~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE AMENDMENT ADOPTED

March 24, 2011

**S. 473**

Introduced by Senators Lourie and Setzler

S. Printed 3/24/11--S.

Read the first time January 27, 2011.

**A** **BILL**

TO AMEND CHAPTER 102, TITLE 59, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ATHLETE AGENTS AND STUDENT AGENTS, SO AS TO REVISE DEFINITIONS, TO INCLUDE DEFINITIONS FOR “ADMINISTRATOR”, “DEPARTMENT”, AND “FINANCIAL SERVICES CONTRACT”, TO REVISE THE POWERS OF THE DEPARTMENT OF CONSUMER AFFAIRS WITH RESPECT TO ATHLETE AGENTS AND STUDENT ATHLETES, TO PROVIDE FOR INSPECTION OF OUT‑OF‑STATE RECORDS, TO REQUIRE AN APPLICANT TO UNDERGO A NATIONAL AND STATE CRIMINAL HISTORY RECORDS CHECK AND TO PROVIDE FINGERPRINTS, TO PROVIDE FOR REPORTING AND MAINTENANCE OF CRIMINAL HISTORY RECORDS CHECK RESULTS, TO REVISE CONSIDERATIONS THE DEPARTMENT MAY MAKE WHEN ISSUING A CERTIFICATE OF REGISTRATION, TO REVISE THE TIME IN WHICH A CERTIFICATE OF REGISTRATION IS VALID AND TO PROVIDE THAT THE CERTIFICATE IS NONTRANSFERABLE AND NONASSIGNABLE, TO PROVIDE THAT IF A PERSON AGGRIEVED BY DEPARTMENT ACTION FAILS TO REQUEST A CONTESTED CASE THE ADMINISTRATIVE ACTION IS FINAL, TO PROVIDE THAT FUNDS COLLECTED BY THE DEPARTMENT MUST BE USED TO IMPLEMENT THE PROVISIONS OF THIS CHAPTER, TO REQUIRE THAT THE ADDRESS OF THE ATHLETE AGENT BE INCLUDED IN AN AGENCY CONTRACT, TO REVISE WHAT THE CONTRACT MUST CONTAIN, TO PROVIDE ADDITIONAL PROHIBITED ACTS OF ATHLETE AGENTS, TO ALLOW THE DEPARTMENT TO ISSUE A CEASE AND DESIST ORDER AND IMPOSE A PENALTY UPON FINDING OF MISCONDUCT, TO PROVIDE REPORTING REQUIREMENTS FOR EDUCATIONAL INSTITUTIONS, AND TO PROVIDE THAT THE DEPARTMENT MAY PROMULGATE REGULATIONS NECESSARY TO EFFECTUATE THE PROVISIONS OF THIS CHAPTER.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 102, Title 59 of the 1976 Code is amended to read:

“CHAPTER 102

Athlete Agents and Student Athletes

Section 59‑102‑10. This chapter may be cited as the ~~‘Uniform Athlete Agents Act of 2004’~~ ‘Sports Agent Enforcement and Registration Act of 2011’.

Section 59‑102‑20. As used in this chapter:

(1) ‘Administrator’ means the Administrator of the Department of Consumer Affairs or his designee.

(~~1~~2) ‘Agency contract’ means an agreement in which a student athlete authorizes a person to negotiate or solicit on behalf of the student athlete a professional sports services contract, financial service contract, or an endorsement contract.

(~~2~~3) ‘Athlete agent’ means an individual who enters into an agency contract with a student athlete or, directly or indirectly, recruits or solicits a student athlete to enter into an agency contract or who, for any type of financial gain or expectation thereof, directly or indirectly, procures, offers, assists, promises, or attempts to obtain a professional sports services contract, financial service contract, or an endorsement contract for a student athlete. The term includes an individual who represents to the public that the individual is an athlete agent. The term does not include a spouse, parent, sibling, grandparent, or guardian of the student athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.

(~~3~~4) ‘Athletic director’ means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate.

(~~4~~5) ‘Contact’ means a communication, direct or indirect, between an athlete agent and a student athlete to recruit or solicit the student athlete to enter into an agency contract.

(6) ‘Department’ means the South Carolina Department of Consumer Affairs.

(~~5~~7) ‘Endorsement contract’ means an agreement under which a student athlete is employed or receives consideration to use a product or service based on value the student athlete has because of publicity, reputation, following, or fame obtained from athletic ability or performance.

(8) ‘Financial services contract’ means an agreement under which an individual is employed or agrees to render services relating to the making or execution of an investment or other financial decision, or counseling as to a financial decision.

(~~6~~9) ‘Intercollegiate sport’ means a sport played at the collegiate level for which eligibility requirements for participation by a student athlete are established by a national association for the promotion or regulation of collegiate athletics.

(~~7~~10) ‘Person’ means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, other legal or commercial entity, or government, governmental subdivision, agency, or instrumentality.

(~~8~~11) ‘Professional sports services contract’ means an agreement under which an individual is employed or agrees to render services as a player on a professional sports team, with a professional sports organization, or as a professional athlete.

(~~9~~12) ‘Record’ means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(~~10~~13) ‘Registration’ means registration as an athlete agent pursuant to this chapter.

(~~11~~14) ‘State’ means the State of South Carolina when referring to this State or a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States when referring to another state.

(~~12~~15) ‘Student athlete’ means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in an intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student athlete for purposes of that sport.

Section 59‑102‑30. (A) By acting as an athlete agent in this State, a nonresident person appoints the ~~Director~~ Administrator of the Department of Consumer Affairs as his agent for service of process in a civil action in this State related to his acting as an athlete agent in this State.

(B) The Department of Consumer Affairs may ~~issue subpoenas for material~~ conduct investigations relevant to the administration of this chapter and, to the extent necessary for this purpose, may administer oaths or affirmations, may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

(C) If the person’s records are located outside this State, the person, at the department’s discretion, shall either make them available to the department at a convenient location within this State or pay the reasonable and necessary expenses for the department to examine them at the place where they are maintained. The administrator may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his behalf.

(D) Upon failure without lawful excuse to obey a subpoena or to give testimony, and upon reasonable notice to all persons affected, the department may apply to the Administrative Law Court for an order compelling compliance.

Section 59‑102‑40. (A) Except as otherwise provided in subsection (B), ~~a person~~ an individual may not act as an athlete agent in this State without holding a certificate of registration pursuant to Section 59‑102‑60 or 59‑102‑80.

(B) Before being issued a certificate of registration, ~~a person~~ an individual may act as an athlete agent in this State for all purposes except signing an agency contract if:

(1) a student athlete or one acting on behalf of the student athlete initiates communication with the ~~person~~ individual; and

(2) within seven days after an initial act as an athlete agent, the ~~person~~ individual submits an application for registration as an athlete agent in this State.

(C) An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return all consideration received pursuant to the contract.

Section 59‑102‑50. (A) An applicant for registration shall submit an application for registration to the Department of Consumer Affairs in a form prescribed by the Department of Consumer Affairs. An application filed pursuant to this section is a public record. The application must be in the name of ~~a person~~ an individual and, except as otherwise provided in subsection ~~(B)~~ (C), signed or otherwise authenticated by the applicant under penalty of perjury and state or contain:

(1) the name of the applicant and the address of the applicant’s principal place of business;

(2) the name of the applicant’s business or employer, if applicable;

(3) any business or occupation engaged in by the applicant for the five years next preceding the date of submission of the application;

(4) a description of the applicant’s:

(a) formal training as an athlete agent;

(b) practical experience as an athlete agent; and

(c) educational background relating to his activities as an athlete agent;

(5) the names and addresses of three individuals not related to the applicant who are willing to serve as references;

(6) the name, sport, and last known team for each individual for whom the applicant acted as an athlete agent during the five years next preceding the date of submission of the application;

(7) the names and addresses of all persons who are:

(a) with respect to the athlete agent’s business, if it is not a corporation, the partners, members, officers, managers, associates, or profit‑sharers of the business; and

(b) with respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of five percent or greater;

(8) whether the applicant or a person named pursuant to item (7) has been convicted of a crime that would be a crime involving moral turpitude or a felony if committed in this State, and identification of the crime;

(9) whether there has been any administrative or judicial determination that the applicant or a person named pursuant to item (7) has made a false, misleading, deceptive, or fraudulent representation;

(10) an instance in which the conduct of the applicant or a person named pursuant to item (7) resulted in the imposition against a student athlete or educational institution of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event;

(11) a sanction, suspension, or disciplinary action taken against the applicant or a person named pursuant to item (7) arising out of occupational or professional conduct; and

(12) whether there has been a denial of an application for, suspension or revocation of, or refusal to renew the registration or licensure of the applicant or a person named pursuant to item (7) as an athlete agent in any state.

(B) An applicant shall consent to national and state criminal history records checks, to a set of the applicant’s fingerprints in a form acceptable to the department, and to provide the actual cost of obtaining national and state criminal history records checks by the Federal Bureau of Investigation (FBI) and the South Carolina Law Enforcement Division (SLED). Using the information supplied by the administrator to SLED, the applicant shall undergo a state criminal records check supported by fingerprints, by SLED, and a national criminal records check, supported by fingerprints, by the FBI. The results of these criminal records checks must be reported to the department. The South Carolina Law Enforcement Division is authorized to retain the fingerprints for certification purposes and for notification of the department regarding criminal charges. The administrator shall keep all information pursuant to this section privileged, in accordance with applicable state and federal guidelines.

(~~B~~C) An applicant for registration in this State, who has applied for and holds a certificate, registration, or licensure as an athlete agent in another state, may submit a copy of that application and certificate instead of submitting an application in the form prescribed pursuant to subsection (A). The Department of Consumer Affairs shall accept the application and the certificate from the other state as an application for registration in this State if the application to the other state:

(1) was submitted in the other state within six months next preceding the submission of the application in this State and the applicant certifies that the information contained in the application is current;

(2) contains information substantially similar to or more comprehensive than that required in an application submitted in this State; and

(3) was signed by the applicant under penalty of perjury.

Section 59‑102‑60. (A) Except as otherwise provided in subsection (B), the Department of Consumer Affairs shall issue a certificate of registration to ~~a person~~ an individual who complies with Section 59‑102‑50(A) or whose application has been accepted pursuant to Section 59‑102‑50(B).

(B) The Department of Consumer Affairs may refuse to issue a certificate of registration if he determines the applicant has engaged in conduct that has a significantly adverse effect on the applicant’s fitness to act as an athlete agent. In making the determination, the Department of Consumer Affairs may consider whether the applicant has:

(1) been convicted of a crime that would be a crime involving moral turpitude or a felony if committed in this State;

(2) made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent;

(3) engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;

(4) engaged in conduct prohibited by ~~Section 59‑102‑140~~ this chapter or any regulation promulgated thereunder;

(5) had a registration or licensure as an athlete agent suspended, revoked, or denied or been refused renewal of registration or licensure as an athlete agent in any state;

(6) engaged in conduct resulting in the imposition against a student athlete or educational institution of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event; ~~or~~

(7) engaged in conduct related to athlete agent activities resulting in a governmental authority instituting an action against the applicant; or

(~~7~~8) engaged in conduct that significantly adversely reflects on the applicant’s credibility, honesty, or integrity.

(C) In making a determination pursuant to subsection (B), the Department of Consumer Affairs shall consider:

(1) how recently the conduct occurred;

(2) the nature of the conduct and the context in which it occurred; and

(3) other relevant conduct of the applicant.

(D) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the Department of Consumer Affairs. An application filed pursuant to this section is a public record. The application for renewal must be signed by the applicant under penalty of perjury and must contain current information on all matters required in an original registration.

(E) ~~A person~~ An individual who has submitted an application for renewal of registration or licensure in another state may file a copy of that application for renewal and a valid certificate of registration or licensure from the other state instead of submitting an application for renewal in the form prescribed pursuant to subsection (D). The Department of Consumer Affairs shall accept the application for renewal from the other state as an application for renewal in this State if the application to the other state:

(1) was submitted in the other state within six months next preceding the filing in this State and the applicant certifies the information contained in the application for renewal is current;

(2) contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this State; and

(3) was signed by the applicant under penalty of perjury.

(F) A certificate of registration or a renewal of a registration is valid for two years from the date of issuance and is nontransferable and nonassignable.

Section 59‑102‑70. (A) The Department of Consumer Affairs may refuse to renew a registration or may revoke or suspend a registration for conduct that would have justified denial ~~of registration~~ pursuant to Section 59‑102‑60(B).

(B) ~~A person~~ An individual aggrieved by an action taken by the department ~~pursuant to this subsection or pursuant to Section 59‑102‑60(B)~~ may request review by filing a request for a contested case hearing with the Administrative Law Court in accordance with the court’s rules of procedure. If the person fails to request a contested case hearing within the time provided in the court’s rules of procedure, the administrative order becomes final and the department may bring an action to enforce its order pursuant to Chapter 23, Title 1.

~~(C)~~ ~~The Department of Consumer Affairs may file a request for a contested case hearing with the Administrative Law Court for an order revoking or suspending the registration of an athlete agent for cause or for a violation of a provision of this chapter.~~

Section 59‑102‑80. The Department of Consumer Affairs may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.

Section 59‑102‑90. An application for registration or renewal of registration must be accompanied by a fee of:

(1) five hundred dollars for an initial application for registration; or

(2) three hundred dollars for an application for renewal of registration.

Section 59‑102‑100. (A) An agency contract must be in a record that is signed or otherwise authenticated by the parties.

(B) An agency contract must include:

(1) the amount and method of calculating the consideration to be paid by the student athlete for services provided by the athlete agent under the contract and other consideration the athlete agent receives from another source for entering into the contract or for providing the services;

(2) the name of a person not listed in the application for registration or renewal of registration to be compensated because the student athlete signed the agency contract;

(3) a description of expenses the student athlete agrees to reimburse;

(4) a description of the services to be provided to the student athlete;

(5) the duration of the contract; ~~and~~

(6) the date of execution; and

(7) the address of the athlete agent to which notice of cancellation permitted by Section 59‑102‑120 must be sent.

(C) An agency contract must contain, in close proximity to the signature of the student athlete, a conspicuous notice in boldface type in capital letters stating:

‘WARNING TO STUDENT ATHLETE

IF YOU SIGN THIS CONTRACT:

(1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT ATHLETE IN YOUR SPORT;

(2) IF YOU HAVE AN ATHLETIC DIRECTOR, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT OR BEFORE THE NEXT SCHEDULED ATHLETIC EVENT IN WHICH YOU MAY PARTICIPATE, WHICHEVER COMES FIRST; AND

(3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.’

(D) An agency contract that does not conform to this section is voidable by the student athlete. If a student athlete voids an agency contract, the student athlete is not required to pay consideration under the contract or to return consideration received from the athlete agent to induce the student athlete to enter into the contract.

(E) The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student athlete at the time of execution.

Section 59‑102‑110. (A) Within seventy‑two hours after entering into an agency contract or before the next scheduled athletic event in which the student athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution at which the student athlete is enrolled or the athlete agent has reasonable grounds to believe the student athlete intends to enroll.

(B) Within seventy‑two hours after entering into an agency contract or before the next athletic event in which the student athlete may participate, whichever occurs first, the student athlete shall inform the athletic director of the educational institution at which the student athlete is enrolled that he or she has entered into an agency contract.

Section 59‑102‑120. (A) A student athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within fourteen days after the contract is signed.

(B) A student athlete may not waive the right to cancel an agency contract.

(C) If a student athlete cancels an agency contract, the student athlete is not required to pay consideration under the contract or to return consideration received from the athlete agent to induce the student athlete to enter into the contract.

Section 59‑102‑130. (A) An athlete agent shall retain the following records for a period of five years:

(1) the name and address of each individual represented by the athlete agent;

(2) an agency contract entered into by the athlete agent; and

(3) direct costs incurred by the athlete agent in the recruitment or solicitation of a student athlete to enter into an agency contract.

(B) Records retained pursuant to subsection (A) are open to inspection by the Department of Consumer Affairs during normal business hours. If the athlete agent’s records are located outside this State, access shall be made as prescribed in Section 59‑102‑30(C).

Section 59‑102‑140. ~~(A)~~ An athlete agent~~, with the intent to induce a student athlete to enter into an agency contract,~~ may not directly or indirectly:

(1) give materially false or misleading information or make a materially false promise or representation;

(2) furnish anything of value to a student athlete before the student athlete enters into the agency contract; or

(3) furnish anything of value prior to a student athlete being permanently ineligible to participate in a particular intercollegiate sport to an individual other than the student athlete, to a member of the student athlete’s immediate family, to an individual deemed to be in a position to influence the student athlete, or to another ~~registered~~ athlete agent~~.~~;

~~(B)~~ ~~An athlete agent may not~~ ~~intentionally~~:

(~~1~~4) initiate contact with a student athlete unless registered pursuant to this chapter;

(~~2~~5) refuse or fail to retain or permit inspection of records pursuant to Section 59‑102‑130;

(~~3~~6) fail to register as required by Section 59‑102‑40;

~~(4~~7) provide materially false or misleading information in an application for registration or renewal of registration;

(~~5~~8) predate or postdate an agency contract; ~~or~~

(~~6~~9) fail to notify a student athlete before the student athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student athlete ineligible to participate as a student athlete in that sport;

(10) fail to comply with a policy of an educational institution, including athlete interview and on‑campus athlete agent registration guidelines and policies;

(11) commit mismanagement or misconduct as an athlete agent which causes financial harm to a student athlete or educational institution;

(12) fail to update and correct information contained on an application filed pursuant to Section 59‑102‑50 or Section 59‑102‑60; or

(13) engage in conduct resulting in the imposition against a student athlete or educational institution of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event.

Section 59‑102‑150. (A) An athlete agent who violates Section 59‑102‑140 is guilty of a misdemeanor and, upon conviction, may be fined not more than ten thousand dollars or imprisoned for not more than three years, or both. A third offense is a felony and, upon conviction, the individual may be fined not more than fifteen thousand dollars or imprisoned for not more than five years, or both.

(B) The department may bring a civil action to restrain any person from violating this chapter, or regulation promulgated thereunder, and for other appropriate relief, including recovering a civil penalty not to exceed one hundred thousand dollars for each violation.

Section 59‑102‑160. (A) An educational institution has a right of action against an athlete agent or a former student athlete for damages caused by a violation of this chapter. In an action pursuant to this section, the court may award costs and reasonable attorney’s fees to the prevailing party.

(B) Damages to an educational institution pursuant to subsection (A) include, without limitation, losses and expenses incurred because the educational institution was injured by a violation of this chapter or was penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self‑imposed disciplinary action taken to mitigate sanctions likely to be imposed by such an organization.

(C) A right of action pursuant to this section does not accrue until the educational institution discovers, or by the exercise of reasonable diligence would have discovered, the violation by the athlete agent or former student athlete.

(D) Liability of the athlete agent or the former student athlete pursuant to this section is several and not joint.

(E) This chapter does not restrict rights, remedies, or defenses of a person under law or equity.

Section 59‑102‑170. (A) Upon a finding that ~~an~~ ~~athlete agent~~ a person has violated a provision of this chapter or regulation promulgated thereunder, ~~as determined from admissions of the athlete agent freely and voluntarily made or as the result of a contested case hearing, the administrative law judge may assess a fine against an athlete agent~~ the department may issue an order requiring the person to cease and desist from the prohibited action and may impose an administrative penalty not to exceed one hundred thousand dollars for ~~a~~ each violation of this chapter.

(B) An individual aggrieved by an action taken by the department may request review by filing a request for a contested case hearing with the Administrative Law Court in accordance with the court’s rules of procedure. If the person fails to request a contested case hearing within the time provided in the court’s rules of procedure, the administrative order becomes final and the department may bring an action to enforce its order pursuant to Chapter 23, Title 1.

Section 59‑102‑175. (A) On or before February fifteenth of each year, an educational institution must report to the department the following information pertaining to the preceding calendar year:

(1) all notifications of contracts received by the educational institution pursuant to this chapter; and

(2) athlete agents who registered with the educational institution or otherwise attempted to comply with the policies or procedures of the educational institution regarding contacting a student athlete.

(B) An educational institution must report to the department any known instances of student athletes receiving anything of value directly or indirectly from an athlete agent within fourteen days after making a determination the incident occurred.

(C) The educational institution must make reports pursuant to subsections (A) and (B) in a manner prescribed by the department. All information reported is public record pursuant to Chapter 4, Title 30, unless otherwise prohibited.

(D) The department may assess a late penalty of twenty dollars per day each day the report is past due.

(E) Damages provided by Section 59‑102‑150 and Section 59‑102‑170 do not apply to this section.

Section 59‑102‑180. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 59‑102‑190. The department may promulgate regulations necessary to effectuate the purposes of this chapter.”

SECTION 2. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑