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## PROFESSIONS AND BUSINESSES Athlete Agents: Regulate

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## PROFESSIONS AND BUSINESSES

### *Athlete Agents: Regulate*

**CODE SECTION:** O.C.G.A. § 43-4A-1 (new)  
**BILL NUMBER:** SB 423  
**ACT NUMBER:** 1227  
**SUMMARY:** The Act creates the Georgia Athlete Agent Regulatory Commission to administer the registration of athlete agents and to promulgate rules and standards of conduct. The Act requires disclosure of professional qualifications, training, and experience and allows denial of registration for certain reasons. The Act also requires a \$100,000 surety bond which may be forfeited to the athletic association of any state university if an agent fails to notify the commission of his intent to sign an athlete with remaining eligibility to a representation contract, compensates a college athlete, or otherwise jeopardizes an athlete's college eligibility.

**EFFECTIVE DATES:** July 1, 1988 (in part); January 1, 1989 (in part)

### *History*

Collegiate sports have been embroiled in a series of controversies in recent times. For example, on March 12, 1987, the *Atlanta Constitution* reported that agent Norby Walters, of World Sports & Entertainment, Inc. (WSE), admitted advancing cash to college football and basketball players after signing the athletes to postdated representation contracts.<sup>1</sup>

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1. Mortensen, *Agent Admits Giving Cash to College Players*, Atlanta Const., Mar. 12, 1987, at 1E, col. 1. National Collegiate Athletic Association (NCAA) rules prohibit college athletes from receiving cash or creating agency relationships before their eligibility has expired. NCAA CONST. art. III, § 1. The technique used by Walters, originally devised by agent Mike Trope, is known as an "offer sheet." The student athlete signs a revocable offer which cannot be accepted by the agent until after the player's last intercollegiate event. At the expiration of the player's athletic eligibility, the agent accepts the offer, and an agency relationship is established. Comment, *The Offer Sheet: An Attempt to Circumvent NCAA Prohibition of Representation Contracts*, 14 LOY. L.A.L. REV. 187 (1980). See E. GARVEY, THE AGENT GAME — SELLING PLAYERS

Walters and his associate, Lloyd Bloom, signed representation agreements with, and paid, five first-round National Football League (NFL) draft choices before their college eligibility expired.<sup>2</sup> These incidents led to a FBI investigation and a federal grand jury inquiry. The federal grand jury was impaneled to investigate Walters and Bloom on charges of extortion, wire fraud, mail fraud, and Racketeer Influenced Corrupt Organization (RICO) Act violations.<sup>3</sup> The grand jury, which subpoenaed more than sixty athletes, also considered fraud<sup>4</sup> and income tax evasion charges against the athletes who accepted money from WSE.<sup>5</sup>

Georgia athletes avoided involvement in the Walters scandal,<sup>6</sup> but were implicated by other athlete agents. Georgia Institute of Technology football and baseball star Ricardo Ingram lost his college eligibility for accepting cash from Atlanta athlete agent Jim Abernathy.<sup>7</sup> Abernathy disclosed that he had signed at least six college athletes to service contracts before their eligibility had expired, and he was compelled to release the names of at least ten athletes who were signed to agent agreements or were recruited in violation of other NCAA rules.<sup>8</sup> The Alabama Attorney General sought a criminal indictment against Abernathy for tampering

SHORT (1984).

2. Neff, *Agents of Turmoil*, SPORTS ILLUSTRATED, Aug. 3, 1987, at 34.

3. Mortensen, *Sports Agent's Dealings Draws Eye of Grand Jury*, Atlanta Const., May 14, 1987, at 1E, col. 5.

4. The fraud charges stemmed from a statement signed annually by all NCAA athletes declaring they have not violated NCAA rules. Many of the athletes signed these declarations after they had taken cash from WSE. Neff, *supra* note 2, at 35.

5. Mortensen, *supra* note 3, at 1E, col. 6.

6. Walters pursued a University of Georgia athlete, Keith Johnson, who was highly ranked by the National Scouting Service. Walters paid Johnson \$5000 and signed him to a representation contract after Johnson had completed his eligibility. Johnson's ranking was significantly lowered because of weight and back problems. When Johnson was not drafted by an NFL team, Walters revoked their representation contract. Mortensen, *Agent: Bum Report on UGA Player Cost Us*, Atlanta Const., Jul. 29, 1987, at 1A, col. 1.

7. Mortensen, *Tech Standout Ingram to be Declared Ineligible for Taking Cash From Agents*, Atlanta J., Nov. 13, 1987, at 1A, col. 1.

8. Mortensen, *Agent's Dealings Could Affect Bowls*, Atlanta J., Dec. 15, 1987, at 1A, col. 1. Abernathy revealed his activities as an agent because of "a recent religious experience, . . . an ongoing investigation by the Journal, the 'hypocrisy' of the NCAA and major college sports, and his opinion that 'athletes are total con artists.'" *Id.* at 10A, col. 2. Abernathy alleged that a booster at Clemson University asked for money in return for "delivering" college athletes to the agent. Abernathy also admitted paying a professional football personnel director and a professional basketball scout for information concerning college athletes. *Id.* Prior to revealing his secret dealings with college athletes, Abernathy had participated in a televised panel discussing the problems of agents and college athletes. He recommended that agents be required to post a one million dollar bond and to forfeit a portion to the schools if the agent interfered with a player's eligibility. Mortensen & Rosenberg, *Ingram, Agent Publicly Urged NCAA Reform*, Atlanta J. & Const., Nov. 14, 1987, at 1A, col. 1.

with a sporting event, commercial bribery, and deceptive trade practices.<sup>9</sup>

Since the Walters and Abernathy controversies, several states have introduced, or are considering, legislation to regulate athlete agents.<sup>10</sup> California and Oklahoma were the first states with statutes regulating athlete agents.<sup>11</sup> Georgia joined that growing number of states regulating athlete agents by adding Chapter 4A to Title 43 of the Code relating to professions and businesses.<sup>12</sup>

The Act is partly a reaction to the Walters and Abernathy controversies and partly a response to the continuing public perception of agent misconduct.<sup>13</sup> The well-publicized cases of agent misconduct emphasized the importance of a prompt legislative response and helped speed the legislation through the process.<sup>14</sup> Although the Act was amended by both the House and Senate, it was virtually unopposed.<sup>15</sup>

Both houses introduced bills in the 1988 session to regulate athlete agents.<sup>16</sup> In its original form, SB 423 required athlete agents to register with the Secretary of State and prohibited nonregistered agents from contacting athletes within the state.<sup>17</sup> SB 423 regulated the business relationship between agents and college athletes. For example, the bill required that contracts used by an athlete agent provide notice of the

9. Davidson, *Abernathy Convicted in Deal With Auburn Football Player*, Atlanta Const., Mar. 2, 1988, at 1A, col. 1. Abernathy was convicted on the misdemeanor tampering charge and received the maximum sentence of one year in jail and a \$2000 fine. *Id.* Walters and Bloom were indicted on the same charges by an Alabama grand jury. Mortensen, *Walters and Bloom are Indicted*, Atlanta Const., Feb. 3, 1988, at 1B, col. 5. Bloom was found guilty of one count of deceptive trade practices. Mortensen, *Sports Agent's Penalty: Week in Hotel*, Atlanta Const., May 3, 1988, at 1A, col. 3. Walters attempted to have the charges dropped in exchange for a \$200,000 restitutionary payment and his promise to never again represent an Alabama athlete. Mortensen, *Alabama, Agent Walters Near Deal to Have Charges Dropped*, Atlanta Const., May 17, 1988, at 3E, col. 4.

10. See, e.g., ALA. CODE §§ 8-26-1 to -41 (Supp. 1988); KY. REV. STAT. ANN. §§ 518.010, .080 (Michie Supp. 1988); LA. REV. STAT. ANN. § 4:421 (West Supp. 1987); TEX. REV. CIV. STAT. ANN. art. 88—71 (Vernon 1988); OHIO REV. CODE ANN. §§ 4771.01 to .06 (Baldwin Supp. 1988). Ohio Representative John Stozich characterized the legislation as a response to the Norby Walters controversy. Telephone interview with Ohio Representative John Stozich, House District No. 82 (Oct. 7, 1987).

11. CAL. LAB. CODE § 1500 (West Supp. 1986); OKLA. STAT. ANN. tit. 70, § 821.61 (West Supp. 1987).

12. O.C.G.A. § 43-4A-1 to -18 (1988).

13. Telephone interview with Representative Dean Alford, House District No. 57 (Apr. 6, 1988) [hereinafter Alford Interview].

14. *Id.*

15. Interview with Keith Logue, Legal Counsel to the Senate Committee on Governmental Affairs (Jan. 28, 1988) [hereinafter Logue Interview].

16. HB 1373, sponsored by Representative Dean Alford, House District No. 57, and others, was introduced and favorably reported out of committee but was never read a second time on the floor. Final Composite Status Sheet, Mar. 7, 1988.

17. SB 423, as introduced, 1988 Ga. Gen. Assem.

agent's registration with the state.<sup>18</sup> The registration also had to disclose the agent's fee schedule and a description of services, and provide a fee ceiling for multiyear contracts.<sup>19</sup> The contracts had to be filed with the state. SB 423 also proscribed certain agent conduct such as fee splitting, receiving money from a professional sports league or team, or offering anything of value to an employee of a university. Agents were also forbidden from offering a cash inducement to an athlete or from entering into an "offer sheet" contract. A violation of these provisions would cause the "forfeiture of any right of repayment" and would void a representation agreement. The original bill also required the athlete agent to maintain expense records while representing an athlete. These records could be subpoenaed for criminal investigations to establish a Code violation.<sup>20</sup>

The Senate Governmental Operations Committee offered a substitute to SB 423 which dramatically reduced its scope.<sup>21</sup> The substitute also required the athlete agent to register with the state.<sup>22</sup> However, it identified certain reasons for which a registration could be denied.<sup>23</sup> At the heart of the substitute was the requirement that a \$100,000 bond be posted.<sup>24</sup> The bond would be forfeited if the agent failed to notify the state of an athlete's prospective signing or otherwise jeopardized the athlete's college eligibility.<sup>25</sup> The substitute was intended to address the major issue of the athlete agent controversy — interference in college sports.<sup>26</sup> The substitute bill deleted the provisions regulating the athlete agent's business practices and the provisions regulating the agent's conduct outside of college sports.<sup>27</sup>

The original House bill was similar to the original Senate version in its comprehensive nature. Unlike the Senate version, HB 1373 created a nine-member commission to be responsible for registering athlete agents, administering the Code section, and promulgating regulations governing agent conduct.<sup>28</sup> Like SB 423, HB 1373 contained provisions regulating the relationship between agents and athletes, including a requirement to provide fee schedules and implement certain record keeping requirements. HB 1373 also required a \$50,000 bond and broad disclosure of the agent's past experience, skill, and training. To reveal potential conflicts of

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18. *Id.* The bill allowed the athlete agent to participate in informational interviews with athletes in their final year of eligibility if organized and conducted by the university. *Id.*

19. *Id.*

20. *Id.*

21. SB 423 (SCS), 1988 Ga. Gen. Assem.

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. Logue Interview, *supra* note 15.

27. SB 423 (SCS), 1988 Ga. Gen. Assem.

28. HB 1373, as introduced, 1988 Ga. Gen. Assem.

interest, HB 1373 required the agent to disclose the names of those with financial interests in the agent's business, as well as the agent's personal involvement in any investment vehicle suggested to the athlete.<sup>29</sup> The House Committee offered a substitute to HB 1373 to make it conform with other licensing statutes.<sup>30</sup> The committee also reduced the size of the commission from nine members to six.<sup>31</sup>

### SB 423

SB 423, as enacted, is a hybrid of the early versions of SB 423 and HB 1373. SB 423 addressed only issues regarding agents and college athletics. HB 1373, on the other hand, called for the creation of a commission and proscribed a wider variety of athlete agent conduct. The authors from the two houses drafted a House substitute to SB 423 as a compromise bill.<sup>32</sup>

The Act creates the Georgia Athlete Agent Regulatory Commission comprised of six commissioners "with an interest in college athletics."<sup>33</sup> The Commission is responsible for administering this Code chapter and promulgating rules and standards of conduct for athlete agents.<sup>34</sup> The establishment of a regulatory commission with broad rule making powers permits a measure of self-regulation through input to the Commission from those with an interest in the profession.<sup>35</sup> The Commission likely will institute certain proscriptions of agent conduct that were deleted from the original House Bill.<sup>36</sup> Unlike other professional boards, whose members are appointed solely by the Governor,<sup>37</sup> the Athlete Agent Regulatory Commission's members are appointed by the Governor, the President of the Senate, and the Speaker of the House.<sup>38</sup> This appointment

29. *Id.*

30. HB 1373 (HCS), 1988 Ga. Gen. Assem. For example, a provision was removed which would have allowed an appeal to the Commission. See O.C.G.A. § 43-1-19 (1988) (establishing the authority of the state examining board to grant or revoke licenses and the mechanism for appeal and review of a decision).

31. HB 1373 (HCS), 1988 Ga. Gen. Assem.

32. Alford Interview, *supra* note 13; see SB 423 (HCS), 1988 Ga. Gen. Assem.

33. O.C.G.A. § 43-4A-3 (1988).

34. *Id.*

35. Alford Interview, *supra* note 13.

36. *Id.* For example, HB 1373 specifically proscribed cash inducements to coaches or university employees and splitting fees with union employees. It also provided for maximum fees, a fee schedule, and extensive record keeping. If the Commission does not institute needed rules of conduct, the legislature may amend the Code in the future. *Id.* Indeed, if the Commission had not been included in the final bill, there may have been a harder fight to retain the more comprehensive measures of HB 1373. *Id.* See O.C.G.A. § 43-4A-3(g) (1988) ("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.").

37. See, e.g., O.C.G.A. § 43-5-2 (1984) (establishing that the Governor appoint members to the Georgia Board of Athletic Trainers).

38. O.C.G.A. § 43-4A-3(a) (1988).

process will lead to more input from the legislature in the development of the commission's goals.<sup>39</sup>

The Act requires the prospective athlete agent to register with the Commission.<sup>40</sup> The agent must furnish certain personal information, including "affidavits or certificates of completion of any and all formal training or practical experience."<sup>41</sup> The Commission will investigate and evaluate the agent's qualifications and either grant or deny registration.<sup>42</sup> Unlike the California statute which does not provide any grounds by which registration can be denied,<sup>43</sup> the Act provides for denial of a registration based on proof of instances of conduct affecting the agent's veracity, credibility, integrity, or competence.<sup>44</sup> The Commission may also suspend or revoke a registration for a violation of the Act.<sup>45</sup> The Act applies to an athlete who resides in Georgia, has remaining eligibility, and is attending a Georgia college or university affiliated with a national sports organization, or an athlete who has participated as a member on such a sports team and has never signed a professional sports contract.<sup>46</sup>

Both HB 1373 and SB 423, as introduced, and the Committee substitute, included members of the Georgia Bar as athlete agents, but no mention is made of Georgia attorneys in the Act.<sup>47</sup> Other states have struggled with this issue. California, for example, excluded attorneys from their statute when they were acting as "legal counsel" for the athlete.<sup>48</sup> The issue of whether an attorney is an athlete agent or merely acting as legal counsel is thus avoided by applying the Act to anyone who "directly or indirectly, recruits or solicits an athlete to enter into an agent contract or

39. Alford Interview, *supra* note 13. The Act also provides that the Governor may remove a commissioner for cause. O.C.G.A. § 43-4A-3(d) (1988).

40. O.C.G.A. § 43-4A-4 (1988).

41. O.C.G.A. § 43-4A-5(b) (1988).

42. O.C.G.A. §§ 43-4A-6 to -7 (1988).

43. CAL. LAB. CODE § 1513 (West Supp. 1986).

44. O.C.G.A. § 43-4A-7 (1988). Specifically, registration may be denied for making false statements in the application; specific acts of fraud; other conduct affecting integrity or competence; violating the rules of the NCAA; conviction on a gambling charge; violating another state's athlete agent statute; or refusing to promise to follow the Commission's rules. *Id.*

45. O.C.G.A. § 43-4A-8 (1988).

46. O.C.G.A. § 43-4A-2(2) (1988). SB 423, as introduced, defined the athlete as an individual who was receiving a scholarship and was also subject to the rules of the NCAA as distinguished from the "Georgia Non-NCAA Athlete."

47. In a meeting of the House Subcommittee on State and Federal Relations in Atlanta on January 28, 1988, Representative Alford suggested leaving attorneys out of the house bill so that it would be an issue for discussion when the bill went to a conference committee.

48. CAL. LAB. CODE § 1500(b) (West Supp. 1987). The exclusion of attorneys when acting as legal counsel has been criticized as being overbroad and as limiting the effectiveness of the regulatory statute. *See Comment, Regulating the Professional Sports Agent: Is California in the Right Ballpark?*, 15 PAC. L.J. at 1241 (1984).

professional sports service contract.”<sup>49</sup>

At the heart of the Act is the requirement that an athlete agent doing business in the state post a \$100,000 surety bond.<sup>50</sup> When an agent wants to represent an athlete with remaining college eligibility in future negotiations with professional sports teams, the agent must notify the commission in writing concerning his intentions, naming the athlete and his university.<sup>51</sup> The Commission will alert the athletic director of the university attended by the athlete within three days. The agent may not sign the athlete to a representation agreement until thirty days after the Commission has received notice from the agent.<sup>52</sup> Further, the agent may not compensate the athlete “prior to signing an agent contract” or otherwise jeopardize the athlete’s college eligibility.<sup>53</sup> If the agent violates the Act by signing the athlete within the cooling-off period, or by paying him prior to signing a representation agreement, he will forfeit the \$100,000 bond to the athlete’s university.<sup>54</sup> If there is a violation, the bond is forfeited “regardless of whether the athlete loses any college eligibility.”<sup>55</sup> Thus, the Act’s enforcement is independent of the ultimate enforcement by the NCAA.

*D. Johnson*

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49. O.C.G.A. § 43-4A-3 (1988). The Act does not apply to anyone affiliated with a professional sports team as long as they do not recruit or solicit college athletes. Alford Interview, *supra* note 13.

50. O.C.G.A. § 43-4A-13 (1988). A House Committee Substitute of HB 1373 provided that malpractice insurance in the amount of \$500,000 would satisfy the bond requirement, but this provision was dropped from the final version. HB 1373 (HCS), 1988 Ga. Gen. Assem.

51. O.C.G.A. § 43-4A-16 (1988).

52. *Id.* The subsection also provides that except for the disclosure to the athletic director of the subject school the news of an athlete’s signing will remain confidential.

53. *Id.*

54. *Id.*

55. *Id.*