

20103022D

## HOUSE BILL NO. 832

Offered January 8, 2020

Prefiled January 7, 2020

A BILL to amend and reenact § 59.1-200 of the Code of Virginia and to amend the Code of Virginia by adding in Title 54.1 a chapter numbered 5.2, consisting of sections numbered 54.1-519 through 54.1-533, relating to the Department of Professional and Occupational Regulation; registration of athlete agents; penalty; civil penalty.

Patrons—Sullivan and Ware

Referred to Committee on General Laws

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

1. That § 59.1-200 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Title 54.1 a chapter numbered 5.2, consisting of sections numbered 54.1-519 through 54.1-533, as follows:

CHAPTER 5.2.  
ATHLETE AGENTS.

**§ 54.1-519. 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 endorsement contract.

"Athlete agent" 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 student-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 student-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 student-athlete's participation in athletics (a) gives consideration to the student-athlete or another person, (b) serves the student-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 student-athlete by providing assistance with bills, payments, contracts, or taxes. "Athlete agent" does not include an individual who (a) acts solely on behalf of a professional sports team or organization or (b) 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 (1) also recruits or solicits the student-athlete to enter into an agency contract, (2) also, for compensation, procures employment or offers, promises, attempts, or negotiates to obtain employment for the student-athlete as a professional athlete or member of a professional sports team or organization, or (3) receives consideration for providing the services calculated using a different method than for an individual who is not a student-athlete.

"Athletic director" means the 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.

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

"Educational institution" means a public or private (i) elementary school, (ii) secondary school, (iii) technical or vocational school, (iv) community college, or (v) institution of higher education.

"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.

"Enrolled" or "enrolls" means registered for courses and attending athletic practice or class.

"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 that promotes or regulates collegiate athletics.

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59 *"Interscholastic sport" means a sport played between educational institutions that are not community*  
60 *colleges or institutions of higher education.*

61 *"Licensed, registered, or certified professional" means an individual, other than an athlete agent,*  
62 *who is licensed, registered, or certified as an attorney, dealer in securities, financial planner, insurance*  
63 *agent, real estate broker or sales agent, tax consultant, accountant, or member of a profession by the*  
64 *Commonwealth or a nationally recognized organization that licenses, registers, or certifies members of*  
65 *the profession on the basis of experience, education, or testing.*

66 *"Person" means an individual, estate, business or nonprofit entity, public corporation, government or*  
67 *governmental subdivision, agency, or instrumentality or other legal entity.*

68 *"Professional sports services contract" means an agreement under which an individual is employed*  
69 *as a professional athlete or agrees to render services as a player on a professional sports team or with*  
70 *a professional sports organization.*

71 *"Record" means information that is inscribed on a tangible medium or that is stored in an electronic*  
72 *or other medium and is retrieved in perceivable form.*

73 *"Recruit or solicit" means an attempt to influence the choice of an athlete agent by a student-athlete*  
74 *or, if the student-athlete is a minor, a parent or guardian of the student-athlete. "Recruit or solicit" does*  
75 *not include giving advice on the selection of a particular agent in a family, coaching, or social situation*  
76 *unless the individual giving the advice does so because of the receipt or anticipated receipt of an*  
77 *economic benefit, directly or indirectly, from the agent.*

78 *"Registration" means registration as a student-athlete.*

79 *"Sign" means, with present intent to authenticate or adopt a record, (i) to execute or adopt a*  
80 *tangible symbol or (ii) to attach to or logically associate with the record an electronic symbol, sound,*  
81 *or process.*

82 *"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States*  
83 *Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.*

84 *"Student-athlete" means an individual who is eligible to attend an educational institution and*  
85 *engages in, is eligible to engage in, or may be eligible in the future to engage in any interscholastic or*  
86 *intercollegiate sport. "Student-athlete" does not include an individual permanently ineligible to*  
87 *participate in a particular interscholastic or intercollegiate sport.*

88 **§ 54.1-520. Authority; procedure.**

89 *A. The Director may promulgate such regulations necessary to implement this chapter and may issue*  
90 *cease and desist orders and otherwise seek to prevent continuing violations of this chapter.*

91 *B. By acting as an athlete agent in the Commonwealth, a nonresident individual appoints the*  
92 *Secretary of State as the individual's agent for service of process in any civil action in the*  
93 *Commonwealth related to the individual acting as an athlete agent in the Commonwealth.*

94 *C. The Director may issue a subpoena for material that is relevant to the administration of this*  
95 *chapter.*

96 **§ 54.1-521. Athlete agent; registration required; void contract.**

97 *A. Except as otherwise provided in subsection B, an individual may not act as an athlete agent in*  
98 *the Commonwealth without holding a certificate of registration under this chapter.*

99 *B. Before being issued a certificate of registration under this chapter, an individual may act as an*  
100 *athlete agent in the Commonwealth for all purposes except signing an agency contract if (i) a*  
101 *student-athlete or another person acting on behalf of the student-athlete initiates communication with the*  
102 *individual and (ii) not later than seven days after an initial act that requires the individual to register*  
103 *as an athlete agent, the individual submits an application for registration as an athlete agent in the*  
104 *Commonwealth.*

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

107 **§ 54.1-522. Registration as athlete agent; application; requirements; reciprocal registration;**  
108 **penalty.**

109 *A. An applicant for registration as an athlete agent shall submit an application for registration to*  
110 *the Director in a form prescribed by the Director. The application shall be signed by the applicant*  
111 *under penalty of perjury and shall contain at least the following:*

112 *1. The name and date and place of birth of the applicant and the following contact information for*  
113 *the applicant: (i) the address of the applicant's principal place of business; (ii) work and mobile*  
114 *telephone numbers; and (iii) any means of communicating electronically, including a facsimile number,*  
115 *email address, and personal and business or employer websites;*

116 *2. The name of the applicant's business or employer, if applicable, including for each business or*  
117 *employer, its mailing address, telephone number, organization form, and the nature of the business;*

118 *3. Each social media account with which the applicant or the applicant's business or employer is*  
119 *affiliated;*

120 *4. Each business or occupation in which the applicant engaged within five years before the date 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;

5. A description of the applicant's (i) formal training as an athlete agent, (ii) practical experience as an athlete agent, and (iii) educational background relating to the applicant's activities as an athlete agent;

6. The name of each student-athlete for whom the applicant acted as an athlete agent within five years before the date of the application or, if the student-athlete is a minor, the name of the parent or guardian of the student-athlete, together with the student-athlete's sport and last known team;

7. The name and address of each person that (i) is a partner, member, officer, manager, associate, or profit sharer or directly or indirectly holds an equity interest of five percent or greater of the athlete agent's business if it is not a corporation and (ii) is an officer or director of a corporation employing the athlete agent or a shareholder having an interest of five percent or greater in the corporation;

8. A description of the status of any application by the applicant, or any person named under subdivision 7, for a state or federal business, professional, or occupational license, other than as an athlete agent, from a state or federal agency, including any denial, refusal to renew, suspension, withdrawal, or termination of the license and any reprimand or censure related to the license;

9. Whether the applicant, or any person named under subdivision 7, has pleaded guilty or no contest to, has been convicted of, or has charges pending for a crime that would involve moral turpitude or be a felony if committed in the Commonwealth and, if so, identification of (i) the crime, (ii) the law-enforcement agency involved, and (iii) if applicable, the date of the conviction and the fine or penalty imposed;

10. Whether, within 15 years before the date of application, the applicant, or any person named under subdivision 7, 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 any person named under subdivision 7, has an unsatisfied judgment or a judgment of continuing effect, including alimony or a domestic order in the nature of child support, which is not current at the date of the application;

12. Whether, within 10 years before the date of application, the applicant, or any person named under subdivision 7, was adjudicated bankrupt or was an owner of a business that was adjudicated bankrupt;

13. Whether there has been any administrative or judicial determination that the applicant, or any person named under subdivision 7, made a false, misleading, deceptive, or fraudulent representation;

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

15. Each sanction, suspension, or disciplinary action taken against the applicant, or any person named under subdivision 7, arising out of occupational or professional conduct;

16. Whether there has been a denial of an application for, suspension or revocation of, refusal to renew, or abandonment of, the registration of the applicant, or any person named under subdivision 7, 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, (i) the name of the league or association; (ii) the date of certification or registration and the date of expiration of the certification or registration, if any; and (iii) 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 Director.

B. Instead of proceeding under subsection A, an individual registered as an athlete agent in another state may apply for registration as an athlete agent in the Commonwealth by submitting to the Director (i) a copy of the application for registration in the other state; (ii) a statement that identifies any material change in the information on the application or verifies there is no material change in the information, signed under penalty of perjury; and (iii) a copy of the certificate of registration from the other state.

C. The Director shall issue a certificate of registration to an individual who applies for registration under subsection B if the Director determines (i) the application and registration requirements of the other state are substantially similar to or more restrictive than the requirements in this chapter and (ii) 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 the individual's registration in any state.

182 D. For purposes of implementing subsection C, the Director shall (i) cooperate with national  
183 organizations concerned with athlete agent issues and agencies in other states that register athlete  
184 agents to develop a common registration form and determine which states have laws that are  
185 substantially similar to or more restrictive than this chapter and (ii) exchange information, including  
186 information related to actions taken against registered athlete agents or their registrations, with those  
187 organizations and agencies.

188 **§ 54.1-523. Certificate of registration; issuance or denials; renewal.**

189 A. Except as otherwise provided in subsection B, the Director shall issue a certificate of registration  
190 to an applicant for registration who complies with subsection A of § 54.1-522.

191 B. The Director may refuse to issue a certificate of registration to an applicant for registration under  
192 subsection A of § 54.1-522 if the Director determines that the applicant has engaged in conduct that  
193 significantly adversely reflects on the applicant's fitness to act as an athlete agent. In making the  
194 determination, the Director may consider whether the applicant has (i) pleaded guilty or no contest to,  
195 has been convicted of, or has charges pending for a crime that would involve moral turpitude or be a  
196 felony if committed in the Commonwealth; (ii) made a materially false, misleading, deceptive, or  
197 fraudulent representation in the application or as an athlete agent; (iii) engaged in conduct that would  
198 disqualify the applicant from serving in a fiduciary capacity; (iv) engaged in conduct prohibited by  
199 § 54.1-531; (v) had a registration as an athlete agent suspended, revoked, or denied in any state; (vi)  
200 been refused renewal of registration as an athlete agent in any state; (vii) engaged in conduct resulting  
201 in imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic  
202 or intercollegiate athletic event of a student-athlete or a sanction on an educational institution; or (viii)  
203 engaged in conduct that adversely reflects on the applicant's credibility, honesty, or integrity.

204 C. In making a determination under subsection B, the Director shall consider (i) how recently the  
205 conduct occurred, (ii) the nature of the conduct and the context in which it occurred, and (iii) other  
206 relevant conduct of the applicant.

207 D. An athlete agent registered under subsection A may apply to renew the registration by submitting  
208 an application for renewal in a form prescribed by the Director. The applicant shall sign the  
209 application for renewal under penalty of perjury and include current information on all matters required  
210 in an original application for registration.

211 E. An athlete agent registered under subsection C of § 54.1-522 may renew the registration by  
212 proceeding under subsection D or, if the registration in the other state has been renewed, by submitting  
213 to the Director copies of the application for renewal in the other state and the renewed registration  
214 from the other state. The Director shall renew the registration if the Director determines (i) the  
215 registration requirements of the other state are substantially similar to or more restrictive than the  
216 requirements in this chapter and (ii) the renewed registration has not been suspended or revoked and no  
217 action involving the individual's conduct as an athlete agent is pending against the individual or the  
218 individual's registration in any state.

219 F. A certificate of registration or renewal of registration under this chapter is valid for two years.

220 **§ 54.1-524. Suspension, revocation, or refusal to renew registration.**

221 A. The Director may limit, suspend, revoke, or refuse to renew a registration of an individual  
222 registered under subsection A of § 54.1-523 for conduct that would have justified refusal to issue a  
223 certificate of registration under subsection B of § 54.1-523.

224 B. The Director may suspend or revoke the registration of an individual registered under subsection  
225 C of § 54.1-522 or renewed under subsection E of § 54.1-523 for any reason for which the Director  
226 could have refused to grant or renew registration or for conduct that would justify refusal to issue a  
227 certificate of registration under subsection B of § 54.1-523.

228 **§ 54.1-525. Temporary registration.**

229 The Director may issue a temporary certificate of registration as an athlete agent while an  
230 application for registration or renewal of registration is pending.

231 **§ 54.1-526. Registration and renewal fees.**

232 An application for registration or renewal of registration as an athlete agent shall be accompanied  
233 by a fee in the amount of \$500 each for (i) an initial application for registration, (ii) registration based  
234 on a certificate of registration issued by another state, (iii) an application for renewal of registration,  
235 and (iv) renewal of registration based on a renewal of registration in another state.

236 **§ 54.1-527. Required form of agency contract.**

237 A. An agency contract shall be in a record signed by the parties.

238 B. An agency contract shall contain:

239 1. A statement that the athlete agent is registered as an athlete agent in the Commonwealth and a  
240 list of any other states in which the agent is registered as an athlete agent;

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

3. The name of any person not listed in the agent's application for registration or renewal of registration which will be compensated because the student-athlete signed the contract;

4. A description of any expenses the student-athlete agrees to reimburse;

5. A description of the services to be provided to the student-athlete;

6. The duration of the contract; and

7. The date of execution.

C. Subject to subsection G, an agency contract shall contain a conspicuous notice in boldface type and in substantially the following form:

**"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, WITHIN 72 HOURS OF 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. HOWEVER, CANCELLATION OF THIS CONTRACT DOES NOT GUARANTEE REINSTATEMENT OF YOUR ELIGIBILITY AS A STUDENT-ATHLETE IN YOUR SPORT."

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

E. A student-athlete or, if the student-athlete is a minor, the parent or guardian of the student-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 student-athlete is a minor, the parent or guardian of the student-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 shall be signed by the parent or guardian of the student-athlete and the notice required by subsection C shall be revised accordingly.

**§ 54.1-528. Notice to educational institution.**

A. For purposes of this section, "communication or attempt to communicate" or any variation thereof means contacting or attempting to contact by an in-person meeting, a record, or any other method that conveys or attempts to convey a message.

B. Not later than 72 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 at which the agent has reasonable grounds to believe the student-athlete intends to enroll.

C. Not later than 72 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 student-athlete shall inform the athletic director of the educational institution at which the student-athlete is enrolled that the student-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 student-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 72 hours after the agent knew or should have known the student-athlete enrolled.

E. If an athlete agent has a relationship with a student-athlete before the student-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 10 days after the enrollment if the agent knows or should have known of the enrollment and (i) the relationship was motivated in whole or in part by the intention of the agent to recruit or solicit the student-athlete to enter an agency contract in the future or (ii) the agent directly or indirectly recruited or solicited the student-athlete to enter an agency contract before the enrollment.

F. An athlete agent shall give notice in a record to the athletic director of any educational institution at which a student-athlete is enrolled before the agent communicates or attempts to communicate with (i) the student-athlete or, if the student-athlete is a minor, a parent or guardian of the student-athlete to

influence the student-athlete or parent or guardian to enter into an agency contract or (ii) another individual to have that individual influence the student-athlete or, if the student-athlete is a minor, the parent or guardian of the student-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 student-athlete, the agent shall notify in a record the athletic director of any educational institution at which the student-athlete is enrolled. The notification shall be made not later than 10 days after the communication or attempt to communicate.

H. An educational institution that becomes aware of a violation of this chapter by an athlete agent shall notify the Director and any professional league or players association with which the institution is aware the agent is licensed or registered of the violation.

**§ 54.1-529. Student-athlete's right to cancel.**

A. A student-athlete or, if the student-athlete is a minor, the parent or guardian of the student-athlete may cancel an agency contract by giving notice in a record of cancellation to the athlete agent not later than 14 days after the contract is signed.

B. A student-athlete or, if the student-athlete is a minor, the parent or guardian of the student-athlete may not waive the right to cancel an agency contract.

C. If a student-athlete or, if the student-athlete is a minor, a parent or guardian of the student-athlete cancels an agency contract, the student-athlete or, if the student-athlete is a minor, the parent or guardian of the student-athlete is not required to pay any consideration under the contract or return any consideration received from the athlete agent to influence the student-athlete to enter into the contract.

**§ 54.1-530. Required records.**

A. An athlete agent shall create and retain for five years records of the following:

1. The name and address of each student-athlete represented by the agent;
2. Each agency contract entered into by the agent; and
3. The direct costs incurred by the agent in the recruitment or solicitation of each student-athlete to enter into an agency contract.

B. Records described in subsection A shall be open to inspection by the Director during normal business hours.

**§ 54.1-531. Prohibited conduct.**

An athlete agent may not intentionally:

1. Give a student-athlete or, if the student-athlete is a minor, a parent or guardian of the student-athlete materially false or misleading information or make a materially false promise or representation with the intent to influence the student-athlete or, if the student-athlete is a minor, a parent or guardian of the student-athlete to enter into an agency contract;

2. Furnish anything of value to a student-athlete or another individual, if to do so may result in loss of the student-athlete's eligibility to participate in the student-athlete's sport, unless (i) the agent notifies the athletic director of the educational institution at which the student-athlete is enrolled or at which the agent has reasonable grounds to believe the student-athlete intends to enroll, not later than 72 hours after giving the thing of value and (ii) the student-athlete or, if the student-athlete is a minor, a parent or guardian of the student-athlete acknowledges to the agent in a record that receipt of the thing of value may result in loss of the student-athlete's eligibility to participate in the student-athlete's sport;

3. 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 or solicit the student-athlete or, if the student-athlete is a minor, a parent or guardian of the student-athlete to enter an agency contract unless registered under this chapter;

4. Fail to create, retain, or permit inspection of the records required by § 54.1-530;

5. Fail to register when required by § 54.1-521;

6. Provide materially false or misleading information in an application for registration or renewal of registration;

7. Predate or postdate an agency contract;

8. Fail to notify a student-athlete or, if the student-athlete is a minor, a parent or guardian of the student-athlete before the student-athlete or, if the student-athlete is a minor, a parent or guardian of the student-athlete signs an agency contract for a particular sport that the signing may result in loss of the student-athlete's eligibility to participate in the student-athlete's sport;

9. Encourage another individual to do any of the acts described in subdivisions 1 through 8 on behalf of the agent; or

10. Encourage another individual to assist any other individual in doing any of the acts described in subdivisions 1 through 8 on behalf of the agent.

**§ 54.1-532. Criminal penalty.**

An athlete agent who violates § 54.1-531 is guilty of a Class 1 misdemeanor and in addition, the Director may suspend the agent's certificate of registration for no more than 12 months.

**§ 54.1-533. Civil remedy; penalty.**

A. An educational institution or student-athlete may bring an action for damages against an athlete agent if the institution or student-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 (i) is suspended or disqualified from participation in an interscholastic or intercollegiate sports event by or under the rules of a state or national federation or association that promotes or regulates interscholastic or intercollegiate sports or (ii) suffers financial damage.

B. A plaintiff that prevails in an action under this section may recover actual damages, punitive damages, costs, and reasonable attorney 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 student-athlete.

C. A violation of this chapter also shall constitute a violation of the Virginia Consumer Protection Act (§ 59.1-196 et seq.).

D. The Director may assess a civil penalty against an athlete agent not to exceed \$50,000 for a violation of this chapter.

**§ 59.1-200. Prohibited practices.**

A. The following fraudulent acts or practices committed by a supplier in connection with a consumer transaction are hereby declared unlawful:

1. Misrepresenting goods or services as those of another;
2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;
3. Misrepresenting the affiliation, connection, or association of the supplier, or of the goods or services, with another;
4. Misrepresenting geographic origin in connection with goods or services;
5. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits;
6. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model;
7. Advertising or offering for sale goods that are used, secondhand, repossessed, defective, blemished, deteriorated, or reconditioned, or that are "seconds," irregulars, imperfects, or "not first class," without clearly and unequivocally indicating in the advertisement or offer for sale that the goods are used, secondhand, repossessed, defective, blemished, deteriorated, reconditioned, or are "seconds," irregulars, imperfects or "not first class";
8. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell at the price or upon the terms advertised.

In any action brought under this subdivision, the refusal by any person, or any employee, agent, or servant thereof, to sell any goods or services advertised or offered for sale at the price or upon the terms advertised or offered, shall be prima facie evidence of a violation of this subdivision. This paragraph shall not apply when it is clearly and conspicuously stated in the advertisement or offer by which such goods or services are advertised or offered for sale, that the supplier or offeror has a limited quantity or amount of such goods or services for sale, and the supplier or offeror at the time of such advertisement or offer did in fact have or reasonably expected to have at least such quantity or amount for sale;

9. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

10. Misrepresenting that repairs, alterations, modifications, or services have been performed or parts installed;

11. Misrepresenting by the use of any written or documentary material that appears to be an invoice or bill for merchandise or services previously ordered;

12. Notwithstanding any other provision of law, using in any manner the words "wholesale," "wholesaler," "factory," or "manufacturer" in the supplier's name, or to describe the nature of the supplier's business, unless the supplier is actually engaged primarily in selling at wholesale or in manufacturing the goods or services advertised or offered for sale;

13. Using in any contract or lease any liquidated damage clause, penalty clause, or waiver of defense, or attempting to collect any liquidated damages or penalties under any clause, waiver, damages, or penalties that are void or unenforceable under any otherwise applicable laws of the Commonwealth, or under federal statutes or regulations;

13a. Failing to provide to a consumer, or failing to use or include in any written document or material provided to or executed by a consumer, in connection with a consumer transaction any statement, disclosure, notice, or other information however characterized when the supplier is required by 16 C.F.R. Part 433 to so provide, use, or include the statement, disclosure, notice, or other information in connection with the consumer transaction;

- 428 14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection  
429 with a consumer transaction;
- 430 15. Violating any provision of § 3.2-6512, 3.2-6513, or 3.2-6516, relating to the sale of certain  
431 animals by pet dealers which is described in such sections, is a violation of this chapter;
- 432 16. Failing to disclose all conditions, charges, or fees relating to:
- 433 a. The return of goods for refund, exchange, or credit. Such disclosure shall be by means of a sign  
434 attached to the goods, or placed in a conspicuous public area of the premises of the supplier, so as to be  
435 readily noticeable and readable by the person obtaining the goods from the supplier. If the supplier does  
436 not permit a refund, exchange, or credit for return, he shall so state on a similar sign. The provisions of  
437 this subdivision shall not apply to any retail merchant who has a policy of providing, for a period of not  
438 less than 20 days after date of purchase, a cash refund or credit to the purchaser's credit card account  
439 for the return of defective, unused, or undamaged merchandise upon presentation of proof of purchase.  
440 In the case of merchandise paid for by check, the purchase shall be treated as a cash purchase and any  
441 refund may be delayed for a period of 10 banking days to allow for the check to clear. This subdivision  
442 does not apply to sale merchandise that is obviously distressed, out of date, post season, or otherwise  
443 reduced for clearance; nor does this subdivision apply to special order purchases where the purchaser  
444 has requested the supplier to order merchandise of a specific or unusual size, color, or brand not  
445 ordinarily carried in the store or the store's catalog; nor shall this subdivision apply in connection with a  
446 transaction for the sale or lease of motor vehicles, farm tractors, or motorcycles as defined in §  
447 46.2-100;
- 448 b. A layaway agreement. Such disclosure shall be furnished to the consumer (i) in writing at the time  
449 of the layaway agreement, or (ii) by means of a sign placed in a conspicuous public area of the  
450 premises of the supplier, so as to be readily noticeable and readable by the consumer, or (iii) on the bill  
451 of sale. Disclosure shall include the conditions, charges, or fees in the event that a consumer breaches  
452 the agreement;
- 453 16a. Failing to provide written notice to a consumer of an existing open-end credit balance in excess  
454 of \$5 (i) on an account maintained by the supplier and (ii) resulting from such consumer's overpayment  
455 on such account. Suppliers shall give consumers written notice of such credit balances within 60 days of  
456 receiving overpayments. If the credit balance information is incorporated into statements of account  
457 furnished consumers by suppliers within such 60-day period, no separate or additional notice is required;
- 458 17. If a supplier enters into a written agreement with a consumer to resolve a dispute that arises in  
459 connection with a consumer transaction, failing to adhere to the terms and conditions of such an  
460 agreement;
- 461 18. Violating any provision of the Virginia Health Club Act, Chapter 24 (§ 59.1-294 et seq.);
- 462 19. Violating any provision of the Virginia Home Solicitation Sales Act, Chapter 2.1 (§ 59.1-21.1 et  
463 seq.);
- 464 20. Violating any provision of the Automobile Repair Facilities Act, Chapter 17.1 (§ 59.1-207.1 et  
465 seq.);
- 466 21. Violating any provision of the Virginia Lease-Purchase Agreement Act, Chapter 17.4  
467 (§ 59.1-207.17 et seq.);
- 468 22. Violating any provision of the Prizes and Gifts Act, Chapter 31 (§ 59.1-415 et seq.);
- 469 23. Violating any provision of the Virginia Public Telephone Information Act, Chapter 32  
470 (§ 59.1-424 et seq.);
- 471 24. Violating any provision of § 54.1-1505;
- 472 25. Violating any provision of the Motor Vehicle Manufacturers' Warranty Adjustment Act, Chapter  
473 17.6 (§ 59.1-207.34 et seq.);
- 474 26. Violating any provision of § 3.2-5627, relating to the pricing of merchandise;
- 475 27. Violating any provision of the Pay-Per-Call Services Act, Chapter 33 (§ 59.1-429 et seq.);
- 476 28. Violating any provision of the Extended Service Contract Act, Chapter 34 (§ 59.1-435 et seq.);
- 477 29. Violating any provision of the Virginia Membership Camping Act, Chapter 25 (§ 59.1-311 et  
478 seq.);
- 479 30. Violating any provision of the Comparison Price Advertising Act, Chapter 17.7 (§ 59.1-207.40 et  
480 seq.);
- 481 31. Violating any provision of the Virginia Travel Club Act, Chapter 36 (§ 59.1-445 et seq.);
- 482 32. Violating any provision of §§ 46.2-1231 and 46.2-1233.1;
- 483 33. Violating any provision of Chapter 40 (§ 54.1-4000 et seq.) of Title 54.1;
- 484 34. Violating any provision of Chapter 10.1 (§ 58.1-1031 et seq.) of Title 58.1;
- 485 35. Using the consumer's social security number as the consumer's account number with the supplier,  
486 if the consumer has requested in writing that the supplier use an alternate number not associated with  
487 the consumer's social security number;
- 488 36. Violating any provision of Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2;
- 489 37. Violating any provision of § 8.01-40.2;



38. Violating any provision of Article 7 (§ 32.1-212 et seq.) of Chapter 6 of Title 32.1;  
 39. Violating any provision of Chapter 34.1 (§ 59.1-441.1 et seq.);  
 40. Violating any provision of Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2;  
 41. Violating any provision of the Virginia Post-Disaster Anti-Price Gouging Act, Chapter 46 (§ 59.1-525 et seq.);  
 42. Violating any provision of Chapter 47 (§ 59.1-530 et seq.);  
 43. Violating any provision of § 59.1-443.2;  
 44. Violating any provision of Chapter 48 (§ 59.1-533 et seq.);  
 45. Violating any provision of Chapter 25 (§ 6.2-2500 et seq.) of Title 6.2;  
 46. Violating the provisions of clause (i) of subsection B of § 54.1-1115;  
 47. Violating any provision of § 18.2-239;  
 48. Violating any provision of Chapter 26 (§ 59.1-336 et seq.);  
 49. Selling, offering for sale, or manufacturing for sale a children's product the supplier knows or has reason to know was recalled by the U.S. Consumer Product Safety Commission. There is a rebuttable presumption that a supplier has reason to know a children's product was recalled if notice of the recall has been posted continuously at least 30 days before the sale, offer for sale, or manufacturing for sale on the website of the U.S. Consumer Product Safety Commission. This prohibition does not apply to children's products that are used, secondhand or "seconds";  
 50. Violating any provision of Chapter 44.1 (§ 59.1-518.1 et seq.);  
 51. Violating any provision of Chapter 22 (§ 6.2-2200 et seq.) of Title 6.2;  
 52. Violating any provision of § 8.2-317.1;  
 53. Violating subsection A of § 9.1-149.1;  
 54. Selling, offering for sale, or using in the construction, remodeling, or repair of any residential dwelling in the Commonwealth, any drywall that the supplier knows or has reason to know is defective drywall. This subdivision shall not apply to the sale or offering for sale of any building or structure in which defective drywall has been permanently installed or affixed;  
 55. Engaging in fraudulent or improper or dishonest conduct as defined in § 54.1-1118 while engaged in a transaction that was initiated (i) during a declared state of emergency as defined in § 44-146.16 or (ii) to repair damage resulting from the event that prompted the declaration of a state of emergency, regardless of whether the supplier is licensed as a contractor in the Commonwealth pursuant to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1;  
 56. Violating any provision of Chapter 33.1 (§ 59.1-434.1 et seq.);  
 57. Violating any provision of § 18.2-178, 18.2-178.1, or 18.2-200.1;  
 58. Violating any provision of Chapter 17.8 (§ 59.1-207.45 et seq.);  
 59. Violating any provision of subsection E of § 32.1-126; and  
 60. Violating any provision of § 54.1-111 relating to the unlicensed practice of a profession licensed under Chapter 11 (§ 54.1-1100 et seq.) or Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1; and  
 61. Violating any provision of Chapter 5.2 (§ 54.1-519 et seq.) of Title 54.1.
- B. Nothing in this section shall be construed to invalidate or make unenforceable any contract or lease solely by reason of the failure of such contract or lease to comply with any other law of the Commonwealth or any federal statute or regulation, to the extent such other law, statute, or regulation provides that a violation of such law, statute, or regulation shall not invalidate or make unenforceable such contract or lease.
- 2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 854 of the Acts of Assembly of 2019 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**