. Press Release, Emily James, Assoc. Dir. of Pub. and Media Relations, NCAA, Ga's Gurley Eligible to Play Nov. 15 (Oct. 29, 2014), <http://www.ncaa.org/about/resources/media-center/news/georgia-s-gurley-eligible-play-nov-15>.

12. Fleming Interview, *supra* note 10.

as a misdemeanor of a high and aggravated nature.<sup>13</sup> Code section 20-2-318 gives the institution a civil cause of action against anyone that causes the institution, as opposed to an individual player, to be sanctioned by the NCAA.<sup>14</sup> These laws were enacted as the result of a 2002 study, which found that the punishment of university staff and boosters was inadequate in comparison to the consequences suffered by the athlete and school.<sup>15</sup> These laws, however, did not cover memorabilia dealers unconnected with the school, such as Mr. Allen.<sup>16</sup>

### *Bill Tracking of HB 3*

#### *Consideration and Passage by the House*

Representative Barry Fleming (R-121st) pre-filed HB 3 on November 17, 2014.<sup>17</sup> It was designated as HB 3 because that was the number Mr. Gurley wore during his time as a Georgia Bulldog.<sup>18</sup> The House read HB 3 for the first time on March 2, 2015.<sup>19</sup> The House read the bill for the second time on March 3, 2015.<sup>20</sup> Speaker David Ralston (R-7th) assigned the bill to the House Committee on Higher Education.<sup>21</sup> The Committee favorably reported the bill by substitute on March 4, 2015.<sup>22</sup>

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13. O.C.G.A. § 20-2-317 (2012 & Supp. 2015).

14. O.C.G.A. § 20-2-318 (2012 & Supp. 2015).

15. Kimberly L. Johnson, *Education: Elementary and Secondary Education*, 20 GA. ST. U. L. REV. 134, 135 (2003).

16. Fleming Interview, *supra* note 10.

17. *See id.*; Georgia General Assembly, HB 3, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20152016/HB/3>.

18. Fleming Interview, *supra* note 10.

19. State of Georgia Final Composite Status Sheet, HB 3, May 14, 2015.

20. *Id.*

21. *Id.*

22. *Id.*; Fleming Interview, *supra* note 10. Legislative rules require that a bill be introduced in the regular session exactly as it is pre-filed. Fleming Interview, *supra* note 10. Representative Fleming refined the bill between pre-filing and introduction during regular session, so he introduced a new bill, HB 503, with the revisions legislative rules prohibited him to make to HB 3. *Id.* HB 503 was the text of the bill that ultimately passed, because the language from HB 503 was substituted into HB 3. *Id.* Representatives Fleming, Dustin Hightower (R-68th), Ronnie Mabra (D-63rd), Demetrius Douglas (D-78th), Spencer Frye (D-118th), and Chuck Efstration (R-104th) sponsored HB 503. Georgia General Assembly, HB 503, Bill Tracking, <http://www.legis.ga.gov/Legislation/en-US/display/20152016/HB/503>.

HB 3, as pre-filed, only amended Code section 20-2-318 by adding a new Code section 20-2-318.1.<sup>23</sup> HB 503, as introduced, made slight grammatical changes to Code section 20-2-317<sup>24</sup> and moved some proposed changes from Code section 20-2-318 to Code section 20-2-317.<sup>25</sup> The result of this latter change is that a violation of the new statute, soliciting autographs from a collegiate athlete in exchange for compensation, is a misdemeanor.<sup>26</sup> Representative Fleming removed this language because he did not “want [the crime] to be a felony.”<sup>27</sup> HB 503 later became the substitute version of HB 3.<sup>28</sup> The House read the Committee substitute as amended on March 13, 2015.<sup>29</sup> The House passed the Committee substitute by a vote of 145 to 27.<sup>30</sup>

#### *Consideration and Passage by the Senate*

Senator Bill Cowsert (R-46th) sponsored HB 3 in the Senate.<sup>31</sup> The Senate read the bill for the first time on March 18, 2015.<sup>32</sup> HB 3 was assigned to the Senate Committee on Higher Education.<sup>33</sup> The Committee favorably reported the bill without changes on March 25, 2015.<sup>34</sup> The Senate read the bill for the second time on March 25, 2015.<sup>35</sup> It was read for the third time on March 31, 2015,<sup>36</sup> and passed the same day by a vote of 48 to 4.<sup>37</sup> HB 3 was sent to

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23. HB 3, pre-filed, 2015 Ga. Gen. Assem.

24. Compare HB 503, as introduced, § 1, p. 1, ln. 14, 16, 18, 21, 2015 Ga. Gen. Assem., with HB 3 (HCS), § 1, p. 1, ln. 14, 16, 18, 21, 2015 Ga. Gen. Assem.

25. Compare HB 503, as introduced, § 1, p. 2, ln 37–46, 2015 Ga. Gen. Assem., with HB 3 (HCS), § 1, p. 2, ln 37–46, 2015 Ga. Gen. Assem.

26. HB 3 (HCS), § 1, p. 2, ln 37–46, 60–61, 2015 Ga. Gen. Assem. HB 3, as introduced, would have made this same violation a felony punishable by a \$25,000 fine and up to five years in prison. HB 3, as introduced, § 1, p. 2, ln 31–33, 2015 Ga. Gen. Assem.

27. Fleming Interview, *supra* note 10.

28. Compare HB 503, as introduced, 2015 Ga. Gen. Assem., with HB 3 (HCS), 2015 Ga. Gen. Assem.

29. State of Georgia Final Composite Status Sheet, HB 3, May 14, 2015.

30. Georgia House of Representatives Voting Record, HB 3 (Mar. 13, 2015).

31. Georgia General Assembly, HB 3, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20152016/HB/3>.

32. State of Georgia Final Composite Status Sheet, HB 3, May 14, 2015.

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. Georgia Senate Voting Record, HB 3 (Mar. 31, 2015).

Governor Nathan Deal (R) on April 7, 2015, and the Governor signed the bill into law on May 6, 2015.<sup>38</sup> The bill became effective upon the Governor's signature.<sup>39</sup>

### *The Act*

The Act amends Part 14 of Article 6 of Chapter 2 of Title 20 of the Official Code of Georgia Annotated to provide a school a cause of action against a person engaged in inappropriate means of encouraging and rewarding a student-athlete, causing a student-athlete to lose eligibility.<sup>40</sup> The Act further makes transacting with a student-athlete, which results in the student-athlete losing eligibility,<sup>41</sup> a misdemeanor.<sup>42</sup>

Section 1 of the Act amends Code section 20-2-317 to define a transaction as “any action or set of actions occurring between two or more persons for the sale or exchange of any property or services.”<sup>43</sup> It prohibits any person from entering into or soliciting transactions with a student-athlete if the person has knowledge that the transaction would violate a governing body's rules, likely carrying a loss of eligibility for the student-athlete as a sanction.<sup>44</sup> Section 2 of the Act expands Code section 20-2-318 granting a school a cause of action against any person that causes a student-athlete to become ineligible to participate in athletics.<sup>45</sup>

### *Analysis*

#### *Intended Consequences and Public Policy*

The original statutes addressing financial rewards for student-athletes had a deterrent effect on alumni “for what used to be a

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38. State of Georgia Final Composite Status Sheet, HB 3, May 14, 2015.

39. Georgia General Assembly, HB 3, Bill Tracking, <http://www.legis.ga.gov/legislation/en-US/Display/20152016/HB/3>.

40. 2015 Ga. Laws 813, at 813.

41. O.C.G.A. § 20-2-317(b.1) (Supp. 2015).

42. O.C.G.A. § 20-2-317(d) (2012 & Supp. 2015).

43. O.C.G.A. § 20-2-317(a)(4) (Supp. 2015).

44. O.C.G.A. § 20-2-317(b.1) (Supp. 2015).

45. O.C.G.A. § 20-2-318(b)(2) (Supp. 2015).

common problem.”<sup>46</sup> Representative Barry Fleming (R-121st) introduced HB 3 to “take the money out” of soliciting athletes for autographs in hopes that it would deter illicit transactions.<sup>47</sup> He hoped that putting memorabilia dealers, and others, at risk of litigation would outweigh any financial benefit gained from the solicitation of student-athletes.<sup>48</sup>

A potential concern is that this statute selectively punishes one party to the transaction. Many other laws, such as anti-drug laws and alcohol age-limits, punish both parties in a transaction.<sup>49</sup> Before HB 3, however, the only party punished was the student-athlete—by either the institution or the NCAA.<sup>50</sup> Now, the Act punishes those who entice others to undertake an illicit act, while the NCAA remains responsible for punishing the student-athlete.<sup>51</sup> The Act intentionally includes a high standard to hold someone liable for the crime; requiring that a person possess *knowledge* that the behavior could result in the athlete losing eligibility to be criminally liable.<sup>52</sup> It is worth noting, however, that the same knowledge requirement is not included in the statute granting the institution a cause of action against the perpetrator.<sup>53</sup>

### *Opposition to HB 3*

Opposition to the Act was sparse, as evidenced by the voting records in the House and Senate.<sup>54</sup> The primary concern of at least one representative was that the law was extraneous and failed to address the root cause of the problem.<sup>55</sup> Representative B.J. Pak (R-108th) stated that the real problem was the NCAA’s prohibition on

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46. Fleming Interview, *supra* note 10.

47. *Id.*

48. *See id.*

49. Audio Recording of Senate Higher Education Committee Meeting, Mar. 3, 2015 at 1 min., 24 sec. (remarks by Rep. Barry Fleming (R-121st)) (on file with the Georgia State University Law Review) [hereinafter Senate Recording].

50. *See* discussion *supra* Part History.

51. Senate Recording, *supra* note 49.

52. *Id.*; *see also* O.C.G.A. § 20-2-317(b.1) (Supp. 2015).

53. O.C.G.A. § 20-2-318 (Supp. 2015).

54. *See* Georgia Senate Voting Record, HB 3 (Mar. 31, 2015); Georgia House of Representatives Voting Record, HB 3 (Mar. 13, 2015).

55. *See, e.g.*, Senate Recording, *supra* note 49, at 5 min., 24 sec. (remarks by Representative Barry Fleming (R-121st)).

athletes receiving compensation for their name or likeness.<sup>56</sup> Without the NCAA rule, Mr. Gurley would not have been subject to penalties for an activity that is otherwise perfectly legal.<sup>57</sup> He further stated that any limits on the freedom to contract were unwarranted.<sup>58</sup> Representative Pak argued that a primary tenet of contract law is that penalties are not levied against value adding activities, and thus, HB 3 outlaws what is typically “allowed between consenting adults.”<sup>59</sup>

Representative Pak also questioned whether the Act would result in any real deterrent effect.<sup>60</sup> While a \$5,000 penalty may seem high, when compared with a \$20,000 payoff for a particularly valuable player signature, the Act’s penalty might not seem like a large obstacle.<sup>61</sup>

Other concerns centered on the amount of publicity surrounding Mr. Gurley’s suspension.<sup>62</sup> In fact, one senator on the Senate Higher Education Committee questioned whether the support for the bill would have been nearly as strong (or existed at all) had the incident involved a lesser-known athlete.<sup>63</sup>

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56. Telephone Interview with Rep. B.J. Pak (R-108th) (June 10, 2015) [hereinafter Pak Interview].

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *See, e.g.*, Senate Recording, *supra* note 49, at 6 min., 15 sec. (remarks by Senator P.K. Martin (R-9th)).

63. *Id.* at 6 min., 4 sec.



