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EDUCATION Elementary and Secondary Education: Provide a Cause of Action for Improper Solicitation of High School Athletes and Require High Schools to Disclose the Names of All Student Athletes

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EDUCATION

Elementary and Secondary Education: Provide a Cause of Action for Improper Solicitation of High School Athletes and Require High Schools to Disclose the Names of All Student Athletes

CODE SECTIONS:	O.C.G.A. §§ 20-2-317 to -318 (new)
BILL NUMBER:	HB 95
ACT NUMBER:	344
GEORGIA LAWS:	2003 Ga. Laws 707
SUMMARY:	The Act creates civil and criminal causes of action for colleges and universities against persons who violate college athletic recruitment rules and regulations by offering high school students money or other things of value to attend a particular college or university. The Act also requires high schools to release the names of all student athletes and to inform those athletes of college eligibility requirements.
EFFECTIVE DATE:	June 4, 2003

History

During the summer of 2002, the House Education Committee investigated the effects of the National Collegiate Athletic Association's ("NCAA") sanctions against a university.¹ It looked at how the school and the community are affected when an athlete becomes ineligible because he accepted gifts to attend that school to play a sport.² During the House Committee's study, it realized that

1. See Audio Recording of House Proceedings, Mar. 28, 2003 (remarks by Rep. Chuck Sims), at <http://www.legis.state.ga.us/services/leg/audio/2003/archive> [hereinafter House Audio].

2. See *id.* An athlete can become ineligible for accepting something of monetary value from a current or former athletics department member, such as a coach or a booster. See NCAA, *Frequently Asked Questions About the NCAA Enforcement Process*, at http://www.ncaa.org/enforcement/faq_enforcement.html#13 [hereinafter *Frequently Asked Questions*]. A booster is a person who represents an institution's athletic interest. *Id.*

while NCAA procedures punish athletic department staff members and boosters who engage in improper solicitation,³ the punishments were inadequate compared to the sanctions the university, the community, and the student athlete receive.⁴ The student athlete could lose eligibility, and the university could suffer enormous financial loss, including exclusion from revenue-generating bowl games.⁵ The House Committee proposed a solution to punish athletic department members and boosters that improperly solicit student athletes.⁶ The House Committee intended to give colleges and universities the chance to seek either restitution or criminal prosecution against a person who improperly solicits a student athlete and causes an NCAA violation.⁷ The House Committee sought to ensure awareness among student athletes of the ramifications for accepting gifts to attend a particular college.⁸ Since Texas passed similar legislation, no one in that state has been charged for improperly soliciting a student athlete.⁹ Representatives from the NCAA and Georgia colleges and universities that have athletic programs provided input for HB 95 and supported its introduction.¹⁰

HB 95

Representatives Chuck Sims, Louise McBee, DuBose Porter, and Earl Ehrhart of the 130th, 74th, 119th, and 28th districts, respectively, sponsored HB 95.¹¹ The Speaker referred the bill to the Committee on Higher Education.¹² The House Committee favorably reported the bill with a slight change.¹³ The original bill provided that violators would be “guilty of a felony,” but some legislators were

3. The NCAA Committee on Infractions “could require that the institution take certain disciplinary actions against the individual that could affect the individual’s athletically related duties at the institution.” See *Frequently Asked Questions*, *supra* note 2.

4. See Telephone Interview with Rep. Chuck Sims, House District No. 130 (Apr. 15, 2003) [hereinafter Sims Interview].

5. See House Audio, *supra* note 1.

6. See Sims Interview, *supra* note 4.

7. See *id.*

8. See *id.*

9. See Audio Recording of Senate Proceedings, Apr. 17, 2003 (remarks by Sen. Brian Kemp), at <http://www.legis.state.ga.us/services/leg/audio/2003/archive>.

10. See *id.*

11. See HB 95, as introduced, 2003 Ga. Gen. Assem.

12. See State of Georgia Final Composite Status Sheet, HB 95, Apr. 25, 2003.

13. See HB 95 (HCS), 2003 Ga. Gen. Assem.

concerned that a felony conviction might be too harsh in certain situations.¹⁴ For instance, if a booster gives a student athlete a \$15 shirt to attend a particular college, the House Committee felt a felony conviction would be too harsh, even though this would still be an NCAA violation.¹⁵ The House Committee offered a substitute to provide for a misdemeanor, instead of a felony, conviction.¹⁶ The House adopted the Committee substitute and passed the bill on March 28, 2003.¹⁷ The Senate read HB 95 on April 7, 2003, and it was referred to the Senate Higher Education Committee.¹⁸ The Senate Committee offered an amendment to change a grammatical error, and the Senate adopted HB 95, as amended, on April 17, 2003.¹⁹ The House agreed to the Senate's amendment on April 22, 2003.²⁰

The Act

The Act creates Code sections 20-2-317 and 20-2-318.²¹ The Act authorizes colleges and universities to pursue a cause of action against persons who offer high school athletes money, or any other thing of value, to attend a particular college or university.²² The Act also provides that such incentives shall not be given to an athlete's immediate family.²³ The institution can recover damages reasonably related to penalties incurred as a result of an athlete's suspension or disqualification.²⁴ Damages can include the loss of scholarship money or the loss of television revenue.²⁵

The Act does not prohibit the university from offering financial aid awards and grants to the student.²⁶ The athlete may also accept any approved intercollegiate athletic awards.²⁷

14. See HB 95, as introduced, 2003 Ga. Gen. Assem.; Telephone Interview with Rep. Louise McBee, House District No. 74 (Apr. 10, 2003).

15. See Sims Interview, *supra* note 4.

16. See HB 95 (HCS), 2003 Ga. Gen. Assem.

17. See Georgia House of Representatives Voting Record, HB 95 (Mar. 28, 2003).

18. See State of Georgia Final Composite Status Sheet, HB 95, Apr. 25, 2003.

19. See Georgia Senate Voting Record, HB 95 (Apr. 17, 2003).

20. See Georgia House of Representatives Voting Record, HB 95 (Apr. 22, 2003).

21. See O.C.G.A. §§ 20-2-317 to -318 (Supp. 2003).

22. See *id.*

23. See O.C.G.A. § 20-2-318(b) (Supp. 2003).

24. See *id.*

25. See O.C.G.A. § 20-2-317(c)(3) (Supp. 2003).

26. See O.C.G.A. § 20-2-317(c)(2) (Supp. 2003).

27. See O.C.G.A. § 20-2-317(e) (Supp. 2003).

Furthermore, the Act requires high schools to disclose the names of all student athletes and to provide the athletes with information pertaining to college eligibility requirements.²⁸ The Act does not “apply to intramural athletic programs.”²⁹

Kimberly L. Johnson

28. *See id.*

29. *See id.*