~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

January 23, 2018

**H. 3068**

Introduced by Reps. J.E. Smith and Clyburn

S. Printed 1/23/18--H.

Read the first time January 10, 2017.

**THE COMMITTEE ON EDUCATION AND PUBLIC WORKS**

To whom was referred a Bill (H. 3068) to amend Chapter 102, Title 59, Code of Laws of South Carolina, 1976, relating to athlete agents and student athletes, so as to enact the, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by deleting all after the enacting words and inserting:

/ 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~~ 2017’.

Section 59‑102‑20. In this chapter:

(1) ‘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 or an endorsement contract.

(2) ‘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. 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~~

(a) means an individual, whether or not registered under this chapter, who:

(i) directly or indirectly recruits or solicits a student athlete to enter into an agency contract or, for compensation, procures employment or offers, promises, attempts, or negotiates to obtain employment for a student athlete as a professional athlete or member of a professional sports team or organization;

(ii) for compensation or in anticipation of compensation related to a student athlete’s participation in athletics:

(A) serves the athlete in an advisory capacity on a matter related to finances, business pursuits, or career management decisions, unless the individual is an employee of an educational institution acting exclusively as an employee of the institution for the benefit of the institution; or

(B) manages the business affairs of the athlete by providing assistance with bills, payments, contracts, or taxes; or

(iii) in anticipation of representing a student athlete for a purpose related to the athlete’s participation in athletics:

(A) gives consideration to the student athlete or another person;

(B) serves the athlete in an advisory capacity on a matter related to finances, business pursuits, or career management decisions; or

(C) manages the business affairs of the athlete by providing assistance with bills, payments, contracts, or taxes; but

(b) does not include an individual who:

(i) acts solely on behalf of a professional sports team or organization; or

(ii) is a licensed, registered, or certified professional and offers or provides services to a student athlete customarily provided by members of the profession, unless the individual:

(A) also recruits or solicits the athlete to enter into an agency contract;

(B) also, for compensation, procures employment or offers, promises, attempts, or negotiates to obtain employment for the athlete as a professional athlete or member of a professional sports team or organization; or

(C) receives consideration for providing the services calculated using a different method than for an individual who is not a student athlete.

(3) ‘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) ‘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.

(5) ‘Educational institution’ includes a public or private elementary school, secondary school, technical or vocational school, community college, college, and university.

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

(7) ‘Enrolled’ means registered for courses and attending athletic practice or class. ‘Enrolls’ has a corresponding meaning.

(~~6~~8) ‘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~~ that promotes or regulates collegiate athletics.

(9) ‘Interscholastic sport’ means a sport played between educational institutions that are not community colleges, colleges, or universities.

(10) ‘Licensed, registered, or certified professional’ means an individual licensed, registered, or certified as an attorney, dealer in securities, financial planner, insurance agent, real estate broker or sales agent, tax consultant, accountant, or member of a profession, other than that of athlete agent, who is licensed, registered, or certified by the state or a nationally recognized organization that licenses, registers, or certifies members of the profession on the basis of experience, education, or testing.

(~~7~~11) ‘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~~12) ‘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~~13) ‘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.

(14) ‘Recruit or solicit’ means attempt to influence the choice of an athlete agent by a student athlete or, if the athlete is a minor, a parent or guardian of the athlete. The term does not include giving advice on the selection of a particular agent in a family, coaching, or social situation unless the indiviual giving the advice does so because of the receipt or anticipated receipt of an economic benefit, directly or indirectly, from the agent.

(~~10~~15) ‘Registration’ means registration as an athlete agent pursuant to this chapter.

(16) ‘Sign’ means, with present intent to authenticate or adopt a record, to:

(a) execute or adopt a tangible symbol; or

(b) attach to or logically associate with the record an electronic symbol, sound, or process.

(~~11~~17) ‘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~~18) ‘Student athlete’ means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in an interscholastic or intercollegiate sport. If an individual is permanently ineligible to participate in a particular interscholastic or intercollegiate sport, the individual is not a student athlete for purposes of that sport.

Section 59‑102‑30. (A) The provisions of the Administrative Procedures Act of Chapter 23, Title 1 apply to this chapter. The Department of Consumer Affairs may promulgate regulations to effectuate the purposes of this chapter.

(B) By acting as an athlete agent in this State, a nonresident person appoints the Director 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~~C) The Department of Consumer Affairs may issue subpoenas for material relevant to the administration of this chapter.

Section 59‑102‑40. (A) Except as otherwise provided in subsection (B), a person 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 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; and

(2) within seven days after an initial act as an athlete agent, the person 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 and, except as otherwise provided in subsection (B), signed or otherwise authenticated by the applicant under penalty of perjury and state or contain:

(1) the name, date of birth, and place of birth of the applicant and ~~the address of the applicant’s principal place of business;~~:

(a) the address of his principal place of business;

(b) his work and mobile telephone numbers; and

(c) any means of communicating with him electronically, including:

(i) facsimile number;

(ii) electronic mail address; and

(iii) personal, business, or employer websites;

(2) the name of the applicant’s business or employer, if applicable, including for each business or employer its mailing address, telephone number, organizational form, and the nature of the business;

(3) each social media account with which the applicant, his business, or his employer is affiliated;

(4) any business or occupation engaged in by the applicant for the five years next preceding the date of submission of the application, including self‑employment and employment by others, and any professional or occupational license, registration, or certification held by the applicant during that time;

(~~4~~5) 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~~6) the names and addresses of three individuals not related to the applicant who are willing to serve as references;

(~~6~~7) 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, or, if the individual is a minor, the name of his parent or guardian;

(~~7~~8) 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 who hold an equity interest of five percent or greater in that 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~~9) whether the applicant or a person named pursuant to item (~~7~~8) 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:

(a) crime;

(b) law enforcement agency involved; and

(c) if applicable, the date of conviction and the fine or penalty imposed;

(10) whether, within fifteen years before the date of application, the applicant or a person named under item (8) has been a defendant or respondent in a civil proceeding, including a proceeding seeking an adjudication of legal incompetence and, if so, the date and a full explanation of each proceeding;

(11) whether the applicant or a person named under item (8) has an unsatisfied judgment or a judgment of continuing effect, including alimony or a family court order for child support, which is not current at the date of the application;

(12) whether, within ten years before the date of application, the applicant or a person named under paragraph (8) was adjudicated bankrupt or was an owner of a business that was adjudicated bankrupt;

(~~9~~13) whether there has been any administrative or judicial determination that the applicant or a person named pursuant to item (~~7~~8) has made a false, misleading, deceptive, or fraudulent representation;

(~~10~~14) an instance in which the conduct of the applicant or a person named pursuant to item (~~7~~8) 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~~15) a sanction, suspension, or disciplinary action taken against the applicant or a person named pursuant to item (~~7~~8) arising out of occupational or professional conduct; ~~and~~

(~~12~~16) 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~~8) as an athlete agent in any state;

(17) each state in which the applicant currently is registered as an athlete agent or has applied to be registered as an athlete agent;

(18) if the applicant is certified or registered by a professional league or players association:

(a) the name of the league or association;

(b) the date of certification or registration, and the date of expiration of the certification or registration, if any; and

(c) if applicable, the date of any denial of an application for, suspension or revocation of, refusal to renew, withdrawal of, or termination of, the certification or registration or any reprimand or censure related to the certification or registration; and

(19) any additional information required by the department.

(B) Instead of submitting an application in the form prescribed pursuant to subsection (A), 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)~~:

(1) a copy of the application for registration in the other state;

(2) a statement that:

(a) identifies any material change in the information on the application described in item (1), cosigned under penalty of perjury; or

(b) verifies there is no such material change provided in subitem (a), signed under penalty of perjury; and

(3) a copy of the certificate of registration from the other state.

(C) The Department of Consumer Affairs shall accept the application and the certificate from the other state as an application for registration in this State and issue a certificate of registration to the applicant 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; and

(4) the registration has not been revoked or suspended and no action involving the person’s conduct as an athlete agent is pending against the person or his registration in any state.

(D) For purposes of implementing the provisions of subsection (C), the department shall:

(1) cooperate with national organizations concerned with athlete agent issues and agencies in other states which register athlete agents to develop a common registration form and determine which states have laws that are substantially similar to or more restrictive than this chapter; and

(2) exchange information, including information related to actions taken against registered athlete agents or their registrations, with those organizations and agencies.

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 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) pleaded guilty or no contest to, has been convicted of, or has charges pending for 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;

(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 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 registered under subsection (A) 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 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).~~ An athlete agent registered pursuant to Section 59‑102‑50(C) may renew the registration by proceeding under Section 59‑102‑50(D) or, if registration in the other state has been renewed, by submitting to the department copies of the application for renewal in the other state and the renewed registration from the other state. 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~~ renew the registration if it determines:

(1) registration requirements of the other state are substantially similar to or more restrictive than this chapter; and

(2) the renewed registration has not been suspended or revoked and no action involving the person’s conduct as an athlete agent is pending against him or his registration in any state.

(F) A certificate of registration or a renewal of a registration is valid for two years.

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

(B) ~~A person 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.~~

~~(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~~ The department may suspend or revoke the registration of a person registered pursuant to Section 59‑102‑50(C) or renewed pursuant to Section 59‑102‑60(E) for any reason for which the department could have refused to grant or renew registration or for conduct that would justify refusal to issue a certificate of registration pursuant to Section 59‑102‑60(B).

Section 59‑102‑80. The Department of Consumer Affairs may issue a temporary certificate of registration as an athlete agent 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) five hundred dollars for registration based on a certificate of registration issued by another state;

(3) three hundred dollars for an application for renewal of registration; or

(4) three hundred dollars for renewal of registration based on a renewal of registration in another state.

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) in a statement that the athlete agent is registered as an athlete agent in this State and a list of other states in which he is registered as an athlete agent;

(2) 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~~3) 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~~4) a description of expenses the student athlete agrees to reimburse;

(~~4~~5) a description of the services to be provided to the student athlete;

(~~5~~6) the duration of the contract; and

(~~6~~7) the date of execution.

(C) Subject to the provisions of subsection (G), 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~~ IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN SEVENTY‑TWO HOURS AFTER SIGNING THIS CONTRACT OR BEFORE THE NEXT SCHEDULED ATHLETIC EVENT IN WHICH YOU PARTICIPATE, WHICHEVER OCCURS FIRST, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR THAT YOU HAVE ENTERED INTO THIS CONTRACT AND PROVIDE THE NAME AND CONTACT INFORMATION OF THE ATHLETE AGENT; AND

(3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY AS A STUDENT ATHLETE IN YOUR SPORT.’

(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~~ An agency contract must be accompanied by a separate record signed by the student athlete or, if the athlete is a minor, the parent or guardian of the athlete acknowledging that signing the contract may result in the loss of the athlete’s eligibility to participate in the athlete’s sport.

(E) A student athlete or, if the athlete is a minor, the parent or guardian of the athlete may void an agency contract that does not conform to this section. If the contract is voided, any consideration received from the athlete agent under the contract to induce entering into the contract is not required to be returned.

(F) At the time an agency contract is executed, the athlete agent shall give the student athlete or, if the athlete is a minor, the parent or guardian of the athlete a copy in a record of the contract and the separate acknowledgement required by subsection (D).

(G) If a student athlete is a minor, an agency contract must be signed by the parent or guardian of the minor and the notice required by subsection (C) must be revised accordingly.

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~~ In this section, ‘communicating or attempting to communicate’ means contacting or attempting to contact by an in‑person meeting, a record, or another method that conveys or attempts to convey a message.

(B) Not later than 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 athlete is enrolled or at which the agent has reasonable grounds to believe the athlete intends to enroll.

(C) Not later than 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 shall inform the athletic director of the educational institution at which the athlete is enrolled that the athlete has entered into an agency contract and the name and contact information of the athlete agent.

(D) If an athlete agent enters into an agency contract with a student athlete and the athlete subsequently enrolls at an educational institution, the agent shall notify the athletic director of the institution of the existence of the contract not later than seventy‑two hours after the agent knew or should have known the athlete enrolled.

(E) If an athlete agent has a relationship with a student athlete before the athlete enrolls in an educational institution and receives an athletic scholarship from the institution, the agent shall notify the institution of the relationship not later than ten days after the enrollment if the agent knows or should have known of the enrollment and:

(1) the relationship was motivated in whole or part by the intention of the agent to recruit or solicit the athlete to enter an agency contract in the future; or

(2) the agent directly or indirectly recruited or solicited the athlete to enter an agency contract before the enrollment.

(F) An athlete agent shall give notice in a record to the athletic director of an educational institution at which a student athlete is enrolled before the agent communicates or attempts to communicate with:

(1) the athlete or, if the athlete is a minor, a parent or guardian of the athlete to influence the athlete or parent or guardian to enter into an agency contract; or

(2) another person to have that person influence the athlete or, if the athlete is a minor, the parent or guardian of the athlete to enter into an agency contract.

(G) If a communication or attempt to communicate with an athlete agent is initiated by a student athlete or another person on behalf of the athlete, the agent shall notify in a record the athletic director of any educational institution at which the athlete is enrolled. The notification must be made not later than ten days after the communication or attempt.

(H) An educational institution that becomes aware of a violation of this chapter by an athlete agent shall notify the Department of Consumer Affairs and a professional league or players’ association with which the institution is aware the agent is licensed or registered of the violation.

Section 59‑102‑120. (A) A student athlete, or if the athlete is a minor, his parent or guardian 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 provided in subsection (A) may not be waived.

(C) If a student athlete, parent, or guardian cancels an agency contract, the student athlete, parent, or guardian 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~~ person 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.

Section 59‑102‑140. (A) An athlete agent, with the intent to induce a student athlete or, if the student athlete is a minor, a parent or guardian of the student athlete to enter into an agency contract, may not take any of the following actions or encourage another person to take or assist another person in taking any of the following actions on behalf of the athlete agent:

(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 to an individual other than the student athlete or another registered athlete agent.

(B) An athlete agent may not intentionally do any of the following or encourage another person to do any of the following on behalf of the athlete agent:

(1) initiate contact, directly or indirectly, with a student athlete or, if the student athlete is a minor, a parent or guardian of the student athlete to recruit the student athlete, parent, or guardian to enter an agency contract unless registered pursuant to this chapter;

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

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

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

(5) predate or postdate an agency contract; or

(6) fail to notify a student athlete or, if the student athlete is a minor, a parent or guardian of the athlete before the student athlete, parent, or guardian 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.

Section 59‑102‑150. 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.

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~~ An educational institution or student athlete may bring an action for damages against an athlete agent if the institution or athlete is adversely affected by an act or omission of the agent in violation of this chapter. An educational institution or student athlete is adversely affected by an act or omission of the agent only if, because of the act or omission, the institution or a person who was a student athlete at the time of the act or omission and enrolled in the institution:

(1) is suspended or disqualified from participation in an interscholastic or intercollegiate athletic event by or under the rules of a state or national federation or association that promotes or regulates interscholastic or intercollegiate sports; or

(2) suffers financial damage.

(B) A plaintiff that prevails in an action under this section may recover actual damages, punitive damages, costs, and reasonable attorney’s fees. An athlete agent found liable under this section forfeits any right of payment for anything of benefit or value provided to the student athlete and shall refund any consideration paid to the agent by or on behalf of the athlete.

(C) A violation of this chapter is an unfair trade practice for purposes of the South Carolina Unfair Trade Practices Act.

Section 59‑102‑170. Upon a finding that an athlete agent has violated a provision of this chapter, 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 not to exceed one hundred thousand dollars for a violation of this chapter.

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 provisions of this chapter modify, limit, or supersede the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but do not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).”

SECTION 2. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 3. After enactment of the provisions of this act, the Code Commissioner is authorized to insert the Official Comments, as amended, available from the Uniform Law Commission into the annotated versions of the provisions of this act, as contained in the South Carolina Code of Laws, after the appropriate provision and before the South Carolina Reporter’s Comments, to the extent that the South Carolina Reporter’s Comments follow a provision. The Official Comments, prepared by the Uniform Law Commission with the intent of aiding the user in understanding the provisions to the Uniform Commercial Code, are not considered part of this act and do not indicate legislative intent.

SECTION 4. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

MERITA A. ALLISON for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Introduced on January 10, 2017**

**State Expenditure**

This bill amends the Uniform Athlete Agents Act, which governs relations among student athletes, athlete agents, and educational institutions, and provides for regulation of athlete agents activities by the Department of Consumer Affairs (DCA).

To act as an athlete agent, a person is currently required to hold a certificate of registration issued by DCA, or a temporary certificate while the person’s application for registration is pending. This bill expands the information agents must provide on their application for a certificate to include additional contact, employment and licensing information, and additional information that reflects on the applicant’s fitness to act as an agent. Additional fitness information required includes, for the applicant and his associates, reporting civil actions in which he or they were defendants, unsatisfied judgements, bankruptcies, and adverse actions against the applicant’s certification by a professional league or players association. The bill also includes additional considerations for which DCA may refuse to issue or renew a certificate of registration or may suspend or revoke an existing certificate.

Current law allows an applicant to submit an application and agent certification from another state in lieu of this state’s application, if the other state’s application contains substantially the same information required by South Carolina. This bill adds provisions requiring the applicant submitting another state’s documents to include either a statement identifying any changed information or verifying there is no change. DCA is authorized to issue a certificate based on the out-of-state application and credentials, if certain current requirements are met, plus a new requirement that other state’s registration is in good standing with no adverse actions pending. DCA is directed to exchange applicant and agent information with other states and to cooperate with national organizations and other states to develop a common registration form. This bill clarifies that the current $500 application fee and $300 renewal fee are applicable to agents submitting out-of-state documents for their South Carolina applications as well as those using the South Carolina application.

This bill also amends provisions of existing law concerning the content of agency contracts and addresses additional situations in which agents and student athletes must notify educational institutions of their relationship or communications to potentially establish a relationship. The bill allows educational institutions and student athletes adversely affected by an agent’s violation of the Uniform Athlete Agents Act to recover punitive damages in addition to actual damages, costs, and attorneys fees that are presently authorized. Violations of the act are also made an unfair trade practice by the bill, in addition to the other existing penalties. Finally, the bill adopts the Interstate Compact for Registration of Athlete Agents, making South Carolina a member state once the compact is effective.

**Department of Consumer Affairs.** The department indicates they do not anticipate any expenditure impact because DCA already regulates athlete agents and this bill mainly clarifies provisions of their authority and adds prohibitions for agents. DCA does not anticipate any costs associated with adopting the Interstate Compact for Registration of Athlete Agents and participating in the Commission of Interstate Registration of Athlete Agents at this time since this commission has not been established yet. Therefore, this bill is not expected to have an expenditure impact on the general fund, other funds, or federal funds in FY 2017-18 or FY 2018-19.

**State Revenue**

**Department of Consumer Affairs.** The department indicates the athlete agent registration and renewal fees for agents already registered as an athlete agent in another state will not change DCA’s revenue. DCA indicates an athlete agent who applied for registration or renewal as an athlete agent in South Carolina by submitting an application using another state’s documentation already pays the $500 registration fee and $300 renewal fee. Therefore, revenue from these fees will not change because of this bill and there will be no impact on state revenue.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND CHAPTER 102, TITLE 59, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ATHLETE AGENTS AND STUDENT ATHLETES, SO AS TO ENACT THE “UNIFORM ATHLETE AGENTS ACT OF 2017”, TO ADOPT THE INTERSTATE COMPACT FOR REGISTRATION OF STUDENT ATHLETE AGENTS AND MAKE NECESSARY CONFORMING CHANGES, TO REVISE VARIOUS PROVISIONS IN CONSIDERATION OF THE EXPANDED IMPACT OF SOCIAL MEDIA ON THE SOLICITATION AND RECRUITMENT OF STUDENT ATHLETES BY ATHLETE AGENTS, TO REVISE REQUIREMENTS REGARDING THE ESTABLISHMENT OF RELATIONSHIPS BETWEEN STUDENT ATHLETES AND ATHLETE AGENTS, AND TO REVISE VARIOUS AVAILABLE REMEDIES, AMONG OTHER THINGS.

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~~ 2017’.

Section 59‑102‑20. In this chapter:

(1) ‘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 or an endorsement contract.

(2) ‘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. 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~~

(a) means an individual, whether or not registered under this chapter, who:

(i) directly or indirectly recruits or solicits a student athlete to enter into an agency contract or, for compensation, procures employment or offers, promises, attempts, or negotiates to obtain employment for a student athlete as a professional athlete or member of a professional sports team or organization;

(ii) for compensation or in anticipation of compensation related to a student athlete’s participation in athletics:

(A) serves the athlete in an advisory capacity on a matter related to finances, business pursuits, or career management decisions, unless the individual is an employee of an educational institution acting exclusively as an employee of the institution for the benefit of the institution; or

(B) manages the business affairs of the athlete by providing assistance with bills, payments, contracts, or taxes; or

(iii) in anticipation of representing a student athlete for a purpose related to the athlete’s participation in athletics:

(A) gives consideration to the student athlete or another person;

(B) serves the athlete in an advisory capacity on a matter related to finances, business pursuits, or career management decisions; or

(C) manages the business affairs of the athlete by providing assistance with bills, payments, contracts, or taxes; but

(b) does not include an individual who:

(i) acts solely on behalf of a professional sports team or organization; or

(ii) is a licensed, registered, or certified professional and offers or provides services to a student athlete customarily provided by members of the profession, unless the individual:

(A) also recruits or solicits the athlete to enter into an agency contract;

(B) also, for compensation, procures employment or offers, promises, attempts, or negotiates to obtain employment for the athlete as a professional athlete or member of a professional sports team or organization; or

(C) receives consideration for providing the services calculated using a different method than for an individual who is not a student athlete.

(3) ‘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) ‘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.

(5) ‘Educational institution’ includes a public or private elementary school, secondary school, technical or vocational school, community college, college, and university.

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

(7) ‘Enrolled’ means registered for courses and attending athletic practice or class. ‘Enrolls’ has a corresponding meaning.

(~~6~~8) ‘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~~ that promotes or regulates collegiate athletics.

(9) ‘Interscholastic sport’ means a sport played between educational institutions that are not community colleges, colleges, or universities.

(10) ‘Licensed, registered, or certified professional’ means an individual licensed, registered, or certified as an attorney, dealer in securities, financial planner, insurance agent, real estate broker or sales agent, tax consultant, accountant, or member of a profession, other than that of athlete agent, who is licensed, registered, or certified by the state or a nationally recognized organization that licenses, registers, or certifies members of the profession on the basis of experience, education, or testing.

(~~7~~11) ‘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~~12) ‘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~~13) ‘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.

(14) ‘Recruit or solicit’ means attempt to influence the choice of an athlete agent by a student athlete or, if the athlete is a minor, a parent or guardian of the athlete. The term does not include giving advice on the selection of a particular agent in a family, coaching, or social situation unless the individual giving the advice does so because of the receipt or anticipated receipt of an economic benefit, directly or indirectly, from the agent.

(~~10~~15) ‘Registration’ means registration as an athlete agent pursuant to this chapter.

(16) ‘Sign’ means, with present intent to authenticate or adopt a record, to:

(a) execute or adopt a tangible symbol; or

(b) attach to or logically associate with the record an electronic symbol, sound, or process.

(~~11~~17) ‘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~~18) ‘Student athlete’ means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in an interscholastic or intercollegiate sport. If an individual is permanently ineligible to participate in a particular interscholastic or intercollegiate sport, the individual is not a student athlete for purposes of that sport.

Section 59‑102‑30. (A) The provisions of the Administrative Procedures Act of Chapter 23, Title 1 apply to this chapter. The Department of Consumer Affairs may promulgate regulations to effectuate the purposes of this chapter.

(B) By acting as an athlete agent in this State, a nonresident person appoints the Director 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~~C) The Department of Consumer Affairs may issue subpoenas for material relevant to the administration of this chapter.

Section 59‑102‑40. (A) Except as otherwise provided in subsection (B), a person 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 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; and

(2) within seven days after an initial act as an athlete agent, the person 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 and, except as otherwise provided in subsection (B), signed or otherwise authenticated by the applicant under penalty of perjury and state or contain:

(1) the name, date of birth, and place of birth of the applicant and ~~the address of the applicant’s principal place of business;~~:

(a) the address of his principal place of business;

(b) his work and mobile telephone numbers; and

(c) any means of communicating with him electronically, including:

(i) facsimile number;

(ii) electronic mail address; and

(iii) personal, business, or employer websites;

(2) the name of the applicant’s business or employer, if applicable, including for each business or employer its mailing address, telephone number, organizational form, and the nature of the business;

(3) each social media account with which the applicant, his business, or his employer is affiliated;

(4) any business or occupation engaged in by the applicant for the five years next preceding the date of submission of the application, including self‑employment and employment by others, and any professional or occupational license, registration, or certification held by the applicant during that time;

(~~4~~5) 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~~6) the names and addresses of three individuals not related to the applicant who are willing to serve as references;

(~~6~~7) 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, or, if the individual is a minor, the name of his parent or guardian;

(~~7~~8) 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 who hold an equity interest of five percent or greater in that 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~~9) whether the applicant or a person named pursuant to item (~~7~~8) 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:

(a) crime;

(b) law enforcement agency involved; and

(c) if applicable, the date of conviction and the fine or penalty imposed;

(10) whether, within fifteen years before the date of application, the applicant or a person named under item (8) has been a defendant or respondent in a civil proceeding, including a proceeding seeking an adjudication of legal incompetence and, if so, the date and a full explanation of each proceeding;

(11) whether the applicant or a person named under item (8) has an unsatisfied judgment or a judgment of continuing effect, including alimony or a family court order for child support, which is not current at the date of the application;

(12) whether, within ten years before the date of application, the applicant or a person named under paragraph (8) was adjudicated bankrupt or was an owner of a business that was adjudicated bankrupt;

(~~9~~13) whether there has been any administrative or judicial determination that the applicant or a person named pursuant to item (~~7~~8) has made a false, misleading, deceptive, or fraudulent representation;

(~~10~~14) an instance in which the conduct of the applicant or a person named pursuant to item (~~7~~8) 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~~15) a sanction, suspension, or disciplinary action taken against the applicant or a person named pursuant to item (~~7~~8) arising out of occupational or professional conduct; ~~and~~

(~~12~~16) 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~~8) as an athlete agent in any state;

(17) each state in which the applicant currently is registered as an athlete agent or has applied to be registered as an athlete agent;

(18) if the applicant is certified or registered by a professional league or players association:

(a) the name of the league or association;

(b) the date of certification or registration, and the date of expiration of the certification or registration, if any; and

(c) if applicable, the date of any denial of an application for, suspension or revocation of, refusal to renew, withdrawal of, or termination of, the certification or registration or any reprimand or censure related to the certification or registration; and

(19) any additional information required by the department.

(B) Instead of submitting an application in the form prescribed pursuant to subsection (A), 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)~~:

(1) a copy of the application for registration in the other state;

(2) a statement that:

(a) identifies any material change in the information on the application described in item (1), cosigned under penalty of perjury; or

(b) verifies there is no such material change provided in subitem (a), signed under penalty of perjury; and

(3) a copy of the certificate of registration from the other state.

(C) The Department of Consumer Affairs shall accept the application and the certificate from the other state as an application for registration in this State and issue a certificate of registration to the applicant 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; and

(4) the registration has not been revoked or suspended and no action involving the individual’s conduct as an athlete agent is pending against the individual or his registration in any state.

(D) For purposes of implementing the provisions of subsection (C), the department shall:

(1) cooperate with national organizations concerned with athlete agent issues and agencies in other states which register athlete agents to develop a common registration form and determine which states have laws that are substantially similar to or more restrictive than this chapter; and

(2) exchange information, including information related to actions taken against registered athlete agents or their registrations, with those organizations and agencies.

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 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) pleaded guilty or no contest to, has been convicted of, or has charges pending for 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;

(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 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 registered under subsection (A) 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 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).~~ An athlete agent registered pursuant to Section 59‑102‑50(C) may renew the registration by proceeding under Section 59‑102‑50(D) or, if registration in the other state has been renewed, by submitting to the department copies of the application for renewal in the other state and the renewed registration from the other state. 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~~ renew the registration if it determines:

(1) registration requirements of the other state are substantially similar to or more restrictive than this chapter; and

(2) the renewed registration has not been suspended or revoked and no action involving the individual’s conduct as an athlete agent is pending against him or his registration in any state.

(F) A certificate of registration or a renewal of a registration is valid for two years.

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

(B) ~~A person 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.~~

~~(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~~ The department may suspend or revoke the registration of an individual registered pursuant to Section 59‑102‑50(C) or renewed pursuant to Section 59‑102‑60(E) for any reason for which the department could have refused to grant or renew registration or for conduct that would justify refusal to issue a certificate of registration pursuant to Section 59‑102‑60(B).

Section 59‑102‑80. The Department of Consumer Affairs may issue a temporary certificate of registration as an athlete agent 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) five hundred dollars for registration based on a certificate of registration issued by another state;

(3) three hundred dollars for an application for renewal of registration; or

(4) three hundred dollars for renewal of registration based on a renewal of registration in another state.

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) in a statement that the athlete agent is registered as an athlete agent in this State and a list of other states in which he is registered as an athlete agent;

(2) 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~~3) 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~~4) a description of expenses the student athlete agrees to reimburse;

(~~4~~5) a description of the services to be provided to the student athlete;

(~~5~~6) the duration of the contract; and

(~~6~~7) the date of execution.

(C) Subject to the provisions of subsection (G), 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~~ IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN SEVENTY‑TWO HOURS AFTER SIGNING THIS CONTRACT OR BEFORE THE NEXT SCHEDULED ATHLETIC EVENT IN WHICH YOU PARTICIPATE, WHICHEVER OCCURS FIRST, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR THAT YOU HAVE ENTERED INTO THIS CONTRACT AND PROVIDE THE NAME AND CONTACT INFORMATION OF THE ATHLETE AGENT; AND

(3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY AS A STUDENT ATHLETE IN YOUR SPORT.’

(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~~ An agency contract must be accompanied by a separate record signed by the student athlete or, if the athlete is a minor, the parent or guardian of the athlete acknowledging that signing the contract may result in the loss of the athlete’s eligibility to participate in the athlete’s sport.

(E) A student athlete or, if the athlete is a minor, the parent or guardian of the athlete may void an agency contract that does not conform to this section. If the contract is voided, any consideration received from the athlete agent under the contract to induce entering into the contract is not required to be returned.

(F) At the time an agency contract is executed, the athlete agent shall give the student athlete or, if the athlete is a minor, the parent or guardian of the athlete a copy in a record of the contract and the separate acknowledgement required by subsection (D).

(G) If a student athlete is a minor, an agency contract must be signed by the parent or guardian of the minor and the notice required by subsection (C) must be revised accordingly.

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~~ In this section, ‘communicating or attempting to communicate’ means contacting or attempting to contact by an in‑person meeting, a record, or another method that conveys or attempts to convey a message.

(B) Not later than 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 athlete is enrolled or at which the agent has reasonable grounds to believe the athlete intends to enroll.

(C) Not later than 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 shall inform the athletic director of the educational institution at which the athlete is enrolled that the athlete has entered into an agency contract and the name and contact information of the athlete agent.

(D) If an athlete agent enters into an agency contract with a student athlete and the athlete subsequently enrolls at an educational institution, the agent shall notify the athletic director of the institution of the existence of the contract not later than seventy‑two hours after the agent knew or should have known the athlete enrolled.

(E) If an athlete agent has a relationship with a student athlete before the athlete enrolls in an educational institution and receives an athletic scholarship from the institution, the agent shall notify the institution of the relationship not later than ten days after the enrollment if the agent knows or should have known of the enrollment and:

(1) the relationship was motivated in whole or part by the intention of the agent to recruit or solicit the athlete to enter an agency contract in the future; or

(2) the agent directly or indirectly recruited or solicited the athlete to enter an agency contract before the enrollment.

(F) An athlete agent shall give notice in a record to the athletic director of an educational institution at which a student athlete is enrolled before the agent communicates or attempts to communicate with:

(1) the athlete or, if the athlete is a minor, a parent or guardian of the athlete to influence the athlete or parent or guardian to enter into an agency contract; or

(2) another individual to have that individual influence the athlete or, if the athlete is a minor, the parent or guardian of the athlete to enter into an agency contract.

(G) If a communication or attempt to communicate with an athlete agent is initiated by a student athlete or another individual on behalf of the athlete, the agent shall notify in a record the athletic director of any educational institution at which the athlete is enrolled. The notification must be made not later than ten days after the communication or attempt.

(H) An educational institution that becomes aware of a violation of this chapter by an athlete agent shall notify the Department of Consumer Affairs and a professional league or players’ association with which the institution is aware the agent is licensed or registered of the violation.

Section 59‑102‑120. (A) A student athlete, or if the athlete is a minor, his parent or guardian 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 provided in subsection (A) may not be waived.

(C) If a student athlete, parent, or guardian cancels an agency contract, the student athlete, parent, or guardian 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.

Section 59‑102‑140. (A) An athlete agent, with the intent to induce a student athlete or, if the student athlete is a minor, a parent or guardian of the student athlete to enter into an agency contract, may not take any of the following actions or encourage any other individual to take or assist any other individual in taking any of the following actions on behalf of the athlete agent:

(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 to an individual other than the student athlete or another registered athlete agent.

(B) An athlete agent may not intentionally do any of the following or encourage another person to do any of the following on behalf of the athlete agent:

(1) initiate contact, directly or indirectly, with a student athlete or, if the student athlete is a minor, a parent or guardian of the student athlete to recruit the student athlete, parent, or guardian to enter an agency contract unless registered pursuant to this chapter;

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

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

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

(5) predate or postdate an agency contract; or

(6) fail to notify a student athlete or, if the student athlete is a minor, a parent or guardian of the athlete before the student athlete, parent, or guardian 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.

Section 59‑102‑150. 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.

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~~ An educational institution or student athlete may bring an action for damages against an athlete agent if the institution or athlete is adversely affected by an act or omission of the agent in violation of this chapter. An educational institution or student athlete is adversely affected by an act or omission of the agent only if, because of the act or omission, the institution or an individual who was a student athlete at the time of the act or omission and enrolled in the institution:

(1) is suspended or disqualified from participation in an interscholastic or intercollegiate athletic event by or under the rules of a state or national federation or association that promotes or regulates interscholastic or intercollegiate sports; or

(2) suffers financial damage.

(B) A plaintiff that prevails in an action under this section may recover actual damages, punitive damages, costs, and reasonable attorney’s fees. An athlete agent found liable under this section forfeits any right of payment for anything of benefit or value provided to the student athlete and shall refund any consideration paid to the agent by or on behalf of the athlete.

(C) A violation of this chapter is an unfair trade practice for purposes of the South Carolina Unfair Trade Practices Act.

Section 59‑102‑170. Upon a finding that an athlete agent has violated a provision of this chapter, 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 not to exceed one hundred thousand dollars for a violation of this chapter.

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.~~ (A) In enacting this chapter, the State of South Carolina adopts the Interstate Compact for Registration of Athlete Agents and agrees to participate with other states enacting those provisions in maintaining the Commission on Interstate Registration of Athlete Agents.

(B) Once effective, the compact continues in force and, except as otherwise provided in subsection (C), remains binding on each member state.

(C) A member state may withdraw from the compact by repealing the portions of the statute that enacted the compact into law. The withdrawal may not take effect until one year after the effective date of the statute that repeals the portions of the statute that enacted the compact into law and until written notice of the withdrawal has been given by the Governor and Secretary of State of the withdrawing state to the Governor and Secretary of State of each member state.

(D) A member state immediately shall notify the executive director of the commission in a record of the introduction of legislation to repeal the compact in the member state. Not later than sixty days after receipt of the notice, the executive director shall notify other member states of the introduction of the legislation.

(E) A state withdrawing from the compact under subsection (C) is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including obligations the performance of which extend beyond the effective date of withdrawal.

(F) The compact is dissolved effective on the date of the withdrawal of the member state that reduces the membership in the compact to fewer than five states. On dissolution, the compact has no further effect, and the affairs of the commission must be concluded and assets distributed in accordance with the commission’s bylaws.

Section 59‑102‑190. 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 59‑102‑200. The provisions of this chapter modify, limit, or supersede the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but do not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).”

SECTION 2. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 3. After enactment of the provisions of this act, the Code Commissioner is authorized to insert the Official Comments, as amended, available from the Uniform Law Commission into the annotated versions of the provisions of this act, as contained in the South Carolina Code of Laws, after the appropriate provision and before the South Carolina Reporter’s Comments, to the extent that the South Carolina Reporter’s Comments follow a provision. The Official Comments, prepared by the Uniform Law Commission with the intent of aiding the user in understanding the provisions to the Uniform Commercial Code, are not considered part of this act and do not indicate legislative intent.

SECTION 4. This act takes effect upon approval by the Governor.

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