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**HOUSE BILL NO. 1819**

Offered January 12, 2011

Prefiled January 11, 2011

A *BILL to amend the Code of Virginia by adding in Title 54.1 a chapter numbered 5.2, consisting of sections numbered 54.1-526 through 54.1-537, relating to the registration of athlete agents; penalty.*

Patrons—Ware, R.L. and Ward

Referred to Committee on General Laws

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding in Title 54.1 a chapter numbered 5.2, consisting of sections numbered 54.1-526 through 54.1-537, as follows:**

**CHAPTER 5.2.****ATHLETE AGENTS.****§ 54.1-526. Definitions.**

*As used in this chapter, unless the context requires a different meaning:*

*"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.*

*"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 shall 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.*

*"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.*

*"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.*

*"Director" means the Director of the Department of Professional and Occupational Regulation.*

*"Endorsement contract" means an agreement under which a student-athlete is employed or receives consideration to use on behalf of the other party any value that the student-athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance.*

*"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.*

*"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.*

*"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.*

*"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.*

*"Registration" means registration as an athlete agent pursuant to this chapter.*

*"State" means 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.*

*"Student-athlete" means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any 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.*

**§ 54.1-527. Registration required; exception; form; requirements; void contracts.**

**A. Except as otherwise provided in subsection B, an individual may not act as an athlete agent in the Commonwealth without being registered in accordance with this chapter.**

**B. Before being issued a certificate of registration, an individual may act as an athlete agent in the Commonwealth for all purposes except signing an agency contract, if:**

**1. A student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual; and**

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59 2. Within seven days after an initial act as an athlete agent, the individual submits an application for  
60 registration as an athlete agent in the Commonwealth.

61 C. An applicant for registration shall submit an application for registration to the Director in a form  
62 prescribed by the Director. The application shall be in the name of an individual and, except as  
63 otherwise provided in subsection D, signed under oath by the applicant and shall contain:

64 1. The name of the applicant and the address of the applicant's principal place of business;

65 2. The name of the applicant's business or employer, if applicable;

66 3. Any business or occupation engaged in by the applicant for the five years next preceding the date  
67 of submission of the application;

68 4. A description of the applicant's:

69 a. Formal training as an athlete agent;

70 b. Practical experience as an athlete agent; and

71 c. Educational background relating to the applicant's activities as an athlete agent;

72 5. The names and addresses of three individuals not related to the applicant who are willing to serve  
73 as references;

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

76 7. The names and addresses of all persons who are:

77 a. With respect to the athlete agent's business if it is not a corporation, the partners, members,  
78 officers, managers, associates, or profit-sharers of the business; and

79 b. With respect to a corporation employing the athlete agent, the officers, directors, and any  
80 shareholder of the corporation having an interest of five percent or greater;

81 8. Whether the applicant or any person named pursuant to subdivision 7 has been convicted of a  
82 crime that, if committed in the Commonwealth, would be a crime involving moral turpitude or a felony,  
83 and identify the crime;

84 9. Whether there has been any administrative or judicial determination that the applicant or any  
85 person named pursuant to subdivision 7 has made a false, misleading, deceptive, or fraudulent  
86 representation;

87 10. Any instance in which the conduct of the applicant or any person named pursuant to subdivision  
88 7 resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an  
89 interscholastic or intercollegiate athletic event on a student-athlete or educational institution;

90 11. Any sanction, suspension, or disciplinary action taken against the applicant or any person named  
91 pursuant to subdivision 7 arising out of occupational or professional conduct; and

92 12. Whether there has been any denial of an application for, suspension or revocation of, or refusal  
93 to renew, the registration or licensure of the applicant or any person named pursuant to subdivision 7  
94 as an athlete agent in any state.

95 D. An individual who has submitted an application for, and holds a certificate of, registration or  
96 licensure as an athlete agent in another state, may submit a copy of the application and certificate in  
97 lieu of submitting an application in the form prescribed pursuant to subsection A. The Director shall  
98 accept the application and the certificate from the other state as an application for registration in the  
99 Commonwealth if the application to the other state:

100 1. Was submitted in the other state within six months next preceding the submission of the  
101 application in the Commonwealth and the applicant certifies that the information contained in the  
102 application is current;

103 2. Contains information substantially similar to or more comprehensive than that required in an  
104 application submitted in the Commonwealth; and

105 3. Was signed by the applicant under penalty of perjury.

106 E. An agency contract resulting from conduct in violation of this section is void and the athlete  
107 agent shall return any consideration received under the contract.

108 § 54.1-528. Certificate of registration; issuance or denial; renewal; temporary certificate.

109 A. Except as otherwise provided in subsection B, the Director shall issue a certificate of registration  
110 to an individual who complies with subsection B of § 54.1-527 or whose application has been accepted  
111 under subsection D of § 54.1-527.

112 B. The Director may refuse to issue a certificate of registration if the Director determines that the  
113 applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as  
114 an athlete agent. In making the determination, the Director may consider whether the applicant has:

115 1. Been convicted of a crime that, if committed in the Commonwealth, would be a crime involving  
116 moral turpitude or a felony;

117 2. Made a materially false, misleading, deceptive, or fraudulent representation in the application or  
118 as an athlete agent;

119 3. Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;

120 4. Engaged in conduct prohibited by § 54.1-534;

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 the consequence of which was that a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student-athlete or educational institution; or

7. Engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity.

C. In making a determination under subsection B, the Director shall consider:

1. How recently the conduct occurred;

2. The nature of the conduct and the context in which it occurred; and

3. Any 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 Director. The application for renewal shall be signed by the applicant under penalty of perjury and shall contain current information on all matters required in an original registration.

E. An individual who has submitted an application for renewal of registration or licensure in another state, in lieu of submitting an application for renewal in the form prescribed pursuant to subsection D, may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The Director shall accept the application for renewal from the other state as an application for renewal in the Commonwealth if the application to the other state:

1. Was submitted in the other state within six months next preceding the filing in the Commonwealth 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 the Commonwealth; 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.

G. The Director may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.

§ 54.1-529. Service of process; subpoenas.

By acting as an athlete agent in the Commonwealth, a nonresident individual appoints the Director as the individual's agent for service of process in any civil action in the Commonwealth related to the individual's acting as an athlete agent in the Commonwealth.

The Director may issue subpoenas for any material that is relevant to the administration of this chapter.

§ 54.1-530. Required form of contract.

A. An agency contract shall be in a record, signed or otherwise authenticated by the parties.

B. An agency contract shall contain:

1. The amount and method of calculating the consideration to be paid by the student-athlete for services to be provided by the athlete agent under the contract and any other consideration the athlete agent has received or will receive from any other source for entering into the contract or for providing the services;

2. The name of any person not listed in the application for registration or renewal of registration who will be compensated because the student-athlete signed the agency contract;

3. A description of any expenses that 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.

C. An agency contract shall contain, in close proximity to the signature of the student-athlete, a conspicuous notice in 14 point boldface type in capital letters stating:

**WARNING TO STUDENT-ATHLETE**

**IF YOU SIGN THIS CONTRACT:**

**YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-ATHLETE IN YOUR SPORT;**

**IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING INTO THIS**

**CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND**

**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 any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

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

184 § 54.1-531 Notice to educational institution.

185 A. Within 72 hours after entering into an agency contract or before the next scheduled athletic event  
186 in which the student-athlete may participate, whichever occurs first, the athlete agent shall give notice in  
187 a record of the existence of the contract to the athletic director of the educational institution at which  
188 the student-athlete is enrolled or the athlete agent has reasonable grounds to believe the student-athlete  
189 intends to enroll.

190 B. Within 72 hours after entering into an agency contract or before the next athletic event in which  
191 the student-athlete may participate, whichever occurs first, the student-athlete shall inform the athletic  
192 director of the educational institution at which the student-athlete is enrolled that he or she has entered  
193 into an agency contract.

194 § 54.1-532. Student-athlete's right to cancel.

195 A. A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete  
196 agent in a record within 14 days after the contract is signed.

197 B. A student-athlete may not waive the right to cancel an agency contract.

198 C. If a student-athlete cancels an agency contract, the student-athlete is not required to pay any  
199 consideration under the contract or to return any consideration received from the athlete agent to  
200 induce the student-athlete to enter into the contract.

201 § 54.1-533. Required records.

202 A. An athlete agent shall retain the following records for a period of five years:

203 1. The name and address of each individual represented by the athlete agent;

204 2. Any agency contract entered into by the athlete agent; and

205 3. Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete  
206 to enter into an agency contract.

207 B. Records required by subsection A to be retained shall be subject to inspection by the Director  
208 during normal business hours.

209 § 54.1-534. Prohibited conduct.

210 A. An athlete agent, with the intent to induce a student-athlete to enter into an agency contract, shall  
211 not:

212 1. Give any materially false or misleading information or make a materially false promise or  
213 representation;

214 2. Furnish anything of value to a student-athlete before the student-athlete enters into the agency  
215 contract; or

216 3. Furnish anything of value to any individual other than the student-athlete or another registered  
217 athlete agent.

218 B. An athlete agent shall not intentionally:

219 1. Initiate contact with a student-athlete unless registered under this chapter;

220 2. Refuse or fail to retain or permit inspection of the records required to be retained by § 54.1-533;

221 3. Fail to register when required by § 54.1-527;

222 4. Provide materially false or misleading information in an application for registration or renewal of  
223 registration;

224 5. Predate or postdate an agency contract; or

225 6. Fail to notify a student-athlete before the student-athlete signs or otherwise authenticates an  
226 agency contract for a particular sport that the signing or authentication may make the student-athlete  
227 ineligible to participate as a student-athlete in that sport.

228 § 54.1-535. Penalties for violation.

229 A. The Director may assess a civil penalty against an athlete agent not to exceed \$10,000 for a  
230 violation of this chapter.

231 B. In addition, any athlete agent who violates the provision of § 54.1-534 shall be guilty of a Class 1  
232 misdemeanor.

233 § 54.1-536. Civil remedies.

234 A. An educational institution has a right of action against an athlete agent or a former  
235 student-athlete for damages caused by a violation of this chapter. In an action under this section, the  
236 court may award to the prevailing party costs and reasonable attorney's fees.

237 B. Damages of an educational institution under subsection A include losses and expenses incurred  
238 because, as a result of the conduct of an athlete agent or former student-athlete, the educational  
239 institution was injured by a violation of this chapter or was penalized, disqualified, or suspended from  
240 participation in athletics by a national association for the promotion and regulation of athletics, by an  
241 athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate sanctions likely  
242 to be imposed by such an organization.

243 C. A right of action under this section shall not accrue until the educational institution discovers or

244 *by the exercise of reasonable diligence would have discovered the violation by the athlete agent or*  
245 *former student-athlete.*

246 *D. Any liability of the athlete agent or the former student-athlete under this section is several and*  
247 *not joint.*

248 *E. This chapter shall not restrict any rights, remedies, or defenses of any person under law or*  
249 *equity.*

250 *§ 54.1-537. Electronic signatures in global and national commerce act.*

251 *The provisions of this chapter governing the legal effect, validity, or enforceability of (i) electronic*  
252 *records or signatures or (ii) contracts formed or performed with the use of such records or signatures*  
253 *conforming to the requirements of Section 102 of the Electronic Signatures in Global and National*  
254 *Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000), and supersede, modify, and limit the*  
255 *Electronic Signatures in Global and National Commerce Act.*

256 **2. That the provisions of this act shall become effective January 1, 2012.**

257 **3. That the Director shall promulgate regulations to implement the provisions of this act to be**  
258 **effective within 280 days of its enactment.**