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A. Stafford

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## PROFESSIONS AND BUSINESSES

### *Athlete Agents: Amend Provisions*

CODE SECTIONS: O.C.G.A. §§ 43-4A-2 (amended), 43-4A-4 (amended), 43-4A-5 (amended), 43-4A-7 (amended), 43-4A-8 (amended), 43-4A-10 to -13 (amended), 43-4A-16 (amended)

BILL NUMBER: SB 43

ACT NUMBER: 408

SUMMARY: The Act amends the regulations governing the conduct of athlete agents by giving the Athlete Agents Regulatory Commission additional powers to discipline or revoke the registration of athlete agents. The Act adds criminal penalties for violation of the Act. The Act also reduces the amount of the bond that an athlete agent is required to post.

EFFECTIVE DATE: April 3, 1989

### *History*

In 1988, the Georgia General Assembly passed the Georgia Athlete Agents Regulatory Act.<sup>1</sup> The Act was passed in response to some highly publicized acts of athlete agent misconduct which caused some student athletes to lose their eligibility.<sup>2</sup> These events led to “the continuing public perception of agent misconduct.”<sup>3</sup>

### *SB 43*

As introduced, SB 43 expanded an athlete agent’s duty to notify the Athlete Agent Regulatory Commission of certain dealings with a college athlete. Under the 1988 law, athlete agents were required to notify the Commission only of their intention to sign a college athlete to an agent

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1. O.C.G.A. §§ 43-4A-1 to -18 (1988).

2. See Legislative Review, *Athlete Agents: Regulate*, 5 GA. ST. U.L. REV. 451, 452. One athlete agent, Norby Walters, allegedly signed a number of first round draft choices to agent contracts before their college eligibility had expired, in direct violation of National Collegiate Athletic Association (NCAA) Rules. Atlanta agent Jim Abernathy also admitted signing college athletes before expiration of their eligibility. *Id.* at 451–52.

3. *Id.* at 453.

contract.<sup>4</sup> SB 43, as introduced, required that athlete agents notify the Commission in writing when they actually signed an athlete at a Georgia university to a contract prior to the termination of that athlete's college eligibility.<sup>5</sup> The bill required the Commission, upon receiving the information that a college athlete had signed a contract, to notify the athletic director of the athlete's college of this signing.<sup>6</sup> This change was made to protect colleges<sup>7</sup> from National Collegiate Athletic Association (NCAA) potential penalties imposed for playing an ineligible athlete.<sup>8</sup>

SB 43 was proposed by the Athlete Agent Regulatory Agency.<sup>9</sup> The Senate Committee on Governmental Operations added a number of provisions to the original bill.<sup>10</sup> Nearly all of the changes made by the Senate committee in its substitute bill were included in the final version of SB 43.<sup>11</sup>

The Act substantially amends the Athlete Agents Regulatory Act of 1988. The Act adds definitions of "athletic department,"<sup>12</sup> "athletic director,"<sup>13</sup> and "institution of higher learning"<sup>14</sup> to clarify the people and organizations within its coverage.<sup>15</sup> The definitions of "player associations or organizations," and of "resident" were deleted from the Act.<sup>16</sup> Finally, the Act makes minor technical changes to the definitions of "athlete"<sup>17</sup> and "athlete agent."<sup>18</sup>

The Act replaces section 43-4A-4 with a new section that requires that every Georgia college "file an annual report with the Commission,"

4. O.C.G.A. § 43-4A-16(a) (1988).

5. SB 43, as introduced, 1989 Ga. Gen. Assem.

6. *Id.*

7. Telephone interview with Jack Littleton, Office of Legislative Council (Sept. 21, 1989). The change was requested by the Georgia Athlete Agent Regulatory Commission, which was created by the Georgia Athlete Agents Regulatory Act of 1988. *Id.*

8. NCAA CONST. art. III, § 1. The NCAA prohibits college athletes from receiving cash or entering into agency agreements before the athletes' college eligibility expires. *Id.*

9. Telephone Interview with William Miller, Committee Member (Sept. 21, 1989) [hereinafter Miller interview].

10. SB 43 (SCS), 1989 Ga. Gen. Assem.

11. Compare SB 43 (SCS), 1989 Ga. Gen. Assem. with the final version of SB 43, 1989 Ga. Gen. Assem.

12. O.C.G.A. § 43-4A-2(4) (Supp. 1989).

13. O.C.G.A. § 43-4A-2(5) (Supp. 1989).

14. O.C.G.A. § 43-4A-2(7) (Supp. 1989).

15. Telephone interview with Keith Logue, member of the Commission, and former legal counsel to Senate Committee on Governmental Operations (Sept. 21, 1989) [hereinafter Logue Interview]. Some smaller schools do not have an official designated as "athletic director"; other schools do not have recognized "athletic departments." These definitions make clear who and what is covered by the Act. *Id.*

16. Compare O.C.G.A. § 43-4A-2 (Supp. 1989) with O.C.G.A. § 43-4A-2 (1988).

17. O.C.G.A. § 43-4A-2(2) (Supp. 1989).

18. O.C.G.A. § 43-4A-2(1) (Supp. 1989).

identifying the college's athletic director.<sup>19</sup> The purpose of the report is to provide the Commission with the name of the person to contact at the school when notification is required under the Act.<sup>20</sup> Section 43-4A-5 was amended to include a requirement that the agent must specify the names and addresses of all persons with a financial interest in his business.<sup>21</sup>

The Act greatly increases the Commission's power to regulate the conduct of athlete agents by allowing the Commission to revoke registration of, or to discipline, a registered athlete agent.<sup>22</sup> Previously, the Commission had the power only to refuse registration to an applicant.<sup>23</sup> The Act expands the type of conduct over which the Commission may exercise its regulatory powers. The Act provides that the Commission may also deny or revoke registration, or may discipline an athlete agent, if it finds that the agent made a false material representation in the conduct of his business, or in an application for renewal of registration.<sup>24</sup> The Commission may also exercise its regulatory powers if an athlete agent "[h]as engaged in conduct which results in a violation of any rule or regulation promulgated by an intercollegiate sports governing body."<sup>25</sup> The 1988 Act permitted the Commission to deny registration to an agent for conduct that violated or caused an athlete to violate only an NCAA rule or regulation.<sup>26</sup> The 1989 Act adds several other grounds for which registration may be denied or revoked, or discipline imposed: conviction for violation of any "statute, law, or any rule or regulation of this state, any other state, the Commission, the United States, or any other lawful licensing authority" relating to athlete agents;<sup>27</sup> any violation of a previous order of the Commission given at a disciplinary hearing;<sup>28</sup> or conduct that causes an athlete to lose college eligibility.<sup>29</sup>

The Act provides that the Commission's denial of registration to an athlete agent is not a "contested case" under Georgia's Administrative Procedure Act.<sup>30</sup> Therefore, the notice and hearing required by that

19. O.C.G.A. § 43-4A-4(b) (Supp. 1989).

20. Logue Interview, *supra* note 15. This requirement was added primarily to help the Commission identify the appropriate person to contact when a school does not have an "athletic director." *Id.*

21. O.C.G.A. § 43-4A-5(a)(5) (Supp. 1989).

22. O.C.G.A. § 43-4A-7(a) (Supp. 1989).

23. O.C.G.A. § 43-4A-7 (1988).

24. O.C.G.A. § 43-4A-7(a)(1) (Supp. 1989).

25. O.C.G.A. § 43-4A-7(a)(8) (Supp. 1989).

26. O.C.G.A. § 43-4A-7(a)(4) (1988).

27. O.C.G.A. § 43-4A-7(a)(6) (Supp. 1989). Previously this subparagraph referred only to conviction "of an offense relating to the profession of an athlete agent in another state." O.C.G.A. § 43-4A-7(a)(6) (1988).

28. O.C.G.A. § 43-4A-7(a)(6) (Supp. 1989).

29. O.C.G.A. § 43-4A-7(a)(8) (Supp. 1989).

30. O.C.G.A. § 50-13-2 (1986).

statute are not required here.<sup>31</sup> The Act, however, gives an applicant the right to appear before the Commission, if he requests in writing to do so.<sup>32</sup>

The Act gives the Commission the power to take any of a number of listed actions in the event it finds any of the conditions listed in O.C.G.A. § 43-4A-7 are met. The Commission may:

(1) Refuse to grant or renew a registration; (2) Administer a public reprimand; (3) Suspend any registration for a definite period of time or for an indefinite period of time in connection with any condition which may be attached to the restoration of said registration; (4) Limit or restrict any registration as the commission deems necessary for the protection of the public; (5) Revoke any registration; (6) Impose a fine not to exceed \$100,000.00 for each violation of a law, rule, or regulation; or (7) Impose any condition on a registration, including, but not limited to, requiring a surety bond in excess of \$10,000.00, which the commission may reasonably deem necessary for the protection of the public.<sup>33</sup>

Section 43-4A-10 provides that the Commission may, at its discretion, issue a temporary registration subject to revocation by the Commission for cause.<sup>34</sup> Under the 1989 Act, temporary registration is no longer limited to ninety days.<sup>35</sup>

The most significant change in the Act is the addition of criminal penalties for failing to comply with the provisions of the Act. Section 43-4A-11 makes failure to comply a felony, punishable by one to five years in jail, or by a fine of between 5,000 dollars and 10,000 dollars, or both.<sup>36</sup> In addition, any contract negotiated with an athlete by an athlete agent who fails to register with the Commission is void.<sup>37</sup>

The Commission may set fees, in addition to the application fee.<sup>38</sup> These include a "temporary registration fee, registration fee, [or] registration renewal fee."<sup>39</sup> In setting the fees, the Commission is limited to a reasonable amount needed to cover the Commission's operating expenses.<sup>40</sup> A previous version of the bill provided that fees would be

31. O.C.G.A. § 43-4A-7(b) (Supp. 1989); *see* O.C.G.A. § 50-13-2 (1986).

32. O.C.G.A. § 43-4A-7(b) (Supp. 1989).

33. O.C.G.A. § 43-4A-8 (Supp. 1989).

34. O.C.G.A. § 43-4A-10 (Supp. 1989).

35. *Compare* O.C.G.A. § 43-4A-10 (Supp. 1989) *with* O.C.G.A. § 43-4A-10 (1988).

36. O.C.G.A. § 43-4A-11(a) (Supp. 1989).

37. O.C.G.A. § 43-4A-11(b) (Supp. 1989).

38. O.C.G.A. § 43-4A-12 (Supp. 1989).

39. *Id.* Fees under the prior law were limited to the application fee. O.C.G.A. § 43-4A-12 (1988).

40. O.C.G.A. § 43-4A-12 (Supp. 1989).

returned only for good cause, but that language was deleted from the final version.<sup>41</sup>

Section 43-4A-13 of the Act gives the Commission discretion to set the amount of the surety bond that an athlete agent is required to deposit with the Commission as a prerequisite to registration or renewal. Previously, the amount of the bond required was 100,000 dollars.<sup>42</sup> The Act calls for a bond of not less than 10,000 dollars.<sup>43</sup> Also, under former law, the athlete agent forfeited the bond only if he violated both section 43-4A-16, which requires the athlete agent to notify the Commission of his intent to sign, or the signing of, a college athlete, *and* section 43-4A-8.<sup>44</sup> Now, the violation of either section, or of section 43-4A-7, is grounds for forfeiture of the bond.<sup>45</sup>

The change in the bond requirements is one reason for greatly increasing the Commission's regulatory powers and adding criminal penalties to the Act.<sup>46</sup> The Commission believed that the 100,000 dollars bond was too expensive and many good agents might be forced to seek other employment because they could not afford the bond.<sup>47</sup> Supporters of the Act believed that more good agents would be able to do business in this state if the Commission had discretion to lower the required bond to 10,000 dollars.<sup>48</sup> It was feared that the potential forfeiture of the bond would prove insufficient to deter violations of the Act.<sup>49</sup> Therefore, the Commission's powers were increased, and criminal penalties were added so that other actions could be taken to deter misconduct.<sup>50</sup>

The Act requires that an athlete agent must notify the Commission of his intent to sign an athlete to an agent contract prior to the termination of the athlete's eligibility.<sup>51</sup> The agent must also notify the Commission within ten days after actually signing an athlete to a contract.<sup>52</sup> The Commission then has seven business days<sup>53</sup> in which to notify the athletic director of the college that the athlete attends of the agent's signing, or intent to sign, that athlete.<sup>54</sup> The Act provides

41. Compare SB 43 (HCSFA), 1989 Ga. Gen. Assem. with O.C.G.A. § 43-4A-12 (Supp. 1989).

42. O.C.G.A. § 43-4A-13 (1988).

43. O.C.G.A. § 43-4A-13 (Supp. 1989).

44. O.C.G.A. § 43-4A-8 (Supp. 1989).

45. O.C.G.A. § 43-4A-13 (Supp. 1989).

46. Logue Interview, *supra* note 15.

47. *Id.*

48. *Id.*

49. *Id.*

50. O.C.G.A. § 43-4A-16(a)(1) (Supp. 1989).

51. O.C.G.A. § 43-4A-16(a)(Z) (Supp. 1989).

52. *Id.*

53. *Id.*

54. *Id.*

further that the Commission need not notify the athletic director if the college has not filed an annual report with the Commission.<sup>55</sup> The Act adds that, if the athlete agent fails to notify the Commission in writing as required by this section, any contract negotiated by the agent is void,<sup>56</sup> and the agent will forfeit anything of value he has given to the athlete while the athlete has college eligibility remaining.<sup>57</sup>

*A. Stafford*

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55. *Id.*

56. O.C.G.A. § 43-4A-16(d) (Supp. 1989).

57. O.C.G.A. § 43-4A-16(e) (Supp. 1989).