

3-1-2000

PROFESSIONS AND BUSINESSES Athlete Agents: Provide Additional Grounds for Refusing To Register or for Disciplining an Athlete Agent; Change the Provisions Relating to Criminal Penalties; Change the Provisions Relating to Notice of the Signing of an Agent Contract That is Given to an Institution of Higher Education and the Georgia Athlete Agent Regulatory Commission; Provide for Certain Terms To Be Included in Agent Contracts; Authorize an Institution of Higher Education To Bring a Civil Action Against an Athlete Agent for the Recovery of Damages Due to Violation of Chapter 4A of Title 43

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Recommended Citation

Horne Natasha, *PROFESSIONS AND BUSINESSES Athlete Agents: Provide Additional Grounds for Refusing To Register or for Disciplining an Athlete Agent; Change the Provisions Relating to Criminal Penalties; Change the Provisions Relating to Notice of the Signing of an Agent Contract That is Given to an Institution of Higher Education and the Georgia Athlete Agent Regulatory Commission; Provide for Certain Terms To Be Included in Agent Contracts; Authorize an Institution of Higher Education To Bring a Civil Action Against an Athlete Agent for the Recovery of Damages Due to Violation of Chapter 4A of Title 43*, 17 GA. ST. U. L. REV. (2000).
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PROFESSIONS AND BUSINESSES

Athlete Agents: Provide Additional Grounds for Refusing To Register or for Disciplining an Athlete Agent; Change the Provisions Relating to Criminal Penalties; Change the Provisions Relating to Notice of the Signing of an Agent Contract That Is Given to an Institution of Higher Education and the Georgia Athlete Agent Regulatory Commission; Provide for Certain Terms To Be Included in Agent Contracts; Authorize an Institution of Higher Education To Bring a Civil Action Against an Athlete Agent for the Recovery of Damages Due to Violation of Chapter 4A of Title 43

CODE SECTIONS: O.C.G.A. §§ 43-4A-7, -11, -16 (amended), -16.1, -20 (new)

BILL NUMBER: HB 1323

ACT NUMBER: 850

GEORGIA LAWS: 2000 Ga. Laws 1396

SUMMARY: The Act amends several sections of the Georgia Code to provide additional grounds for refusing to register an athlete agent or for disciplining athlete agents. First, the Act requires that an athlete agent provide written notice of an agent contract to the athletic director of the institution of higher education with which the athlete is associated. Second, the Act requires agent contracts to be in writing and provides contract language that must be included in order for the contract to be enforceable. Third, the Act provides the athlete a right to rescind an agent contract by written notice. Finally, the Act provides an institution of higher education the right to bring a civil action for recovery of damages against an athlete agent if the institution is damaged by acts of an athlete agent (or

his representatives or employees) in violation of the Chapter.

EFFECTIVE DATE: July 1, 2000

History

In 1988, partially in response to athlete agent misconduct that caused some collegiate athletes to lose their eligibility to play in collegiate sports, the Georgia General Assembly enacted the Georgia Athlete Agents Regulatory Act.¹ In 1989, the General Assembly amended the Act to give the Athlete Agents Regulatory Commission additional power in disciplining athlete agents and to add criminal penalties for violation of the Act.²

HB 1323

Representatives Carolyn Hugley, Newt Hudson, Thomas B. Murphy, Bob Smith, Don Parsons, and Mitchell Kaye of the 133rd, 156th, 18th, 91st, 40th, and 37th House Districts, respectively, sponsored HB 1323.³ The House assigned the bill to its Industry Committee, which favorably reported the bill, as substituted, on February 9, 2000.⁴ The House Industry Committee substitute changed language in the bill, as introduced.⁵ Specifically, under new Code section 43-4A-16.1(a), the substitute changed "INTERCOLLEGIATE ATHLETIC ASSOCIATION OR CONFERENCE" to "THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION OR THE CONFERENCE."⁶ Similarly, under Code section 43-4A-20(b)(1), the substitute changed "by a national association for the promotion and regulation of intercollegiate athletics" to "the

1. See *Review of Selected 1989 Georgia Legislation*, 6 GA. ST. U. L. REV. 298, 298 (1989) [hereinafter *Selected 1989 Legislation*]. A Georgia Institute of Technology football and baseball star, "Ricardo Ingram[,] lost his college eligibility for accepting cash from Atlanta athlete agent Jim Abernathy." *Review of Selected 1988 Georgia Legislation*, 5 GA. ST. U. L. REV. 451, 452 (1988).

2. See *Selected 1989 Legislation*, *supra* note 1.

3. See HB 1323, as introduced, 2000 Ga. Gen. Assem.

4. See State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

5. Compare HB 1323, as introduced, 2000 Ga. Gen. Assem., with HB 1323 (HCS), 2000 Ga. Gen. Assem.

6. Compare HB 1323, as introduced, 2000 Ga. Gen. Assem., with HB 1323 (HCS), 2000 Ga. Gen. Assem.

National Collegiate Athletic Association.”⁷ The House adopted the Industry Committee substitute and passed the bill on February 16, 2000.⁸

On February 17, 2000, the Senate assigned the bill to its Judiciary Committee, which favorably reported the bill on March 3, 2000.⁹ The Senate unanimously passed the bill on March 14, 2000.¹⁰ Governor Roy Barnes signed HB 1323 into law on May 1, 2000.¹¹

The Act

The Act amends Code section 43-4A-7, relating to the grounds for refusal or revocation of registration of an athlete agent.¹² Specifically, the Act allows the Commission to deny registration or revoke the registration of an athlete agent or to discipline an athlete agent if: (1) the agent contacts an athlete prior to the completion of the athlete’s last intercollegiate contest for the purpose of entry into an agent contract; (2) the agent accepts an athlete as a client in exchange for consideration made to an employee or coach of an institution of higher education; (3) the agent offers anything of value to anyone to induce an athlete to enter into an agent contract; or (4) the agent postdates an agent contract.¹³ However, the Act amends the Georgia Code to allow an athlete agent to send written materials to an athlete if the agent also sends an identical copy of the materials to the athletic director of the school at which the athlete is enrolled, or with which the athlete has signed a national grant-in-aid.¹⁴ The Act also amends the Georgia Code to allow an athlete agent to contact an athlete for the purpose of entering into an agent contract if the athlete or the athlete’s parent or guardian

7. Compare HB 1323, as introduced, 2000 Ga. Gen. Assem., with HB 1323 (HCS), 2000 Ga. Gen. Assem.

8. See Georgia House of Representatives Voting Record, HB 1323 (Feb. 16, 2000). The vote was 147 to 2. See *id.*

9. See State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

10. See Georgia Senate Voting Record, HB 1323 (Mar. 14, 2000).

11. See 2000 Ga. Laws 1396, § 7, at 1401.

12. Compare 1989 Ga. Laws 370, § 4, at 374-75 (formerly found at O.C.G.A. § 43-4A-7 (1999)), with O.C.G.A. § 43-4A-7 (Supp. 2000).

13. Compare 1989 Ga. Laws 370, § 4, at 374-75 (formerly found at O.C.G.A. § 43-4A-7 (1999)), with O.C.G.A. § 43-4A-7 (Supp. 2000).

14. Compare 1989 Ga. Laws 370, § 4, at 374-75 (formerly found at O.C.G.A. § 43-4A-7 (1999)), with O.C.G.A. § 43-4A-7 (Supp. 2000).

initiates the contact and if the athletic director has prior notice of the contact.¹⁵

The Act amends Code section 43-4A-11, relating to violations and criminal penalties, by removing redundant language within the Georgia Code.¹⁶ Specifically, the Act deletes “or who otherwise violates any provisions of this chapter” after “[a]ny person who engages in the occupation of an athlete agent with an athlete without complying with this chapter”¹⁷

The Act amends Code section 43-4A-16, relating to the signing of contracts prior to termination of an athlete’s college eligibility.¹⁸ The Act currently requires an agent who enters into an agency contract with an athlete prior to the termination of the athlete’s college eligibility to provide written notice of the contract to the school’s athletic director.¹⁹ Such notice must be given “before the contracting athlete practices or participates in any intercollegiate athletic event or within 72 hours after entering into the contract, whichever comes first.”²⁰

The Act creates new Code section 43-4A-16.1, relating to terms that must be provided in agent contracts.²¹ First, the “contract must be in writing [and] must state the fees and percentages to be paid by the athlete to the athlete agent.”²² Second, the contract must include specified language which alerts the athlete to the effect of an agent contract on his collegiate career, in ten-point boldface type near the athlete’s signature.²³ Third, the Code section makes void and unenforceable the following types of agent contracts: (1) any agent contract which does not meet the requirements of the Code section; (2) any agent contract which is postdated; and (3) any agent contract that

15. Compare 1989 Ga. Laws 370, § 4, at 374-75 (formerly found at O.C.G.A. § 43-4A-7 (1999)), with O.C.G.A. § 43-4A-7 (Supp. 2000).

16. Compare 1989 Ga. Laws 370, § 7, at 376-77 (formerly found at O.C.G.A. § 43-4A-11 (1999)), with O.C.G.A. § 43-4A-11 (Supp. 2000).

17. Compare 1989 Ga. Laws 370, § 7, at 376-77 (formerly found at O.C.G.A. § 43-4A-11 (1999)), with O.C.G.A. § 43-4A-11 (Supp. 2000).

18. Compare 1989 Ga. Laws 370, § 10, at 378-79 (formerly found at O.C.G.A. § 43-4A-16 (1999)), with O.C.G.A. § 43-4A-16 (Supp. 2000).

19. Compare 1989 Ga. Laws 370, § 10, at 378-79 (formerly found at O.C.G.A. § 43-4A-16 (1999)), with O.C.G.A. § 43-4A-16 (Supp. 2000).

20. Compare 1989 Ga. Laws 370, § 10, at 378-79 (formerly found at O.C.G.A. § 43-4A-16 (1999)), with O.C.G.A. § 43-4A-16 (Supp. 2000).

21. See O.C.G.A. § 43-4A-16.1 (Supp. 2000).

22. *Id.* § 43-4A-16.1(a).

23. See *id.*

purports to take effect or does take effect at a future time after the athlete is no longer eligible to participate in intercollegiate athletics.²⁴ Fourth, the Code section provides an athlete the right to rescind an agent contract through written notice to the athlete agent within fifteen days after the agent signs the contract.²⁵ This right to rescind cannot be waived by the athlete.²⁶

The Act also creates Code section 43-4A-20, allowing an institution of higher education to bring a civil action for the recovery of damages against an athlete agent if the institution is damaged by conduct of the athlete agent (or his representatives or employees) that is in violation of the Act.²⁷ Any potential action must be brought within four years after the right accrues.²³ An institution of higher education is presumed to be damaged by the acts of the athlete agent if, because of those acts: (1) the institution is penalized, suspended, or disqualified from participation in an interscholastic or intercollegiate athletic event by the National Collegiate Athletic Association (NCAA) or by an intercollegiate athletic conference, and (2) as a result of such penalty, suspension, or disqualification, the institution suffers an adverse financial impact.²⁹ Under the Act, adverse financial impact may result from loss of revenue from media coverage of a sports event; the loss of the right to grant an athletic scholarship, to recruit an athlete, or to participate in a post-season athletic competition; forfeiture of an athletic contest; or loss of other opportunities through which the school would have realized revenue.³⁰ The Act also allows the school to recover actual damages, punitive damages, court costs, and reasonable attorneys' fees should it prevail in the action.³¹

Natasha T. Horne

24. *See id.* § 43-4A-16.1(b), (d), (e).

25. *See id.* § 43-4A-16.1(c).

26. *See id.*

27. *See id.* § 43-4A-20(a).

28. *See id.*

29. *See id.* § 43-4A-20(b).

30. *See id.*

31. *See id.* § 43-4A-20(c).